

AGRICULTURAL LABOR RELATIONS BOARD

OFFICE OF THE EXECUTIVE SECRETARY

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DATE: September 22, 2021

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member
Barry Broad, Board Member

RE: Regulatory Proposals – Filing and Service Regulations

Below are draft regulatory changes and proposals based on the Regulations Subcommittee's recommendations approved by the Board at the April 13, 2021 public meeting. Changes are reflected in underline (new language) and strikethrough (deletions) formats. Note that a number of regulations proposed to be amended in other substantive respects also include filing and/or service provisions proposed to be amended in similar respects to those listed below. In such instances, proposals concerning such other regulations are reflected separately in the report covering the general subject matter to which the regulations pertain.

FILING AND SERVICE UPDATES

To eliminate requirements of filing multiple copies, outdated methods of service, and to require all represented parties to electronically file documents with the Board:

To amend regulation 20150 to state:

§ 20150. Format of Pleadings and Papers.

All papers not electronically filed with the Board shall be on white paper, 8 1/2 inches wide by 11 inches long, ~~which shall be of at least 18 pound bond weight.~~ In all filings, Matter shall be presented by typewriting typewritten, using not less than 12-point serif font or at least as large as pica type printing or other clearly legible reproduction process, and if not filed electronically shall appear on one side of each sheet only. All documents filed with the Board shall identify and be signed by the party or representative filing the document, contain the ~~sender's party's or the representative's address, and telephone number, and email address,~~ sender's party's or the representative's address, and telephone number, and email address, and designate the title of the case, including any case number assigned by the Board. All documents filed with the Board shall use single 22.75 spacing to align with line numbers when prepared on pleading paper or otherwise be prepared with space and a half 1.5 or double spacing spacing, except for the identification of party or representative, the title of case, footnotes, and quotations. ALRB forms and petitions may be completed by hand, provided the handwriting is legible. Handwritten declarations will be accepted where it would be unduly difficult to provide typewritten ones. Whenever declarations which are not in English are presented for filing and service, they shall, whenever possible, be accompanied by a proposed English translation.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.4(a), 1156.3(a), (c), 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20155 to state:

§ 20155. Signing of Petitions, Pleadings, Motions, Applications, Requests, Responses, Briefs and Other Papers.

Every pleading, petition, motion, application, request, response, brief, or other paper filed with the Board and every request for discovery or particulars and any responses thereto, shall be signed by the attorney or other representative of the party, or, if the party is not represented, ~~it shall be signed~~ by the party or by one of its officers or partners. The signature of the attorney, other representative, party, officer, or partner may be handwritten or electronic and constitutes a certification by the signer that ~~he or she~~ the signer has read the petition, pleading, motion, application, request, response, brief, or other paper, that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.4(a), 1156.3(a), (c), 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20160 to state:

§ 20160. Place of Filing and Number of Copies to be Filed; Requirement of Electronic Filing for Represented Parties.

(a) For parties who are not represented by counsel or other representative:

(1) Papers presented for consideration by the executive secretary, an administrative law judge, an investigative hearing examiner or the Board itself shall be filed in the offices of the Agricultural Labor Relations Board in Sacramento. A party shall submit an original and six (6) copies of all papers, other than hearing exhibits.

(2) Papers presented for consideration by the general counsel shall be filed in the office of the general counsel in Sacramento. A party shall submit an original and two (2) copies.

(3) Papers which these regulations required to be filed at a regional office shall be filed in the regional office having jurisdiction of the matter. A party shall submit an original and two (2) copies.

(4) Parties who are not represented by counsel or other representative may file documents electronically pursuant to section 20169 but are not required to do so.

(b) Parties represented by counsel or other representative shall file documents with the Board electronically pursuant to section 20169.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.4(a), 1156.3(a), (e), 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20162 to state:

§ 20162. Appearance Before the Board.

To facilitate the service of papers upon the parties and their attorneys or representatives, the executive secretary shall maintain an appearance list containing the name, address ~~and~~, telephone number, and email address for each attorney or representative of a party and for each unrepresented party, and shall make this information available upon request. Accordingly, each party, attorney, or representative of record, shall either (i) include ~~his or her~~ their address ~~and~~, telephone number, and email address on the initial pleading ~~he or she files~~ filed with the Board or the executive secretary and ~~serve~~ be served on the other parties and the appropriate regional office, or (ii) file with the executive secretary and serve on the other parties and the appropriate regional office a notice of appearance containing ~~his or her~~ their address ~~and~~, telephone number, and email address. The attorney or representative of a party or any unrepresented party shall immediately notify the executive secretary and the other parties of any change of address ~~or~~, telephone number, or email address.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), 1156.3(a), (e), 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20164 to state:

§ 20164. Service of Papers by the Board or on the Board.

All papers filed by the Board or any of its agents shall be served, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party either (i) personally, by leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (ii) by registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served, together in accordance with section 20169 with an appropriate proof of service. All papers filed by a party with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, ~~may be filed in accordance with any of the methods prescribed above, with a certificate of mailing, or by deposit with a common carrier promising overnight delivery~~ shall be in accordance with the provisions of sections 20160, 20166, and 20169.

Service need only be made at one address of a party, or attorney or representative of a party and only to one attorney or representative of each party. Proof of Sservice shall be established by a written declaration under penalty of perjury, setting forth the name and address of each party, attorney or representative served and the date and manner of their service. The Board or the party shall retain the original proof of service.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), 1156.3(a), (e), 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20166 to state:

§ 20166. Service on Others of Papers Filed with the Board.

Whenever a party files papers with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, it shall serve the same, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party in the same manner as set forth in sections 20164 and 20169, with the exception of an unfair labor practice charge, which, in accordance with section 20206, must be served personally or by a method that includes a return receipt. Service need only be made at one address of an unrepresented party or an attorney or representative of a party and to only one attorney or representative of each party.

(a) Service on other parties shall be made prior to, or simultaneously with, the filing with the Board, and proof of such service shall be attached to the papers when filed with the Board. Service shall be proven by means of written declaration signed under penalty of perjury, setting forth the name and address of each unrepresented party, attorney or representative of a party served and the date and manner of service.

(b) No proof of service will be required when papers are served by one party on another at the hearing when the fact of such service is stated on the record and in the presence of the party being served, or ~~his or her~~ the party's attorney or representative of record.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), 1156.3(a), ~~(e)~~, 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To repeal regulation 20168.

~~§ 20168. Provisions for Use of Facsimile Machines and Expedited Service.~~

~~(a) In lieu of the methods of service provided for above, the Board or any of its agents may serve papers on parties and parties may file papers with the Board or any of its agents and serve them upon other parties by means of facsimile ["FAX"] machine under the following conditions:~~

~~(1) The total length of the document(s) to be filed and/or served at any one time is no more than fifteen (15) pages. This means multiple documents concerned with the same matter—for example, a motion, supporting declarations, points and authorities, and proof of service—are to be considered together in computing the fifteen (15) page limit.~~

~~(2) The format and content of the document transmitted shall comply with section 20150 and the specific requirements of any other section of these regulations applicable to the particular matter involved.~~

~~(3) Each document so transmitted shall contain the FAX number of the sender and the sender's telephone number.~~

~~(4) For a document to be considered received on the day in question, transmission must have begun prior to 4:00 p.m. on that date.~~

~~(5) As soon as possible after transmission, but no later than 5:00 p.m. on the next business day, the sending party shall file the original and the required number of copies with the Board and serve copies on each party in the manner provided for in section 20166, and shall provide a proof of service to that effect. Where service is effected by the Board, copies shall be served on each party in the manner provided in section 20164 along with proof of service to that effect.~~

~~(b) To the extent possible, all other parties will be served by FAX with any document filed by FAX, and the FAX transmission shall include a proof of service indicating the method of service on each party. For those parties who cannot be served by FAX, some other expedited form—mailgram, telegraph, overnight mail—may be utilized and the FAX proof of service shall so indicate. Parties filing papers who do not have an available FAX machine may file with Board and serve copies on the other parties by one of the expedited methods described above, and shall so indicate on their proof of service.~~

~~(c) The unexcused failure to comply with the above conditions shall be grounds for striking or refusing to consider the FAXed document(s) involved.~~

~~(d) In order to facilitate prompt processing and consideration of filings, the Executive Secretary may require that certain filings be by facsimile transmission.~~

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), 1156.3(a), (c), 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20169 to state:

§ 20169. Provisions for Use of Electronic Filing and Service of Documents.

