
THIRD READING

Bill No: AB 288
Author: McKinnor (D), et al.
Amended: 9/5/25 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 6/18/25
AYES: Smallwood-Cuevas, Cortese, Durazo, Laird
NOES: Strickland

SENATE JUDICIARY COMMITTEE: 11-1, 7/8/25
AYES: Umberg, Allen, Arreguín, Ashby, Caballero, Durazo, Laird, Stern, Wahab,
Weber Pierson, Wiener
NOES: Niello
NO VOTE RECORDED: Valladares

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/29/25
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 68-2, 6/2/25 - See last page for vote

SUBJECT: Employment: labor organization and unfair practices

SOURCE: California Federation of Labor Unions
California Teamsters Public Affairs Council
International Brotherhood of Boilermakers
Service Employees International Union
Western States Section

DIGEST: This bill permits private sector employees and their unions to petition the Public Employment Relations Board (PERB) to adjudicate National Labor Relations Board (NLRB) unfair practice charges, including determinations of union elections and union certifications, if the NLRB fails to adjudicate those cases, as specified.

Senate Floor Amendments of 9/5/25 clarify when PERB can exercise jurisdiction over private sector labor relations issues.

ANALYSIS:

Existing law:

- 1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA), but leaves it to the states to regulate collective bargaining in their respective public sectors. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights. (29 United States Code §§151 et seq.)
- 2) Provides under the U.S. Constitution that federal law preempts state law when the two conflict. (U. S. Const., Art. VI, cl. 2.)
- 3) Requires under U.S. Supreme Court jurisprudence that “[w]hen an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board”. (*San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959))¹
- 4) Provides several statutory frameworks under California law to provide *public employees* collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. (See e.g., the Meyers-Milias-Brown Act (MMBA) which governs employer-employee relations for local public employers and their employees.) (Government Code §§ 3500 et seq.)
- 5) Establishes PERB, a quasi-judicial administrative agency charged with administering certain statutory frameworks governing California state and local

¹ As restated by Justice Barret in *Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174*, 598 U.S. 771 (2023), “Preemption under the NLRA is unusual, though, because our precedent maintains that the NLRA preempts state law even when the two only arguably conflict. *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959) (‘When an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board’). This doctrine—named Garmon preemption after the case that originated it—thus goes beyond the usual preemption rule. Under Garmon, States cannot regulate conduct ‘that the NLRA protects, prohibits, or arguably protects or prohibits.’ *Wisconsin Dept. of Industry v. Gould Inc.*, 475 U. S. 282, 286 (1986).”

public employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers, employees, and employee organizations. (Government Code §3541 et seq.)

- 6) Establishes the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), which makes it unlawful for public employers to deter or discourage public employees or applicants to be public employees from: a) becoming or remaining members of an employee organization; b) authorizing representation by an employee; or, c) authorizing dues or fee deductions to an employee organization. (Government Code §§3550 et seq.)
- 7) Establishes the Public Employee Communication Chapter (PECC), which provides California public employee unions with specific rights designed to provide them with meaningful access to, and the ability to effectively communicate with, their represented members. (Government Code §§3555 et seq.)
- 8) Establishes the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act (ALRA) to regulate labor relations between agricultural employees and agricultural employers. (Labor Code §§1140 et seq.)
- 9) Establishes the Agricultural Labor Relations Board (ARLB) in the Labor and Workforce Development Agency and empowers ARLB to investigate and adjudicate unfair labor practice complaints under the ALRA. (Labor Code §§1141 et seq.)

This bill:

- 1) Makes legislative findings and declarations to support the justification for the use of the state's general welfare and policing powers to regulate private sector labor relations.
- 2) Adds Section 923.1 to the Labor Code under a chapter that regulates contracts between employees and employers, designates certain contractual promises as against public policy, and sets forth the state's public policy that employees have a right to collective bargaining, as specified.
- 3) Requires that its provisions 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.

