AGRICULTURAL LABOR RELATIONS BOARD
OFFICE OF THE EXECUTIVE SECRETARY
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Internet: www.alrb.ca.gov

STATE OF CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD
PUBLIC MEETING MINUTES
TUESDAY, FEBRUARY 22, 2022
10:00 A.M.

There was no physical meeting location. Attendance was by remote meeting only (meeting number **857 9257 1622**), via the attendee's choice of either Zoom videoconference or teleconference.

Board:	Chair Victoria Hassid Members Barry Broad, Cinthia Flores, and Ralph Lightstone Executive Secretary Santiago Avila-Gomez Chief Board Counsel Todd Ratshin
General Counsel:	General Counsel Julia Montgomery
Administrative Services Division:	Administrative Services Chief Brian Dougherty
Interpreter:	Ashley Nuñez
Court Reporter:	Martha Nelson

These meeting minutes include Appendices, which provide additional information about topics that were addressed during this ALRB Public Board Meeting. Each Appendix is referenced at the appropriate place within these Minutes.

OPEN SESSION

1. Call to Order
    - Board Chair Victoria Hassid called the meeting to order at 10:00 a.m.
    - Board Members Broad, Flores, and Lightstone present. Board Member Hall absent.
2. Approval of Minutes from Public Board Meeting, December 14, 2021
    - Board Member Broad moved to approve minutes.
    - Board Member Lightstone seconded the motion.
    - Motion approved by vote of 4 to 0.
3. Board Chair's Report – presented by Victoria Hassid
    - Pleased to announce return.
    - Thank you to Board and staff that served in absence.
    - Recognition of Black History Month.
4. Executive Officer's Report on Elections, Unfair Labor Practice Complaints, and Hearings – presented by Santiago Avila-Gomez

    See Appendix A
5. Litigation Report – presented by Todd Ratshin

    See Appendix B
6. General Counsel's Report – presented by Julia Montgomery

    See Appendix C
    - Reported on hiring and recruitment in Salinas, Visalia, Santa Rosa, and Oxnard offices.
    - Reported on settlements in Monterey, Ventura, Visalia, Kern, Fresno, and Tulare counties.
    - Reported on outreach events in Imperial, Tulare, Ventura, Fresno, Monterey, and Sonoma counties.
    - General Counsel was confirmed in Senate re-appointment.
7. Division of Administrative Services Report – presented by Brian Dougherty

- Reported on office updates for Oxnard, Visalia, Salinas, and Sacramento.

8. Legislation Report – presented by Todd Ratshin
    - None.
9. Regulations

    See Appendix D
    - Continuing to solicit commentary from stakeholders on regulatory package.
    - Proposed Regulation 20220 to be tabled.
        - Recommendation to postpone formal imposition of a time limit for filing of complaints. Proposed permanent reports from General Counsel's office for case aging statistics.
    - Proposed Regulation 20202 to be tabled.

Ten Minute Break at 11:01 a.m.

- General Counsel proposed changes in administrative procedure.
    - Centralized calendaring and tracking system for investigation-related deadlines; oversight of case work in Regions; centralizing review of attorneys assigned to cases; continually assessing and monitoring mentorship needs for Regional Office staff.
- Board supported recommendations of the Regulation Subcommittee.
- Board Chair Hassid advised monthly updates from the General Counsel's office, in addition to addressing staff burdens.
- General Counsel to discuss revised way of sharing data at subsequent Public Meetings.

Motion to Approve Report of Subcommittee and Board Approval of Regulatory Package

- Board Member Broad moved to approve Report of Subcommittee and Board Approval of Regulatory Package.
- Board Member Lightstone seconded the motion.
- Motion approved by vote of 4 to 0.

10. Personnel
    - None.

11. Public Comment
12. Announcements
    - Next Public Board Meeting is on March 9th, 2022.
13. Adjourn Meeting
    - Meeting adjourned at 11:38 a.m.

APPENDIX A:
EXECUTIVE SECRETARY'S REPORT

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

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ALRB PUBLIC MEETING
EXECUTIVE OFFICER'S REPORT
ELECTIONS, UNFAIR LABOR PRACTICE COMPLAINTS, AND HEARINGS

DATE: February 22, 2022
TO: Agricultural Labor Relations Board
FROM: Santiago Avila-Gomez, Executive Secretary

Election Activity

---------- Petitions for Certification or Decertification ----------

1. *Sonoma Cho, LLC dba Flora Terra*, Case NO. 2022-RC-001-SAL (Teamsters Local 665; January 14, 2022 – Election Held on January 21, 2022)

Complaints and Specifications

---------- Complaints ----------

1. *Norma Stretch dba Dixieland Orchards*, Case No. 2021-CE-010-VIS (Almonds; Madera County, CA; February 11, 2022)
2. *Treesap Farms, LLC dba Everde Growers*, Case No. 2021-CE-019-VIS (Trees, flowers, and shrubbery; Yolo County, CA; February 11, 2022)
3. *Caymus Vineyards,* Case No. 2020-CE-001-SAL (Lemons & Grapes; Monterey County, CA; December 17, 2021)
4. *Prime Time Packing, LLC*, Case No. 2019-CE-017-VIS (Vegetables; Riverside County, CA; December 17, 2021)
5. *Tanimura & Antle Fresh Foods, Inc.,* Case No. 2020-CE-047-SAL (Agricultural products; Monterey County, CA; December 16, 2021)

---------- Specifications ----------

1. *Rincon Pacific,* LLC, Case No. 2014-CE-044-SAL (46 ALRB No. 4; December 27, 2021)

---------- **Settled** ----------

1. *Tanimura & Antle Fresh Foods, Inc.,* Case No. 2020-CE-047-SAL (parties entered into informal bilateral settlement agreement; February 16, 2022)
2. *Coast King Packing,* LLC, Case No. 2020-CE-016-SAL (parties entered into informal bilateral settlement agreement; January 28, 2022)
3. *Guess Cattle Co., LLC*, Case No. 2020-CE-008-VIS (parties entered into informal bilateral settlement agreement; January 17, 2022)
4. *Rincon Pacific, LLC*, Case No. 2014-CE-044-SAL (46 ALRB No. 4 – Respondent agreed to fully comply with Board Decision; December 31, 2021)

---------- **Withdrawn** ----------

NONE

Hearings and Administrative Law Judge Decisions

NONE

Board Decisions, Administrative Orders, and Pending Matters

---------- **Board Decisions** ----------

NONE

---------- **Administrative Orders** ----------

1. *Rincon Pacific, LLC* (2021) ALRB Admin. Order 2021-11 (46 ALRB No. 4 [Case No. 2014-CE-044-SAL]; Order Certifying Good Cause Exists to Exceed Time Limit in ALRA Section 1149.3; December 15, 2021)

---------- **Pending Matters** ----------

1. *Cinagro Farms, Inc*., Case No. 2017-CE-008-SAL (Vegetables; Ventura County, California; Briefing completed on December 13, 2021)
2. *Sonoma Cho, LLC dba Flora Terra*, Case NO. 2022-RC-001-SAL (Teamsters Local 665; January 14, 2022 – Election Held on January 21, 2022)

APPENDIX B:
LITIGATION REPORT

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

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ALRB PUBLIC MEETING
LITIGATION REPORT

DATE: February 22, 2022

TO: Agricultural Labor Relations Board

FROM: Todd M. Ratshin, Chief Board Counsel

This report discusses updates and developments that have occurred in litigation matters involving the Board since its December 14, 2021 meeting.

Petitions for Writ of Review of Unfair Labor Practice Decisions

California Appellate Courts

► ***Wonderful Orchards, LLC v. ALRB*, Fifth District Court of Appeal, Case No. F081172**

Summary: Petition for writ of review of the Board's decision in 46 ALRB No. 2, in which the Board found the employer unlawfully terminated a group of employees for engaging in protected concerted activity.

Status: The court heard oral argument on January 25, 2022, and the matter was submitted. The parties now are awaiting issuance of the court's opinion.

► ***United Farm Workers of America v. ALRB*, Fifth District Court of Appeal, Case No. F080469**

Summary: Petition for writ of review of the Board's decisions in 45 ALRB Nos. 8 and 4, in which the Board found the United Farm Workers of America unlawfully threatened to picket Gerawan Farming, Inc. if it did not recognize and bargain with the union, which had been decertified as the employees' bargaining representative in the Board's decision in 44 ALRB No. 10.

Status: On January 6, 2022, the court issued a notice setting oral argument for February 10. The court heard oral argument that day, and issued an unpublished opinion on February 18 affirming the Board's orders, which is available at: <https://www.courts.ca.gov/opinions/nonpub/F080469.PDF>.

