

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: January 23, 2023

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member

RE: Regulations Subcommittee Report Re: Rulemaking Notice File No. Z2022-1121-01;
Public Comments

INTRODUCTION

After conducting extensive preliminary rulemaking activities regarding various proposals to modernize the Board's regulations and administrative procedures, the Board commenced a formal rulemaking procedure on December 2, 2022. No hearing on the proposed regulatory action was scheduled, and none was requested by any interested party or stakeholder. The public comment period closed on January 17, 2023. Only one public comment, jointly from the UFCW Western States Council (UFCW) and the California Teamsters Public Affairs Council (Teamsters), was received. The UFCW and Teamsters support the Board's proposed rulemaking and modernization efforts and do not object to or propose any modifications to the current regulatory proposals. Rather, the UFCW and Teamsters request the Board adopt additional rules allowing the use of electronic signatures on a labor organization's proof of support when filing a representation petition with the Board.

RESPONSE AND RECOMMENDATION

The UFCW and Teamsters have played an important role in the development of California's laws governing the cannabis industry in recent years, including specifically the impact of such laws on cannabis cultivation workers. The UFCW and Teamsters support the Board's adoption of rules generally requiring the electronic filing of documents with the Board, but request such rules be expanded to allow the use of electronic authorization cards and signatures in a labor organization's proof of support when engaged in the organization of workers. The UFCW and Teamsters state that issues impacting workers in the cannabis cultivation industry often are different from those facing other agricultural workers, that workers in the cannabis industry are "tech savvy" and frequently use app-based technology in their work, and that allowing workers in the cannabis industry to use such tools to support a union's organizing campaign provides a "commonsense health and safety measure during public health crises."

Both the National Labor Relations Board and California Public Employment Relations Board have adopted guidance or rules permitting the use of electronic signatures in a labor organization's proof of support, as the UFCW and Teamsters note in their comments. I believe the Board should consider developing a regulation to permit use of electronic signatures in a

labor organization's proof of support. The Board has several options if it agrees to consider such a regulation:

- (1) The Board could postpone finalizing the current regulatory package in order to develop new regulatory language to govern the use of electronic signatures in a labor organization's showing of interest to support a representation petition, after which it will be required to re-notice the proposed rulemaking and provide for a new 45-day comment period;
- (2) The Board could proceed to adopt the current proposed regulatory amendments, to which no objections or modifications have been proposed, and refer this proposal concerning the use of electronic signatures in a showing of interest to a designated subcommittee to consider the feasibility of the proposal and develop proposed regulatory language on the topic, as appropriate; or
- (3) The Board could hold this proposal with the intent to address it in rulemaking related to the implementation of the anticipated AB 2183 cleanup legislation.

My present recommendation is to follow the second option referring this matter to a Board subcommittee. This would allow the Board the opportunity and ability to more fully inquire into the circumstances of union organizing in our agricultural industry and any issues concerning the use of electronic tools to aid in such efforts. The current regulatory action has been pending before the Board for a long time, dating back to 2020, and this is the first time the issue of a labor organization's use of electronic signatures in a proof of support has been raised. While a failure to raise the issue during our Board's extensive pre-rulemaking activities certainly is no bar to the current public comment or the proposal it makes, the proposal to adopt rules allowing the use of electronic signatures or authorizations in a labor organization's proof of support is both substantial and not sufficiently related to the current regulatory action.

The issue of allowing the use of electronic signatures in a labor organization's proof of support is one that the Board should examine closely, including for the purpose of identifying any obstacles or impediments to allowing the use of electronic signatures in such contexts and its application to all agricultural workers and not just those employed in the cannabis industry. Therefore, I recommend the Board refer this proposal concerning the use of electronic signatures in a showing of interest to a designated subcommittee to consider the feasibility of the proposal and develop proposed regulatory language on the topic, as appropriate and that the Board approve the current regulatory package — to which no objections or modifications have been raised — and direct staff to proceed to finalizing without further delay.

As indicated above, further amendments to the Agricultural Labor Relations Act are anticipated this year after the Governor signed Assembly Bill No. 2183 last September. Such amendments would include, among other things, adoption of a form of card check procedure for agricultural employees to select a labor organization as their exclusive bargaining representative. Regulations will be necessary to implement the provisions of the clarifying bill expected this year. After having an opportunity to more fully consider allowing the use of electronic signatures in a labor organization's showing of interest, the Board will also have the option to consider such amendments alongside those necessary to implement the additional amendments to our Act.