

## CONCURRENCE IN SENATE AMENDMENTS

AB 288 (McKinnor)

As Amended September 5, 2025

Majority vote

**SUMMARY**

Expands the jurisdiction of the Public Employment Relations Board (PERB) by authorizing certain workers to petition the PERB to protect and enforce their rights, as provided, if certain conditions are satisfied, among other provisions.

**Senate Amendments**

- 1) Make changes to the legislative findings and declarations.
- 2) Modify by clarifying the criteria in which a worker may petition the PERB to protect and enforce certain prescribed rights, and include a worker in a position that subjects them to the jurisdiction of the Agricultural Relations Board (ALRB).
- 3) Define "charging party" to mean the party bringing an unlawful practice charge, and "respondent" to mean the party that allegedly committed the unfair practice; and, define "charging party," and "respondent," respectively.
- 4) Provide that if the PERB determines that certain prescribed conditions no longer apply relating to a worker's eligibility to petition it, it must retain jurisdiction over pending matters, including those from that point forward, unless ordered by a court of competent jurisdiction to cede its jurisdiction.
- 5) Clarify that a worker or their chosen representative may petition the PERB to: i) process any representation previously filed with the National Labor Relations Board (NLRB); ii) promptly certify and exclusive bargaining representative previously certified by another state or federal agency, as provided; or, iii) decide unfair labor practice cases based on a prescribed timeline and certain prescribed employer acts that deny worker rights, and employer size based on number of employees, as of January 1, 2026, or January 1, 2027, as applicable. The manner by which cases are prioritized also is stipulated.
- 6) Change from binding mediation to binding arbitration where a worker or their chosen representative may seek an order from the PERB to resolve certain differences.
- 7) Clarify that to seek relief from the PERB, a covered worker or their representative must file an unfair practice charge and submit certain information, as prescribed; require the PERB to maintain supporting documentation and evidence confidential as part of its investigatory file; exempt such documentation and evidence from disclosure under the California Public Records Act; and, authorize the PERB to implement certain provisions pursuant to its own procedures.
- 8) Authorize the PERB to assess a \$1,000 civil penalty per worker per violation against an employer if it has found to have engaged in a pattern or practice of committing unfair practices, but allows an employer an opportunity to review and dispute the allegations. In addition, the PERB is authorized to prioritize certain charges brought before it for these purposes, subject to certain enumerated factors.

- 9) Provide that a decision of the court enforcing a PERB order must be final, subject to the right to petition to the California Supreme Court for review. However, pendency of a petition for review must not, except by express court orders, constitute a stay of the decision, and any violation of a decision must be remediable by the court as contempt.
- 10) Amend the Labor Code relating to the ALRB within the Labor and Workforce Development Agency by providing that it must have jurisdiction over all phases of the administration, as provided; and, authorizes the ALRB to follow applicable precedents of the NLRA, as amended, which must constitute persuasive authority in interpretation and application, as provided, but must not be obligated to follow those precedents where it deems inappropriate to do so.
- 11) Make other technical, clarifying, or conforming changes for these purposes.

## COMMENTS

### *Justice Delayed is Justice Denied*

A right without a remedy is no right at all. The rights of workers to organize and engage in collective bargaining with their employer are fundamental rights. These rights were hard-fought rights that came as the result of thousands of workers speaking up, organizing, and risking their lives as part of the Labor Movement that swept the United States in the early Twentieth Century. They are enshrined in the NLRA, which states that employees "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." (29 U.S.C. Section 157.) Under the NLRA, workers' rights are vindicated before the NLRB, a five-person quasi-judicial body that decides cases regarding workers' rights to organize under the NLRA. Each member is appointed by the President of the United States on five-year terms, and can only be fired for "neglect of duty or malfeasance in office" after notice and a hearing. (29 U.S.C. Section 153(a).) The board acts as an appellate body for regional NLRB administrative law judges, and decides cases regarding workers' rights under the NLRA. The NLRB also has a General Counsel who is also appointed by the President with the advice and consent of the U.S. Senate to four-year terms. The General Counsel investigates and prosecutes unfair labor practice cases and supervises the NLRB field offices.

Despite the fact that the NLRB is the primary avenue for workers to assert their rights to collectively organize, the NLRB no longer functions in any constructive way. In recent years, the NLRB has seen the number of petitions for union petitions double, with a 27 percent increase in such petitions between 2023 and 2024 alone.<sup>1</sup> However, at the same time, the NLRB has struggled with funding and staffing cuts. In 2011, the NLRB had 67 percent more staff than it did 13 years later in 2024.<sup>2</sup> At the same time that the NLRB has struggled with caseload and staffing, two other developments existentially challenge its ability to function as a bulwark for workers' rights. The first is the development of numerous lawsuits challenging the constitutionality of the NLRB itself; in a case before the Fifth Circuit Court of Appeals,

---

<sup>1</sup> "Union petitions filed with NLRB double since FY 2021, up 27% since FY 2023." Office of Pub. Affairs, Nat'l Lab. Rel. Board (Oct. 14, 2024).