APPENDIX C:
GENERAL COUNSEL'S MEMO

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

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General Counsel Memorandum

To: **ALRB Board**

From: **Julia Montgomery, General Counsel**

Re: **General Counsel Report to Board Re. Summary of Steps Taken to Reduce Investigation Delays**

Date: **February 17, 2022**

The following is a brief summary of some of the steps I have taken to reduce investigation delays in the General Counsel program, which I will also cover as part of my General Counsel report to the Board at our February 22, 2022 Board Meeting:

Changes to calendaring and tracking system: Previously, investigation-related tasks and deadlines were tracked at the regional office level overseen by the regional directors. Last fall, we centralized this function through the General Counsel headquarters staff. We have now centralized our tracking system for all cases program-wide and our Headquarters analyst is monitoring key investigation-related deadlines[1] with the assistance of the regional office analysts. Our analyst staff has created better tracking systems and is also tasked with sending email reminders and notifications regarding these deadlines to staff and their supervisors. The Regional Directors and I have also reminded regional office staff to promptly communicate when they encounter challenges which mayimpact their ability to meet a deadline so that such situations are adequately addressed.

Changes to process for oversight of casework in the regions: We have also made changes to how the investigative work is overseen and reviewed, to help

[1] These include but are not limited to deadlines that may be set in a particular case for completing witness

interviews, serving document requests, issuing and enforcing subpoenas and completing investigations.

provide more support to investigative teams earlier on in the process and to ensure that staff receive more prompt feedback and assistance on written work. The Regional Directors, Deputy General Counsel and I will continue to assess and refine procedures to ensure that regional office staff promptly receive the support they need and to reduce review backlogs.

Increased review of timelines and data entries: General Counsel Program supervisors are more regularly reviewing timelines and deadlines set for individual staff members they oversee and are ensuring that case-related data entries are regularly updated in our case management system, e-Court.

Staff mentorship and training: I am working closely with the Headquarters attorneys and regional directors to continually assess the mentorship and training needs of our regional office staff and to help provide them with the resources they need to complete their work more efficiently and effectively. We will continue to provide ongoing training and mentorship to staff to increase the capacity of the General Counsel program.

I am highly committed to reducing investigation delays when possible by improving our procedures and more closely tracking timelines. I also believe it is important for the Board to have accurate and updated data regarding the disposition of filed charges. To that end, I am willing to provide periodic reports with this information to the Board going forward.

APPENDIX D:
REPORTS OF THE REGULATION SUBCOMMITTEE

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

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DATE: February 11, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

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

RE: Report of the Regulations Subcommittee Re: Regs. 20202, 20220

After due consideration of the comments received at and following the Board's October 12, 2021 public meeting, the Regulations Subcommittee recommends that the Board promulgate the regulatory proposals under consideration with the exception of two regulations. As discussed below, the subcommittee recommends that the Board forego any action concerning Board regulations 20220 and 20202 at this time.

Proposed Regulation 20220—Time Limit for the Issuance of a Complaint by the General Counsel

On April 13, 2021, the Board approved a proposal by the Regulations Subcommittee to:

> Establish a time limit for the General Counsel to issue a complaint after an unfair labor practice charge has been filed, subject to a motion for an extension of time for just cause. Once the time limit has passed, the charge would be deemed dismissed.

On September 22, 2021, the Regulations Subcommittee issued several reports setting forth proposed regulatory actions, including proposed amendments to regulation 20220 that generally would require an unfair labor practice complaint to issue within 12 months of the filing of an unfair labor practice charge, subject to extension in certain circumstances.

At the October 12, 2021 public meeting, the Board voted to return this proposal to the Regulations Subcommittee for reconsideration and modification. The Regulations Subcommittee thereafter solicited and received further written comments from interested parties concerning this and other proposals. In addition, the Regulations Subcommittee has studied unfair labor practice charge disposition timeframes for charges filed between 2016 and 2021. Attached to this report are tables summarizing the timeframes for the disposition of unfair labor practice charges filed during this period of time, broken down by each calendar year. Based on the information set forth in these tables, while there certainly

are instances of charges whose time to disposition was unacceptably long, with respect to addressing the issue on a going-forward basis, we believe it is appropriate to forego action on our earlier proposed amendments to regulation 20220 in order that we may continue to monitor this issue and any improvement in the disposition timeframes reflected in the tables.

Accordingly, the Regulations Subcommittee recommends the Board take no regulatory action at this time concerning this proposal. The subcommittee further recommends that the Board request that the General Counsel provide regular reports documenting the age of pending charges that remain under investigation.

Proposed Regulation 20202—Filing of an Anonymous Charge

Under our current practice, the name of the charging party is required to be stated in the charge, which is served on the charged party. Proposed Regulation 20202 would permit the regional director to redact the name of a charging party if that person has "stated a reasonable fear of retaliation from the charged party and maintaining anonymity is necessary to permit the filing of the charge." If, after an investigation, the General Counsel files a complaint against the charged party, the name of the charging party would still be revealed.

The principal purpose of this proposed regulation is to protect charging parties who are agricultural employees from discrimination or retaliation for filing a charge. Some administrative agencies, such as CalOSHA, routinely accept anonymous reporting of alleged unsafe working conditions. Other agencies, notably the National Labor Relations Board, do not confer anonymity on charging parties.

While allowing charging parties to maintain their anonymity during the investigation of a charge could encourage agricultural employees who fear discrimination or retaliation to come forward, we are concerned that redacting the name of the charging party may weaken the legal protection that is afforded the charging party by the very act of revealing their identity. Once the charge is filed, the charging party is legally protected from discrimination and retaliation for using the Board's processes and it is considerably more difficult for the charged party to evade responsibility for retaliatory adverse action taken against the charging party by claiming to have been ignorant of the filing of the charge.

Moreover, in many instances, the very facts alleged in the charge or disclosed in the discovery process may reveal the identity of the charging party, thereby affording the charging party a false sense of security that the charged party does not know their identity. Due to this concern, investigators may be reluctant in some cases to request information from charged parties that might indirectly reveal the identity of a charging party who has requested anonymity, potentially chilling the investigation process. In any event, the anonymity of the charging party is transitory, as the name of the charging party will be revealed if a complaint is issued.

A similar concern arises with regard to the settlement process. The general policy of the ALRB is to favor settlement of cases and many cases are settled before a complaint is issued. If the charging party is alleging that the charged party engaged in discriminatory or retaliatory conduct against them, it is difficult to see how anonymity can be maintained where the settlement discussions must necessarily relate to what happened to the charging party and may require remediation specific to the charging party, such as backpay, rescinding of discipline, etc. Thus, anonymity may have the unanticipated, and undesired, result of making settlement efforts more difficult.

Finally, anonymity of charging parties may complicate the pre-complaint discovery process. Requests for information and investigatory subpoenas must remain within the scope of the charge. If the charged party asserts that an information request or investigatory subpoena lacks sufficient specificity to

determine whether it is within the scope of the charge, the identity of the charging party may have to be revealed.

Accordingly, after due consideration, the subcommittee recommends not moving forward with this proposal at this time.

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DATE: February 11, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

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

RE: *Updated* Regulatory Proposal – Cannabis

Below is an updated draft regulation based on the Regulations Subcommittee's recommendations approved by the Board at the April 13, 2021 public meeting and following receipt and consideration of public comment at the Board's October 12, 2021 public meeting. Changes are reflected in underline (new language) and strikethrough (deletions) formats. Language added or changed since the October 12 meeting is indicated bold red type.

CANNABIS (NEW CHAPTER 9.5)

To make clear that violations of a labor peace agreement may give rise to unfair labor practice allegations:

To add new regulation 20951 to state:

§ 20951. Labor Peace Agreements

(a) An agricultural employer licensed to engage in the cultivation of cannabis as provided in the Medicinal and Adult-Use Cannabis Regulation and Safety Act, Business and Professions Code section 26000 et seq., and who is required to enter into a labor peace agreement as defined in subdivision (y) of Business and Professions Code section 26001, may enter into labor peace agreements with more than one labor organization seeking to represent an appropriate bargaining unit of agricultural employees. **If an employer enters into labor peace agreements with more than one labor organization, upon execution of each such labor peace agreement it shall provide notice that it has done so to each other labor organization with which it has entered into a labor peace agreement.**

(b) An agricultural employer shall not discriminate against a labor organization in terms of providing access to its employees where two or more labor organizations seek to represent the same bargaining unit of employees and shall treat similarly situated labor organizations the same; provided, however, that no labor organization has been certified pursuant to the provisions of Chapter 5 of the Act (Labor Code section 1156 et seq.) as the exclusive representative of the employer's agricultural employees.

