

ASSEMBLY BILL

No. 3370

Introduced by Assemblymen **Burton, Alatorre, Garcia, and
~~Foran~~ Foran, and Berman**

March 11, 1974

REFERRED TO COMMITTEE ON LABOR RELATIONS

*An act to add Part 11 (commencing with Section 2670) to
Division 2 of the Labor Code, relating to agricultural labor
relations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3370, as amended, Burton (Labor Rel.). Agricultural Employees Election Law.

Enacts Agricultural Employees Election Law of 1974.

Specifies rights, duties, and obligations of agricultural employers, agricultural employees, and labor organizations in agricultural labor relations under such law.

Creates the Agricultural Workers Commission in state government, and specifies membership, powers, and duties thereof.

Provides for secret ballot election among agricultural employees to select a labor organization as their exclusive bargaining agent.

Adds various related provisions.

Provides that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the act.

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

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

1 SECTION 1. Part 11, commencing with Section 2670,
2 is added to Division 2 of the Labor Code, to read as
3 follows:

4
5 PART 11

6
7 Article 1. General Policy

8
9 Section 2670. It is hereby stated to be the policy of
10 the State of California to encourage and protect the right
11 of agricultural employees to full freedom of association,
12 self-organization, and designation of representatives of
13 their own choosing. For this purpose this part is adopted
14 to provide orderly procedures for the selection of
15 collective bargaining representatives by agricultural
16 employees.

17 Section 2671. This part may be referred to as the
18 "Agricultural Employees Election Law of 1974".

19
20 CHAPTER 1. DEFINITIONS

21
22 Section 2672. As used in this part:

23 (a) "Agricultural employee" or "employee" shall
24 mean one engaged in agriculture as that term is defined
25 in Section 3(f) of the Fair Labor Standards Act, as
26 amended, 29 U.S.C. § 203(f).

27 (b) "Employer" shall be liberally construed to include
28 any person acting directly or indirectly in the interest of
29 an employer in relation to an agricultural employee, any
30 individual grower, corporate grower, cooperative
31 grower, any association of persons or cooperatives
32 engaged in agriculture and shall include any person who
33 owns or leases or manages land used for agricultural
34 purposes, but shall exclude any person supplying
35 agricultural workers to an employer, any labor contractor
36 as defined by Section 1682 of this code, and any person
37 functioning in the capacity of a labor contractor. The
38 employer engaging such labor contractor or person shall

1 be deemed the employer for all purposes under this part.

2 (c) "Labor organization" shall mean any organization
3 of any kind, or any agency or employee representation
4 committee or plan, in which the employees participate
5 and which exists, in whole or in part, for the purpose of
6 dealing with employers concerning grievances, labor
7 disputes, wages, rates of pay, hours of employment, or
8 conditions of work for agricultural employees.

9 (d) "Bargaining unit" shall mean all the agricultural
10 employees of any employer.

11 (e) "Certification year" shall mean one year from the
12 date upon which the commission certifies the results of an
13 election conducted pursuant to the provisions of this part
14 and shall also mean one year from the inception of a
15 recognitional strike in which a majority of the employees
16 of an employer struck for recognition or from the
17 confirmation of such majority by the commission,
18 whichever is later.

19 (f) "Party" or "person" shall mean any individual
20 person, corporation, partnership, or any other legal
21 entity, employer, or labor organization having an interest
22 in the outcome of a proceeding under this part.

23 (g) "Commission" shall mean the Agricultural
24 Workers Commission established hereunder.

25

26 CHAPTER 2. AGRICULTURAL WORKERS COMMISSION

27

28 Section 2673. The Agricultural Workers Commission,
29 consisting of three (3) members, is hereby created as an
30 agency of the state. It shall exercise all powers vested in
31 it under this code.

32 The members shall be appointed by the Governor,
33 with the advice and consent of the Senate. One member
34 shall be chosen from interests representative of
35 agricultural employers. One member shall be chosen
36 from interests representative of the workers. One
37 member, who shall be the chairman, shall be chosen from
38 interests representative of the public and shall not have
39 had any association with agricultural management or
40 agricultural labor interests. Each member shall receive

1 an annual salary equal to the annual salary paid a judge
2 of a superior court in this state, and shall engage in no
3 other business, vocation or employment.

