

## **AGRICULTURAL LABOR RELATIONS BOARD**

### **NOTICE OF PROPOSED REGULATORY ACTION** **TO AMEND TITLE 8, SECTIONS 20335(c)**

**March 2016**

Notice is hereby given that the Agricultural Labor Relations Board (ALRB or Board), pursuant to the authority vested in it by section 1144 of the Labor Code to make, amend, or rescind rules and regulations as may be necessary to implement, interpret, and make specific the provisions of the Agricultural Labor Relations Act (ALRA) (Labor Code sec. 1140, et seq.), proposes to amend section 20335(c) of its regulations in order to implement section 1156.3 as amended by Senate Bill No. 126 (SB 126; Chapt. 697, Stats. of 2011).

The Board's regulations are codified in Title 8, California Code of Regulations, section 20100, et seq. The proposed amendments are described below in the Informative Digest. An initial statement of reasons for the amendment of these regulations, along with the text of proposed amendments, has been prepared by the ALRB and is available upon request by contacting J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 1325 J Street, Suite 1900 B, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: [J.Antonio.Barbosa@alrb.ca.gov](mailto:J.Antonio.Barbosa@alrb.ca.gov) or Eduardo R. Blanco, Special Legal Advisor, same address and fax number as above, (916) 651-7633, e-mail: [eblanco@alrb.ca.gov](mailto:eblanco@alrb.ca.gov). This notice, as well as the initial statement of reasons and text of the proposed regulation, also may be found on the Board's website at [www.alrb.ca.gov](http://www.alrb.ca.gov). The final statement of reasons, once it has been prepared and submitted to the Office of Administrative Law, shall be available in the same manner as the initial statement of reasons.

**The ALRB invites all interested persons to submit written comments on the proposed amendments. Comments must be received at ALRB headquarters at the address listed above by May 23, 2016. A public hearing is not scheduled. However, any interested person or his or her duly authorized representative may submit, in writing, no later than May, 23, 2016 a request that a public hearing be held on the proposed amendments.**

### **ADOPTION OF PROPOSED REGULATION**

After the comment period closes, and a hearing, if requested, is held, the Board will consider all public comment, written and oral, and decide whether to make any changes to the proposed amendments. The Board may adopt the proposed amendments if no substantial changes are made. If the Board decides to make substantial changes that are

"sufficiently related" to the initial proposals, the public will be given notice of those changes and will be given at least 15 days to provide comment. If the Board decides to make "major" changes to the proposals that are "not sufficiently related to" the initial proposals, a new notice of proposed action will issue allowing for a new 45-day comment period.

## **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

### **Amend Section 20335(c). Transfer, Consolidation , and Severance**

SB 126 includes new subdivision (i) of Labor Code section 1156.3, the existing provision governing elections generally. Subdivision (i) sets forth various time limits for the resolution of challenged ballots and election objections. The time limit for the initial evaluation of whether challenged ballots or election objections warrant an evidentiary hearing is 21 days from the filing of election objections or the submittal of evidence in support of challenged ballots. Within the 21 day period the Board must issue a decision determining which, if any, of the objections and challenges to set for hearing.

Although in SB 126 the legislature did not address whether the application of the 21 day period applied to the consolidation of unfair labor practice charges with the challenges and objections to be set for hearing, the need for this type of consolidation has been capable of preventing an elections objections or challenge hearing from moving forward. The Board has preferred to place the objections or challenge hearing into abeyance rather than proceed with it if that were to mean that mirror ulps are not litigated with them. Before the implementation of the timeframes for processing objections and challenges, the Board had determined that the avoidance of duplicative hearings which could result from a failure to consolidate was preferable as it avoided unnecessary additional costs for holding two hearings on the same or similar issues with the same evidence and witnesses and more importantly it created the possibility of conflicting results which would create further litigation and uncertainty as to what was the correct result. Such an eventuality would create even more delay rather than reduce it.

