

AGRICULTURAL LABOR RELATIONS BOARD

THE GENERAL COUNSEL'S PROPOSED AMENDMENTS TO SECTION 20363

TITLE 8, CALIFORNIA CODE OF REGULATIONS

§20363. Post-Election Determination of Challenges.

(a) If the tally of ballots discloses that the **unresolved** challenged ballots are sufficient in number to affect the outcome of the election, the regional director ***shall within ten (10) days of the tally of ballots*** conduct ***and complete*** such investigation as he or she deems necessary to determine the eligibility of the challenged voters, including giving all parties an opportunity to present evidence on each of the challenges. The time period for submitting evidence shall be ***no later than*** seven (7) days ***from the tally of ballots and shall be filed with the regional director by personal service. For the purposes of this section, the seven day period shall include weekends and holidays.*** The parties shall provide the regional director with two copies of any evidence submitted. Thereafter, ***on the tenth day of the ten day period,*** the regional director shall issue to the Board a report containing ***all challenged ballot declarations, all other evidence in his or her possession relevant to the eligibility of the challenged voters,*** his or her conclusions and recommendations and a detailed summary of the facts underlying them. A copy of the regional director's report shall be served on ***the Board by personal service and on all parties by electronic service followed by service by overnight delivery.*** Where, after investigation, the regional director deems it appropriate, he or she may issue a notice of hearing on those challenged ballots which cannot be resolved by investigation []. ***The hearing will provisionally be set to occur pending a decision by the Board.*** A copy of the notice of hearing shall be served on all parties. Such hearing will be in accord with section 20370. ***The 21-day period set forth in Labor Code section 1156.3, subdivision (i)(1)(A)(i) shall run from receipt by the regional director of the evidence submitted by the parties, or the expiration of the seven day period to submit evidence, whichever occurs first.***

(b) The conclusions and recommendations of the regional director, set forth in the report provided for in (a) above, shall be final unless exceptions to the conclusions and recommendations are filed with the executive secretary by personal service within five (5) days [] following service upon the parties of the regional director's report, ***i.e., within fifteen (15) days of the tally of ballots.*** An original and six copies of the exceptions shall be filed and shall be accompanied by seven copies of declarations and other documentary evidence offered in support of the exceptions. However, the Board will not consider, absent extraordinary circumstances, evidence that was not submitted timely to the regional director pursuant to subsection (a). "Extraordinary circumstances" includes recognized legal excuses such as where the evidence is newly discovered, and not reasonably discoverable, or the party was not on notice as to issues in dispute. Copies of any exceptions and supporting documents shall be served [] ***by electronic***

service with hard copy to follow on all other parties to the proceeding and on the regional director and proof of service shall be filed ***by personal service*** with the executive secretary along with the exceptions. Upon the filing of exceptions, the regional director ***in addition to forwarding to the Board the regional director's investigative report, all challenged ballot declarations, all other evidence in his or her possession relevant to the eligibility of the challenged voters shall*** forward to the Board the entire record relied upon in the investigation. ***The Board shall, after considering the evidence and the parties' arguments, determine which challenges may be resolved thereon and which require the resolution of material factual disputes, and thus must be set for an evidentiary hearing in accordance with section 20370. The hearing on challenged ballots shall be scheduled to commence within 28 days of the date of the Board's decision to set a hearing.***

(c) In serving exceptions and supporting documents on other parties pursuant to subdivision (b) above, the excepting party shall have the option of serving a detailed statement of facts in lieu of the declarations. This detailed statement of facts shall describe the contents of declarations in sufficient detail to allow an opposing party to secure its own witnesses and otherwise prepare itself to counter the exceptions at an evidentiary hearing. An excepting party electing to serve a detailed statement of facts on other parties shall also file the original and six copies of this statement with the executive secretary together with the declarations.

(d) In any case in which exceptions are filed to a regional director's recommendations for the disposition of challenged ballots pursuant to subsection (b) above, the record ***on review by*** the Board shall consist of: the ***election*** petition pursuant to Labor Code Section 1156.3(a), the notice and direction of election, the tally of ballots, the evidence ***and argument*** submitted to the regional director by the parties, as well as any other evidence relied on by the regional director, ***the declarations, regional director's investigative report and other evidence forwarded by*** the regional director [] on challenged ballots, and the exceptions thereto, along with supporting evidence and briefs as provided in subsection (b) above.

Authority: Section 1144, Labor Code; Reference: Section 1157, Labor Code.