4 Each member shall be appointed for a term of three
5 (3) years, provided that the original chairman shall be
6 appointed for a term of three (3) years and the remaining
7 two members for periods of one (1) and two (2) years
8 respectively as the Governor shall appoint.

9 Section 2673.1. The commission shall have the power
10 to appoint such administrative assistants, attorneys, and
11 other employees, as necessary for the proper exercise of
12 its duties. The commission shall maintain principal offices
13 in San Francisco and Los Angeles, and subsidiary offices
14 in such places as it deems necessary.

15 Section 2673.2. The commission shall travel from
16 place to place within the State of California to hear
17 matters brought under the provisions of this part. It shall
18 make a written summary of the proceedings held before
19 it and the evidence upon which it bases its decision.
20 Actions of the commission shall be taken by a decision of
21 a majority of the commission.

22 Section 2673.3. The members of the commission and
23 their authorized employees shall have free access to all
24 places of labor. If any person or agent or officer thereof
25 refuses admission to the members of the commission or
26 their authorized employees or, upon request, willfully
27 neglects or refuses to furnish them any statistics or
28 information pertaining to their lawful duties, which are
29 in his possession or under his control, it shall constitute
30 grounds for setting the election aside and such person
31 shall be guilty of a misdemeanor, punishable by a fine of
32 not more than two hundred dollars (\$200).

33 Section 2673.4. If any person willfully impedes or
34 prevents the members of the commission or their
35 authorized employees in the performance of their duties,
36 it shall constitute grounds for setting the election aside
37 and such person shall be guilty of a misdemeanor,
38 punishable by a fine of not less than ten dollars (\$10) and
39 not more than fifty dollars (\$50) or imprisonment of not
40 less than seven (7) nor more than thirty (30) days in the

1 county jail or both.

2 Section 2673.5. The members of the commission and
3 their duly authorized employees may issue subpoenas to
4 compel the attendance of witnesses and parties and the
5 production of books, papers, and records; administer
6 oaths; examine witnesses under oath; take the
7 verification, acknowledgment or proof of written
8 instruments; and take depositions and affidavits for the
9 purpose of carrying out the provisions of this code and all
10 laws which the commission is to enforce.

11 Section 2673.6. Obedience to subpoenas issued by the
12 commission shall be enforced by the courts. It is a
13 misdemeanor to ignore willfully such a subpoena if it calls
14 for an appearance at a distance from the place of service
15 two hundred fifty miles (250) or less.

16 Section 2673.7. The commission, upon the ex parte
17 application of any party in writing, shall grant any
18 subpoena requested by such party. Any person served
19 with a subpoena may, within five (5) days of the service
20 of the subpoena, file a petition in writing to revoke with
21 the commission and serve a copy on the party applying
22 for the subpoena. The commission shall revoke the
23 subpoena if, in its opinion, the evidence, the production
24 of which is required, does not relate to any matter under
25 investigation or in question in the proceedings or the
26 subpoena does not describe with sufficient particularity
27 the evidence which is required, or if for any reason
28 sufficient in law the subpoena is otherwise invalid. Absent
29 special circumstances, failure to timely produce evidence
30 pursuant to a subpoena shall not be grounds for granting
31 any extension of time, except with the written approval
32 of the party at whose request the subpoena was granted.

33 Section 2673.8. Any party shall have the right to
34 appear at any hearing in person, by counsel, or by other
35 representative, and any party and the commission shall
36 have the power to call, examine, and cross-examine
37 witnesses and to introduce into the record documentary
38 and other evidence. Witnesses shall be examined orally
39 under oath. The rules of evidence prevailing in courts of
40 law or equity shall not be controlling. Stipulations of fact

1 may be introduced in evidence with respect to any issue.
2 ~~Section 2673.9. The commission shall have power to~~
3 ~~make and issue regulations to implement its duties~~
4 ~~hereunder.~~

5 *2673.9. The commission shall have the power to*
6 *promulgate reasonable rules and regulations, and*
7 *amendments and additions thereto, as are necessary to*
8 *administer this part, and shall have such powers as are*
9 *reasonably necessary to carry out any duty imposed by*
10 *this part.*

11 12 CHAPTER 3. EMPLOYEE RIGHTS

13
14 Section 2674. Agricultural employees shall have full
15 freedom of association, self-organization and designation
16 of representatives of their own choosing and shall be free
17 from the interference, restraint or coercion of employers,
18 their agents, and other persons in the designation of such
19 representatives, in self-organization or in other
20 concerted activities.