In order to ensure that the elimination of delay for which the legislature created the amendments to 1156.3 actually occur with respect to the consolidation of mirror ulp charges with objections and challenges being set for hearing, it is proposed that section 20335(c) be amended to create a process by which the ALRB's Executive Secretary will provide to the General Counsel with all of the objections and challenges filed so that the General Counsel will be able to determine whether any of the ulps filed in connection to the election appear to mirror those filed objections or challenges. Additionally, the Executive Secretary will advise the General Counsel of the date on which the 21st day of the 21 day timeframe will be reached. With this information, the General Counsel may determine what, if any, of the ulp charges mirror the filed objections and challenges and

can then accordingly determine whether to notify the Executive Secretary that there, in fact, are certain ulp charges that do mirror certain of the objections and challenges. In the event the General Counsel desires to consolidate charges with the objections and challenges, those charges must mirror the objections and challenges filed. Charges that were filed during the election and do not mirror an objection or a challenge will not be allowed to be consolidated. The motion must be filed within the 21 day time frame.

Where there is a need on the part of the General Counsel for an extension of the 21 day time frame because the investigation and or issuance of the complaint on the mirror charges remains incomplete and the 21 day limit will expire before a consolidation motion can occur, the General Counsel may seek from the Board an extension for 30 days of the timeframe for the setting of the objections and challenges for hearing. Good cause for the granting of the motion will be established by the General Counsel asserting that more time is needed for the purposes of consolidation. However, the Board will only grant a one-time 30 day continuance for the purposes of consolidation. No other continuances will be granted for the purposes of consolidation.

Separate and apart from the ability of the General Counsel to obtain an extension of the timeframe is the ability of the parties to the election to obtain, through a stipulation, an extension of the time frames. This ability was created by section 1156.3(i)(3). The Board clarified that the General Counsel is not an affected party and is not necessary for the parties to achieve the stipulation. Additionally, the Board clarified that the role of the General Counsel in an objections hearing did not give it party status and was limited by other regulation and also limited to the objections and challenges mirrored by the ulps.

The amendments eliminated requests from the Board to the General Counsel for expedited ulp investigations; narrowed the types of ulps to be consolidated from “concurrent” ulps to “mirror” ulps; and eliminated the ability of the Board to order consolidation.

## **RULEMAKING FILE**

Pursuant to Government Code sections 11346.5 and 11347.3, the Board shall maintain a rulemaking file containing all materials considered in the rulemaking process.

The file currently contains:

1. A copy of this notice
2. A copy of the Initial Statement of Reasons
3. Text of the Proposed Amendments to Sections 20335(c)

As other materials are received, such as written comments, studies, reports, etc., they will be added to the rulemaking file. The file is available for inspection at the headquarters

office of the ALRB, 1325 J Street, Suite 1900B, Sacramento, CA, during normal business hours.

### **ALTERNATIVES TO PROPOSED ACTION**

The Administrative Procedure Act requires that the Board, in taking any regulatory action, determine that no alternative considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Board has made that determination.

### **LOCAL MANDATE STATEMENT**

The proposed regulatory changes would not impose any mandate on local agencies or school districts.

### **IMPACT STATEMENTS**

- A. Estimated fiscal impact on local government or school districts: None.
- B. The proposed changes would result in no cost or savings to any state agency, or cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, nor impose other nondiscretionary cost or savings on local agencies or affect cost or savings in federal funding.
- C. Fiscal effect on private persons or businesses directly affected: No increase in costs. The ALRB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- D. The proposed changes would have no effect on small business because the changes impose no new burdens upon parties appearing before the Board.
- E. The proposed changes would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- F. The proposed changes would have no effect on the creation or elimination of jobs within the State of California, no effect on the creation of new businesses or the elimination of existing businesses within the State of California, and no effect on the expansion of businesses currently doing business within the State of

California.

G. The proposed changes would have no effect on housing costs.

### **INQUIRIES**

Any inquiries concerning any aspect of the proposed regulatory action noticed herein should be directed to J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 1325 J Street, Suite 1900 B, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: [J.Antonio.Barbosa@alrb.ca.gov](mailto:J.Antonio.Barbosa@alrb.ca.gov) or Eduardo R. Blanco, Special Legal Advisor, same address and fax number as above, (916) 651-7633, e-mail: [eblanco@alrb.ca.gov](mailto:eblanco@alrb.ca.gov). Questions concerning the substance of the proposed amendments may be directed to Mr. Blanco.