

AGRICULTURAL LABOR RELATIONS BOARD

OFFICE OF THE EXECUTIVE SECRETARY

1325 J STREET, SUITE 1900

SACRAMENTO, CA 95814-2944

(916) 894-6840

FAX (916) 653-8750

Internet: www.alrb.ca.gov



DATE: August 26, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

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

RE: Regulatory Proposal – Cannabis; Labor Peace Agreement Complaints

In light of the new labor peace agreement complaint procedures adopted pursuant to Assembly Bill No. 195 (2021-2022 Reg. Sess.) § 3, currently codified in Business and Professions Code section 26051.5, subdivision (a)(5)(D), the Regulations Subcommittee presents the following proposal for the Board to adopt new regulations governing labor peace agreements in the cannabis industry and this new complaint procedure.

CANNABIS (NEW CHAPTER 9.5)**§ 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.

§ 20952. Complaints Regarding Labor Peace Agreements

(a) A labor organization or current or former employee of an employer who holds a license to conduct commercial cannabis activity in accordance with section 26051.5 of the Business and Professions Code may file a complaint with the general counsel alleging that the licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization. The complaint shall be accompanied by all evidence relied upon by the complaining party that support its contentions. The complaint shall be served on both the accused licensee and organization alleged not to be a bona fide labor organization, or their respective registered agents for service, by (1) personal delivery, leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (2) registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served. If the person to be served cannot be served with reasonable diligence by one of these methods, service by publication as described in section 415.50 of the Code of Civil Procedure shall be permitted. The complaint, with proof of service, shall be filed in accordance with section 20169. For purposes of this complaint procedure, the term "employer" includes any person or entity holding a license to conduct commercial cannabis activity, or applicant for such a license, under Division 10 of the Business and Professions Code, commencing with section 26000 of the Business and Professions Code.

(b) Upon receipt of a complaint, the general counsel shall promptly notify the accused licensee and organization of the filing of the complaint. The licensee and organization each may file an answer to the complaint. Any answer must be filed within 15 days after the date of the general counsel's notice. The answer shall respond to the allegations of the complaint that the organization with which the licensee has a labor peace agreement is not a bona fide labor organization, and shall be accompanied by all evidence relied upon by the licensee or organization in support of their defense.

Note: Authority cited: Section 20651.5, Business and Professions Code; Section 26001, Business and Professions Code.

§ 20953. Investigation

(a) The general counsel shall investigate the allegations of the complaint to determine whether the accused organization is a bona fide labor organization. The general counsel may propound interrogatories or issue subpoenas pursuant to this section at any time that is five days after the general counsel serves notice of the filing of the complaint upon accused licensee and organization.

(b) Interrogatories. The general counsel may propound interrogatories to the accused licensee or organization to be answered under oath. Such interrogatories shall be relevant to the allegations the accused organization is not a bona fide labor organization and may not total more than 10 interrogatories to each the licensee and organization. Any party to whom interrogatories have been propounded shall serve their responses thereto within 10 days after service of the interrogatories. Where a party fails to respond to interrogatories within the time allowed for doing so, the general counsel may presume such failure is attributable to the fact that the information sought, if produced, would be adverse to the interests of the responding party. A party who fails to respond to interrogatories properly served by the general counsel may not thereafter rely on any materials in support of its defense, or to rebut any presumption relied upon by the general counsel pursuant to this paragraph, that was responsive to an interrogatory and which was not produced.

(c) Subpoenas. The general counsel may issue and serve subpoenas requiring the attendance and testimony of witnesses or the production by persons at the licensee's or organization's place of business, or such other location as mutually agreed to by the licensee or organization and general counsel, of any documents or things in their possession or under their control.

(1) The subpoena shall show on its face the name, address, and telephone number of the general counsel or 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 the 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.

(2) Service of subpoenas shall be made consistent with the provisions of Labor Code 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).

(3) 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 and 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.

(4) 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 within five days.

(5) Upon any other failure of any person to comply with a subpoena, the general counsel may presume such failure is attributable to the fact that the testimony or materials sought, if produced, would be adverse to the interests of the subpoenaed party. A subpoenaed party who fails to comply with a subpoena may not thereafter rely on any materials in support of its defense, or to rebut any presumption relied upon by the general counsel pursuant to this paragraph, that was responsive to the subpoena and which was not produced.

Note: Authority cited: Section 20651.5, Business and Professions Code; Section 26001, Business and Professions Code.

§ 20954. Decision

(a) Following its investigation, the general counsel shall issue a written decision on the complaint no later than 70 days after the date the complaint was filed. The decision shall state whether the complaint allegation that an organization is not a bona fide labor organization has been dismissed or sustained, and shall describe the reasoning and any evidence relied upon in making such determination.

(b) The general counsel may render its decision based solely on the complaint, any responses thereto, and any other evidence or argument submitted by the parties. The general counsel is not required to hold a hearing, but in its discretion may elect to hold a hearing if it is deemed necessary to resolve credibility disputes or any disputed fact material to its determination. Either the accused licensee or organization may request a hearing, provided that such request is made in writing no later than 30 days after the date the complaint was filed. A request for a hearing must be supported by good cause demonstrating the need for a hearing and why resolution of the matter on the records submitted to the general counsel is not appropriate. The general counsel's decision whether to hold a hearing is final and nonreviewable.

Note: Authority cited: Section 20651.5, Business and Professions Code; Section 26001, Business and Professions Code.

§ 20955. Board Review: Report to Department of Cannabis Control

(a)(1) Within five days after service of the general counsel's decision, an aggrieved party may file an appeal to the decision with the executive secretary for submission to the board. The appeal shall be served on all other parties, and the general counsel, in accordance with sections 20166 and 20169. Any other party, including the general counsel, may file a response to the appeal within five days.

(2) The record before the board shall include the complaint, any answers to the complaint, and all other filings and materials served by or submitted to the general counsel during the course of its investigation, as well as the general counsel's decision pursuant to section 20954. Within 10 days after the last response to the appeal is filed, or the time to file such response expires, the board shall issue an order affirming or reversing the general counsel's decision.

(b) The board shall report to the Department of Cannabis Control all decisions or orders sustaining a complaint allegation that an organization with which a licensee has a labor peace agreement is not a bona fide labor organization.

(1) If the general counsel issues a decision concluding an accused organization is not a bona fide labor organization and no appeal to such decision is filed within the time allowed for doing so, the board promptly shall report the decision to the Department of Cannabis Control.

(2) In cases where an appeal to the general counsel's decision is filed with the board and the board determines an accused organization is not a bona fide labor organization, the board shall report the issuance of its order to the Department of Cannabis Control.

Note: Authority cited: Section 20651.5, Business and Professions Code; Section 26001, Business and Professions Code.