- 4) Specifies that the rights described in the bill require that a worker 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.
- 5) Prohibits the state and its political subdivisions from, directly or indirectly, denying, burdening, or abridging the described rights except as necessary to serve a compelling state interest achieved by the least restrictive means.
- 6) Authorizes a worker who meets either description as follows to petition PERB to protect and enforce the rights provided under this Act.
 - a) The worker is employed in a position that is, or would have been, subject to the NLRA as of January 1, 2025, but loses coverage under the Act because it 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 other law that subjects the worker to PERB or ALRB.
 - b) The worker is employed in a position which is or would be subject to the NLRA as of January 1, 2025, but the NLRB Board has expressly or impliedly ceded jurisdiction, as specified.
- 7) Deems that the NLRB cedes jurisdiction of a case to the states upon any of the following as of January 1, 2026:
 - a) For cases over an NLRB or ALJ union certification decision or an objection to a union election: A lack of an NLRB quorum, the loss of NLRB independence, or a court order enjoining the case, as specified.
 - b) For cases wherein NLRB has issued no decision, as specified: The case remains pending for more than six months.
 - c) For cases wherein NLRB regional directors or ALJs have issued reviewable or appealable orders: Processing delays that result in no NLRB action on the review or appeal petition for more than six months from the petition's filing.
 - d) For cases on review or exceptions before the NLRB: Processing delays resulting in the case remaining pending for more than 12 months without the issuance of a final decision.

- 8) Requires PERB to maintain jurisdiction of pending NLRB cases ceded to PERB if qualifying conditions for PERB jurisdiction no longer apply unless a court orders PERB to cede its jurisdiction.
- 9) Provides that the rights provided under this Act shall not affect the rights of workers under other federal or state statutes.
- 10) Authorizes an eligible worker or union to do any of the following:
 - a) Petition PERB to process any representation petition previously filed with NLRB.
 - b) Petition PERB to promptly certify a union that another state or federal agency has previously certified; or that the majority of employees in an appropriate bargaining unit has selected through an election; through other legal processes recognized by PERB or NLRB at that time the selection is made; or through a written designation. The Act requires all existing terms and conditions of employment between a certified union and an employer to remain in full force and effect during bargaining following certification.
 - c) Petition PERB to decide unfair labor practice cases on the following timeline:
 - i. *Category 1 Cases: Obstruction Cases*
 - (A) As of January 1, 2026, eligible petitioners may file the following cases, which PERB must prioritize over Category 2 or 3 cases:
 1. Cases involving a large employer (more than 500 employees) alleging a refusal to bargain, recognize, or give effect to an election certification.
 2. Cases involving an employer of any size unilaterally withdrawing union recognition and associated violations.
 - (B) As of July 1, 2026, eligible petitioners may file the following cases, which PERB must also prioritize over Category 2 or 3 cases:
 1. Cases involving an employer of any size alleging a refusal to bargain, recognize, or to give effect to an election certification, and associated violations.
 - ii. *Category 2 Cases: Good Faith Bargaining Violation Cases*
 - (A) As of January 1, 2027, eligible petitioners may file the following cases, which PERB must prioritize over Category 3 cases:
 1. 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.

- iii. *Category 3 Cases*: Cases not in Category 1 or 2
 - (A) As of January 1, 2027, eligible petitioners may also file all other eligible cases not included in Category 1 or 2.
- 11) Requires PERB to process the Category 1 and Category 2 cases according to the following priority before any Category 3 cases if it determines it has insufficient resources to process all cases filed pursuant to this Act or that doing so would prevent it from meeting statutory deadlines applicable prior to July 1, 2026:
 - a) Priority 1: Cases involving employers employing more than 500 affected or potentially affected workers.
 - b) Priority 2: Cases involving an active union organizing campaign and allegations of loss of employment
 - c) Priority 3: Cases involving an active union organizing campaign and allegations not involving loss of employment.
 - d) Priority 4: Cases pending before the NLRB for more than 18 months.
 - e) Priority 5: All other Category 1 or 2 cases.
- 12) Requires PERB to process Category 3 cases to the extent feasible, in accordance with the following priorities:
 - a) Priority 1: Cases involving allegations arising from an organizing campaign.
 - b) Priority 2: Cases involving allegations of loss of employment.
 - c) Priority 3: Cases involving allegations of retaliation for union activities or the exercise of rights under the NLRA or this Act, not involving loss of employment.
 - d) Priority 4: 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.
- 13) Authorizes PERB to further prioritize the resolution of subcategories of Category 3 cases to ensure their most efficient possible resolution and the maximum possible protection of employee rights.
- 14) Requires a covered worker or their union to file the following with PERB to pursue relief from PERB:
 - a) An unfair practice charge or petition that includes all of the following information:

