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Is it “1984” All Over Again?

By Jim Bogart

Election day rapidly approaches, and I encourage all of you to go to the polls on November 4 and cast your ballots. The right to vote and freely choose our President and other government officials is the cornerstone of our democracy. The absolute, unfettered right to cast one’s ballot – either in the sanctity of the voting booth or the privacy of one’s home – free from intimidation, threats or coercion is sacred.

Can you imagine this right being taken away? Can you imagine one of the presidential candidates picking up your ballot, coming to your home and peering over your shoulder as you fill it out? Or worse, filling out your ballot for you and taking it to the elections department himself? Or even worse, the ballot brought to you by that presidential candidate has only his name on it? And worse yet, only one presidential candidate is allowed to do this. Not only is the other candidate not allowed to, he will be slapped with a hefty fine if he does so!

Can’t happen here you say? Think again. The California legislature has passed a bill that turns the Agricultural Labor Relations Act on its head and takes away the absolute right of farm workers to cast their ballots in private when deciding whether or not to be represented by a union.

AB 2386 is headed to the Governor’s office as I write this column. Suffice to say, I hope he vetoes the bill and preserves the right of farm workers to cast their ballots in the privacy of a voting booth monitored closely by government officials to prevent undue influence, pressure, or threats against the voter by anyone. This is precisely what Cesar Chavez fought so hard for in 1975 when the ALRA was enacted.

The bill calls for either a “mediated” or a “ballot booth” election. In order to have a mediated election, the union must only submit a petition to the ALRB requesting it (a mediated election) without any known level of support from the employees. Currently more than 50% of the employees have to sign cards authoring a secret ballot election.

In a mediated election, ballots are mailed to employees with only two choices: 1) a ballot booth election or 2) the union. There is no choice for “no union”.

Blank ballots can then be requested by the union in any number they want and only the union can visit the employee in their home. Employers are not only precluded from requesting blank ballots but are specifically prevented to “participate in, or in any way interfere with, an agricultural employee’s selection of a choice on a mediated ballot election”. Civil penalties only for the employer have been added up to \$20,000 for each occurrence for unfair labor practices. In essence, the employer is taken out of the equation altogether.

Only the union can help an employee fill out the ballot. They can literally stand over the shoulder of the employee and simply ask them to sign the ballot after they the union has filled it out. This is the

equivalent of card check! Employers are not only prevented from assisting employees in any way possible, they can't state their side of the issue.

The union can be found guilty of fraud only if there is "clear and convincing evidence" and only the individual, not the union, would be subject to penalty which at most would be to prevent the distribution "of mediated election ballots for a period of not more than five years". The employer would be subject to the aforementioned fines based upon the "preponderance" of evidence. This is a clear double standard.

So how is the secret ballot maintained as the union has claimed? It isn't! In a mediated election the only way you could get back to a secret ballot election is to have more than 50% of the employees vote for a "ballot booth" election in the direct presence of union representatives which simply isn't going to happen. Or more than fifty percent of the employees, without any help from the ALRB or anyone else, must sign a petition on their own and present it to the ALRB requesting a secret ballot before the union files their request for a mediated election. Again you simply will not see a secret ballot election.

In summary, this legislation would hand over the keys to the union and give them free reign to intimidate and bully workers, not only in the workplace but their homes as well. This isn't about heat stress or protecting worker's right to the full extent of the law. AB2386 is all about the union's failure to communicate value to the workers. It is about legislators and a union that believe that they know about what is best for a farm worker than the farm worker themselves. It is about changing the rules because they can't win under the current rules. It is about taking away a farm worker's fundamental right to a secret ballot.

AB 2386 would destroy over three decades of carefully constructed policy that balances the needs and rights of farmers, farm workers and unions. California has the most stringent and progressive laws in the nation when it comes to protecting farm workers. I strongly support efforts to enforce all these laws and crack down on anyone who violates them. AB 2386 does none of these things except give a union the right to rig elections. We need to preserve the current system – not smash it to bits. Now is the time to contact our Governor and demand that the electoral rights of all be protected. Join me in doing so today.