(c) Allegations that a party has failed or refused to enter into a labor peace agreement, has discriminated against a labor organization where two or more labor organizations seek to represent the same bargaining unit of employees, or that a party has violated the terms of an existing labor peace agreement may be

subject to an unfair labor practice charge where it is asserted such conduct has violated any applicable provisions of Labor Code sections 1153 or 1154.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1153 and 1154, Labor Code; Sections 26001 and 26051.5, Business and Professions Code.

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DATE: February 11, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

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

RE: *Updated* Regulatory Proposals – Mandatory Mediation and Conciliation

---

Below is an updated draft regulation based on the Regulations Subcommittee's recommendations approved by the Board at the April 13, 2021 public meeting and following receipt and consideration of public comment at and following the Board's October 12, 2021 public meeting. Changes are reflected in underline (new language) and strikethrough (deletions) formats. Language added or changed since the October 12 meeting is indicated in bold red type.

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 **10** 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.

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DATE: February 11, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

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

RE: *Updated* Regulatory Proposals – Procedural Provisions and Unfair Labor Practices

---

Below are updated draft regulatory changes and proposals based on the Regulations Subcommittee's recommendations approved by the Board at the April 13, 2021 public meeting and following receipt and consideration of public comments at and following the Board's October 12, 2021 public meeting. Changes are reflected in underline (new language) and strikethrough (deletions) formats. Language added or changed since the October 12 meeting is indicated in bold red type.

RULES OF PRACTICE/PROCEDURE (CHAPTER 1.5)

To provide administrative law judges greater discretion to grant continuances of hearing dates:

To amend regulation 20190 to state:

§ 20190. Continuance of Hearing Dates.

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference, including any scheduled settlement conference in an unfair labor practice case, will be finalized unless the executive secretary receives a written communication within ~~ten (~~10~~)~~ days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or any scheduled settlement or prehearing conference is mutually agreed to and communicated to the executive secretary within the ten-day period, that date will be

finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or any scheduled settlement or prehearing conference, the objecting party may submit a written request to the executive secretary within the ten-day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or any scheduled settlement or prehearing conference in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing ~~three~~five additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled settlement or prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and any scheduled settlement or prehearing conference and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or

orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to ~~two working~~ten business days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. After the opening of a hearing, ~~R~~requests for continuances for periods longer than ~~two~~ten ~~working~~business days shall be in writing directed to the executive secretary with proof of service on all parties. Such motions shall not be granted unless extraordinary circumstances are established. The executive secretary may delegate the authority to rule on such motions to the assigned administrative law judge. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for a continuance of longer than ten working days, all matters relevant to a proper determination of the motions will be taken into consideration, including:

(1) The official case file and any supporting declaration submitted with the motion.

(2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.

(3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.

(4) The proximity of the hearing date.

(5) The condition of the hearing calendar.

(6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.

(7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.

(8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

(1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.

(2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.

(3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.

(4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

(1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which ~~that~~the witness' counsel or representative did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.

(2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.

(3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.

(4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.

(5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.

(6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 1156.3~~(c)~~, 1160.2 and 1160.5, Labor Code.

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To require a party seeking an extension of time to file a document to include in its request the positions of the other parties:

To amend regulation 20192 to state:

§ 20192. Extensions of Time.

(a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.

(b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, and the grounds for the extension, ~~and the position of the other parties,~~ in the same manner as required for continuances in subsection 20190(c)(2) above. The request must be accompanied by a declaration stating the position of the other parties. If the other parties' positions were not obtained, the declaration must state in detail all efforts made to attempt to contact that party or the party's counsel, including the dates and times of any emails and telephone calls, including whether a message was left.

(c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 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 allow a regional director to propound interrogatories to a charged party during investigation of an unfair labor practice charge:

To amend regulation 20216 to state:

§ 20216. Investigation by Regional Director.

(a) The regional director shall investigate to determine whether or not there is reasonable cause to believe that an unfair labor practice has been committed.

(b) The regional director may propound written interrogatories to a charged party to be answered under oath. The regional director may propound interrogatories any time that is 10 days after service of the charge on the charged party. The scope of permissible interrogatories under this section shall be limited to threshold issues, such as the proper legal identity of the charged party; the charged party's status as a labor organization, agricultural employer, farm labor contractor, or custom harvester; whether an alleged discriminatee is an agricultural employee; and supervisory or agency status of any individual alleged to have

committed an unfair labor practice. The charged party shall respond to the interrogatories within 20 days after service of the interrogatories, answering each interrogatory separately and completely, and shall sign the response under oath.

(c) If a charged party fails to respond to interrogatories propounded by the regional director**, the regional directory may apply to the chief administrative law judge, or the assigned administrative law judge, to compel responses from the charged party or for other appropriate relief as provided in section 20238(b).**

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151(a) and 1160.2, Labor Code.

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To allow the General Counsel to review a regional director's dismissal of an unfair labor practice charge:

To amend regulation 20219 to state:

§ 20219. Review of Dismissals.

(a) Within 10 days of the date of service of a dismissal, the charging party may file a request with the general counsel for review of the decision dismissing the charge. The request for review shall specifically state all reasons why the decision should be reviewed. If the charge was dismissed for lack of evidence, the charging party may provide additional evidence in support of the charge accompanied by a showing of the reasons why such evidence was not previously presented to the regional director. If the charge was dismissed for failure to legally constitute an unfair labor practice, the charging party shall provide legal authority in support of its position that the evidence constitutes an unfair labor practice. The request for review and all supporting documents shall be served upon the charged party and the regional director as provided in sections 20166 and 20169.

(b) In situations where the charging party is an agricultural employee **who is not represented by counsel or other representative with respect to the charge**, if the charging party has not timely requested review of a dismissal, the general counsel may grant review of the regional director's dismissal sua sponte within 10 days from the date a request for review would have been due. The general counsel shall provide notice to both the charging and charged parties when the general counsel has granted sua sponte review of a dismissal.

(c) Within 10 days from the filing of ~~such~~a request for review or from the date the general counsel provides notice of granting sua sponte review, the charged party may file a statement in opposition with service on the charging party as provided in ~~S~~sections 20166 and 20169.

(d) Extensions of time to file a request for review or a statement in opposition may be requested in accordance with section 20192, except that such requests shall be directed to and ruled upon by the ~~G~~general ~~C~~counsel.

(e) Where a request for review has been filed or the general counsel has granted sua sponte review, ~~T~~the general counsel may request an oral presentation from the parties. The general counsel may affirm the decision of the regional director, remand for further consideration or evidence, or issue a complaint.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149, 1151.4(a), 1160.2 and 1160.5, Labor Code.

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To allow the General Counsel to make a request for particulars regarding a respondent's answer to an unfair labor practice complaint:

To amend regulation 20235 to state:

§ 20235. Request for Particulars.

(a) Where a complaint lacks specificity as to the time, place or nature of the alleged conduct, or the identity of the persons who engaged in it, or fails sufficiently to identify the individual or group against whom the conduct was specifically directed, a written request for particulars may be made by the respondent in accordance with section 20237 to obtain such information; provided, however, that in responding the general counsel need not disclose the identity of any potential witness whose primary source of income is non-supervisory employment in agriculture.

(b) Where an answer raises an issue or asserts a defense based on an agricultural employee's immigration status, a written request for particulars may be made by the general counsel in accordance with section 20237 to obtain further information concerning the facts upon which such issue or defense is raised.

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

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Subpoenas/Discovery — To make specific an investigatory subpoena may request witness testimony, to require privilege logs, to make explicit the Board may authorize the General Counsel to seek judicial enforcement of a subpoena on behalf of the Board, and clarifying the availability of evidentiary sanctions where a party fails to comply with a subpoena:

To amend regulation 20217 to state:

§ 20217. Investigative Subpoenas.

(a) For purposes of investigation, the general counsel or ~~his or her~~the general counsel's agents may issue and serve subpoenas requiring the attendance and testimony of witnesses or the production by persons at the respondent's place of business, or such other location as mutually agreed to by the respondent and the regional director, of any materials, including but not limited to books, records, correspondence or documents in their possession or under their control.

(b) The subpoena shall show on its face the name, address, and telephone number of the general counsel or ~~his or her~~the general counsel's agent who has issued the subpoena. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum, showing good cause for the production of the matters and things described in such subpoena. The declaration shall show specific facts justifying discovery and that the materials are relevant to the subject matter of the investigation or reasonably calculated to lead to the discovery of admissible evidence.

(c) Service of subpoenas shall be made pursuant to Labor Code ~~S~~section 1151.4(a) or by certified mail. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Witnesses shall be entitled to fees in accordance with Labor Code section 1151.4(a).