21 22 CHAPTER 4. SECRET BALLOT ELECTIONS

23
24 Section 2675. Petitions for elections pursuant to this
25 chapter shall be filed during the season of peak
26 agricultural employment, shall be signed by the
27 petitioner under penalty of perjury and shall allege:

28 (a) That the number of agricultural employees
29 currently employed by the employer named therein, as
30 determined from his payroll immediately preceding the
31 filing of the petition, is not less than 50 percent of his peak
32 agricultural employment for the current calendar year.
33 Such peak employment shall be determined from past
34 employment records, current crop data, and such other
35 relevant evidence as may be available;

36 (b) That no valid election pursuant to this chapter has
37 been conducted among the agricultural employees of the
38 employer named in the petition within the twelve (12)
39 months immediately preceding the filing thereof;

40 (c) That no labor organization is currently certified as

1 the exclusive collective bargaining representative of the
2 agricultural employees of the employer named in the
3 petition.

4 (d) That the petition is not barred by an existing
5 collective bargaining agreement;

6 (e) That in the case of a petition pursuant to this
7 chapter, the labor organization named therein has not,
8 within the twelve (12) months immediately preceding
9 the filing of the petition, discriminated against any
10 member or prospective member thereof *who is engaged*
11 *in agriculture* on the basis of race, color, national origin,
12 religion, sex or any other arbitrary or invidious
13 classification: provided, that a finding of ~~reasonable cause~~
14 ~~to believe~~ that such labor organization has violated any
15 provision of Subchapter VI, Chapter 21, of Title 42 of the
16 United States Code, made by the United States Equal
17 Employment Opportunities Commission pursuant to 42
18 U.S.C. § 2000(e)(5), or a finding that such labor
19 organization has engaged in an unlawful employment
20 practice as defined in Part 4.5, Division 2, of the
21 California Labor Code, made by the State Fair
22 Employment Practices Commission pursuant to Section
23 1426 of the California Labor Code, shall be prima facie
24 evidence of such discrimination. *Any issue of*
25 *discrimination under this subdivision may be determined*
26 *by the commission at a hearing following an election held*
27 *pursuant to this part. If the commission determines that*
28 *such discrimination has occurred, it shall, as the case may*
29 *be, either (1) refuse to certify the labor organization if*
30 *the labor organization receives a majority of the votes*
31 *cast and has not yet been certified by the commission, or*
32 *(2) decertify the labor organization if it had certified the*
33 *labor organization pursuant to Section 2675.5.*

34 Section 2675.1. Whenever a petition shall have been
35 filed in accordance with procedures hereinafter
36 prescribed by an employee or group of employees, or any
37 individual or labor organization acting on their behalf
38 supported by:

39 (i) Authorization cards signed by a majority of the
40 employees in the bargaining unit and designating a labor

1 organization to act as their representative, or

2 (ii) Signed by a majority of employees in the
3 bargaining unit asserting that the labor organization
4 which has been certified or is being currently recognized
5 by their employer, is no longer their representative, the
6 commission shall investigate the allegations of such
7 petition, and, if it finds reasonable cause to believe that
8 such allegations are true, it shall within seven (7) days of
9 the filing of the petition and upon as least forty-eight (48)
10 hours notice to the parties conduct a secret ballot election
11 in the bargaining unit, *as such term is defined in*
12 *subdivision (d) of Section 2672. However, if the*
13 *agricultural employees of the employer are employed in*
14 *two or more noncontiguous geographical areas, the*
15 *commission shall determine the appropriate unit or units*
16 *of agricultural employees in which such a secret ballot*
17 *election shall be conducted.*

18 Section 2675.2. Eligibility to vote in a secret ballot
19 representation election among the agricultural
20 employees of an employer shall be accorded:

21 (a) To all agricultural employees of the employer who
22 appear on his payroll for the period immediately
23 preceding the filing of the petition for such election:
24 provided, that no agricultural employee of the employer
25 hired subsequent to the commencement of a strike or
26 work stoppage at his agricultural operations shall be
27 entitled to vote in such election if the strike or work
28 stoppage is still in progress on the date thereof;

29 (b) To all agricultural employees who have left the
30 employment of the employer pursuant to a strike or work
31 stoppage at his agricultural operations and have not
32 accepted permanent employment elsewhere; and

33 (c) To all agricultural employees previously on the
34 payroll of the employer whose employment was
35 terminated either wholly or partially as the result of an
36 unfair election practice. The commission shall not be
37 barred from considering unfair practices, which affect or
38 tend to affect the outcome of the election, occurring prior
39 to the filing of the petition and any dismissal subsequent
40 to the initiation of organizational activities is presumed to

1 be an unfair election practice within the meaning of this
2 part absent clear and convincing proof to the contrary.

3 Section 2675.3. Any party to an election conducted
4 pursuant to this chapter, or any agent of the board, may
5 challenge for good cause the eligibility of any person to
6 vote in the election. Such challenges shall be made at the
7 time of the balloting and shall specify the reasons
8 therefor. Any challenged ballots shall immediately be
9 impounded by the board.

10 Section 2675.4. In the event that any ballots
11 challenged pursuant to Section 2675.3 of this part are
12 insufficient in number to affect the results of an election,
13 and no objections are filed pursuant to Section 2680 of this
14 part, the commission shall immediately issue to the
15 parties a certification of the results of the election as
16 provided below.

17 Section 2675.5. If any labor organization receives a
18 majority of the votes cast it shall be certified by the
19 commission as the exclusive collective bargaining
20 representative of the agricultural employees among
21 whom the election was conducted for a period of twelve
22 (12) months. If no representative receives a majority of
23 the votes cast in such an election, the commission shall so
24 specify in its certification of the results thereof.

25 Section 2675.6. In any election pursuant to this
26 chapter where the ballot provides for three (3) or more
27 choices, and none of the choices receives a majority of the
28 votes cast, the commission shall within three (3) days of
29 the certification of results therein conduct a runoff
30 election in which the ballot provides for a selection
31 between the two choices receiving the largest and second
32 largest number of votes cast. Any agricultural employee
33 eligible to vote in the first election shall be eligible to vote
34 in the runoff election provided that on the date thereof
35 he meets the requirements of Section 2675.2 above.
36 Challenges to the eligibility of any person to vote in a
37 runoff election shall be made in accordance with Section
38 2675.3 above.

39 Section 2675.7. A collective bargaining agreement
40 executed by an employer and a labor organization

1 certified as the exclusive bargaining representative of his
2 agricultural employees pursuant to this chapter shall be
3 a bar to any petition for an election among such
4 employees, for a period not exceeding three (3) years
5 provided that:

6 (a) It is in writing and executed by all the parties
7 thereto;

8 (b) It is ratified in open meeting by a majority of such
9 employees; and

10 (c) It incorporates all of the substantive terms and
11 conditions of the employment of such employees. Any
12 employee or group of employees or any individual or
13 labor organization acting on their behalf may file a
14 petition for an election pursuant to the provisions of this
15 part by filing a petition more than sixty (60) days and less
16 than ninety (90) days prior to the expiration of said
17 contract.

18 Section 2675.8. Once a petition for an election has
19 been filed, any labor organization qualified to appear on
20 the ballot shall have the right to communicate peacefully
21 with the employees at their residences or dwelling places
22 or on the property of the employer during nonworking
23 hours, including meal and rest periods or other breaks:
24 provided said labor organization or its agents shall not
25 interfere with the performance of work in the exercise of
26 rights guaranteed by this section. Such right shall be
27 specifically enforceable in a court of competent
28 jurisdiction.

29 Section 2675.9. A labor organization shall be qualified
30 to appear on the ballot if it presents authorization cards
31 signed by at least ten (10) percent of maximum seasonal
32 employment in the bargaining unit to the commission at
33 least forty-eight (48) hours prior to the election, and files
34 an affidavit stating that it is in compliance with the
35 provisions of Section 2675.(e).