~~(a) In lieu of the methods of service provided for above, the Parties represented by counsel or other representative shall file and serve documents electronically. Parties who are not represented by counsel or other representative are not required to file electronically but may do so; however, by electronically filing a document in a proceeding before the Board an unrepresented party agrees to file all further documents in the proceeding electronically and agrees to accept service of documents in the case electronically. The Board or any of its agents shall file and serve all documents electronically, except that parties who are not represented by counsel or other representative and who have not electronically filed any document with the Board shall be served by other non-electronic means. may serve papers on parties and parties may file papers with the Board or any of its agents and serve them on other parties by means of electronic mail [email] under the following conditions. The following rules apply to electronic filings in Board proceedings:~~

~~(1) “Electronic filing” refers to the act of filing a document with the Board via the “efile@alrb.ca.gov” address. A link to this address and further information is available on the Board’s website at <<https://www.alrb.ca.gov/e-file/>>. The subject line of an email to the Board’s e-filing address shall state the name of the case and case number, if one has been assigned, and the title of the document being submitted for electronic filing.~~

~~(2) Parties may file documents electronically at any time. However, documents electronically filed after 5:00 p.m. on a business day, or at any time on a nonbusiness day, will be deemed filed on the next regular business day.~~

(3) All documents electronically filed must be in portable document format (PDF) and be text searchable. When possible, electronic bookmarking should be used for the first page of the document and all tables, sections, headings, and subheadings within a document.

(4) Electronically filed documents must be paginated consecutively using arabic numerals only (1, 2, 3, etc.) beginning with the first page so that the document pagination matches the electronic page counter for the electronic document. The caption page, table of contents, table of authorities, and any proof of service included within an electronically filed document will not be counted by the Board in determining whether a filing complies with the page number limits set forth in sections 20282 or 20370.

(5) Documents filed electronically shall not exceed 25 MB in file size. Documents larger than 25 MB in file size may be split into multiple files to be submitted separately. Pagination in documents that must be split into multiple files shall remain consecutive. For example, the page numbering in the second part of a file divided into two parts shall continue where the page numbering of the first part stopped.

~~All documents may be served by email except for unfair labor practice charges and representation petitions.~~

~~(2) Electronic service of a document is authorized only when a party has agreed to accept service electronically in that action. A party indicates that the party agrees to accept electronic service by:~~

~~(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the Board. The notice must include the email address at which the party agrees to accept service; or~~

~~(B) Electronically filing any document in a case with the Board. The act of electronic filing is evidence that the party agrees to accept service of documents related to that case at the email address the party has furnished to the Board.~~

~~(6) The file name of any document electronically filed by email must be in the following format: Year (followed by a dash) month (followed by a dash) day (followed by two spaces) followed by the ~~name~~title of the document from the caption on the face page of the document, which may be abbreviated. For example, a document filed by email on March 12, 2016, would be named "2016-03-12 Respondent's Exceptions to the Decision of the Administrative Law Judge," or "2016-03-12 Resp Excepts to ALJ Dec" or using similar easily identifiable abbreviations.~~

~~(b) Whenever "service" is required by the regulations, service of electronically filed documents shall be on all parties to the proceeding and may be effected by copying (i.e., "cc") all such other parties on the electronic filing email to <efile@alrb.ca.gov>, except that any unrepresented parties shall be served by non-electronic means. Unfair labor practice charges must be served in accordance with sections 20166 and 20206 and representation petitions must be served in accordance with section 20300(f). Documents filed by email electronically must include a copy of a proof of service. Where service is effected by the Board, copies shall also be served on each party in the manner provided for in section 20164 along with proof of service to that effect. For the exchange of documents not required to be filed, such as requests for discovery or particulars subject to sections 20235-20237, electronic service may be effected by email to the counsel or representative of a party.~~

~~(c) The multiple copy requirements of section 20160, Place of Filing and Number of Copies to be Filed, are waived whenever documents are electronically served or filed.~~

~~(d) In order to facilitate prompt processing and consideration of filings, the Executive Secretary may require that certain filings be by email.~~

~~(e) Once a document filed by email electronically is received by the Board and has been determined to have met requirements of subdivision (a)(5) and (6), a confirmation email will be sent to the filing party's email address on file by the close of the next business day.~~

(d) Where electronic filing of a document is not feasible due to file size or technical problems associated with the document or filing, a party may request permission from the executive secretary, or the administrative law judge if one has been assigned to the case, to file and serve the document through non-electronic means.

~~(f) The Board's website (www.alrb.ca.gov) contains a link to the email address to be used for filing documents electronically.~~

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20170 to state:

§ 20170. Computation of Time Periods.

(a) The date of service shall be the day when the matter served is deposited in the mail or with a courier providing overnight delivery, delivered in person, or transmitted electronically pursuant to ~~section 20168 and 20169 of these regulations.~~

(b) In computing time periods prescribed by these rules, the ~~day of the mailing date of service as defined in subdivision (a)~~ or other event which starts the time period running is not counted. The last day of the time period is included unless it falls on a Saturday, Sunday or a State or Federal legal holiday as defined in Government Code section 6700, in which case the time period expires on the next business day. Where a time period prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

(c) Whenever a time period begins to run from the time of service of a document on a party and such service is made by mail, ~~three~~five days shall be added to the prescribed period for response. If service is by a courier providing overnight delivery, two business days shall be added to the prescribed period for a response. No days are added to the prescribed period for a response when service is effected personally or electronically.

~~(e)~~ Except as provided in section ~~20168(a)(5) and 20169(a)(42)~~, documents required to be filed with the Board must be received by the Board by 5:00 p.m. on the last day of the time period unless mailed by registered or certified mail postmarked by that last day, or deposited by the last day with a common carrier promising overnight delivery.

~~(d) In case of fax transmission, the time period shall begin to run upon service of the document in the manner provided for in section 20168(a)(5).~~

~~(e) In case of email transmission, the time period shall begin to run upon service of the document in the manner provided for in section 20169.~~

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), ~~1156.3(a), (e)~~, 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To amend regulation 20240 to state:

§ 20240. Motions Before Prehearing and After Hearing.

(a) With the exception of motions to correct the transcript, all motions made before the prehearing conference or after the close of hearing shall be filed with the executive secretary in accordance with sections 20160 ~~and 20166 and~~ through 20169. Responses shall be filed within seven (7) days after the filing of the motion, or within such time as the executive secretary may direct, as provided in sections 20160, ~~20168 and~~ through 20169. No further pleadings shall be filed in support of or in opposition to the motion unless requested by the executive secretary or assigned administrative law judge.

(b) The executive secretary may rule on motions or forward them for ruling to the assigned administrative law judge. The ruling shall be in writing with reasons stated, and shall be served on all parties or, at the discretion of the administrative law judge, it may be incorporated into ~~his or her~~ the administrative law judge's decision.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.

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To amend regulation 20241 to state:

§ 20241. Motions During or After Prehearing Conference and Before Close of Hearing.

(a) With the exception of requests for continuances made prior to the opening of hearing and requests for continuances in excess of ~~two~~ 10 days made during the hearing, motions and applications made at or after prehearing conference and prior to close of the hearing shall be directed to the assigned administrative law judge, and may be made orally on the record or in writing. If written, the motion, shall be filed and served in accordance with sections 20160, ~~20166 and~~ through 20169; provided, however, ~~that a duplicate original shall be filed with the administrative law judge, and,~~ if the hearing is in progress, copies shall be personally served on each party or its representative.

(b) Any party may respond to a written motion orally, at the prehearing conference or hearing, or in writing so long as a response is made within five (5) days after filing of the motion, or such time as the administrative law judge may direct. Written responses shall be served on each party or its representative. No further pleadings shall be filed in support of or in opposition to the motion unless requested by the administrative law judge.

(c) The administrative law judge shall rule on all motions either orally on the record or in writing, as may be appropriate. Rulings shall state the reasons therefor and, if in writing, shall be incorporated in the decision or separately served on all parties or their representatives and on the executive secretary.

(d) The administrative law judge may conduct a telephone conference call among the parties to hear argument or to rule on any motion before him/her. When the conference call method is utilized, upon request of any party, or at the direction of the administrative law judge, the conference call shall be reported or recorded by appropriate means as determined by the

administrative law judge, and shall become part of the official record of the proceeding. As an alternative to a telephone conference call, the administrative law judge may utilize any other means of electronic communication which the Board has designated as appropriate.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.

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To amend regulation 20246 to state:

§ 20246. Witnesses and Depositions.

Witnesses shall be examined orally under oath, except that after the issuance of a complaint, testimony may be taken by deposition, if the witness will be unavailable for the hearing within the meaning of Evidence Code §section 240, or where the existence of special circumstances makes it desirable in the interest of justice.

(a) Applications to take depositions shall be in writing, and shall set forth the reasons why such depositions should be taken, the name of the witness, the matters about which the witness is expected to testify, and the time and place proposed for the taking of the deposition. Such application shall be served on the opposing party not less than 10 days prior to the time when it is desired that the deposition be taken.

(b) If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner. Depositions so taken may be used to the same extent as depositions taken pursuant to the requirements of this section.

(c) The application shall be made to the executive secretary ~~in triplicate~~ and served pursuant to ~~section 20166~~ upon ~~the~~all other parties.

(d) The executive secretary may order the deposition taken in the exercise of ~~his or her~~the executive secretary's discretion.

(e) The deposition shall be taken at a time and place and before a person designated by the executive secretary.