(d) Any person on whom an investigative subpoena is served who does not intend to comply shall, within five days after the date of service, petition in writing to revoke the subpoena. Such petition shall explain with particularity the grounds for objecting to each item covered by the petition. The petition to revoke shall be served upon the general counsel or ~~his or her~~the general counsel's agent who issued the subpoena. The petition to revoke shall be filed with the executive secretary. When a person under subpoena objects to any request for production of materials on the basis of a claim of privilege or that the information sought is protected work product, the petition shall state specifically the privilege asserted and shall include a privilege log providing sufficient information for the general counsel to evaluate the merits of such claims.

(e) The executive secretary shall revoke the subpoena if the materials required to be produced do not relate to any matter under investigation, or the subpoena does not describe with sufficient particularity the materials whose production is required, or the testimony or records sought are privileged or confidential or deal with a matter not subject to review, or the subpoena is otherwise invalid. A simple statement of the grounds for the ruling on the petition shall accompany the ruling. Adverse rulings may be appealed to the Board through the procedures outlined in Section 20242.

(f) When a person under subpoena refuses to testify or produce the requested information on the basis of ~~his or her~~the person's privilege against self-incrimination, the general counsel or ~~his or her~~the general counsel's agents may file a written request that the Board grant immunity and compel that person to testify or produce the requested materials. Said request shall otherwise conform and be processed according to ~~S~~section 20251; however, the Board shall rule directly on said request.

(g) Upon any other failure of any person to comply with an investigative subpoena, the general counsel may request that the Board apply to an appropriate superior court for an order requiring compliance in accordance with ~~S~~section 20250(k) or authorize the general counsel to make such application. The subpoenaed party shall have five (5) days after an application pursuant to this subdivision is filed with the Board to file a response to the application.

(h) In addition to, or in lieu of, seeking enforcement pursuant to section 20250(k), the general counsel may apply to the chief administrative law judge**, or the assigned administrative law judge,** for appropriate sanctions to be imposed against a charged party based on the charged party's failure to comply with an investigative subpoena in the event the general counsel subsequently issues a complaint pursuant to section 20220, or at any time following issuance of a complaint and before hearing, including any evidentiary sanctions specified in section 20238(b).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151(a) and 1160.2, Labor Code.

To amend regulation 20236 to state:

§ 20236. Matters Discoverable.

(a) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the names, addresses and any statements (as defined in section 20274(b)) of all witnesses, other than those whose primary source of income is non-supervisory employment in agriculture; provided, however, that any portion of a statement likely to identify a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised.

(b) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the name, address, field of expertise, qualifications, and a brief description of expected testimony of any expert

whom it intends to call as a witness. The responding party shall also make available any report prepared for it by such expert concerning the subject matter of the testimony to be given. The failure, without good cause, to comply with the requirements of this subsection shall be grounds for excluding such expert testimony.

(c) Upon written request, a party to a hearing shall be afforded a reasonable opportunity to examine, inspect and copy, and, where appropriate, to photograph and/or test, any writing or physical evidence in the possession or control of the party to the hearing to whom the request is directed which that party intends to introduce into evidence at hearing; provided, however, that any portion of a writing which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised, except that this proviso shall not apply to otherwise unprotected or unprivileged business records. Where the writing or physical evidence to be introduced is not yet in the possession or control of the responding party, it shall be identified with reasonable specificity. A party that objects to a request under this subdivision on the basis of a claim of privilege or that the information sought is protected work product shall state specifically the privilege asserted and shall include a privilege log providing sufficient information for other parties to evaluate the merits of such claims.

(d) Upon written request, general counsel shall disclose to respondent any evidence which is purely and clearly exculpatory.

(e) In compliance proceedings, the general counsel shall, upon written request, make available to the requesting party to the hearing all information in its files, which tends to verify, clarify or contradict the items and amounts alleged in the backpay or bargaining makewhole specification unless the information is absolutely privileged, e.g., income tax returns, form W-2 (wage and tax statement), . . . etc.

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

To amend regulation 20238 to state:

§ 20238. Orders Compelling Discovery; Sanctions.

(a) A requesting party who believes that the responding party has failed, in whole or part, to comply with a proper request pursuant to sections 20235, 20236, or 20237 may apply in writing to the chief administrative law judge for an order requiring compliance. No application will be entertained unless the applying party establishes that it first made a reasonable effort to resolve the matter by contacting or attempting to contact the responding party. The application shall include copies of the request and any response received, and shall be served on the responding party. ~~If the responding party desires to oppose the application, he or she~~The responding party shall immediately notify the office of the chief administrative law judge if the party desires to oppose the application. Depending on the proximity to hearing, the chief administrative law judge shall determine whether the opposition will be written or oral, when it will be due, and whether to assign the matter to an administrative law judge. When the dispute concerns the propriety of excising or failing to turn over a statement containing the name of a potential witness whose primary income is from non-supervisory agricultural employment, the privilege created by Evidence Code section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexcised document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of sections **20216,** 20217, 20235, 20236, ~~or~~ 20237, or 20250, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or

exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

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

To amend regulation 20250 to state:

§ 20250. Issuance of Subpoenas and Notices to Appear or Produce; Petitions to Revoke; Right to Inspect or Copy Data.

(a) Any member of the Board, or the executive secretary, regional director, or any person authorized by the Board, executive secretary or regional director shall upon the ex parte request of any party, prior to hearing, issue subpoenas as provided for in this section requiring the attendance and testimony of witnesses and/or the production of any materials including, but not limited to, books, records, correspondence or documents in their possession or under their control. Requests for subpoenas during the hearing shall be made to the administrative law judge.

(b) The subpoena shall show on its face the name, address, and telephone number of the party at whose request the subpoena was issued. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum issued before hearing, showing good cause for the production of the matters and things described in such subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the ~~witness or party has the~~ desired matters or things are in ~~his or her~~the possession or under ~~his or her~~the control of the witness or party.

(c) Service of subpoenas shall be made pursuant to sections 20164, 20166, and ~~20168~~20169. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

(d) In order to obtain the attendance of a party to the matter, or of anyone who is an officer, director, supervisor, or managing agent of any such party, the service of a subpoena upon any such witness is not required following issuance of a complaint if written notice requesting such witness to attend the hearing of the matter, with the time and place thereof, is served upon the attorney for such party. Such notice shall be served at least 10 days before the time required for attendance unless the Board prescribes a shorter time. The giving of such notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the Board may make and seek such orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the Board. The witness shall be entitled to fees ~~as if served pursuant to~~in accordance with Labor Code ~~S~~section 1151.4(a).

(e) If the notice specified in subdivision (d) is served at least 10 days before the time required for attendance, or within such shorter time as the Board may order, it may include a request that such party or person bring books, documents or other things. The notice shall be accompanied by a copy of a declaration under penalty of perjury showing good cause for the production of the matters and things described in such notice, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the ~~witness or party has the~~ desired matters or things are in ~~his or her~~the possession or under ~~his or her~~the control of the witness or party.

(f) Any person on whom a subpoena or a notice to appear (described in sub~~sections~~divisions (d) and (e)) is served who does not intend to comply shall, within five days after the date of service, petition in writing to revoke the subpoena or notice. Such petition shall explain with particularity the grounds for objecting to each

item covered by the petition and shall have attached a copy of the subpoena or notice. If a party objects to a request in a subpoena duces tecum and refuses to produce any material responsive to the request on the basis of a claim of privilege or that the information is protected work product, the petition shall state specifically the privilege asserted and shall include a privilege log providing sufficient information for other parties to evaluate the merits of such claims. The petition to revoke shall be served as provided in sections 20160~~, 20164, and 20166~~through 20169 by or on behalf of the person seeking revocation upon the party at whose request the subpoena was issued or who issued the notice. If the petition to revoke is filed after the issuance of a complaint but prior to the prehearing conference, the petition shall be filed with the executive secretary. A copy shall be served on the party issuing the subpoena or notice in compliance with sections 20160~~, 20164, and 20166~~through 20169. A petition to revoke filed at or after the prehearing conference or during the hearing shall be filed with the administrative law judge who may rule on the matter. If the subpoena has been served less than five days before the hearing, the petition to revoke is due on the first day of the hearing except that the administrative law judge, upon a showing of good cause, may grant up to five days for filing a petition to revoke. For a subpoena issued during the hearing, any petition to revoke shall be due at the time specified in the subpoena for compliance unless further time, up to five days, is granted by the administrative law judge. Responses to petitions to revoke shall be allowed only upon leave of the ~~E~~executive ~~S~~secretary or assigned administrative law judge, and on such terms as he or she deems appropriate.

(g) When a party serves a subpoena for the production of records of the Board or for the testimony of a Board agent, the general counsel may represent the Board or the Board agent and may, if appropriate, move to revoke the subpoena on the grounds stated in sub~~section~~division (h) below.