- i. The charging party's name, address, email address, and telephone number.
 - ii. The respondent's name, address, email address, and telephone number.
 - iii. Where applicable, the original charge or petition with all supporting documentation and evidence submitted to the NLRB.
 - iv. All correspondence, communications, or other materials received by the charging party, or otherwise in the charging party's possession, from NLRB regarding the original charge or petition filed with NLRB.
- 15) Prohibits the charging party from serving the documentation and evidence filed with PERB on the respondent.
- 16) Requires PERB to hold the supporting documentation and evidence confidential and maintain it as part of its investigatory file.
- 17) Exempts the documentation and evidence filed with PERB from the California Public Records Act.
- 18) Authorizes PERB to do the following pursuant to its own procedures in implementing this Act:
 - a) Conduct union elections to determine whether a majority of workers in an appropriate bargaining unit have selected an exclusive bargaining representative.
 - b) Promptly certify a union and order that an employer bargain with the union.
 - i. The workers may demonstrate to PERB their selection through a previous certification by another state or federal agency, an election, or other legal processes recognized by PERB or NLRB at that time workers made their selection, or through a written designation.
 - ii. PERB may resolve pending objections or voter eligibility challenges in an election previously pending with NLRB.
 - c) Order that an employer bargain with the certified union and otherwise decide unfair labor practices and order all appropriate action and remedies.
 - d) Order that an employer submit to binding arbitration to assist the parties in finalizing their negotiations for a collective bargaining agreement if NLRB or PERB certified a union or if an employer has voluntarily recognized the union, 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 Act, including if an employer refuses to comply with an order under this Act.
- 19) Permits PERB to rely on its own decisions and precedent under the NLRA, and requires PERB to do so in a manner that most expansively effectuates the rights guaranteed under this bill's provisions.
 - 20) Allows PERB to order all appropriate relief for a violation of this Act including civil penalties and provides that PERB may assess civil penalties for one thousand dollars (\$1,000) per worker per violation if it finds that an employer engaged in a pattern or practice of committing unfair practices.
 - 21) Authorizes a state appellate court of competent jurisdiction to review any action taken by PERB pursuant to Act. Provides that the court's decision enforcing a PERB order is final, subject to the right to petition the California Supreme Court for review. Declares that the pendency of a petition for review shall not constitute a stay of the court's decision except by express order of the courts. Authorizes a court whose decision a party has violated under this Act to hold the party in contempt.
 - 22) Establishes the PERB Enforcement Fund in the State Treasury.
 - 23) Requires PERB to deposit any civil penalty collected pursuant to this Act into the PERB Enforcement Fund.
 - 24) Makes moneys in the fund available to PERB for purposes of administering this Act upon appropriation by the Legislature
 - 25) Applies the following definitions for purposes of this Act:
 - a) "Charging party" means the party bringing an unfair labor practice charge.
 - b) "Respondent" means the party that allegedly committed the unfair labor practice.
 - 26) Provides that the *Agricultural Labor Relations Board* shall have exclusive jurisdiction in all phases of the administration of the *ALRA* notwithstanding any other provision of state law to determine *whether any person or entity meets one or more of that act's definitions*.

- 27) Grants the ALRB exclusive jurisdiction over *all phases* of the administration of the ALRA.
- 28) Authorizes the ALRB to follow applicable *NLRA* precedents in interpreting and applying the ALRA; makes those precedents persuasive authority for the ALRB to interpret and apply the ALRA; however, grants the ALRB discretion to not follow those precedents where the ALRB deems it inappropriate to do so.
- 29) Contains a severability clause providing that 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.
- 30) Adds constitutionally required language and findings to support this bill's exemption of NLRB documentation from the California Public Records Act.

