

New law targets intimidation of farmworkers

By Gosia Wozniacka, Associated Press
Published Tuesday, 11 October 2011

(AP) — California has a new law that will allow state regulators to automatically certify union elections by farmworkers if they determine growers used threats or intimidation toward workers in the election process.

The law, signed by Gov. Jerry Brown late Sunday, is part of a compromise after union efforts to change the fundamental way farmworkers organize failed earlier this year.

The United Farm Workers of America, whose membership has dwindled in recent years, says the new law will keep growers more accountable but doesn't solve the issue of intimidation.

"It's not what we want, not what we feel we really need to benefit a large number of farmworkers," said Arturo Rodriguez, UFW president. "But it's an improvement over what we had before. Clearly the current system was not working. It offered an incentive for the growers to violate the law, because they had no reason to obey it."

Farmworkers previously called for majority sign-up elections, also known as card-check balloting, that would have allowed workers to vote by signing petitions away from the fields. Farmers and agricultural organizations vehemently opposed the move due to possible election violations by union organizers.

During his first stint as governor, Brown in 1975 signed the California Agricultural Labor Relations Act, which gave workers the right to hold secret ballot elections. However, he vetoed the card-check bill in June.

Brown and Senate President Pro Tempore Darrell Steinberg, who authored the vetoed bill, compromised on the new law that became an amendment to the Agricultural Labor Relations Act.

Growers said they were not happy with the new law, because previous elections protections were sufficient.

"We're not pleased with the bill and we don't think this law was justified. That said, we recognize that it's not card-check," said John Aguirre, president of the California Association of Winegrape Growers. "But it's much easier now for a grower to get tripped up; there is less of margin of error. So growers will have to rely more heavily on consultants and lawyers to make sure they won't run afoul" of the new law.

Growers also worried about what could constitute misconduct and when the law could be applied.

The Agricultural Labor Relations Board says misconduct by growers will have to be egregious and include pervasive threats, discharges or other actions against workers for an election to be automatically certified.

The law also makes it easier to obtain preliminary injunctive relief from the courts to reinstate fired employees if an employer is charged with unfair labor practices. In addition, it spells out circumstances under which mandatory mediation may be requested by unions or employers.

"It's a rather exclusive remedy," said Rich Matteis, administrator of the California Farm Bureau Federation. "We want to make sure this law is applied only in the most serious cases, not just for any nominal infractions."

The UFW said the new law is much needed because employers have used threats and intimidation to influence many elections.

In a hotly contested 2005 organizing election at Giumarra Vineyards, one of the country's largest table grape growers, the union had collected cards supporting a union vote that were signed by more than 70 percent of the vineyard's 3,000 workers.

But when the election was held, the union lost with 48 percent of the vote.

The vineyard denied committing any misconduct. A state examiner found the vineyard had intimidated workers and threw out the election. However, the workers were demoralized and no second vote was requested.

The state Agricultural Labor Relations Board acknowledged the situation illustrated a larger systemic problem and called the election process "a meaningless exercise" that only encourages employer misconduct.

"When you do that to immigrant workers, especially workers who are undocumented and afraid, it has a tremendous impact on them," Rodriguez said.

Because of such intimidation, Rodriguez said, the UFW has been hesitant to use the election process. Not only have elections not lead to union certification, process led to worker activists being identified and fired, Rodriguez said.

Labor relations board data show the union filed for fewer than 30 elections during the past nine years. It has not filed for a single election in the San Joaquin Valley, the heart of California's agriculture, since 2006.

Meanwhile, nationwide UFW membership has fallen from more than 70,000 in the 1970s to what officials say is about 27,000 workers today. California alone has 460,000 agricultural workers.

It's hard to tell whether the new law will make a big difference, said Philip Martin, a professor of agricultural and resource economics at the University of California, Davis.

"This is a very evolutionary change, not revolutionary," he said.

But by making unionization easier, Martin said, it will put more

pressure on farmworker wages.

Rodriguez said the UFW will continue to push for card-check voting.

Though he didn't offer a timeline, he said the card-check legislation — which has been adopted by legislators and vetoed five times by governors — would be reintroduced.

"The reality is, a farmworkers still has to sign the card there in the fields and testify at a hearing when the grower is violating the law," Rodriguez said. "Those are big risks that many are not willing to take." #