(h) The Board or administrative law judge, as the case may be, shall revoke the subpoena or notice in whole or in part if the evidence required to be produced does not relate to any matter in question in the proceedings, or the subpoena or notice does not describe with sufficient particularity the evidence whose production is required, or the testimony or records sought are privileged or otherwise protected or deal with a matter not subject to review, or the subpoena is otherwise invalid. The scope of a subpoena or notice may be limited if the Board or administrative law judge determines that the material sought is: (i) unreasonably cumulative or duplicative, or (ii) obtainable from some other source that is more convenient, less burdensome, or less expensive; or (iii) unduly burdensome or expensive to provide, taking into account the needs of the case, the limitation of the resources of the parties, and the importance of the issues upon which it bears. A simple statement of the grounds for the ruling on the petition shall accompany the ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall become part of the official record upon the request of the party aggrieved by the ruling.

(i) Subpoenas duces tecum (as described in sub~~sections~~divisions (a) and (b), above) and notices to produce (as described in sub~~section~~division (d), above) may be served by all parties with return dates for prehearing conferences. Witnesses may be examined orally under oath at such prehearing conferences, subject to the discretion of the administrative law judge, for the limited purpose of identifying and/or authenticating the matters and things produced pursuant to the subpoenas or notices. Such oral examination shall not be for the purpose of generally deposing the witnesses unless the same has previously been ordered by the executive secretary pursuant to the procedures in ~~S~~section 20246.

(j) Nothing in section 20250 shall compel the disclosure of information which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture unless that individual is a charging party; provided, however, that when a dispute arises concerning the propriety of turning over a writing which would make such identification likely, the privilege created by Evidence Code section 1040(b)(2) is waived to the extent of allowing the administrative law judge to examine the entire document in camera to determine which, if any, portions should be disclosed and which portions should be excised before

being turned over; provided further, that this subsection shall not apply to otherwise unprotected or unprivileged business records.

(k) Upon any other failure of any person to comply with a subpoena or notice, the Board may apply to an appropriate superior court for an order requiring such person to appear and produce evidence and give testimony regarding the matter under investigation or in question. A request that the Board apply for an order may be made by the general counsel during investigatory stages of the proceedings or by any party following issuance of a complaint. The administrative law judge will review any requests made in the course of a hearing~~.~~, and, ~~I~~if the administrative law judge deems the request appropriate, ~~he or she~~administrative law judge shall promptly recommend that the Board seek enforcement of the subpoena or notice. The subpoenaed party shall have five (5) days after an application pursuant to this subdivision is filed with the Board to file a response to the application. The Board shall seek enforcement on relation of the general counsel, or may delegate authority to the general counsel to seek enforcement on behalf of the Board, or a party unless in the judgment of the Board the enforcement of such subpoena or notice would be inconsistent with law or the policies of the Act. If the request is granted, the record will remain open in the matter until the Board determines that the court order will not be forthcoming, or that further delay would frustrate the policies of the Act, or until the testimony sought is included in the record.

(l) In addition to, or in lieu of, superior court enforcement proceedings as provided in subdivision (k), a party may apply to the chief administrative law judge or the assigned administrative law judge, if the matter has been assigned for hearing, for appropriate sanctions as provided for in section 20238(b) based on a person's failure to comply with a subpoena or notice.

(~~l~~m) By causing the issuance of a subpoena or a notice, the attorney or representative or the party, if not represented, certifies that to ~~his or her~~their knowledge, information and belief, and after reasonable inquiry: (i) the testimony or material sought is relevant and material to the issues in the proceeding; (ii) the subpoena or notice is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or to needlessly increase the cost of litigation; and (iii) the subpoena or notice is not unreasonably or unduly burdensome or expensive, given the needs of the case, given the materials already in the hands of the party seeking the testimony or material, and given the importance of the issues upon which it bears.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151, 1160.2 and 1160.3, Labor Code.

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To state in regulation the standard adopted by the Board in case precedent for determining whether to grant an application for special permission to appeal an interim ruling by an administrative law judge or executive secretary:

To amend regulation 20242 to state:

§ 20242. Appeals of Executive Secretary and Administrative Law Judge Rulings.

(a) All rulings and orders of every kind, by the executive secretary or by an administrative law judge, shall be a part of the record without the necessity of their being introduced into evidence, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby, as provided in section 20250.

(b) No ruling or order shall be appealable, except upon special permission from the Board; except that a ruling which dismisses a complaint in its entirety shall be reviewable as a matter of right. The Board will consider an application for special permission to appeal only where the challenged ruling or order cannot be addressed effectively through exceptions filed pursuant to sections 20282 or 20370(j). A

party applying for special permission for an interim appeal from any ruling by the executive secretary or an administrative law judge shall, within five (5) days from the ruling, file with the executive secretary, to be forwarded to the Board for review, its application for permission to appeal, setting forth its position on the necessity for interim relief and on the merits of the appeal. The application shall be supported by declarations if the facts are in dispute and by such authorities as the party deems appropriate. Applications and supporting papers shall be filed and served in accordance with sections 20160~~, 20166 and~~through 20169. Any party may file a ~~statement opposing~~ response or opposition to such application, with proof of service on the other parties as provided in sections 20160~~, 20166 and~~through 20169, within ~~such time as the executive secretary may direct~~five (5) days after the application is filed. No further pleadings shall be filed in support of or in opposition to the appeal unless requested by the Board ~~through the executive secretary~~.

(c) Parties intending to apply for special permission to appeal an oral ruling by an administrative law judge shall immediately notify the administrative law judge and arrange with the reporter for an expedited copy of the relevant portion of the hearing transcript which shall be lodged with the Board at the moving party's expense.

(d) Unless the executive secretary so directs, no hearing shall be delayed because an application was filed; nor shall the appeal or attempt to appeal a ruling or order delay the hearing unless the Board so directs.

(e) This section does not apply to decisions of administrative law judges as defined in sections 20279-20286.

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

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To require case management conferences to be held following the filing of an answer to a complaint:

To add new regulation 20247.1 to state:

§ 20247.1. Case Management Conference

(a) Within **20** days after the respondent files an answer to the complaint or timely could have filed an answer to the complaint, a mandatory telephonic case management conference shall be scheduled by the chief administrative law judge or executive secretary. The assigned administrative law judge may continue the date of the case management conference. At this case management conference, parties shall be expected to address the following issues:

(1) Whether the parties intend to conduct discovery, and, if so, when discovery will be completed and any anticipated discovery issues or disputes.

(2) Any facts or issues that are undisputed and may be subject to stipulation.

(3) Whether the case is expected to present any novel or complex legal issues.

(4) Any anticipated motions before hearing that may narrow the issues in the case or that may eliminate any claims or defenses.

(4) The appropriate timing for assignment of a settlement judge to the matter.

(5) The parties' availability for hearing.

(b) The parties shall meet and confer regarding the matters to be addressed at the case management conference and shall file, jointly or separately, a case management conference statement no later than 5 days before the scheduled date of the conference. The assigned administrative law judge may take the case management conference off calendar if the administrative law judge finds the parties' case management conference statement or statements sufficiently address the matters to be addressed at the conference. The administrative law judge shall issue an order summarizing the results of the case management conference as soon as practicable after the conference is held or, if taken off calendar, was scheduled to be held.

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

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To require settlement conferences be held in unfair labor practice proceedings:

To amend regulation 20248 to state:

§ 20248. Settlement Conference.

(a) ~~At any time after a complaint has issued, either on his or her own motion or upon written request by any party~~Within 30 days after issuance of the administrative law judge's case management conference order, the chief administrative law judge ~~may~~shall schedule a settlement conference to be held before an administrative law judge other than the one assigned to hear the matter and shall notify the parties, including the charging party, of its time and place. Each party attending ~~such a~~the settlement conference shall be represented by a person fully authorized to engage in negotiations for settlement. Clients or principals shall either attend or be available by telephone.

(b) ~~After assignment of a case to an administrative law judge, he/she may direct that a settlement conference be held in conjunction with any prehearing conference or independently thereof. Upon request by any party, the executive secretary shall assign another administrative law judge to conduct the settlement discussions.~~

~~(c) Independently of (a) and (b) above, a~~At any stage of a proceeding prior to hearing, if time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit for consideration by the regional director with whom the charge was filed, facts, arguments, offers of settlement, or proposals of adjustment.

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

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

AGRICULTURAL LABOR RELATIONS BOARD
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DATE: February 11, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

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

RE: *Updated* Regulatory Proposals – Representation Proceedings (Elections)

Below are updated draft regulatory changes and proposals based on the Regulations Subcommittee's recommendations approved by the Board at the April 13, 2021 public meeting and following receipt and consideration of public comment at and following the Board's October 12, 2021 meeting. Changes are reflected in underline (new language) and strikethrough (deletions) formats. Language added or changed since the October 12 meeting is indicated in bold red type.