(f) The rules governing the manner of taking of depositions shall be the same as those set forth in the Code of Civil Procedure §sections 2016 and following. Where these regulations conflict with the Code of Civil Procedure, these regulations shall govern.

(g) The administrative law judge assigned to preside at the hearing on the complaint shall rule upon the admissibility of the deposition or any part of it. All rulings on objections to the taking of the deposition or any part of it shall be reserved to the administrative law judge at the hearing on the complaint.

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.2, Labor Code.

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To amend regulation 20249 to state:

§ 20249. Prehearing Conference.

(a) Prior to any hearing held pursuant to Section 20260, a pre-hearing conference shall be held. The conference shall be conducted by an administrative law judge and shall be attended by the parties or their representatives, who shall be familiar with the case and shall have authority with respect to all matters on the agenda, including settlement.

(b) Prior to the pre-hearing conference the parties shall confer in person or by telephone in an attempt to resolve or define any issues relating to compliance with the provisions of Giumarra Vineyards, 3 ALRB No. 21, or with outstanding subpoenas. Where full agreement cannot be reached, they shall agree on such matters as are reasonably susceptible to agreement, and on the time, place and manner of their compliance with such understandings and agreements. In addition, they shall also discuss and attempt to reach agreement on:

(1) Those facts which are not reasonably disputable;

(2) The identification, authentication and/or admissibility of all documents which are to be offered in evidence;

(3) Additional evidence to be subpoenaed if no agreement can be reached for its voluntary exchange;

(4) Anticipated evidentiary issues, including issues of privilege and work product;

(5) A firm estimate of hearing time; and

(6) Amendments, dismissals, consolidations, ~~severences~~severances, and transfer.

(c) The agenda for the pre-hearing conference shall include:

(1) A thorough discussion of the issues and positions of the parties, including a careful explanation of the factual and legal theories relied upon. For any theory which is novel or unusual, parties should be prepared, or may be required, to provide the administrative law judge with offers of proof and/or appropriate legal authorities.

(2) Resolution by agreement or ruling on any remaining disputes concerning compliance with the provisions of Giumarra Vineyards, 3 ALRB No. 21, and any outstanding subpoenas.

(3) Agreement for the handling of facts not reasonably subject to dispute by stipulation or otherwise.

(4) Discussion and, where possible, resolution of anticipated evidentiary issues, including, insofar as possible, the resolution of issues involving the authentication, admissibility and relevance of documentary and physical evidence. As provided in Section 20250(i), witnesses appearing pursuant to subpoenas duces tecum or notices to produce may be sworn and examined for the limited purpose of identifying, authenticating or marking for identification and lodging with the administrative law judge documentary or physical evidence. The parties shall also address themselves to the handling and resolution of anticipated future subpoenas or discovery.

(5) Consideration of issues involving consolidation, severance, transfer, amendment and dismissal.

(6) A firm and mutual estimate of the length of hearing, including any specific scheduling problems and the need for interpreters.

(7) Consideration of utilizing the settlement procedures of Section 20248.

(8) Any other matters as may aid in expediting the hearing or contribute to the just, efficient and economical disposition of the case.

(d) The failure to fully and adequately prepare for pre-hearing conference, including the failure to attempt in good faith to confer beforehand, and resolve problems and issues, as provided in (b) above, or failure to comply with a prehearing conference order, shall be grounds for the imposition of such sanctions, inferences or other orders, then or during the hearing, as the administrative law judge may deem appropriate.

(e) The pre-hearing conference may be continued or recessed as may be necessary. At any time after assignment to the case, the administrative law judge may, either on the administrative law judge's his/her own motion or upon request by a party, conduct a conference among the parties preparatory to the pre-hearing conference by telephone conference call or by any other electronic means which the Board has designated as appropriate; likewise, the administrative law judge may, where appropriate, conduct the initial pre-hearing conference or a continued or recessed pre-hearing conference by telephone conference call or by any other electronic means which the Board has designated as appropriate. When the conference call method is utilized, upon request of any party, or at the direction of the administrative law judge, the conference shall be reported or recorded by appropriate means as determined by the administrative law judge, and shall become part of the official record of the proceeding.

(f) At or after any prehearing conference held pursuant to this section, an order shall be entered and served on all parties reciting the action taken. Absent a showing of good cause for modifying or deviating from the terms of the order, it shall control the subsequent course of the proceeding. ~~It may be served on the parties by FAX, expedited mail or other means as the administrative law judge may determine.~~ Should any party believe the order to be inaccurate or incomplete, that party shall promptly file a motion to correct the order with the administrative law judge as provided in section 20241.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.

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To amend regulation 20262 to state:

§ 20262. Administrative Law Judges; Powers.

The hearing shall be conducted by an administrative law judge designated by the Board, unless the Board or any member of the Board presides. The duty of the administrative law judge is to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice as set forth in the complaint or amended complaint. ~~Between the time he or she~~ the administrative law judge is designated and the time the case is transferred to the Board the administrative law judge shall, subject to the limitations specified elsewhere in these regulations, have authority, with respect to assigned cases ~~assigned to him or her~~:

- (a) To administer oaths and affirmations;
- (b) To grant applications for subpoenas;
- (c) To rule upon petitions to revoke subpoenas or notices to appear or produce, and to impose sanctions for failure to comply with appropriate subpoenas or notices to appear or produce;
- (d) To require and/or rule upon offers of proof;
- (e)(1) To regulate the course of the hearing, including the power, consistent with section 20800, to exclude from the hearing any person who engages in disruptive or abusive conduct.
~~(2) In excluding any person from a hearing, the administrative law judge shall state on the record the specific facts upon which the order of exclusion is based and submit to the Board a written statement of the specific facts which constitute the misconduct. The statement of facts with original and six copies shall be filed with the executive secretary and served on all parties to the hearing. The person excluded from a hearing may file a written response to the administrative law judge's written statement submitted to the Board. A ruling whereby any person is ejected from a hearing may be immediately appealed to the Board pursuant to section 20242.;~~
- (f) To conduct and regulate the course of pre-hearing conferences, settlement conferences, and hearings, to inquire fully into the basis for settlement submitted to them for recommendation, and to approve settlements as provided in section 20298.;
- (g) To dispose of procedural requests, motions, or similar matters; to dismiss complaints or portions thereof;
- (h) To approve a stipulation voluntarily entered into by the parties;
- (i) To make and file decisions in conformity with the Act and these regulations;
- (j) To call, examine, and cross-examine witnesses and to require the production of and introduce into the record documentary or other evidence;
- (k) To request the parties at any time during the hearing or pre-hearing conference to state their respective positions concerning any issue in the case or theory in support thereof either orally or in writing;
- (l) To request that the Board seek a court order to compel compliance with a subpoena;
- (m) To issue protective orders as may be appropriate and necessary; and
- (n) To carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the Act.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1145, 1160.2 and 1160.3, Labor Code.

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To amend regulation 20282 to state:

§ 20282. Exceptions to the Administrative Law Judge's Decision.

(a) Within 20 days after the service of the decision of the administrative law judge, or within such other period as the executive secretary may direct, any party may file with the executive secretary for submission to the Board ~~the original and seven copies of exceptions to the decision or any other part of the proceedings, with an original and seven copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160, 20164, and 20166 through~~ 20169.

(1) The exceptions shall state the ground for each exception, identify by page number that part of the administrative law judge's decision to which exception is taken, and cite to those portions of the record which support the exception.

(2) A brief in support of exceptions which exceeds 20 pages shall contain a table of contents and a table of authorities cited. No brief shall exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs when necessary. The table of contents and the table of authorities cited shall not be counted as part of the 50 pages. If a post-hearing brief is incorporated by reference, the portions incorporated shall be identified by page number and shall count as part of the 50-page limitation on the brief in support of exceptions.

(b) Within ten (10) days following the filing of exceptions or within such other period as the executive secretary may direct, a party opposing the exceptions may file with the executive secretary for submission to the Board, ~~an original and (7) seven copies of a brief answering the exceptions. An answering brief that exceeds 20 pages shall contain a table of contents and a table of authorities cited. This brief shall not exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs when necessary. The table of contents and the table of authorities cited shall not be counted as part of the 50 pages. The answering brief shall be filed and served in accordance with sections 20160, 20166 and~~ through 20169.

(c) No further brief shall be filed except as requested by the Board. No extensions of time will be given to file exceptions or briefs except in extraordinary circumstances. Unless permission to file a brief exceeding the page limitations specified in ~~subsection~~ subdivision (a)(2) and (b) above has been obtained from the executive secretary in advance, only the first 50 pages of exceptions briefs and answering briefs shall be accepted and filed. Anything in excess of 50 pages ~~will be returned to the party and~~ will not be considered by the Board.

(d) No matter not included in the exceptions filed with the Board may thereafter be raised by any party before the Board.

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.3, Labor Code.

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To amend regulation 20286 to state:

§ 20286. Board Action on Unfair Labor Practice Cases.

