

Memo

To: All Interested Parties
From: Mark Soble, Acting Executive Secretary
Date: June 20, 2017
Re: New Board Regulations Allowing E-Filing and Consolidation of Mirror Unfair Labor Practice Charges with Objections to Election

New regulations allowing electronic filing (e-filing) by email (available now) and consolidation of mirror unfair labor practice charges with objections to elections (effective July 1, 2017) were adopted by the Board on January 12, 2017, after undergoing public review. The regulations have been approved by the Office of Administrative Law and filed with the Secretary of State. Attached is the Final Text of each of the new regulations, Informative Digests, and instructions on how to use the e-filing option. An updated version of the complete set of official ALRB regulations will be available at the ALRB's website by July 1, 2017, at: www.alrb.ca.gov. Please contact me at (916) 653-2767 should you have any questions. Thank you.

E-Filing Regulation - INFORMATIVE DIGEST

The E-Filing regulation (attached) outlines the processes and procedures for optional use of electronic filing and service on the Board through e-mail. The regulation adds a new Section 20169 and amends Sections 20170, 20234, 20240, 20241, 20242, 20282, 20286, 20363, 20393, 20400, 20401, 20402, 20407, and 20408.

Prior to adoption of the e-filing regulation, complaints, orders, and other process and papers of the ALRB, by regulation were served either personally or by registered mail or by telegraph, or by leaving a copy at the principal office or place of business of the person required to be served. These requirements also generally applied to parties filing documents with the Board and serving documents on other parties.

In today's world of high-speed communications, the telegram has long been replaced by the use of facsimile (fax) and electronic mail (e-mail). In the legal setting, for the purposes of serving and filing documents, electronic filing (e-filing) and electronic submission (e-submission) have become commonplace.

The ALRB is aware that individuals who may or will represent themselves in front of the Board might not have computers or access to the internet. Accordingly, under the new regulations, e-filing is a voluntary option for the filing of documents with the Board and service of documents on parties.

Consolidation of Mirror Unfair Labor Practice Charges with Objections to Election Regulation - INFORMATIVE DIGEST

The Consolidation of Mirror Unfair Labor Practice Charges with Objections to Election regulation (attached) amends Section 20335(c), to allow the General Counsel to file a motion with the Board to seek approval to consolidate mirror unfair labor practice charges with objections to election filed.

Labor Code section 1156.3, 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. No timeframe was specified in the statute for consolidation of unfair labor practice charges (ulps) which mirror challenges and objections.

Although the legislature did not address the application of the 21-day period applied to the consolidation of ulps with the challenges and objections to be set for hearing, there is a need for this type of consolidation. Before the implementation of the statute driven timeframes for processing objections and challenges, the Board had determined 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. 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. Awaiting such consolidation while the General Counsel determined whether mirroring ulps would go to complaint and a hearing, has prevented 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.

In order to eliminate delay for which the legislature created the amendments to 1156.3 with respect to the consolidation of mirror ulp charges with objections and challenges being set for hearing, section 20335(c) has been 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 complaint mirror the filed objections and challenges and can then accordingly determine whether to notify the Executive Secretary that there, in fact, are certain ulps complaint(s) 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, and there is provision for an extension.

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