Background

Need for this Bill? According to the author:

“California has a responsibility to ensure that workers can freely exercise their inalienable rights, including their right to organize and to freely assemble with their coworkers. These rights are not only guaranteed in the Federal Constitution and in California’s constitution, but the state Labor Code, Section 923, also declares that the public policy of the state of California is for workers to have the freedom to organize free from interference or intimidation and the right to collectively bargain. The state cannot sit idly by as workers are systematically denied the right to organize due to employer intransigence and federal agency inaction, delays, and potential inability to make decisions because of a lack of a quorum or because of pending court cases enjoining the NLRB from acting or finding the NLRB to be unconstitutional.”

Related/Prior Legislation

AB 283 (Haney, 2025) would establish the In-Home Supportive Services (IHSS) Employer-Employee Relations Act to shift collective bargaining with IHSS providers from the county or public authority to the state and provide PERB jurisdiction of labor relations between the state and IHSS workers. The bill is currently pending on the Senate Floor.

AB 672 (Caloza, 2025) would grant PERB the right, upon timely application, to intervene in a civil action arising from a labor dispute involving public employee strike actions that PERB claims implicates the constitutionality, interpretation, or enforcement of a statute administered by PERB. The bill was placed on the Senate Inactive File at the request of the author.

AB 1340 (Wicks, 2025) would establish the Transportation Network Company (TNC) Drivers Labor Relations Act to require PERB to protect TNC drivers collective bargaining rights under the Act. The bill is currently pending on the Senate Floor.

SCA 7 (Umberg, 2023) would have established a broad-based constitutional right for any person in California to form or join a union and for that union to represent the person in collective bargaining with the person's respective employer. The measure died in the Senate Elections and Constitutional Amendments Committee.

AB 2524 (Kalra, Chapter 789, Statutes of 2022) transferred jurisdiction over Santa Clara Valley Transportation Authority's employer-employee labor relations disputes from superior court to PERB.

SB 598 (Pan, Chapter 492, Statutes of 2021) transferred jurisdiction over Sacramento Regional Transit District's employer-employee labor relations disputes from superior court to PERB.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- PERB's administrative costs would likely reach, at a minimum, the millions of dollars annually (General Fund).
- This bill could result in increased in penalty revenue to the State. The magnitude is unknown, but probably minor (Public Employment Relations Board Enforcement Fund).
- By allowing a state court to review newly authorized PERB decisions, this bill could result in potentially significant cost pressures to the courts; the magnitude is unknown (Trial Court Trust Fund (TCTF)). The specific number of new actions that could be filed under the bill also is unknown; however, it generally costs about \$10,500 to operate a courtroom for an eight-hour day. Courts are not funded on the basis of workload, and increased pressure on TCTF may create a need for increased funding for courts from the General Fund. The

enacted 2025-26 budget includes \$38 million in ongoing support from the General Fund to continue to backfill TCTF for revenue declines.

SUPPORT: (Verified 9/6/25)

California Federation of Labor Unions (Co-source)
International Brotherhood of Boilermakers, Western States Section (Co-source)
Service Employees International, California (Co-source)
California Teamsters Public Affairs Council (Co-source)
AFSCME California
Air Line Pilots Association
Alliance San Diego
Association of Flight Attendants
Bluegreen Alliance
Building Justice San Diego
California Alliance for Retired Americans
California Association of Psychiatric Technicians
California Catholic Conference
California Coalition for Worker Power
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Democratic Party
California Environmental Voters
California Environmental Voters
California Federation of Teachers
California IATSE Council
California Labor Federation
California Nurses Association
California Professional Firefighters
California School Employees Association
California State Legislative Board of the Sheet Metal, Air, Rail and Transportation
Workers - Transportation Division
California State Pipe Trades Council
California Teachers Association
California Working Families Party
Center on Policy Initiatives
CleanEarth4kids.org
Coalition for Humane Immigrant Rights of Los Angeles
Coalition of Black Trade Unionists, San Diego County Chapter
Culver City Democratic Club
Employees Rights Center