(a) If no exceptions are filed, the decision of the administrative law judge shall automatically become final 20 days after the date on which the decision of the administrative law judge is served on the parties. Unless expressly adopted by the Board, the statement of reasons in support of the decision shall be without precedent for future cases.

(b) Where one or more parties take exception to the decision of the administrative law judge, the Board shall review the applicable law and the evidence and determine whether the factual findings are supported by a preponderance of the evidence taken.

(c) A party to an unfair labor practice proceeding before the Board may, because of extraordinary circumstances, move for reconsideration or reopening of the record after issuance of the Board's final decision and order, in accordance with the provisions set forth in section 20160(a)(1), and served on the parties, in accordance with the provisions set forth in sections 20166, ~~20168~~ and 20169. The motion may alternatively request reconsideration and reopening. Such motions shall be in writing and state with particularity the grounds for reconsideration or reopening. Any motion pursuant to this section shall be filed within 10 days after the service of the Board's final decision and order. A motion filed under this section shall not operate to stay the decision and order of the Board.

(d) A party to an unfair labor practice proceeding may, because of extraordinary circumstances, move for reconsideration of the record after issuance of any Board action other than a final decision and order, in accordance with the provisions set forth in section 20286(c), except that the motion and supporting documents must be filed within five days after service of the non-final Board action.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2, and 1160.3, Labor Code.

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To amend regulation 20305 to state:

§ 20305. Contents of Petition for Certification; Construction.

(a) Contents--A petition for certification shall contain the following, in addition to those requirements set forth in Labor Code Section 1156.3(a):

- (1) The name and address of the petitioner and its affiliation, if any.
- (2) The name, location, and mailing address of the employer.
- (3) The nature of the employer's agricultural commodity or commodities encompassed by the unit.
- (4) A description of the bargaining unit which the petitioner claims is appropriate. If the unit sought encompasses less than all the agricultural employees of the employer, the petition shall include a specific and complete description of the unit, including its geographical limits, and a statement of inclusion or exclusion of processing or packing sheds or cooling facilities and the location of such sheds or facilities.
- (5) The approximate number of employees currently employed in the alleged unit.
- (6) Whether a strike is in progress for the unit involved, and if so, the approximate number of employees participating and the date such strike commenced.
- (7) A statement of which languages, if any, other than Spanish and English, the petitioner requests be included on the ballots in any election conducted pursuant to said petition and the

approximate number of employees who can effectively read the requested language and no other language in which the ballot would otherwise be printed.

(8) Name, ~~and~~ telephone number, and email address of one representative of the filing party authorized to make agreements with the Board and the parties and to accept service of papers.

(b) A petition shall be liberally construed to avoid dismissal. In the event that petitioner fails to provide the information required by this section, thereby preventing the regional director from determining the existence of reasonable cause to believe that a bona fide question of representation exists, the regional director may, after consultation with the parties, dismiss the petition and notify the parties of the reasons thereof.

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

* * * * *

To amend regulation 20325 to state:

§ 20325. Intervention.

(a) Subject to the provisions of Labor Code ~~§~~section 1156.3(b), any labor organization which seeks to intervene in an election proceeding based on a petition filed under Labor Code ~~§~~section 1156.3(a) must file with the regional office of the Board in which the petition is being processed a written petition for intervention. In order to be filed, an intervention petition must be accompanied by proof of service of the intervention petition on the employer and on the original petitioner. Service of an intervention petition shall be in accordance with the provisions of ~~§~~section 20300(~~fe~~) of these regulations. Upon the filing of an intervention petition, the regional director shall notify the employer and petitioner that an intervention petition has been filed.

(b) A petition for intervention shall include: (1) the name and address of the intervening union and its affiliation, if any; (2) the name, ~~and~~ telephone number, and email address of a representative of the intervenor authorized to make agreements with the Board and the parties and to accept service of papers; and (3) a statement of what language or languages other than English or Spanish are required for the election, if any.

(c) If the intervenor contends that the geographical scope of the unit sought in the election petition is incorrect or challenges any of the allegations in the petition made pursuant to Labor Code ~~§~~section 1156.3(a), the intervenor shall raise these contentions in the petition for intervention.

(d) The petition shall also be accompanied by evidence of employee support for the intervention by at least 20 percent of the employees in the bargaining unit. The regional director shall determine administratively whether there exists an adequate showing of employee support to permit intervention. If the regional director determines that the showing of interest is inadequate, the deficiency may be corrected up to 24 hours prior to the time of the election. Sections 20300(~~ji~~)(4) and (5) with respect to challenges to showing of interest and reviewability of the regional director's determination on showing of interest shall be applicable also to showing of interest by an intervenor.

(e) In computing the 24-hour period for intervention provided for in Labor Code ~~§~~section 1156.3(b) and the 24-hour period permitted for correcting deficiencies in showing of interest as provided by subsection (d) above, Sundays and legal holidays shall be excluded. If the time for filing an intervention petition elapses at a time when the regional office is closed, such petition may be timely filed during the first hour of business on the next business day. When any

election is scheduled prior to the opening of business on a Monday or on the day following a legal holiday, a potential intervenor shall notify the regional director of its intention to intervene during regular business hours, and the regional director shall make arrangements to receive the petition at a reasonable hour no later than 24 hours prior to the opening of the polls.

(f) Any labor organization which, prior to the pre-election conference, files with the appropriate regional office a written statement of intention to intervene in a particular election but has not yet filed its intervention petition accompanied by an adequate showing of interest, may send one representative to a pre-election conference which may take place before the period for intervention expires.

Note: Authority cited: Section 1144, Labor Code; Reference: Section 1156.3, Labor Code.

* * * * *

To amend regulation 20363 to state:

§ 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 two (2) working days, forward to the Board all challenged ballot declarations and all other evidence in ~~his or her~~the regional director's possession relevant to the eligibility of the challenged voters and shall serve the same on all parties to the election. However, should the evidence include any declarations or statements of non-supervisory agricultural employees other than those of the challenged voters, the regional director shall serve on the parties only a summary of such declarations, prepared in a manner that does not reveal the identity of the declarants. Within ten (10) days of service of the challenged ballot declarations and other evidence, the parties may file with the executive secretary, as agent of the Board, and serve on all other parties to the election, declarations and/or documentary evidence in support of their positions as to the eligibility of the challenged voters, accompanied by argument explaining their positions and the relevance of the proffered evidence. The 21-day period set forth in Labor Code section 1156.3, subdivision (i)(1)(A)(i) shall run from receipt by the Board of the evidence submitted by all parties, or the expiration of the 10-day period to submit evidence, whichever occurs first. Within five (5) days of service of the other parties' evidence and argument, any party may file argument in response. Filing and service shall be in accordance with sections 20160 ~~through, 20164, 20166, 20168~~ and 20169. At any time after the tally of ballots and prior to the issuance of its decision resolving challenges and/or setting them for hearing, the Board may request that the appropriate regional director conduct such investigation as the Board deems necessary. Any evidence obtained as a result of such investigation shall be submitted to the Board and served on the parties in the same manner as specified above.

(b) 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.

(c) In serving declarations and supporting documents on other parties pursuant to subdivision (a) above, the parties 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 evidence at an evidentiary hearing. A 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) The record before the Board shall consist of: the election petition, the notice and direction of election, the tally of ballots, the evidence and argument submitted by the parties, and the declarations and other evidence forwarded by the regional director.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1156.3 and 1157, Labor Code.

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To amend regulation 20365 to state:

§ 20365. Post-Election Objections Procedure.

(a) Time for filing. Within five days after an election, any person may, pursuant to Labor Code ~~§~~section 1156.3(e), file with the Board a signed petition asserting that allegations made in the election petition filed pursuant to Labor Code ~~§~~section 1156.3(a) were incorrect, or asserting that the Board or regional director improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election. Except as provided in ~~subsections-subdivisions~~ (1), (2) and (3) below, the five-day period begins to run when the election ends. The election ends when the ballots have been counted and a final tally of ballots issues.

(1) If challenged ballots are outcome-determinative or the ballots are impounded, the election ends when the polls close, and the five-day period for filing election objections begins to run at that time. Neither the existence of a determinative number of challenged ballots nor the impoundment of ballots shall extend the period for filing objections, and the subsequent issuance of a revised tally or delayed tally shall not reopen the period for filing objections.

(2) The time for filing objections after a rerun election is governed by ~~§~~section 20372(c).

(3) The time for filing objections after a run-off election is governed by ~~§~~section 20375(d).

(b) An objections petition shall be filed electronically pursuant to section 20169 or, for an unrepresented party who has not consented to electronic filing, by personal service on the executive secretary, as agent of the Board, or by registered or certified mail postmarked within the five-day period. No extensions of time for filing objections shall be permitted, and no amendments to objections petitions shall be permitted for any reason after the five-day filing period has elapsed.