36 Section 2675.10. Any labor organization qualified to
37 participate in an election may file with the commission
38 any symbol or trademark it wishes to appear on the
39 ballots used by the commission. The ballots of the
40 commission shall then contain the symbols of the labor

1 organizations qualified to appear on the ballot. The
2 commission shall make available at any election ballots
3 printed in English and Spanish and upon request of any
4 qualified labor organization, the commission shall make
5 available ballots printed in any other language.

6 Section 2675.11. Any contract *entered into on or*
7 *after the effective date of this part* between the employer
8 and a labor organization not certified pursuant to the
9 provisions of this part shall be void and unenforceable
10 and contrary to public policy. An employer who, *on or*
11 *after the effective date of this part*, recognizes a labor
12 organization which has not been certified pursuant to the
13 provisions of this part shall be liable to make restitution
14 to each of the employees for any dues paid by said
15 employees to said labor organization. Upon application
16 by any person the commission shall within 30 days
17 determine whether a labor organization recognized by
18 the employer ~~within the preceding year~~ *on or after the*
19 *effective date of this part* was not certified pursuant to
20 the provisions of this part. If the commission finds the
21 labor organization was not so certified, it shall issue an
22 order determining the amounts due, the employees
23 eligible, and shall prescribe the method for effectuating
24 restitution. Within 60 days of the order the employer shall
25 render full accounting to the commission setting forth all
26 the facts establishing compliance with the commission's
27 order. If the commission has reason to believe a good faith
28 effort to comply with the order has not been made, it shall
29 petition a court of competent jurisdiction for an order
30 compelling compliance. Provided: Where an address for
31 the employee entitled to restitution is available, good
32 faith shall require an attempt at restitution by certified
33 mail, return receipt requested.

34 Furthermore, any employer who willfully enters into
35 an agreement in violation of this section shall, in addition
36 be liable to suit by any person who is injured thereby. Said
37 injured person shall recover the damages sustained by
38 him, attorney's fees, and the costs of the suit. He shall also
39 obtain appropriate equitable relief.

40 2675.12. *Except as provided in this section and*

1 *Section 2682.1, nothing in this part shall affect any*
2 *contract in effect on the effective date of this act.*
3 *However, in any case in which a collective bargaining*
4 *agreement has been entered into prior to the effective*
5 *date of this act and exists after such date, a petition*
6 *meeting the requirements of subdivision (a) of Section*
7 *2675 may be filed with the commission requesting that a*
8 *secret ballot election be conducted among the*
9 *agricultural employees in the bargaining unit subject to*
10 *such agreement to determine if any labor organization is*
11 *the bargaining representative of such employees. If such*
12 *a petition is filed with the commission, the commission*
13 *shall pursue the same course under this chapter as if a*
14 *petition had been filed under Section 2675. Nothing in*
15 *this section shall be construed to grant certification to a*
16 *labor organization acting pursuant to any such*
17 *agreement entered into prior to the effective date of this*
18 *part.*

19

20 CHAPTER 5. ELIGIBILITY; SEASONAL EMPLOYEES

21

22 Section 2676. It is hereby recognized that agriculture
23 is a seasonal occupation for the great majority of
24 agricultural employees. To provide the fullest scope for
25 their enjoyment of the rights provided herein, no labor
26 organization shall be deemed to have been selected
27 pursuant to the provisions of this part if at the time the
28 representation petition, or petition to decertify is filed, or
29 at the inception of a recognitional strike, fifty (50)
30 percent of the peak agricultural employment for the
31 current calendar year is not on the payroll for the period
32 immediately preceding the filing of the petition.

33 In this connection the peak agricultural employment
34 for the prior season shall alone not be a basis for such
35 determination, but rather the commission shall estimate
36 the peak employment on the basis of acreage and crop
37 statistics which shall be applied uniformly throughout the
38 State of California, and upon all other relevant data.

39 Section 2676.1. The employer shall make the payroll
40 list available to the commission and any labor

1 organization qualified to appear on the ballot forty-eight
2 (48) hours prior to any election or verification. In the
3 event the employer is unable to compile a full and
4 accurate list within the requisite time period, the
5 commission shall proceed to determine eligibility on the
6 basis of such other evidence as is available to it at that
7 time. Where an employer willfully supplies the
8 commission with an inaccurate list, or otherwise willfully
9 fails to perform its obligations under this section, the
10 petitioning union shall be certified by the commission as
11 the selected representative of the employer's employees.