REPRESENTATION PROCEEDINGS (CHAPTER 3)

To allow a petition for certification to be served on a security guard located on the employer's premises, and to specify conditions which may warrant blocking an election or the impounding of ballots in an election:

To amend regulation 20300 to state:

§ 20300. Petition for Certification Under Labor Code Section 1156.3.

(a) Procedure. A petition for investigation of a question concerning representation under Labor Code ~~S~~section 1156.3(a), hereinafter called a petition for certification, may be filed as provided for in this part and in the Act.

(b) Form of the Petition. A petition for certification shall be in writing and signed by hand or electronically. Printed forms for such petitions will be supplied by the regional offices of the Board upon request. Such petition shall contain a declaration, signed under penalty of perjury, that the petition's contents are true and correct to the best of the declarant's knowledge and belief.

(c) Amendments. A petition for certification may be amended by the petitioner, upon approval of the regional director, for good cause shown. Any amended petition shall be served upon the employer in accordance with the provisions of ~~subsection~~ subdivision (~~f~~g) below for service of the initial petition.

(d) ~~Number of Copies of Petition. An original and two copies of the petition for certification shall be filed in the regional office.~~

~~(e)~~ Where Filed. A petition for certification shall be filed in the regional office having jurisdiction over the geographical area in which all or part of the unit encompassed by the petition is located.

(~~f~~e) Service of the Petition. A petition for certification shall be served upon the employer in the manner set out herein. In order to be filed, a petition must be accompanied by proof of service of the petition on the employer, either by verified return of the person making personal service or by the return receipt from the post office. Service on the employer may be accompanied by service upon any owner, officer, or director of the employer, or by leaving a copy at an office of the employer with a person apparently in charge of the office or other responsible person, ~~or~~ by personal service upon a supervisor of employees covered by the petition for certification. **For an employer engaged in the cultivation of cannabis, the petition may be served personally upon a security guard stationed at any location where employees covered by the petition for certification work.** If service is made by delivering a copy of the petition to anyone other than an owner, officer, or director of the employer, the petitioner shall immediately ~~send a telegram or facsimile transmission~~provide notice to the owner, officer, or director of the employer declaring that a certification petition is being filed and stating the name and location of the person actually served. Such notice shall **include a copy of the petition and** be provided by email, if an email address is available, and by a courier providing overnight delivery, and the petitioner ~~and~~ shall file with the regional office proof that the ~~telegram or facsimile transmission~~notice was sent and received.

(~~g~~f) Filing of Petition. A petition for certification shall be deemed filed upon its receipt in the appropriate regional office accompanied by proof of service of the petition upon the employer. As soon as possible upon the filing of a petition for certification, the regional office in which the petition is filed shall telephone the employer and give the employer the following information: (1) the date and time of the filing of the petition and (2) the case number assigned to the petition. Notification by ~~telegraph or facsimile transmission~~ email shall be permissible in the event that notification by telephone is unavailable or unsuccessful.

(~~h~~g) Withdrawal of Petition. A petition for certification may be withdrawn only with the consent of the regional director. Whenever the regional director approves the withdrawal of any petition, the matter shall be closed and the parties shall be notified of the withdrawal.

(~~i~~h) Dismissal of Petition.

(1) The petition for certification shall be dismissed by the regional director whenever the contents of the petition or the administrative investigation of the petition disclose the absence of reasonable cause to believe that a bona fide question concerning representation exists, or the unit petitioned for is not appropriate, or there is not an adequate showing of employee support pursuant to ~~S~~section 20300(~~j~~i).

(2) When the regional director has determined that the petition shall be dismissed, ~~he or she~~the regional director shall issue a dismissal letter to the filing party and the employer setting forth the reasons therefor.

(3) The dismissal of a petition may be reviewed by the Board pursuant to the provisions of Labor Code ~~S~~section 1142(b) and ~~S~~section 20393.

(~~j~~i) Evidence of Employee Support.

(1) Pursuant to Labor Code ~~S~~section 1156.3(a), evidence that a majority of the currently employed employees in the bargaining unit sought in the election petition support the petitioner shall be submitted with the petition. Such evidence shall consist of either: (a) authorization cards, signed by employees, dated, and providing that the signer authorizes the union to be ~~his or her~~the signer's collective bargaining representative, or (b) a petition to the same effect signed by employees, each signature dated. No

employee authorization dated more than one year prior to the date of filing of the election petition shall be counted to determine majority showing of interest. An authorization card or authorization petition signed by an employee at a time when the employee was not working for the employer named in the election petition shall, if otherwise valid, be counted in determining majority showing of interest.

(2) The regional director shall conduct an administrative investigation to determine whether there exists an adequate showing of employee support, as required by Labor Code ~~S~~section 1156.3(a), to warrant the conduct of an election.

The administrative investigation may include solicitation from the petitioner and intervenor of their positions with respect to the accuracy and completeness of the employee list submitted pursuant to ~~S~~section 20310(a)(2). If the regional director determines that there is insufficient showing of interest, ~~he or she~~the regional director may grant the petitioner an additional 24-hour period, from the time the regional director notifies the petitioner that its showing of interest is insufficient, to submit additional showing of interest. Authorization cards or other showing of interest shall be held confidential.

(3) In determining the number of currently employed employees for the purposes of Labor Code ~~S~~section 1156.3(a) or these regulations, when the number of employees on the employer's list conflicts with the number alleged in the petition, the regional director may independently ascertain by administrative investigation the number of persons actually working in the appropriate payroll period.

(4)(A) Any party which contends that the showing of interest was obtained by fraud, coercion, or employer assistance, or that the signatures on the authorization cards were not genuine, shall submit evidence in the form of declarations under penalty of perjury supporting such contention to the regional director within 72 hours of the filing of the petition. The regional director shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When evidence submitted to the regional director ~~gives him or her~~ establishes reasonable cause to believe that the showing of interest may have been tainted by such misconduct, ~~he or she~~the regional director shall conduct an administrative investigation. If, as a result of such investigation, the regional director determines that the showing of interest is inadequate because of such misconduct, ~~he or she~~the regional director shall dismiss the petition. Nothing in this ~~subsection~~ subdivision shall diminish the applicability of Labor Code ~~S~~section 1151.6 to instances of forgery of authorization cards.

(B) The regional director may dismiss a petition pursuant to this subdivision when there is pending an unfair labor practice complaint against the employer named in the petition alleging the employer or the employer's representatives directly or indirectly initiated or instigated the petition or assisted in the showing of interest necessary for holding an election. If there is pending an investigation of an unfair labor practice charge for which no complaint has issued alleging the employer or the employer's representatives directly or indirectly initiated or instigated the petition or assisted in the showing of interest necessary for holding an election, the regional director may order any ballots cast in an ensuing election be impounded in accordance with section 20360(c).

(5) The regional director's determination of the adequacy of the showing of interest to warrant the conduct of an election shall not be reviewable.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 1156.2, 1156.3, 1156.4, 1156.5, 1156.6 and 1156.7, Labor Code.

* * * * * * * * * * *

To amend regulation 20390 to state:

§ 20390. Decertification and Rival Union Petitions.

(a) Where the incumbent union presently has a collective bargaining agreement with the employer, the petition shall contain an allegation that the agreement will expire within the next twelve months or has been in existence for more than three years, and shall be accompanied by evidence of support by 30% or more of the employees currently employed in the bargaining unit.

(b) Where the incumbent union presently does not have a collective bargaining agreement with the employer, the petition shall contain an allegation to that effect, and shall be accompanied by evidence of support by a majority of the employees currently employed in the bargaining unit.

(c) The evidence of support for the petition may be in the form of signatures on a petition or, in the case of a rival union petition, on authorization cards or on a petition. In either case, each signature must be dated.

(d) All petitions for decertification and rival union petitions shall contain the following:

(1) The name, address, and telephone number of the petitioner and its affiliation, if any.

(2) The name, address, ~~and~~ telephone number, and email address of a representative of the petitioner authorized to make agreements with the Board and the parties and to accept service of papers.

(3) The name and address of the incumbent union.

(4) The name, location, and mailing address of the employer.

(5) The nature of the employer's agricultural commodity or commodities encompassed by the unit.

(6) A description of the existing bargaining unit.

(7) The approximate number of employees currently employed in the bargaining unit.

(8) A statement whether a strike is in progress in the unit involved and, if so, the approximate number of employees participating and the date the strike began.