<sup>2</sup> *Id.*

defendant SpaceX recently asserted that the structure and powers of the NLRB are unconstitutional.<sup>3</sup>

Lastly, on January 27, 2025, President Trump fired the NLRB Chairperson Gwynne Wilcox, despite the statutory requirements that NLRB members only be fired for specified reasons and after notice and hearing. While Chair Wilcox initially succeeded in a suit challenging her dismissal as unlawful, the order of the district court was subsequently stayed by the Supreme Court.<sup>4</sup> Without Chair Wilcox, the NLRB is without a quorum, and cannot meet and decide cases before the Board. The consequences of a non-functioning NLRB are significant. Research has found that union membership significantly increases worker wages, reduces race and gender pay disparities, contributes to general economic growth, and reduces income inequality.<sup>5</sup> If workers cannot enforce their rights before the NLRB, employers evade consequences for violating their workers' rights, and those rights become meaningless. Delays in enforcing workers' rights also serves to frustrate the rights themselves, as a union effort might die if it does not achieve unionization in a timely manner and workers leave, and claims of unfair labor practice that go unpunished only help employers silence workers' rights to organize and encourage continued violations. A right without a remedy is no right at all.

*The PERB, its Powers and Duties, and its Experience with NLRB Decisions under the NLRA*

The PERB is a quasi-judicial agency charged with administering each of the state's statutes governing public employer-employee relations. Under this authority, the PERB is vested with a broad range of other rights and responsibilities, including authority to determine appropriate bargaining units; determining in disputed cases whether a certain item is within the scope of representation; arranging for, supervising, and certifying election results of union representation; establishing a list of individuals available to serve as mediators, arbitrators, or factfinders; establishing procedural rules and regulations to effectuate the purposes of the respective statutes within its administrative jurisdiction; holding hearings and ordering investigations as needed to enforce laws within its jurisdiction; bringing actions to courts of law to enforce its orders, decisions or rulings; and, taking any other actions necessary to discharge its powers and duties.

Generally, the PERB has limited authority to enforce such laws if an unfair practice has been committed. However, among its other powers and duties, it may issue remedies, including cease and desist orders or certain affirmative remedies (e.g., reinstatement of employees with or without back-pay), to the extent that it effectuates the provisions established by the applicable employment relations statute within its administrative jurisdiction.

While decisions of the NLRB are non-binding on state statutes governing public employer-employee relations, they may serve as persuasive. Given this, there are a number of occasions where the PERB has adopted an NLRB ruling and applied it to a California public employment relations matter. As such, the PERB is well-versed in the NLRA and NLRB decisions.<sup>6</sup>

---

<sup>3</sup> *Space Exploration Technologies Corp. v. NLRB* (5th Cir. 2025) Case No. 24-50627 (pending); “Amazon and Elon Musk’s SpaceX challenge labor agency’s constitutionality in federal court.” Associate Press (Nov. 18, 2024).

<sup>4</sup> “Supreme Court allows Trump to fire labor board members while case proceeds.” CBS News (May 22, 2025).

<sup>5</sup> “Labor Unions and the Middle Class.” U.S. Dept. of Treasury (Aug. 2023).

<sup>6</sup> For a couple of examples of the PERB’s familiarity with the NLRA, its citing or adoption of NLRB decisions as persuasive towards resolving California public sector employment relations matters, please see the Assembly Committee on Public Employment Retirement’s analysis of Assembly Bill 340 (Ahrens, 2025), March 19, 2025.

*Federal Preemption, and This Bill*

Generally, a state law is preempted if there is an explicit statement within the federal law that state laws in the area are preempted; if the state law conflicts with the federal law; or, if the Congress legislated in such a comprehensive way as to occupy the entire field of law. The NLRA does not contain such explicit preemption language. Yet, the seminal case on NLRA preemption is *Garmon*, which found that if an action is arguably covered by the NLRA, states must defer to the NLRB in resolving the issue. (*San Diego Building Trades Council v. Garmon, et al.* (1959) 359 U.S. 236.) In another case, the United States (U.S.) Supreme Court found that the state courts could not assert jurisdiction to hear the claims because it involved activity arguably covered by the NLRA. In reaching this conclusion, the Court noted that "the unifying consideration of [the Court's prior labor preemption rulings] has been regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency." (*Garmon*, 359 U.S. 242.)