12 Section 2676.2. At the conclusion of an election
13 conducted pursuant to this part, the board shall
14 immediately tally the unchallenged ballots cast therein
15 and supply the results of such tally to the parties to the
16 election.

17 Section 2676.3. Under no circumstances shall any of
18 the time periods specified in this part for the conduct of
19 an election or verification of a recognitional strike be
20 extended.

21

22 CHAPTER 6. RECOGNITIONAL STRIKE

23

24 Section 2677. Whenever a majority of the
25 agricultural employees in a bargaining unit engage in a
26 bona fide recognitional strike and an employee or group
27 of employees or any individual or labor organization
28 acting on their behalf makes a demand upon the
29 employer that he recognize a labor organization, the
30 employees shall be deemed to have selected said labor
31 organization as their bargaining representative.

32 Section 2677.1. Within forty-eight (48) hours of the
33 initiation of such strike the employer or any person,
34 individual or labor organization may make upon the
35 commission a demand that it verify that a majority of the
36 employees of the employer employed on the date of the
37 strike are engaged in a recognitional strike. The
38 commission shall immediately upon receipt of said
39 demand proceed to make such verification and certify
40 the results thereof. If the commission finds that a majority

1 of the employees in the bargaining unit are engaged in
2 a bona fide recognitional strike, the labor organization
3 claiming to represent the employees shall be deemed
4 certified for all purposes under this part.

5 Any person who fails to make a demand for verification
6 upon the commission within forty-eight (48) hours of the
7 initiation of the strike shall be precluded from
8 challenging the majority status of the labor organization
9 which shall be deemed certified.

10

11 CHAPTER 7. COLLECTIVE BARGAINING 12 REPRESENTATIVE

13

14 Section 2678. The representative selected for
15 collective bargaining purposes by the majority of the
16 employees in the bargaining unit pursuant to this part
17 shall be the exclusive representative of all the employees
18 in such unit for the purposes of collective bargaining in
19 respect to rates of pay, wages, hours of employment, and
20 other conditions of employment. The methods of
21 selecting representatives prescribed in this part shall be
22 exclusive.

23

24 CHAPTER 8. UNFAIR ELECTION PRACTICES

25

26 Section 2679. The commission of unfair practices
27 which affect or tend to affect the outcome of an election
28 shall be cause for the commission to declare the election
29 invalid.

30 Section 2679.1. It shall be an unfair practice for an
31 employer or its agents:

32 (a) To interfere with, restrain, or coerce employees in
33 the exercise of rights guaranteed by Section 2674 of this
34 part;

35 (b) To dominate or interfere with the formation,
36 selection or administration of any labor organization;

37 (c) To contribute financial or other support to a labor
38 organization;

39 (d) To influence or attempt to influence the outcome
40 of a secret ballot election by the loss or threat of loss of

1 jobs or benefits, or by the conferring of benefits or the
2 promise of benefits;

3 (e) To recognize, bargain with, or sign a collective
4 bargaining agreement with any labor organization not
5 certified pursuant to the provisions of this part;

6 (f) To discharge or otherwise discriminate against an
7 employee because he has invoked the procedures of this
8 part or otherwise given testimony hereunder;

9 (g) To interfere, coerce or restrain any labor
10 organization or its agents in the exercise of the rights
11 guaranteed by Section 2675.8 of this part.

12 (h) To interrogate, poll or otherwise inquire into the
13 views or preferences of any agricultural employee as to
14 collective bargaining or collective bargaining
15 representation;

16 (i) To engage in surveillance or cause the surveillance
17 of any agricultural employee;

18 (j) To visit the residence or dwelling place of any
19 agricultural employee during the pendency of a petition
20 for an election among his employees pursuant to this part;

21 (k) To communicate to any agricultural employee,
22 expressly or impliedly, a preference for recognizing,
23 bargaining with or otherwise dealing with any particular
24 labor organization or organizations;