(9) A statement of which languages, other than English and Spanish, the petitioner requests be included on the ballots, and the approximate number of employees requiring such ballots.

(10) An allegation that the number of agricultural employees currently employed by the employer named in the petition, as determined from ~~his~~ the employer's payroll immediately preceding the filing of the petition, is not less than 50 percent of ~~his~~ the employer's peak agricultural employment for the current calendar year.

(11) An allegation that no valid election has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing of the petition.

(12) An allegation that the Board did not certify the incumbent union within the 12 months immediately preceding the filing of the petition.

(e) The procedures set forth in Chapter 3 of these regulations for the service and processing of petitions for certification, election procedures, and post-election procedures shall be applicable to decertification and rival union petitions, except that service of the petition also shall be made upon an officer or director of the incumbent union, or upon an agent of the union authorized to receive service of papers. If service is made by delivering a copy of the petition to anyone other than an officer, director, or agent of the union authorized to receive service of papers of the employer, the petitioner shall immediately ~~send a telegram or facsimile transmission~~provide notice to the officer, director, or agent of the union declaring that a certification petition is being filed and stating the name and location of the person actually served. Such notice shall be provided by email, if an email address is available, and by a courier providing overnight delivery, and the petitioner ~~and~~ shall file with the regional office proof that the ~~telegram or facsimile transmission~~notice was sent and received.

(f)(1) The regional director may dismiss a petition pursuant to subdivision (h) of section 20300 when there is pending an unfair labor practice complaint against the agricultural employer named in the petition alleging any of the following: (A) conduct that, if proven, would interfere with employee free choice in an election were one to be held, (B) the employer or the employer's representatives directly or indirectly initiated or instigated the petition or assisted in the showing of interest necessary for holding an election, or (C) the employer has failed or refused to recognize the incumbent bargaining representative or bargain with it in good faith in violation of Labor Code section 1153(e). Alternatively, if all other conditions are satisfied to otherwise warrant an election, the regional director may order the election to proceed but that the ballots cast in the election be impounded.

(2) If there is a pending unfair labor practice charge against the agricultural employer named in the petition alleging conduct as described in subdivision (f)(1) but no complaint has issued, the regional director may not dismiss the petition, but may order any ballots cast in an ensuing election be impounded in accordance with section 20360(c).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1156.3 and 1156.7(c) and (d), Labor Code; Montebello Rose Co. (1981) 119 Cal.App.3d 1; and Cattle Valley Farms (1982) 8 ALRB No. 24.

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To require that the list of employees an employer is required to produce in response to a petition for certification include employees' telephone numbers and email addresses, and to require employers to maintain such information:

To amend regulation 20310 to state:

§ 20310. Employer Obligations.

(a) Employer's Written Response to the Petition. Upon service and filing of a petition, as set forth above, the employer so served shall provide to the regional director or ~~his or her~~the regional director's designated agent, within the time limits set forth in ~~subsection~~ subdivision (d), the following information accompanied by a declaration, signed under penalty of perjury, that the information provided is true and correct:

(1) The employer's full and correct legal name, a description of the nature of its legal entity, a full and correct address, and the name, address, telephone number, email address, and the location and title of a person within the employer's organization who is authorized to accept service of papers. Such person shall also be one who is authorized to make agreements with the Board and the parties regarding the

petition unless the employer has notified the regional office that it has a designated outside attorney or other outside representative who is to be contacted regarding the petition.

(2) A complete and accurate list of the complete and full names, current street addresses, landline and cellular telephone numbers, email addresses, and job classifications of all agricultural employees, including employees hired through a labor contractor, in the bargaining unit sought by the petitioner in the payroll period immediately preceding the filing of the petition. “Current street addresses” means the address where the employees reside while working for the employer. The employee list shall also include the names, current street addresses, landline and cellular telephone numbers, email addresses, and job classifications of persons working for the employer as part of a family or other group for which the name of only one group member appears on the payroll. If the employer contends that the unit sought by the petition is inappropriate, the employer shall additionally, and within the time limits set forth in ~~subsection~~ subdivision (d), provide a complete and accurate list of the names, ~~and~~ addresses, landline and cellular telephone numbers, and email addresses of the employees in the unit the employer contends to be appropriate, together with a written description of that unit. If an employer chooses to submit, in addition to the information required, W-4 forms, social security numbers, employee signature facsimiles, or similar information, the regional director shall use such information to confirm the validity of the union's showing of interest only to the extent ~~he or she deems~~deemed appropriate in ~~his or her~~the regional director’s discretion. Such information may also be used by the regional director to the extent ~~he or she deems~~deemed appropriate in ~~his or her~~the regional director’s discretion in order to resolve allegations of fraud in the showing of interest pursuant to ~~S~~section 20300(~~j~~i)(4)(A) of these regulations.

(3) The names of employees employed each day during the payroll period immediately preceding the filing of the petition. This information may be submitted in the form of a copy of the employer's original payroll records or in some other form acceptable to the Board agent assigned to the case. The regional offices shall not disclose these records to any party.

(4) The duration and timing of payroll periods for the unit sought, for example, weekly, Sunday-Saturday payroll, or bimonthly payroll commencing on the 1st and 15th of each month. If employees in the unit sought are paid on more than one payroll period, the employer shall give the duration and timing of each payroll period and lists of which employees are covered by each payroll period.

(5) The names, addresses, ~~and~~ telephone numbers, and email addresses of all labor contractors supplying labor during the pertinent payroll period(s).

(6) A statement of the peak employment (payroll period dates and number of employees) for the current calendar year in the unit sought by the petition. If the employer contends that the petition was filed at a time when the number of employees employed constituted less than 50% of its peak agricultural employment for the current calendar year, the employer shall provide evidence sufficient to support that contention.

If it is contended that the peak employment period has already passed, such evidence shall include payroll records which show both the names and actual number of (agricultural) employees employed each day and the number of hours each employee worked during the peak payroll period. If it is contended that the peak payroll period will occur later in the calendar year, such evidence shall include payroll records which show both the names and actual number of (agricultural) employees employed each day and the number of hours each employee worked during the peak payroll period from the previous year(s), as well as any other information in the employer's possession which would be relevant to the determination of peak employment requirements.

(7) If the employer challenges the accuracy of any of the other allegations of the petition required by Labor Code ~~S~~section 1156.3(a), in particular ~~subsections~~ subdivisions (a)(2), (3), and (4), the employer shall provide information to support these contentions.

(8) A statement of which languages, if any, other than Spanish and English, the employer requests be included on the ballots in any election conducted pursuant to the petition, and the approximate number of employees who can effectively read the requested language and no other in which the ballot would otherwise be printed.

(b) Form of List. The list included in the employer's written response to the petition for certification should be in the following form:

(1) Typewritten or otherwise legibly prepared.

(2) Alphabetical. However, if the payroll is prepared according to crew or work group, the list should be provided alphabetically within each crew or work group.

(3) If the employer maintains an employee list in an electronic format, it shall alphabetize the list pursuant to subdivision (b)(2) and produce such alphabetized list in its electronic format to the regional director.

(c) Where Provided. The employer's written response to the petition under ~~subsection~~ subdivision (a) above shall be presented at the regional office of the Board noted as the place of filing on the face of the petition, unless the employer is notified by an agent of the Board that the case has been transferred to another region, or unless, in any particular case, some other arrangement for making the information available at a different location is agreed to by the regional director or Board agent assigned to the case.

(d) Timing for Filing Employer's Written Response. The requirements set forth above in ~~subsections~~ subdivisions (a) through (c) shall be satisfied by making such information available in the place specified in ~~subsection~~ subdivision (c) above not more than 48 hours after the filing of a petition with proof of service. However, when said 48-hour period expires on a Sunday or legal holiday, the time to provide such information shall be extended to the corresponding hour on the next business day ~~following~~.

(e) Recordkeeping Requirement. Employers shall at all times maintain accurate records of the current street addresses, landline and cellular telephone numbers, and email addresses of all agricultural employees, including employees hired through a labor contractor, and of persons working for the employer as part of a family or other group for which the name of only one group member appears on the payroll.

(~~e~~f) Effect of failure to comply with ~~subsections~~ subdivisions (a) through (~~d~~e) above:

(1) If an employer fails to comply with the requirements of ~~subsections~~ subdivisions (a) through (~~d~~e) above, and such failure frustrates the determination of particular facts, the regional director may invoke any or all of the following presumptions:

(A) That there is adequate employee support for the petition and for any intervention.

(B) That the petition is timely filed with respect to the employer's peak of season.

(C) That all persons who appear to vote, who are not challenged by the board agent or by a party other than the employer, and who provide adequate identification, are eligible voters. This presumption shall be invoked only when no employee list is submitted or when the regional director determines that the list as

submitted is substantially inadequate for the purpose of determining employee eligibility. Invocation of this presumption does not prevent the employer's observers from recommending challenges to the Board agent on the grounds listed in ~~S~~section 20355.

