

AGRICULTURAL LABOR RELATIONS BOARD

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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 – Mandatory Mediation and Conciliation

Below is a draft regulation 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.

MANDATORY MEDIATION AND CONCILIATION PROCEEDINGS (CHAPTER 4)

To provide applicable rules to govern supplemental mandatory mediation and conciliation proceedings under Labor Code section 1164.10:

To implement the provisions of subdivisions (b) and (c) of Labor Code section 1164.10, add new regulation 20410 to state:

§ 20410. Supplemental Mandatory Mediation and Conciliation.

(a)(1) A request for referral to supplemental mandatory mediation and conciliation pursuant to subdivision (b) of Labor Code section 1164.10 shall identify the specific provisions of the collective bargaining agreement set forth in a mediator's report previously ordered into effect by the Board that the requesting party alleges have become outdated or moot as a result of the passage of time during the course of judicial review proceedings. The request must include reference to the article and section numbers, if any such numbers have been assigned, and headings of each contract provision for which supplemental mediation is requested, as well as the contract language for each such provision.

(2) Before requesting referral to supplemental mediation, a party first must communicate its intention to do so to the other party at least five (5) days before submitting such a request to the Board. This rule does not prohibit a party from providing such notice before judicial review proceedings are concluded. This prior notice must identify the provisions for which the requesting party intends to seek supplemental mediation and must seek to obtain the other party's position concerning each provision. When filing a request for referral to supplemental mediation with the Board, the requesting party must attest in a written declaration that it has complied with the provisions of this subdivision and state, if available or known, the other party's position concerning each provision subject to the request for supplemental mediation.

(3) No request for supplemental mediation shall operate to stay or delay the parties' implementation of all other provisions of a collective bargaining agreement previously ordered into effect by the Board and not encompassed in the request.

(b) Within five (5) days of service of a request for supplemental mediation, the other party to the collective bargaining agreement set forth in a mediator's report previously ordered into effect by the Board may file an answer to the request. The answer shall respond separately to each provision for which supplemental mediation is requested.

(c) The Board shall issue an order concerning a request for supplemental mediation within 10 days after a timely answer is, or could have been, filed. The Board may grant or deny a request for supplemental mediation in full or in part.

(d) Where the Board has ordered the parties to supplemental mediation and the mediator who presided over the parties' earlier mediation proceedings is unavailable or if the parties cannot agree on a different mediator, either party may request the Board obtain from the State Mediation and Conciliation Service a new list of nine (9) mediators to be furnished to the parties.

(e)(1) Each party shall provide to the mediator and serve on the other party, either personally or electronically, its position on each of the provisions subject to supplemental mediation no later than 10:00 a.m. the business day before the supplemental mediation is scheduled to commence. However, in the event the mediation cannot be held within the time required by Labor Code section 1164.10(c), the mediator shall then have authority to determine the time in which the parties must provide to the mediator and serve on each other their positions on each provision subject to supplemental mediation.

(2) The mediator shall preside at the supplemental mediation, shall rule on the admission or exclusion of evidence and on questions of procedure where the parties do not agree, and shall exercise all powers relating to the conduct of the supplemental mediation.

(3) The parties shall have the right to be represented by counsel or other representative during supplemental mediation proceedings. The parties are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing, but rules of evidence and of judicial procedure need not be observed. The testimony of witnesses shall be under oath. The failure of a party to appear or participate shall not prevent the mediator from filing a report with the Board that resolves all issues subject to the supplemental mediation.

(4) The mediator and parties may go off the record at any time to clarify or resolve issues informally. Any 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 or conclusions in the mediator's report.

(5) All evidence upon which the mediator relies in writing the report required by section 1164.10(c) shall be preserved in an official record through the use of a court reporting service or, with the consent of both parties and approval of the mediator, by a stipulated record. The mediator shall cite evidence in the record that supports the mediator's findings and conclusions in resolving disputed terms subject to the supplemental mediation.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1164 and 1164.10, Labor Code.