(c) An objections petition filed with the Board shall consist of ~~the original and six copies of the~~ following: the petition pursuant to Labor Code ~~§~~section 1156.3(e); a detailed statement of facts and law relied upon, as required by ~~subsection-subdivision~~ (1) below, or declarations in support of the petition, as required by ~~subsection-subdivision~~ (2) below; a declaration of service upon all other parties, including the regional director, as provided in section 20166, of the objections petition and any detailed statement of facts and law supporting declarations, and ~~seven copies of the following:~~ petition for certification, the notice and direction of election, and the tally of ballots. A party exercising the option provided by ~~subsection-subdivision~~ (2)(D) below to serve on other parties a detailed statement of facts in lieu of declarations shall file with the executive secretary the ~~original and six copies of said-statement and a declaration of service of the statement upon all other parties, as provided in section 20166.~~

(1) A party objecting to an election on the grounds that the Board or the regional director improperly determined the geographical scope of the bargaining unit, or that the allegations

made in the petition filed pursuant to Labor Code ~~Section~~ 1156.3(a) were incorrect, shall include in its petition a detailed statement of the facts and law relied upon.

(2) A party objecting to an election on the grounds that the election was not conducted properly, or that misconduct occurred affecting the results of the election shall attach to the ~~original and each copy of the~~ petition a declaration or declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election.

(A) If more than five declarations are submitted with a petition, each objection therein shall contain a reference, by number, to the declaration or declarations offered in support of that objection.

(B) The facts stated in each declaration shall be within the personal knowledge of the declarant. The details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election shall be set forth with particularity.

(C) Allegations of misconduct shall include identification of the person or persons alleged to have engaged in the misconduct and their relationship to any of the parties, a statement of when and where the misconduct occurred; and a detailed description of the misconduct including, if speech is complained of, the contents of what was said.

(D) Copies of the declarations and supporting documents or exhibits shall be served upon all other parties with the objections petition, provided that, at the option of the objecting party, a detailed statement of facts may be substituted for the declarations. This detailed statement of facts shall describe the contents of the declarations in sufficient detail to allow an opposing party to secure its own witnesses and otherwise prepare itself to counter the objections at an evidentiary hearing. An objecting 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.

(3) Documents and exhibits offered in support of the objections petition shall be identified and authenticated.

(4) All declarations shall state the date and place of execution, and shall be signed and certified by the declarant to be true and under penalty of perjury, which certification shall be substantially in the following form: "I certify (declare) under penalty of perjury that the foregoing is true and correct."

(5) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(d) Disposition of objections petitions. The Board shall dismiss any objections petition or any portion of such petition which does not satisfy the requirements of ~~subsections~~ subdivisions (a), (b), and (c).

(e) With respect to any portion of the petition not dismissed pursuant to ~~subsection~~ subdivision (d) above, the Board may:

(1) Direct any party to submit evidence through declarations or documents;

(2) Order the inspection of documents by Board agents or by the parties;

(3) Direct any party to submit an offer of proof;

- (4) Obtain declarations from Board agents or other persons;
- (5) Conduct investigatory conferences with the parties for the purpose of exploring and resolving factual or legal issues;
- (6) Dismiss any portion of the petition which, after investigation and on the basis of applicable precedent, is determined not to be a basis for setting the election aside;
- (7) Set aside the election if, after an investigation, it appears on the basis of applicable precedent it would be appropriate to do so, and there are no material factual issues in dispute.
- (f) Where the objections satisfy the requirements of ~~subsections~~ subdivisions (a), (b), and (c) and there are material factual issues in dispute, the Board shall direct an investigatory hearing pursuant to ~~S~~section 20370. The hearing shall be strictly limited to the issues set forth in the notice of hearing. Hearings of more than one day's duration shall continue on the next business day and each day following until completed. Requests for continuance shall be granted only in extraordinary circumstances.
- (g) Prior to the Board certifying a labor organization as the exclusive bargaining representative as authorized by Labor Code section 1156.3, subdivision (f), or an ~~investigative H~~ investigative H ~~earner~~ earing Examiner (IHE) recommending such action, the parties to the election shall be afforded the opportunity to submit written argument addressing whether certification is warranted under the standard set forth in Labor Code section 1156.3, subdivision (f).

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1156.3, Labor Code.

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To amend regulation 20370 to state:

§ 20370. Investigative Hearings -Types of Hearings and Disqualification of IHE's.

(a) The executive secretary shall appoint an investigative hearing examiner to conduct an investigative hearing on objections filed pursuant to section 20365, on challenges pursuant to section 20363, on extensions of certifications pursuant to section 20382, on petitions seeking clarification of a bargaining unit or amendment of a certification pursuant to section 20385, on petitions to revoke certifications on alleged violations of access rights pursuant to section 20900, or on any other representation matter. No person who is an official or an employee of a regional office shall be appointed to act as an investigative hearing examiner. An investigative hearing examiner is subject to disqualification on the same basis and in the same manner as provided in section 20263 for administrative law judges in unfair labor practice proceedings. If the investigative hearing examiner assigned to a hearing becomes unavailable for any reason at any time between the beginning of the hearing and the issuance of the decision, the executive secretary may designate another investigative hearing examiner for such purpose.

Investigative Hearings -Powers of IHE's

(b) The parties shall have the right to participate in such investigative hearing as set forth in Labor Code sections 1151, 1151.2, and 1151.3. Any party shall have the right to appear at such investigative hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses and to introduce into the record documentary evidence, except that participation of any party shall be limited to the extent permitted by the investigative hearing examiner, and provided further, that documentary evidence shall be submitted in duplicate. The

investigative hearing examiner shall have the duty to inquire fully into all matters in issue and to obtain a full and complete record. In furtherance of this obligation, the investigative hearing examiner shall have all of the powers that an administrative law judge has in an unfair labor practice proceeding as enumerated in section 20262, where applicable.

Investigative Hearings -Necessary Parties

(c) The necessary parties to an investigative hearing are the petitioner, the employer, and any other labor organization which has intervened pursuant to section 20325. The regional director or a designated representative of the regional director may participate in an investigative hearing to the extent necessary to ensure that the evidentiary record is fully developed and that the basis for the Board's action is fully substantiated.

Investigative Hearings -Adverse Inference

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded. The refusal of a witness at a hearing to answer any question which has been ruled to be proper may be grounds for striking the portions of the testimony of such witness on related matters and/or for making such inferences as may be proper under the circumstances, unless the refusal to answer is privileged.

Investigative Hearings -Time of Hearings and Continuance During Hearing

(e) Hearings may be held any time that the investigative hearing examiner considers appropriate. Hearings shall continue from day to day until completed or recessed. Once a hearing has commenced, continuances or recesses will not be granted except in extraordinary circumstances, and then only by order of the executive secretary or, for recesses of two (2) working days or less, by order of the investigative hearing examiner.

(f) The hearing shall be recorded by an appropriate means to be designated by the executive secretary. In any case where the investigative hearing examiner is directed to make a tape recording of the hearing, copies of the tape recording shall be made available to any party at cost. Unless otherwise directed by the executive secretary, the tape recording will not be transcribed.

(g) After any party to a representation hearing has completed the presentation of its evidence, any other party, without waiving its right to offer evidence not yet produced in support of its own position, may move for decision in its favor in whole or in part in the same manner and subject to the same inferences, standard, and review as provided in section 20243 for motions for decision in unfair labor practice cases.

(h) At the close of the taking of testimony, any party may request a reasonable period for closing oral argument on the record. Post-hearing briefs shall not be filed unless the investigative hearing examiner determines that, because of the complexity of the issues, ~~he or she requires~~ further briefs are required as an aid to decision, and then only upon such terms as the

investigative hearing examiner shall direct, but shall, in any event, conform to the limitations contained in Section 20370(j)(2).

(i) Within a reasonable time after the close of taking of testimony or within a specific time as may be determined by the executive secretary, the investigative hearing examiner shall issue an initial decision including findings of fact, conclusions of law, a statement of reasons in support of the conclusions, and a recommended disposition of the case. In the absence of timely exceptions, as set forth in ~~subsection~~subdivision (j) below, such decision shall become the decision of the Board. Unless expressly adopted by the Board, the statement of reasons in support of the decision shall have no effect as precedent.

(j) Within 10 days after service of the investigative hearing examiner's decision, or within such other period as the executive secretary may direct, a party may file with the executive secretary ~~the original and six copies of the exceptions and a brief in support of the exceptions to the investigative hearing examiner's decision accompanied by proof of service on all parties pursuant to section 20166.~~

(1) The brief in support of the exceptions shall state the grounds for each exception, shall identify by page number that part of the investigative hearing examiner's decision to which exception is taken, and shall cite to the portions of the record which support the exception. If the record of the hearing consists of a tape recording made by the investigative hearing examiner, exceptions to findings of fact shall be accompanied by a transcription of those portions of the tape recording relied upon in addition to the references to the location number on the tape where the cited portions occur.

