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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510–6300

October 15, 2025

VIA ELECTRONIC TRANSMISSION

The Honorable Gavin Newsom
Governor of California
1021 O Street, Suite 9000
Sacramento, CA 95814

Dear Governor Newsom,

As Chairman of the Senate Committee on Health, Education, Labor, and Pensions (HELP), I am committed to ensuring that workers can rely on a predictable process when they are involved in an unfair labor practice dispute or want to organize to improve their working conditions.

You recently signed AB 288, which expands the jurisdiction of the State of California's Public Employment Relations Board (PERB) to include that of the National Labor Relations Board (NLRB). Infringing on NLRB's jurisdiction undermines processes enshrined in federal law that protect workers and falsely suggests to workers that PERB decisions can provide a legal resolution.

I am concerned that AB 288 will result in workers' good faith claims going unaddressed in the proper forum. The issue of the NLRB jurisdiction has been settled by the U.S. Supreme Court on several occasions: first, in *San Diego Building Trades Council v. Garmon*[1], and again in *Wis. Dept. of Indus., Labor & Human Relations v. Gould, Inc.*[2] In addition to affirming the jurisdiction of the NLRB in any matter related to the National Labor Relations Act (NLRA), the *Garmon* Court found that the absence of an assertion of jurisdiction by the NLRB does not create a jurisdictional vacuum leaving states free to act. In *Gould*, the Court reiterated the principle established in *Garmon*—that states are preempted from regulating activity that is protected, prohibited, or arguably protected or prohibited under the NLRA.[3]

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[1] *San Diego Bldg. Trades Council, Millmen's Union, Loc. 2020 v. Garmon*, 359 U.S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775 (1959).
[2] *Wisconsin Dep't of Indus., Lab. & Hum. Rels. v. Gould Inc.*, 475 U.S. 282, 106 S. Ct. 1057, 89 L. Ed. 2d 223 (1986).
[3] *Id.* at 1061.

Workers in California and across the United States should be able to assert their rights without confusion or undue difficulty. They should not be expected to be labor law experts, parse jurisdictional questions, and file their grievances in every possible forum to preserve their claim. This law accomplishes the opposite of its purported goal, which is to help workers. To that end, I request answers to the following questions by October 29, 2025.

Jurisdictional Basis

1. *San Diego Building Trades Council v. Garmon* stated that the NLRB has jurisdiction "over the multitude of activities regulated by § 7 and § 8 of the National Labor Relations Act."[4] In *Wis. Dept. of Indus., Labor & Human Relations v. Gould, Inc.*, a unanimous Court, quoting *San Diego Building Trades Council v. Garmon*, reaffirmed the general rule that "States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits."[5]
    a. Given these decisions by the U.S. Supreme Court, on what grounds does the State of California believe AB 288 provides certainty for workers regarding the permanent disposition of unfair labor practice disputes and certification of bargaining units?
    b. Is AB 288 preempted by the NLRA?

2. In *San Diego Unions v. Garmon*, the Court stated that the failure of the NLRB to assert jurisdiction did not allow states "to regulate activities they would otherwise be precluded from regulating" and "to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy."
    a. Why did the State of California disregard *Garmon*'s conclusions?
    b. Does the State of California believe AB 288 operates outside of *Garmon*?
    c. Was AB 288 proposed and passed to challenge *Garmon* and seek its reversal?

3. How did the State of California decide that the only actions the NLRB could take to successfully assert jurisdiction are issuing a bargaining order requiring an employer to bargain in good faith, seeking a bargaining order under Section 10(j) of the NLRA, issuing an order that an employee be reinstated, issuing a complaint or dismissing an unfair labor practice charge?
    a. What is the standard under California state law for the PERB to successfully assert jurisdiction?

[4] *San Diego Bldg. Trades Council, Millmen's Union, Loc. 2020 v. Garmon*, 359 U.S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775 (1959).
[5] *Wisconsin Dep't of Indus., Lab. & Hum. Rels. v. Gould Inc.*, 475 U.S. 282, 106 S. Ct. 1057, 89 L. Ed. 2d 223 (1986).

b. Does the PERB face a similar six-month statutory deadline to issue a bargaining order, issue an order that an employee be reinstated, issue a complaint, or dismiss a charge of any sort?

4. Public statements have cited the NLRB's inability to act due to a lack of quorum as a primary reason for AB 288.[6] However, the NLRB continues to investigate charges, and Acting General Counsel Bill Cowen recently issued a statement saying that the NLRB's "Regional Offices continue to process unfair labor practice and representation cases, and the Acting General Counsel has been delegated litigation authority that would normally be exercised by the Board."[7] Please explain how these actions do not constitute the assertion of jurisdiction by the NLRB over matters covered by the NLRA.

5. How did the State of California decide that the definition of "ignored or excessively delayed" amounts to more than six months without action?
    a. Did you rely on an existing definition in California or federal law?
    b. On average, how long does the PERB take to act on:
        i. unfair labor practice cases,
        ii. recognizing bargaining units, or
        iii. issuing orders requiring employers to attend binding mediation?

6. Section 1(d)(2) of AB 288 states "[i]n implementing this section, the Public Employment Relations Board may do all of the following: [d]ecide unfair labor practice cases with reference to its own unfair labor practice decisions involving the public employee statutes it administers or to National Labor Relations Act precedent, in the manner that most expansively effectuates the rights guaranteed under this section, and order all appropriate relief for violation, including civil penalties."
    a. What standard will PERB use to determine what "most expansively effectuates the rights" under AB 288?
    b. What is the standard for deciding "unfair labor practice cases with reference to its own unfair labor practice decisions involving the public employee statutes it administers or to National Labor Relations Act precedent?"
        i. Does "with reference" require the PERB obligated to base decisions on its own precedent or NLRA precedent?
        ii. If not, what is the State of California's definition of "with reference" as used in the above quote?