Engineers and Scientists of California, IFPTE Local 20
International Alliance of Theatrical Stage Employees
International Brotherhood of Electrical Workers, Local 1245
Koreatown Immigrant Workers Alliance
Los Angeles Alliance for a New Economy
Los Angeles Black Worker Center
National Union of Healthcare Workers
Northern California District Council of Laborers
Office & Professional Employees International Union, Local 30
Orange County Employees Association
Partnership for the Advancement of New Americans
Peace and Freedom Party of California
Peace Officers Research Association of California
Pillars of the Community
Professional & Technical Engineers, Local 21, IFPTE
San Diego Black Workers Center
San Mateo County Central Labor Council
Screen Actors Guild - American Federation of Television and Radio Artists
Service Employees International Local 1000
Sheet Metal, Air, Rail, and Transportation Workers, Local 104
Sheet Metal, Air, Rail, and Transportation Workers, Local 105
South Bay Labor Council
State Building and Construction Trades Council of California
United Auto Workers, Region 6
Unite Here
United Domestic Workers, Local 3930
United Food and Commercial Workers, Western States Council
United Nurses Associations of California/Union of Health Care Professionals
United Public Employees
United Steelworkers, District 12
United Taxi Workers of San Diego
Utility Workers Union of America
Writers Guild of America West

OPPOSITION: (Verified 9/6/25)

California Chamber of Commerce
Orange County Business Council

ARGUMENTS IN SUPPORT: According to a coalition of labor unions and worker advocates, including the California Federation of Labor Unions:

“California cannot and must not sit idly by as California workers are exploited and chilled from exercising their rights. The 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, and we must exercise that right. As the Supreme Court has long recognized, “[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.”

California, therefore, has a right and responsibility to regulate the working conditions of workers within its borders, including preserving workers’ fundamental and constitutionally protected rights to free speech, to free association, and to have a real voice at their workplaces.

AB 288 respects the framework of federal labor law and requires workers covered by the NLRA to seek redress first before the NLRB. But if workers are unable to get a timely remedy at the federal level, this bill authorizes the state to step in to vindicate their fundamental rights.”

ARGUMENTS IN OPPOSITION: According to the California Chamber of Commerce:

“While we understand uncertainty that is occurring as a result of the current federal administration, *AB 288* is plainly preempted by federal law. Even if it were upheld, the consequence would be two different entities interpreting federal law with PERB having the explicit right to disregard NLRB precedent.

AB 288 is Preempted Under Garmon Because It Proposes to Regulate Union Relationships That Are Governed by Federal law

The NLRA provides for workers’ rights to organize. The NLRA exclusively governs those rights. The NLRB is an independent federal agency established by the NLRA. Its primary role is to enforce labor laws related to union activities and collective bargaining by investigating and prosecuting unfair labor practices in the private sector. It also oversees representation elections seeking to certify or decertify unions as the representative of employees. The NLRB has regional offices located throughout the country.

Because the NLRA establishes and solely governs workers’ rights to organize, courts have repeatedly held that states are prohibited from regulating this space under the longstanding doctrine of preemption. AB 288’s attempt to give PERB the

ability to adjudicate issues in lieu of the NLRB is a clear example of *Garmon* preemption. See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).

The present lack of a quorum at the NLRB and hypothetical scenarios about what *may* happen does not allow **AB 288** to escape preemption. The NLRA is still law, and it continues to be enforced by the NLRB's regional offices."

ASSEMBLY FLOOR: 68-2, 6/2/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Chen, Connolly, Davies, Elhawary, Flora, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NOES: DeMaio, Ellis

NO VOTE RECORDED: Castillo, Dixon, Gallagher, Jeff Gonzalez, Hadwick, Lackey, Macedo, Sanchez, Tangipa

Prepared by: Glenn Miles / L., P.E. & R. / (916) 651-1556
9/8/25 21:08:11

**** END ****