(2) A brief in support of exceptions which exceeds 20 pages shall contain a table of authorities cited. This brief shall not exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs where necessary to address factual or legal issues. ~~Each page shall be 8 1/2 inches wide by 11 inches long and shall contain 28 double-spaced lines of pica type.~~ If post-hearing briefs are incorporated by reference, the portions incorporated shall be identified by page number and shall count as part of the 50-page limitation on the exceptions brief. Unless permission to file a brief exceeding the page limitations specified above has been obtained from the executive secretary in advance, only the first 50 pages of briefs in support of the exceptions shall be accepted and filed. Anything in excess of 50 pages ~~will be returned to the party and will not be considered by the Board.~~

(3) Within seven days following the filing of exceptions, or within such other period as the executive secretary may direct, a party opposing the exceptions may file ~~an original and six copies of a brief in answer to the exceptions, not to exceed 50 pages in length. Each page shall be 8 1/2 inches wide by 11 inches long and shall contain 28 double-spaced lines of pica type.~~ If post-hearing briefs are incorporated by reference, the portions incorporated shall be identified by page number and shall count as part of the 50-page limitation on the answering brief. The answering brief shall be accompanied by a proof of service on all other parties as required by section 20166. Unless permission to file a brief exceeding the page limitations specified above has been obtained from the executive secretary in advance, only the first 50 pages of briefs in answer to the exceptions shall be accepted and filed. Anything in excess of 50 pages ~~will be returned to the party and will not be considered by the Board.~~

(k) In any case the Board may direct that the record, which shall include the hearing transcript or recorded tapes and all exhibits, be transferred directly to the Board for decision, accompanied by the report from the investigative hearing examiner, if any, and by such briefs from the parties as the Board may direct. If there is no conflict in the evidence to be offered at the hearing scheduled before the investigative hearing examiner, the parties may, where appropriate, file

with the Board a stipulated set of facts and their briefs, and request permission to make oral argument concerning matters of law.

(l) Nothing contained in this section shall be construed as controlling a proceeding in which concurrent unfair labor practice charges under Chapters 4 and 6 of the Act have been consolidated with a representation proceeding under Chapter 5 of this Act. The procedures and rights of the parties in such a consolidated proceeding are set forth in Chapter 2 of these regulations covering unfair labor practice proceedings.

(m) The provisions of section 20250 with respect to issuance, service, revocation, and enforcement of subpoenas and notices to appear or produce shall apply to hearings conducted under this section, except that applications for subpoenas made prior to the hearing pursuant to section 20250(a) shall be filed with the appropriate regional director, and petitions to revoke subpoenas or notices which are made prior to the hearing pursuant to section 20250(b) should be filed with the executive secretary who shall refer them to the investigative hearing examiner. References in section 20250 to action by the administrative law judge or by the general counsel shall, for purposes of application of that section to proceedings under this section, be deemed to refer to actions of an investigative hearing examiner or the executive secretary respectively.

(n) The procedures for grants of immunity to witnesses set forth in section 20251 shall apply in representation cases, except that references in that section to action by the administrative law judge shall, for purposes of application of that section to proceedings in representation cases, be deemed a reference to actions of an investigative hearing examiner.

(o) The procedures set forth in section 20246 ~~of these regulations~~ shall apply to the taking of depositions of witnesses in representation cases, except that references in that section to action by the administrative law judge shall, for purposes of application of that section to proceedings in representation cases, be deemed to refer to actions of an investigative hearing examiner and references to the issuance of a complaint shall be deemed to refer to proceedings covered by this section.

(p) The procedures set forth in section 20274 ~~of these regulations~~ shall apply to the disclosure of statements of witnesses in representation cases, except that references in that section to action by the administrative law judge shall, for purposes of application of that section to proceedings in representation cases, be deemed to refer to actions of an investigative hearing examiner.

(q) In any case in which a hearing is conducted pursuant to this section, the record on review by the Board shall consist of: the petition or petitions pursuant to Labor Code sections 1156.3(a) or 1156.7(c) or (d), or the petition or petitions filed pursuant to sections 20363, 20365, 20382, or 20385 ~~of these regulations~~, any petitions for intervention pursuant to Labor Code section 1156.3(b), the notice and direction of election, the tally of ballots, the order setting the matter for hearing, motions, responses, rulings, the official record of the hearing, exhibits, stipulations, depositions, post-hearing briefs, the decision of the investigative hearing examiner, and the exceptions, cross-exceptions or opposition to exceptions, along with supporting briefs as provided in section 20370(l).

(r) An attorney or representative who has made a general appearance for a party in a proceeding governed by this Chapter may withdraw as follows: (i) upon a written consent executed by both the attorney or representative and by the client or the attorney or representative who will substitute into the proceedings, which shall be filed with the executive secretary; or (ii) by the order of the executive secretary or the Board, if the matter is then pending before it, upon the application of the attorney or representative, after notice from one to

the other. Withdrawal or substitution shall be permitted unless to do so would result in serious prejudice to the other parties to the proceeding. Any application or consent filed pursuant to (i) or (ii) above shall contain the address of the client or new attorney or representative for the service of subsequent pleadings and papers. Any application filed pursuant to (ii) above shall, without compromising the confidentiality of the attorney-client relationship, if any, state in general terms the reason for the application.

(s) The provisions of sections 20240 and 20241 with respect to motions, rulings and orders, and section 20242 with respect to appeals therefrom shall apply to all motions filed with the executive secretary prior to or after the close of hearing, and the procedure set forth in section 20241 shall apply to all motions filed with the investigative hearing examiner from the opening to the close of the hearing.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 1145, 1151, 1151.3, 1156.3(a), (e) and 1156.7(c), (d), Labor Code.

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To amend regulation 20375 to state:

§ 20375. Runoff Elections.

(a) Except as provided below, in any election where no party receives a majority of the valid votes cast, a runoff election between the two parties receiving the greatest number of votes shall be held within seven days from the date of the initial election. All persons eligible to vote in the initial election shall be eligible in the runoff election.

(b) Whenever challenged ballots determine whether or not a runoff will be necessary, or determine who will be parties to the runoff election, the regional director may proceed as follows if it appears that an expedited procedure will enable the Board to conduct a runoff election during the same period of peak employment:

(1) The regional director may conduct an investigation and issue a report on challenged ballots within 48 hours or such additional time as extraordinary circumstances necessitate, file the report with the executive secretary, and contact the parties by telephone or ~~telegram~~ email to inform them that the report is available to them.

(2) Any party wishing to except to recommendations in the regional director's report shall file such exceptions with the executive secretary and serve a copy in the appropriate regional office within 48 hours from issuance of the report. Exceptions need not be accompanied by a brief but whether or not a brief is submitted the basis for each exception must be stated in detail.

(3) Upon the expiration of the 48-hour period for filing exceptions, the regional director shall consider any exceptions which have been filed and may reconsider ~~his or her~~ the recommendations and prepare and issue a brief supplemental report setting forth any changes in the original resolution. The regional director shall then open and count the challenged ballots in accordance with ~~his or her~~ the recommendations, prepare and issue an amended tally and notify the parties whether a runoff election is required, and if so, which parties will appear on the ballot. The runoff election shall be conducted as soon as practicable after issuance of the amended tally, at a time and place designated by the regional director.

(c) If the ballot in the initial election provided for three or more choices, and, after determinative challenged ballots are resolved, none of the choices receives a majority of the votes cast, and

(1) the number of votes cast is equally divided among the several choices, or

(2) the same number of votes was cast for two choices, but that number is less than the number cast for the third choice, the regional director shall declare the initial election a nullity and set it aside. The regional director shall conduct another election within two days, and the ballot in that election shall contain the same choices as appeared on the ballot in the initial election. Only one such additional election may be held.

(d) In cases in which a runoff election is held, election objections filed pursuant to Labor Code ~~§~~section 1156.3(c) and ~~§~~section 20365 shall be filed within five days of the runoff election. If the regional director declares after the initial election that a runoff election appears necessary, but after resolution of challenged ballots finds that no runoff election should be held, objections to the initial election shall be due within five days from the determination that no runoff will be held. Any exceptions to the regional director's resolution of challenges under ~~subsection~~ subdivision (b) above may be filed as objections under section 20365. Any such objections shall be accompanied by the regional director's report or reports and any exceptions filed thereto, supplemented by a brief and evidence in support of the exceptions.

(e) Only one runoff election shall be held in any case. If a runoff election results in a second tie vote, the election shall be deemed void, and no certification of results shall issue. The provisions of Labor Code ~~§~~section 1156.5 shall not apply to bar the direction of a new election pursuant to a new petition after an election has been voided under this ~~subsection~~ subdivision.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1156.3(e) and 1157.2, Labor Code.

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To amend regulation 20382 to state:

§ 20382. Extension of Certification, Labor Code Section 1155.2(b).

(a) A labor organization certified under ~~§~~section 20380 may file a petition for extension of the certification not earlier than the 90th day nor later than the 60th day preceding the expiration of a 12-month period following the date of certification. The sole ground for the petition is that the labor organization has requested the employer to bargain, and the employer has failed to bargain in good faith.