25 (l) To discriminate in regard to hire or tenure of
26 employment or any other term or condition of
27 employment, in a manner tending to discourage or
28 encourage membership in or other support for any labor
29 organization: provided, that termination of the
30 employment of any agricultural employee, subsequent to
31 the initiation of organizational activities, shall be
32 presumed to be an unfair labor practice within the
33 meaning of this subsection absent clear and convincing
34 proof to the contrary: provided further, that nothing in
35 this part shall make it an unfair labor practice for an
36 employer to make an agreement with a labor
37 organization, which is certified as the exclusive
38 representative of his agricultural employees, to require as
39 a condition of employment membership in such labor
40 organization;

1 Section 2679.2. It shall be an unfair practice for a
2 labor organization or its agents:

3 (a) To interfere with, restrain, or coerce employees in
4 the exercise of rights guaranteed by Section 2674;

5 (b) To influence or attempt to influence the outcome
6 of a secret ballot election by threatening the loss of jobs
7 or benefits;

8 (c) To solicit or accept financial or other support from
9 an employer. Any violation of this subsection shall be per
10 se grounds for setting aside the election and disqualifying
11 the labor organization from representing the employees
12 of said employer for a period of three (3) years.

13 (d) To bargain with or sign a collective bargaining
14 agreement with any employer if it has not been certified
15 pursuant to the provisions of this part.

16 (e) To threaten any agricultural employee, expressly
17 or impliedly, with injury to his person or property or to
18 the person or property of any member of his family in the
19 event that he fails or refuses to join, designate as his
20 collective bargaining representative or otherwise
21 support such labor organization;

22 (f) To injure or cause injury to the person or property
23 of any agricultural employee, or of any member of his
24 family, in reprisal for his having failed or refused to join,
25 designate as his collective bargaining representative or
26 otherwise support such labor organization;

27 (g) To cause or attempt to cause any employer to
28 discriminate against any agricultural employee in regard
29 to hire or tenure of employment, or to any other term or
30 condition of employment, in a manner tending to
31 encourage membership in or other support for such labor
32 organization or to discourage membership in or other
33 support for any other labor organization.

34

35 CHAPTER 9. CHALLENGE TO CONDUCT OF AN 36 ELECTION

37

38 Section 2680. Within three (3) days of the holding of
39 an election, any party may file with the commission
40 objections alleging the commission of unfair practices

1 affecting or tending to affect the outcome of an election.

2 In the event that any ballots challenged are sufficient
3 in number to affect the results of an election, or
4 objections are filed pursuant to this section, the
5 commission shall investigate such objections or
6 challenges, or both, and issue a report and decision
7 thereon. Such report and decision shall be issued within
8 seven (7) days of the balloting in the election or, in the
9 event of objections, within seven (7) days of the filing
10 thereof. If the commission's investigation establishes that
11 there are substantial and material issues of fact that can
12 be resolved only after an administrative hearing, it shall
13 direct in its report and decision that such hearing be
14 conducted within seven (7) days thereof, and shall issue
15 a final decision disposing of such challenges or objections
16 within twenty-one (21) days of the conclusion of the
17 hearing. If the commission's investigation establishes no
18 such issues of fact, it shall make a final disposition of such
19 challenges or objections in its initial report and decision
20 thereon.

21 Section 2680.1. Where the commission determines
22 that an objection raises substantial and material issues of
23 fact, requiring a hearing, it shall conduct a rerun election
24 to be held twenty-one (21) days after the original
25 election. The ballots shall be impounded pending the
26 final decision of the commission. Any agricultural
27 employee eligible to vote in the original election shall be
28 eligible to vote in the rerun election provided he meets
29 the requirements of Section 2675.2 above.

30 Section 2680.2. (a) If the board finds that any
31 objection filed pursuant to Section 2680 of this part has
32 merit, it shall:

33 (i) Immediately certify the election in question a
34 nullity;

35 (ii) Tally the unchallenged ballots cast in the rerun
36 election and supply the results of such tally to the parties
37 to the election.

38 (b) If the board finds that none of the objections filed
39 pursuant to Section 2680 of this part have merit, it shall;

40 (i) Make a tally of any ballots it finds to have been

1 challenged without good cause; and

2 (ii) Proceed to certify the results of the election in
3 question in accordance with the provisions of this part.