(2) The determination of whether or not an employee list complies with the requirements of these regulations or is timely filed will be made by the regional director. If the regional director determines that a list is not complete or accurate, ~~he or she~~the regional director shall state the reasons therefor in writing and serve ~~pursuant to section 20164~~ a copy of such written reasons on all parties.

(3) The failure of an employer to provide the information required by ~~subsection~~ subdivision (a) within the time period specified shall not be excused by the employer's desire to consult with its attorney or by the failure of the person served pursuant to ~~S~~section 20300(~~f~~e) to inform it of the service of a petition for certification on it.

(4) The failure of an employer to provide a complete or accurate employee list shall not be excused by the fact that the employer based its information on information supplied to it by a labor contractor.

Note: Authority cited: Section 1144, Labor Code; Reference: Sections 1156.3, ~~and~~ 1156.4, and 1157.3, Labor Code.

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To clarify the status of ballots impounded in an election, including that a tally of ballots is not necessary to the conclusion of an election proceeding in situations where ballots have been ordered impounded:

To amend regulation 20360 to state:

§ 20360. Tally of Ballots.

(a) As soon as possible after completion of the balloting, a Board agent shall count the ballots and shall prepare both a tally of ballots and a list of the names of each person whose ballot was challenged, along with the basis for the challenge and the name of the party making the challenge, and shall furnish both the tally and the list to representatives of all parties who are present. If the ballots are not to be counted immediately after the conclusion of the election, the Board agent shall give advance notice to representatives of all parties of the time and place at which the ballots will be counted. It is the obligation of all parties who are notified of the time and place of the ballot count to have a representative present at the time ballots are counted who is authorized to receive a copy of the tally. The time for filing objections under Labor Code ~~S~~section 1156.3(~~e~~e) shall begin to run as soon as the count is completed and the tally prepared, regardless of whether or not all parties are present to receive a copy of the tally.

(b) Notwithstanding any other provision of these rules, the Board shall have the authority acting pursuant to a petition under Labor Code ~~S~~section 1156.3(~~e~~e), or on its own motion, without hearing, to issue an amended tally of ballots and appropriate certification in any election in which the Board has acted to resolve issues with respect to challenged voters or to correct mathematical errors in the previous tally of ballots. Except as provided in ~~S~~section 20375(d), nothing in this rule shall be deemed to extend the period of time for filing a petition under Labor Code ~~S~~section 1156.3(~~e~~e).

(c) Whenever it appears necessary, in order to effectuate the purposes and policies of the Act, the Board or the regional director may direct that the ballots cast in an election be impounded. When ballots are impounded based on a pending unfair labor practice complaint, they shall remain impounded until resolution of the complaint. If the impoundment order was based on an unfair labor practice charge for which a

complaint had not yet issued, the ballots cast in the election shall remain impounded for no more than 60 days after the election is held unless a complaint on such charge issues first, in which case the ballots shall remain impounded pending resolution of the complaint. ~~When the ballots are so impounded, the election will not be deemed complete until a ballot count has been conducted and the Board agent has furnished representatives of the parties who are present with a tally and a list of challenged ballots in accord with subsection (a) above.~~

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

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To make technical amendments to the following sections based on the foregoing proposed amendments:

To amend regulation 20330 to state:

§ 20330. Cross-Petitions.

(a) Whenever a petition is filed which encompasses a unit for which a valid petition is currently on file, and no election has yet been directed, the Board or the regional director will determine which of the petitions seeks the appropriate unit, in the event the petitions do not seek the same unit. When the petitions seek the same unit an election will be directed in that unit if the regional director determines it to be appropriate. Both petitions shall be deemed to be cross-petitions. As soon as possible after a cross-petition is filed, the regional director or Board agent assigned to the case shall notify the employer and the original petitioner by telephone that a cross-petition has been filed.

(b) When a cross-petition is filed after the Notice and Direction of Election has been distributed but prior to the 24-hour intervention period set forth in Labor Code ~~S~~section 1156.3(b), the later petition or petitions will be treated as a motion to intervene. A cross-petition which is not accompanied by a majority showing of interest shall be treated as a petition for intervention if it is accompanied by at least a 20 percent showing of interest. Nothing contained in these rules shall preclude an intervenor or cross-petitioner from challenging the appropriateness of the unit in which an election was conducted by filing a petition pursuant to Labor Code ~~S~~section 1156.3(c).

(c) A cross-petitioner shall be subject to the same obligations with respect to service of the cross-petition as apply to service of the petition by the petitioner pursuant to Section 20300(~~f~~e). If the cross-petitioner contends that the allegations with respect to peak employment in the original petition are incorrect, it shall raise that contention in writing to the regional director within 48 hours of the filing of the cross-petition.

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

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To amend regulation 20377 to state:

§ 20377. Elections Under Strike Circumstances.

(a) Where a petition for certification alleges that a majority of employees are engaged in a strike at the time of the filing, the regional director shall conduct an administrative investigation to determine whether such a majority exists, and shall notify the parties of ~~his or her~~the regional director's determination. Where the regional director determines that a majority of employees in the bargaining unit were on strike at the time of filing, ~~he or she~~the regional director shall exercise all due diligence in attempting to hold an election within 48 hours of the filing; however, this shall not be construed to require that an election be held in 48 hours. The holding of elections under strike circumstances takes precedence over the holding of other elections.

(b) The procedures set forth in Chapter 3 of these ~~R~~regulations shall apply to the conduct of elections under this section insofar as is practicable under strike circumstances. The regional director shall have authority to establish reasonable procedures for the conduct of expedited elections under strike circumstances. In particular, upon notice to and consultation with the parties, ~~he or she~~the regional director may establish procedures for expediting the receipt of information necessary to evaluate showing of interest and timeliness of the petition pursuant to Labor Code ~~S~~section 1156.4~~;~~, and may reasonably shorten deadlines specified in ~~S~~sections 20300(~~j~~i)(2) and (4), 20310(d), 20325(e), and 20350(d)~~ of these Regulations~~.

(c) Any party who contends that a 48-hour election is improper shall notify the regional director of its contention and shall submit evidence in the form of written declarations under penalty of perjury supporting the contention and the manner in which the party would be prejudiced. The notification and submission of evidence must be made prior to the pre-election conference. Absent such notice, the regional director's determination shall not be reviewable in post-election objections under ~~S~~section 20365.

Note: Authority cited: Section 1144, Labor Code. Reference: ~~Part 3.5, Division II (commencing with Section 1140)~~Section 1156.3, Labor Code.

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To allow a labor organization to file a notice of intent to organize without filing a prior notice of intent to take access:

To amend regulation 20910 to state:

§ 20910. Pre-Petition Employee Lists.

(a) Any labor organization ~~that has filed within the past 30 days a valid notice of intent to take access as provided in Section 20900(e)(1)(B) on a designated employer~~ may file with the appropriate regional office of the Board ~~two (2) copies of~~ a written notice of intention to organize the agricultural employees of ~~the same~~ an agricultural employer, accompanied by proof of service of the notice upon the employer in the manner set forth in ~~S~~section 20300(f). The notice must be signed by or accompanied by authorization cards signed by at least ten percent (10%) of the current employees of the designated employer. The signatures and authorization cards must comply with the requirements set forth in subdivision (i)(1) of section 20300~~, subdivision (j)(1)~~.

(b) A notice of intention to organize shall be deemed filed upon its receipt in the appropriate regional office accompanied by proof of service of the notice upon the employer. As soon as possible upon the filing of the notice of intention to organize, the regional office in which the petition is filed shall telephone or telegraph the employer to inform ~~him or her~~the employer of the date and time of the filing of the notice.

(c) Within five days from the date of filing of the notice of intention to organize, the employer shall submit to the regional office an employee list as defined in ~~S~~section 20310(a)(2). If the employer contends that the unit named in the notice is inappropriate, it shall submit its arguments to the regional director in writing. A contention that the unit named is inappropriate shall not excuse the timely submission of the pre-petition employee list in the unit named in the notice.

(d) Upon receipt of the list, the regional director shall determine if the ten percent showing of interest requirement has been satisfied, and, if so, shall make available a copy of the employee list to the filing labor organization. The same list shall be made available to any other labor organization which within 30 days of the original filing date files a notice of intention to organize the agricultural employees of the same employer.

(e) ~~No employer shall be required to provide more than one employee list pursuant to this section within any 30 day period~~A labor organization may not file more than one notice of intent to organize an agricultural employer under this section in any 120-day period.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1152 and 1157.3, Labor Code.