(b) The petition for extension of certification shall be submitted under oath and contain the following:

(1) The date of certification;

(2) A description of the progress of negotiations between the labor organization and the employer, including, but not limited to, the requests made by the union to bargain, the dates of meetings between the labor organization and the employer, and the conduct that the labor organization claims constitutes a failure to bargain in good faith;

(3) Copies of documents and correspondence that support the description of the progress of the negotiations, if relevant; and

(4) The amount of time for which the labor organization requests the certification be extended.

(c) ~~An original and six copies of~~ The petition for extension of certification shall be filed with the executive secretary accompanied by proof of service on the employer pursuant to section 20166.

(d) An employer shall file a response to the petition for extension of certification within 10 days of service of the labor organization's petition. The ~~petition~~ response shall be submitted under oath and contain a statement of the following:

(1) Whether the employer agrees with the labor organization's description of the progress of the negotiations;

(2) If not, the employer's description of the progress of the negotiations, along with any relevant documentation; and

(3) Whether the employer objects to an extension of the certification.

(e) ~~An original and six copies of~~ The response to the petition for extension of certification shall be filed with the executive secretary, along with proof of service on the labor organization. If the response is not filed within 10 days, the Board will rule on the petition alone.

(f) The Board shall either grant an extension of certification for a specified time following the end of the first twelve months after the original certification, deny the petition, or notice a hearing. Hearings noticed under this section shall be conducted according to the provisions of ~~§~~ section 20370.

(g) The granting of a petition for extension of certification shall not constitute evidence that an unfair labor practice has been committed. A Board order extending a certification shall not be admissible in an action on an unfair labor practice proceeding under Labor Code ~~§~~ section 1153(e).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1155.2 and 1156.6, Labor Code.

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To amend regulation 20385 to state:

§ 20385. Clarification of Bargaining Unit; Amendment of Certification.

(a) A petition seeking clarification of an existing bargaining unit in order to resolve questions of unit composition which were left unresolved at the time of certification or were raised by changed circumstances since certification may be filed by a labor organization or by an employer where no question concerning representation exists. A petition seeking amendment of a certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization or in the site or location of the employer, may be filed by a labor organization or by an employer where no question concerning representation exists.

(b) A petition for clarification of an existing bargaining unit or for amendment of a certification shall contain:

(1) the name and address of the petitioner;

(2) the name and address of the employer, the certified bargaining representative, and any other labor organization which claims to represent any employees affected by the proposed clarification or amendment;

(3) a description of the existing certification, including job classifications of employees and location of property covered by the certification;

(4) a description of the proposed clarification or amendment and a statement of reasons why petitioner seeks clarification or amendment; and

(5) any other relevant facts.

(c) A petition under this section shall be filed in the regional office which conducted the election leading to certification, and petitioner shall serve, in the manner provided in sections 20160 and 20166, the executive secretary, all other parties, and any organization named in subsection (b)(2) above. The regional director shall conduct such investigation of the issues raised by the petition as ~~his or her~~ the regional director deems necessary. Thereafter the regional director shall issue to the Board a report containing ~~his or her~~ the regional director's conclusions and recommendations and a detailed summary of the facts underlying them. A copy of the regional director's report shall be served on all parties and any organization named in subsection (b)(2) above. Where, after investigation, the regional director deems it appropriate, ~~he or she~~ the regional director may, rather than issuing an investigative report, request permission from the executive secretary to issue a notice of hearing on the question of whether the unit clarification petition or the amendment of certification should be granted or denied. A copy of the notice of hearing shall be served on all parties. Such hearings will be in good accord with section 20370.

(d) The conclusions and recommendations of the regional director in the report provided for in subsection (c) above shall be final unless exceptions to the conclusions and recommendations are filed electronically pursuant to section 20169, or by an unrepresented party who has not consented to electronic filing by personal service on the executive secretary or by deposit in registered mail postmarked within five days following service upon the parties of the regional director's report ~~with the executive secretary by personal service within five days, or by deposit in registered mail postmarked within five days following service upon the parties of the regional director's report. An original and six copies of t~~ The exceptions shall be filed and shall be accompanied by ~~seven copies of~~ declarations and other documentary evidence in support of the exceptions. Copies of any exceptions and supporting documents shall be served pursuant to section 20166 on all other parties to the proceeding and on the regional director, and proof of service shall be filed with the executive secretary along with the exceptions.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 1156 and 1156.2, Labor Code.

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To amend regulation 20393 to state:

§ 20393. Requests for Review; Requests for Reconsideration of Board Action; Requests to Reopen the Record.

(a) Dismissal of a representation petition, cross-petition, or intervention petition by a regional director pursuant to section 20300(ih) may be reviewed by the Board pursuant to Labor Code section 1142(b), upon a written request for review filed by the party whose petition was dismissed. The request for review shall be filed with the Board within five days of service of the

dismissal upon the party making the request. Requests for review of other delegated action reviewable under Labor Code section 1142(b), except those specifically provided for in ~~subsection-subdivision (b), infra,~~ shall also be filed with the board within five days of service of notice of the action for which review is requested. Such requests shall be filed ~~in accordance with the provisions set forth in section 20160(a)(2),~~ and served in accordance with the provisions set forth in sections 20160 through 20166, 20168 and 20169. The request shall set forth with particularity the basis for the request and shall be accompanied by ~~six copies of the~~ following:

(1) the evidence and legal arguments which the party seeking review contends support the request;

(2) the representation petition if the action to be reviewed concerns the dismissal of a representation, intervention, or cross-petition;

(3) the regional director's notice of dismissal of the representation petition, or notice of other action reviewable under Labor Code section 1142(b), and statement of reasons therefor, where applicable; and

(4) evidence that the aforementioned material has been served upon all parties pursuant to sections ~~20166, 20168~~ and 20169.

(b) Review of any other actions of a regional director or ~~his or her~~ the regional director's agent pursuant to the powers which may be delegated ~~to him or her~~ under Labor Code ~~§~~section 1142(b) to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question of representation exists, and to direct an election shall be by means of a petition filed pursuant to Labor Code ~~§~~section 1156.3(e) and ~~§~~sections 20363, 20365 and 20370.

(c) A party to a representation proceeding may, because of extraordinary circumstances, move for reconsideration or reopening of the record, after the Board issues a decision or order in the case. A motion under this section must be filed with the Board within five days of service of the decision or order upon the party making the request, and served on the parties in accordance with the provisions set forth in ~~section 20160(a)(2), and served on the parties, in accordance with the provisions set forth in sections 20166, 20168 and~~20164 through 20169. A motion for reconsideration or reopening of the record shall set forth with particularity the basis for the motion and legal argument in support thereof and shall be accompanied by proof of service of the motion and accompanying documents upon all parties ~~as provided in sections 20166, 20168 and 20169~~. Only one request for reconsideration of or to reopen the record for any decision or order will be entertained. A motion filed after the issuance of a decision of the Board may alternatively request reconsideration and reopening. A motion filed under this section shall not operate to stay the decision and order of the Board.

(d) The Board, in its discretion, may request a response from the opposing party or parties prior to granting or denying a request for review under ~~subsection-subdivision (a)~~ subsection-subdivision (a) above or a request for reconsideration under ~~subsection-subdivision (c)~~ subsection-subdivision (c) above. Where an opportunity for response is to be provided, the Board shall serve notice thereof upon all parties as provided in section 20164, and shall set a reasonable period within which the opposing party or parties may file a response. Unless the Board requests it to do so, the party initially requesting review or reconsideration may not submit any material in addition to the petition for review or for reconsideration and its supporting documents.

(e) In any case in which a request for review is filed pursuant to this section of a dismissal of a representation petition, cross-petition or intervention petition by a regional director, the record on review by the Board shall consist of: the petition pursuant to Labor Code Section 1156.3(a), the cross-petition or intervention petition where applicable, the regional director's dismissal letter, and the request for review and supporting evidence and briefs.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 1156.3 and 1156.7, Labor Code.

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To amend regulation 20400 to state:

§ 20400. Filing of Declaration Requesting Mandatory Mediation and Conciliation.

(a) Where the certification issued prior to January 1, 2003:

A declaration pursuant to Labor Code section 1164, subdivision (a)(1) may be filed with the Board by either the agricultural employer or the certified labor organization at any time at least 90 days after a renewed demand to bargain, as defined in subdivision (2) below. The declaration shall be served and filed in accordance with sections ~~20160, 20164, 20166, 20168~~ and through 20169. The declaration shall be signed under penalty of perjury by an authorized representative of the filing party, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, and shall state that (A) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (B) the employer has committed an unfair labor practice, describing the nature of the violation, and providing the corresponding Board decision number or case number, (C) the parties have not previously had a binding contract between them, and (D) the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements and establishes the date of the renewed demand to bargain.

(1) The unfair labor practice referred to above is one where a final Board decision has issued or where there is a settlement agreement that includes an admission of liability.