4 Section 2680.3. Objections and challenges to the
5 rerun election may be made in the same manner and
6 under the same conditions as to the original election,
7 except, that if the commission determines that an
8 objection raises substantial and material issues of fact
9 requiring a hearing, it shall not direct a second rerun
10 election.

11

12 CHAPTER 10. DUTY TO BARGAIN

13

14 Section 2681. Upon certification or verification by
15 the commission that a labor organization has been
16 selected by a majority of the employees as their
17 bargaining representative, the employer shall have the
18 obligation to bargain collectively with the labor
19 organization as the exclusive representative of its
20 employees.

21 Section 2681.1. For the purposes of this part, to
22 bargain collectively is the performance of the mutual
23 obligation of the employer and the representative of the
24 employees to meet at reasonable times and confer in
25 good faith with respect to wages, hours and other terms
26 and conditions of employment or the negotiation of an
27 agreement, or any question arising thereunder, and the
28 execution of a written contract incorporating any
29 agreement reached if requested by either party, but such
30 obligation does not compel either party to agree to a
31 proposal or require the making of a concession.

32 Section 2681.2. Upon the application of any person
33 made not earlier than the ninetieth (90th) day nor later
34 than the sixtieth (60th) day preceding the expiration of
35 a certification year, the commission upon appropriate
36 petition shall determine whether an employer whose
37 employees selected a representative in accordance with
38 this part has bargained in good faith. If the commission
39 shall find that the employer has not so bargained, it shall
40 extend the certification for an additional year, effective

1 immediately upon the expiration of the prior certification
2 year.

3
4 CHAPTER 11. COURT REVIEW
5

6 Section 2682. Decisions of the commission shall be
7 final. Any person aggrieved by a final decision of the
8 commission granting or denying, in whole or in part, the
9 relief sought, or any person seeking to confirm, in whole
10 or in part, a decision of the commission may obtain a
11 review of such order in any superior court of the State of
12 California in a county or city, in which the commission
13 maintains its principal offices by filing in such court a
14 written petition praying that the decision of the
15 commission be confirmed, modified, or set aside. A copy
16 of such petition shall be forthwith transmitted by the
17 clerk of such court to the commission, and thereupon the
18 commission shall file in the court the record of the
19 proceeding, certified by the commission. Such record
20 shall be certified and filed by the commission within ten
21 (10) days of the clerk's notice unless such time is
22 extended by the court for good cause shown. The clerk
23 shall give notice to all parties upon the filing of the
24 commission's record.

25 The court shall proceed to make and enter a judgment
26 enforcing, modifying, and enforcing as so modified, or
27 setting aside, in whole or in part, the order of the
28 commission. The findings of the commission with respect
29 to questions of fact shall be conclusive if supported by
30 substantial evidence on the record considered as a whole.
31 An order directing an election shall be reviewable in the
32 same manner as provided herein for all other orders of
33 the commission, but an order directing an election shall
34 not be stayed pending review.

35 Proceedings under this provision shall be in accord
36 with Article I, Chapter 5 of Part 3, Title 9 of the Code of
37 Civil Procedure (commencing with Section 1290) except
38 that the time for service and filing of the response to the
39 petition shall be computed from receipt of the clerk's
40 notice of filing of the commission's record as herein

1 provided.

2 Section 2682.1. Except as specifically provided,
3 nothing herein shall be construed to limit or impair the
4 right to engage in a *lawful* strike, lockout, boycott, picket
5 line, or any other lawful concerted activity and any
6 contract executed prior to the enactment of this part shall
7 not impair any such right nor bar an election *conducted*
8 *pursuant to a petition filed under Section 2675.12*.

9 Section 2682.2. If any provision of this part, or the
10 application of such provision to any person or
11 circumstance, shall be held invalid, the remainder of this
12 part, or the application of such provision to persons or
13 circumstances other than those as to which it is held
14 invalid, shall not be affected thereby.

15 SEC. 2. No appropriation is made by this act, nor is
16 any obligation created thereby under Section 2231 of the
17 Revenue and Taxation Code, for the reimbursement of
18 any local agency for any costs that may be incurred by it
19 in carrying on any program or performing any service
20 required to be carried on or performed by it by this act.

O