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[6] Tina McKinnor, *McKinnor Speaks on AB 288: Offering Critical Protection for California Workers' Right to Unionize* (Apr. 3, 2025), video, California Assembly District 61, https://a61.asmdc.org/video/20250403-mckinnor-speaks-ab-288-offering-critical-protection-california-workers-right.

[7] NLRB Acting Gen. Couns., Statement on Potential State Legislation Regulating Private Sector Labor Relations (Aug. 15, 2025), *Nat'l Lab. Rels. Bd.*, https://www.nlrb.gov/news-outreach/news-story/acting-general-counsel-statement-on-potential-state-legislation-regulating.

iii. May the PERB use both its own precedent and NLRA precedent in the same decision?

7. How long will it take to establish clear and navigable processes for non-governmental workers to: (1) file an unfair labor practice complaint, (2) petition for the recognition of a bargaining unit, or (3) petition the PERB to order employers to attend binding mediation, reinstate a worker, or bargain with a union representative?

8. Please describe how the State of California plans to inform the NLRB of the following actions when they occur at the PERB:
    a. Receipt of unfair labor practice complaint, recognizing a bargaining unit, or ordering employers to attend binding mediation, reinstate a worker, or bargain with a union representative,
    b. Any investigatory action taken regarding an unfair labor practice complaint, recognizing a bargaining unit, or ordering employers to attend binding mediation, reinstate a worker, or bargain with a union representative, and
    c. Resolution of an unfair labor practice complaint, recognition of a bargaining unit, or the result of employers attending binding mediation, reinstating a worker, or bargaining with a union representative.

9. In a conflict between a decision by the PERB and the NLRB in the same matter will the State of California voluntarily surrender jurisdiction and rescind the PERB's decision?
    a. Will the State of California go to court for each conflict between the PERB and NLRB? Will it be decided on a case-by-case basis?

10. Will the PERB and/or the State of California cease enforcement of AB 288 on the date that the NLRB reaches a quorum?

11. Will you send a message to California's State Assembly and State Senate leadership urging immediate repeal of AB 288 on the date that the NLRB reaches a quorum?

<u>Cost and Reimbursement</u>

1. Will the State of California reimburse Californians for any costs, including time away from work, related to dealing with a conflict between decisions by the PERB and NLRB?
    a. If not, what categories of costs or specific costs will you reimburse?

2. Will you or your administration promise not to seek any federal reimbursement in any form for costs associated with implementing AB 288 or defending it from any litigation that may arise related to its preemption?

3. How much will it cost taxpayers to increase the size and workload of the PERB under AB 288?

4. Will you promise not to raise taxes or implement any fee structure of any sort to pay for the expansion of or additional hiring at the PERB or any state agency for costs related to implementing AB 288 not already provided for in the state budget?

5. Did the State of California engage in any sort of analysis to determine what filing claims with both the PERB and NLRB would cost Californians?
    a. Please include a copy of any analysis.

Impact on Workers

1. What safeguards exist to prevent abuse of AB 288's provision directing any civil penalties collected by PERB be deposited into its own Enforcement Fund?
    a. Does directing civil penalties to the same agency responsible for enforcement create an incentive for that agency to impose penalties more frequently?
    b. How much money does the State of California expect to collect from employers and unions subject to civil penalties?
    c. Did the State of California consider directing revenue from the civil penalties to the State Treasury rather than a dedicated PERB fund, to better benefit all Californians?

2. How will the State of California communicate to workers how to file an unfair labor practice claim or petition to certify a bargaining unit with the PERB?
    a. In those communications:
        i. will the State of California disclose that any unfair labor practice claim or petition to certify a bargaining unit adjudicated by the PERB only applies to state law?
        ii. will the State of California disclose that any unfair labor practice claim or petition to certify a bargaining unit should also be properly filed with the NLRB?
        iii. will the State of California disclose that any result reached by the PERB to certify a bargaining unit will have no bearing on any similar decision by the NLRB?
        iv. will the State of California disclose that anyone who files an unfair labor practice claim or petition to certify a bargaining unit with the PERB and NLRB may receive two different results, resulting in costs they must bear?

v. will the State of California disclose that any result reached by the PERB will have no bearing on any decision to investigate, charge, or other result reached by the NLRB?

3. How did the State of California conclude that subjecting workers to at least two separate legal fora—one of which is preempted by the other—and processes help workers resolve their claims?

4. How will the State of California explain PERB's supposed jurisdiction and the NLRB's jurisdiction over an unfair labor practice complaint, recognizing a bargaining unit, or ordering employers to attend binding mediation, reinstate a worker, or bargain with a union representative?
    a. Please include a copy of any talking points, forms, charts, or any other document that may be provided to filers.

5. How does the State of California plan to explain to Californians that a PERB-recognized bargaining unit may not be recognized by the NLRB?
    a. How does the State of California plan to resolve an instance where the NLRB recognizes a bargaining unit, but the PERB does not, or vice versa?

6. How does the PERB plan to enforce its orders on employers that are not headquartered in but operate in the State of California and in others states as well?
    a. Does the PERB plan on asserting its jurisdiction outside of the State of California?

7. What is the State of California's estimate of how many cases will experience unnecessary delays, thereby increasing the total time it takes for worker to obtain a final resolution under AB 288?
    a. What is the average additional time this process will add on to each case?

Sincerely,

Bill Cassidy, M.D.

Bill Cassidy, M.D.
Chairman
U.S. Senate Committee on Health,
Education, Labor, and Pensions