However, various cases have limited *Garmon*'s applicability since then, and there are arguments for state action not being preempted, including reasoning discussed by the Law and Political Economy Project ("*Did Trump Just Empower States and Cities to Regulate Labor Relations?*" February 6, 2025.) In addition, in *Smith*, a legal claim in state court for breach of a collective bargaining agreement was allowed to proceed under a separate federal law even though the activities at issue violated the NLRA, absent serious problems arising with the state court and the NLRB maintaining dual jurisdiction. (*Smith v. Evening News Assoc.* (1962) 371 U.S. 195.) Recently, the U.S. Supreme Court again cut into the breadth of the *Garmon* doctrine, finding that state court tort claims were not preempted by the NLRA when they involved actions related to a strike that were not protected under NLRB precedent. (*Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local No. 174*, (2023) 598 U.S. 771.) In the concurring opinion of that case, Justice Thomas suggested that the court revisit the *Garmon* doctrine. (*Glacier Northwest* 598 U.S. 788.) In addition, the Tenth Amendment to the U.S. Constitution ensures the broad power of the state to enact laws under its general police powers, which includes those related to employment. Among other things, this state power is expressly stated in the legislative findings and declarations of this bill.

This bill does not attempt to replace or make substantive law regarding employees' rights and protected concerted activity under the NLRA. Rather, it is intended to ensure that the rights already guaranteed to employees can be enforced, especially when considering the NLRB effectively has been rendered nonfunctional by the federal administration. As such, this bill aims to have the state step in only where the NLRB has failed its statutory duties in the administration of the NLRA and labor law; thereby, acting as a supplement to the currently inoperative NLRB – not replacing it.

Please see the various policy committee analyses for a full discussion of this bill.

**According to the Author**

"California cannot sit idly by as workers are systemically denied the right to organize due to employer intransigence and federal agency inaction, delays, and the potential inability to make decisions. This bill respects the framework of federal labor law, [and allows those] who are not able to freely exercise [their rights, or] have not timely received a response or remedy from the NLRB within the specified timelines [to] seek relief at the state level from [the] PERB."

### Arguments in Support

Among other things, the California Federation of Labor Unions, AFL-CIO, and other supporters express that the right of workers to form or join a union and collectively bargain is essential to economic security and human dignity. This includes those covered by the NLRA and the NLRB. However, numerous legal challenges threaten the ability of the NLRB to effectively protect workers. This is followed by the intentional nonfunctional status of the NLRB due to removal of its Chair, making the NLRB incapable of establishing a quorum. "Even before legal challengers, the NLRB has struggled to provide effective relief for workers seeking to organize." Further, "[delays] and legal challenges are not just theoretical obstacles to organizing." Finally, "California can, and should, step in to protect workers when federal agencies are unable to do so."

### Arguments in Opposition

In part, the CalChamber asserts, "[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. [This bill's] attempt to give [the] PERB the ability to adjudicate issues in lieu of the NLRB is a clear example of *Garmon* preemption. The present lack of a quorum at the NLRB and hypothetical scenarios about what *may* happen does not allow [this bill] to escape preemption. The NLRA is still law, and it continues to be enforced by the NLRB's regional offices. Those offices are continuing to process elections, certifications, petitions, and unfair labor practice charges. This is also not the first time the NLRB has operated without a quorum."

## FISCAL COMMENTS

According to the Senate Committee on Appropriations, the 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 (PERB 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.

## VOTES:

### ASM PUBLIC EMPLOYMENT AND RETIREMENT: 6-0-1

**YES:** McKinnor, Alanis, Boerner, Elhawary, Garcia, Nguyen

**ABS, ABST OR NV:** Lackey

### ASM LABOR AND EMPLOYMENT: 7-0-0

**YES:** Ortega, Flora, Chen, Elhawary, Kalra, Lee, Ward

**ASM APPROPRIATIONS: 12-0-3**

**YES:** Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache, Ta

**ABS, ABST OR NV:** Sanchez, Dixon, Tangipa

**ASSEMBLY FLOOR: 68-2-9**

**YES:** 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

**NO:** DeMaio, Ellis

**ABS, ABST OR NV:** Castillo, Dixon, Gallagher, Jeff Gonzalez, Hadwick, Lackey, Macedo, Sanchez, Tangipa

**UPDATED**

VERSION: September 5, 2025

CONSULTANT: Michael Bolden / P. E. & R. / (916) 319-3957

FN: 0001982