(2) The renewed demand to bargain referred to above is one that occurred on or after January 1, 2003.

(b) Where the certification issued after January 1, 2003:

A declaration pursuant to Labor Code section 1164, subdivision (a)(2) may be filed with the Board by the agricultural employer or the certified labor organization at any time at least 90 days after the initial request to bargain by either party following the certification. The declaration shall be served and filed in accordance with sections ~~20160, 20164, 20166, 20168~~ and through 20169. The declaration shall be signed under penalty of perjury, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, shall provide the date of the initial request to bargain, and shall state that the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements.

(c) Where the request for mandatory mediation and conciliation is based on certification of a labor organization pursuant to Labor Code section 1156.3, subdivision (f), or the dismissal of a decertification petition pursuant to Labor Code section 1164, subdivision (a)(4):

A declaration pursuant to Labor Code section 1164, subdivision (a)(3) or (a)(4) may be filed with the Board by the agricultural employer or the certified labor organization at any time at least 60 days after the date the certification was issued or the decertification petition was dismissed, as appropriate. The declaration shall be served and filed in accordance with sections 20160, ~~20164, 20166, 20168~~ and through 20169. The declaration shall be signed under penalty of perjury, shall state that the parties are subject to an existing certification and have no collective bargaining agreement currently in effect, shall provide a citation to the Board order qualifying the request pursuant to Labor Code section 1164, subdivision (a)(3) or (a)(4), and shall state that the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements.

(d) For the purpose of determining the number of declarations permitted to be filed by a labor organization, the term "party" as used in Labor Code section 1164.12 shall refer to the labor organization named in the Board's certifications.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1156.3, 1164, 1164.11 and 1164.12, Labor Code.

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To amend regulation 20401 to state:

§ 20401. Answer to Declaration.

(a) Within three (3) days of service of a declaration, the other party to the collective bargaining relationship (or alleged bargaining relationship) may file an answer to the declaration. The answer shall be served and filed in accordance with sections 20160, ~~20164, 20166, 20168~~ and through 20169. The answer shall be signed under penalty of perjury by an authorized representative of the filing party, and shall identify any statements in the declaration that are disputed. In addition, the answer shall be accompanied by any documentary or other supporting evidence. If it is claimed that the employer has not engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of the declaration seeking referral to mandatory mediation, payroll records sufficient to support the claim shall be submitted with the answer. Payroll records shall be submitted in electronic form if kept in that form in the normal course of business.

(b) All statements in a declaration that are not expressly denied in the answer shall be deemed admitted.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1164, 1164.11 and 1164.12, Labor Code.

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To amend regulation 20402 to state:

§ 20402. Evaluation of the Declaration and Answer.

(a) The Board shall dismiss any declaration that fails to include all of the requirements of section 20400, subdivision (a), (b), or (c), as applicable.

(b) If no answer to the declaration is timely filed, or if the answer admits the truth of all factual prerequisites to the validity of the declaration, the Board shall immediately issue an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

(c) Where a timely filed answer disputes the existence of any of the prerequisites for referral to mediation, the Board shall attempt to resolve the dispute on the basis of the parties' filing and/or upon investigation. The Board shall issue a decision within 5 days of receipt of the answer either (1) dismissing the petition, or (2) referring the matter to mediation, or (3) scheduling an expedited evidentiary hearing to resolve any factual issues material to the question of the existence of any of the prerequisites.

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:

(1) Notice of hearing shall be served in the manner required by §sections 20164 and 20169.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Aadministrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Aadministrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406-~~of these regulations~~, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Aadministrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Aadministrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to sections 20164 and 20169.

(B) Within ten (10) days after the service of the decision of the Aadministrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to

the Board ~~the original and six (6) copies of~~ exceptions to the decision or any part of the proceedings, with ~~an original and six (6) copies of~~ a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160, ~~20166, 20168 and through~~ 20169. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151, 1164, 1164.11 and ~~and~~ 1164.12, Labor Code.

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To amend regulation 20407 to state:

§ 20407. The Mediation and Conciliation Process.

(a) Mediation shall proceed in accordance with Labor Code section 1164, subdivisions (b), (c), and (d). The 30-day periods referred to in Labor Code section 1164, subdivision (c) shall commence on the date of the first scheduled mediation session, shall proceed for consecutive calendar days, and shall not include any pre-mediation conference. The 30-day timelines may be waived by mutual agreement of the parties and with the approval of the mediator. Premediation conferences may be scheduled at the discretion of the mediator.

(1) No later than seven (7) days after receipt of a Board order directing the parties to mandatory mediation and conciliation, and prior to their first discovery requests pursuant to section 20406 above, each party shall identify for the mediator those issues that are in dispute and those that are not in dispute, identify the standards which they propose to resolve the disputed issues, and provide agreed upon contract language for those issues not in dispute. This information shall be served on the other party immediately and on the mediator upon ~~his or her~~ the mediator's selection. During the mediation, the parties shall provide the mediator with a detailed rationale for each of its contract proposals on issues that are in dispute, and shall provide on the record supporting evidence to justify those proposals. The failure of any party to participate or cooperate in the mediation and conciliation process shall not prevent the mediator from filing a report with the Board that resolves all issues and establishes the final terms of a collective bargaining agreement, based on the presentation of the other party.

(2) The mediator shall preside at the mediation, shall rule on the admission and exclusion of evidence and on questions of procedure and shall exercise all powers relating to the conduct of the mediation. All evidence upon which the mediator relies in writing the report required by section 1164, subdivision (d) shall be preserved in an official record through the use of a court reporting service or, with the consent of both parties and the approval of the mediator, by a stipulated record. The mediator shall cite evidence in the record that supports ~~his or her~~ the mediator's findings and conclusions. The mediator shall retain the discretion to go off the record at any time to clarify or resolve issues informally. All communications taking place off the record shall be subject to the limitations on admissibility and disclosure provided by Evidence Code

section 1119, subdivisions (a) and (c), and shall not be the basis for any findings and conclusions in the mediator's report.

(3) The parties shall have the right to be represented by counsel or other representative.

(4) The parties to the mediation are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. The testimony of witnesses shall be given under oath.

(b) In determining the issues in dispute, the mediator may consider those factors commonly applied in similar proceedings, such as, but not limited to:

(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer makes a plea of inability to meet the union's wage and benefit demands.

(3) Comparison of corresponding wages, benefits, and terms and conditions of employment in collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) Comparison of corresponding wages, benefits, and terms and conditions of employment in comparable firms or industries in geographical areas with similar economic conditions, considering the size of the employer, the skills, experience, and training required of the employees, as well as the difficulty and nature of the work.

(5) The average consumer prices for goods and services, commonly known as the Consumer Price Index, and the overall cost of living in the area where the work is performed.

(c) The mediator shall issue ~~his or her~~ the mediator's report within twenty-one (21) days of the last mediation session. Upon completion of the mediator's report, the report shall be served on the parties and filed with the Board in accordance with sections 20164, ~~20168~~ and 20169. Upon the filing of the report, the mediator also shall transfer the official record of the proceeding to the Board.

(d) The issuance of any document signed by the mediator which reflects the determination of the issues in dispute and fixes the terms of a collective bargaining agreement shall be deemed a "report" pursuant to Labor Code sections 1164 through 1164.13, and these regulations.

(e) Where the parties agree to a collective bargaining agreement without the issuance of a mediator's report, as defined in subdivision (d), the parties shall notify the Board and submit a copy of the signed agreement pursuant to ~~Regulation~~ section 20450.

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1164, Labor Code.

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To amend regulation 20408 to state:

§ 20408. Board Review of the Mediator's Report.

(a) Within seven (7) days of the filing of first or second report by the mediator, either party may file a petition for review of the report. The petition shall be served and filed in accordance with

sections 20160, ~~20164, 20166, 20168~~ and through 20169. The petition shall be based on any one or more of the grounds set forth in Labor Code section 1164.3, subdivision (a) or subdivision (e). The petitioning party shall specify the particular provisions of the mediator's report for which it is seeking review, shall specify the specific grounds authorizing review, and shall cite the portions of the record that support the petition. In the event the petition is based on the grounds set forth in Labor Code section 1164.3, subdivision (e), the petitioning party may attach declarations that describe pertinent events that took place off the record, if necessary to establish the grounds for review stated in the petition.

(b) The Board shall issue a decision on the petition in accordance with Labor Code section 1164.3. Where the petition is based on the grounds specified in Labor Code section 1164.3, subdivision (e), and the Board determines that there are material facts in dispute that are outside the official record of the mediation, the Board may order an expedited evidentiary hearing to resolve the dispute, to be conducted in accordance with the procedures set forth in section 20402 ~~of these regulations~~.

(c) Where the Board orders additional mediation pursuant to Labor Code section 1164.3, subdivision (c), the mediation shall commence within thirty (30) days of the issuance of the Board's order, or as soon as practical.

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1164.3, Labor Code.