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DATE: February 13, 2023

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: Proposed Amendments to Reg. 20220
(Unfair Labor Practice Complaint Deadlines)

INTRODUCTION

Last year, the Regulations Subcommittee considered a proposal to adopt a regulation establishing a time limit for the General Counsel to issue a complaint after an unfair labor practice charge has been filed. The last proposal considered by the Board regarding this proposal would have required the General Counsel to issue a complaint within 12 months after a charge was filed, subject to certain grounds allowing for extensions of time. Under these proposals, an unfair labor practice charge would be deemed dismissed if no complaint were issued within the time allowed.¹

After due consideration of comments received from various stakeholders and interested parties, the Board voted at its February 11, 2022 public meeting to defer action on this proposal for one year while the Regulations Subcommittee monitored the status of the General Counsel's disposition of unfair labor practice charges for improvement in the timeframes under which such actions occur. Having done so, the Regulations Subcommittee now provides this report.

REPORT AND RECOMMENDATION

After one year of reviewing the General Counsel's disposition of unfair labor practice charges, the Regulations Subcommittee believes additional time is necessary and warranted to monitor these issues concerning the timeframes in which unfair labor practice charges are disposed.² This recommendation is made for several reasons.

¹ The last proposed regulatory language on this issue is included as an addendum to this report.

² Attached to this report are a series of tables showing unfair labor practice charge disposition statistics on a yearly basis dating back to 2016.

First, because calendar year 2022 only just ended, it is too early to draw any firm conclusions regarding any progress made in the timeframes under which charges filed during this year have been disposed.

Second, although the statistics to date for calendar year 2021 appear at first glance to show a marked improvement in the percentage of charges disposed of under 1 year from the date of filing (74%), only 46 charges were filed that year. That is just over half of the total number of charges filed in each of the previous two calendar years (2019, 2020). A closer look at the data reveals the actual number of charges disposed of under 1 year in 2021 (34) was slightly less than in 2020 (35), and also less than the number of charges filed in 2019 that were disposed of in under 1 year (49).

Finally, while the subcommittee finds the situation has not worsened in the past year, the subcommittee also does not believe the data generated to date supports a finding of significant improvement.

Accordingly, the Regulations Subcommittee recommends the Board continue to monitor these issues concerning charge disposition timeframes for another year in order to assess whether further progress can be made in addressing these issues or whether the Board should consider further rulemaking activity on this subject.

ADDENDUM

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

To require the general counsel to issue a complaint within a specified period of time:

To amend regulation 20220 to state:

§ 20220. Complaint.

(a) If, after investigation, the general counsel has reason to believe that an unfair labor practice has been committed, ~~he or she~~ the general counsel shall issue a formal complaint in the name of the Board. The complaint shall contain a statement of the specific facts upon which jurisdiction of the Board is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair labor practice. The statement must include, where known, the dates and places of the conduct and the names of the persons who allegedly committed the acts being charged. The Board may disregard any error or defect in the complaint which does not substantially affect the rights of the parties.

(b) The complaint shall be accompanied by a statement explaining: (1) the requirements for an answer, (2) the right of respondent to a hearing, and (3) the manner in which hearings are scheduled; and it shall also include a copy of sections 20190 and 20192 dealing with continuances and extensions of time and a copy of sections 20235 through 20238 concerning discovery.

(c) If the general counsel has not issued a complaint pursuant to subdivision (a) of this section within 12 months of the date an unfair labor practice charge was filed, the charge shall be deemed dismissed. Where an amended charge has been filed, the 12-month time period in which to issue a complaint shall run from the date the original charge was filed. The general counsel may apply to the Board for an extension of time to conduct further investigation of a charge for good cause shown based upon a claim that a charged party's conduct impeded the general counsel's timely investigation of the charge or other extraordinary circumstances. The length of an extension based on a charged party's dilatory conduct may be commensurate with any delays reasonably incurred as a result of such conduct. The length of an extension based on other extraordinary circumstances shall be limited to a single extension of no more than 60 days.

(d) A dismissal pursuant to subdivision (c) of this section shall not be subject to review under section 20219.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151(a), 1160.2, 1160.5 and 1160.6, Labor Code.

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2022

Total Charges
70

Complaints Issued	
Total	3

< 1 Year	3
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Withdrawals	
Total	1

< 1 Year	1
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Dismissals	
Total	3

< 1 Year	3
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Settlements	
Total	10

< 1 Year	9
> 1 Year	1
> 18 Months	
> 2 Years	
> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	16	23%
> 1 Year	1	1%
> 18 Months		
> 2 Years		
> 3 Years		

Charges Pending:

	Total	% of Total Number of Charges Filed
< 6 Months	27	39%
> 6 Months	26	37%
> 1 Year		
> 18 Months		
> 2 Years		

*based on information available as of 2/1/2023

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2021

Total Charges
46

Complaints Issued	
Total	8

< 1 Year	5
> 1 Year	2
> 18 Months	1
> 2 Years	
> 3 Years	

Withdrawals	
Total	7

< 1 Year	7
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Dismissals	
Total	7

< 1 Year	5
> 1 Year	1
> 18 Months	1
> 2 Years	
> 3 Years	

Settlements	
Total	18

< 1 Year	17
> 1 Year	1
> 18 Months	
> 2 Years	
> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	34	74%
> 1 Year	4	9%
> 18 Months	2	4%
> 2 Years		
> 3 Years		

Charges Pending:

	Total	% of Total Number of Charges Filed
< 1 Year		
> 1 Year	2	4%
> 18 Months	4	9%
> 2 Years		
> 3 Years		

*based on information available as of 2/1/2023

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2020

Total Charges
85

Complaints Issued	
Total	16

< 1 Year	2
> 1 Year	5
> 18 Months	8
> 2 Years	1
> 3 Years	

Withdrawals	
Total	9

< 1 Year	6
> 1 Year	1
> 18 Months	2
> 2 Years	
> 3 Years	

Dismissals	
Total	23

< 1 Year	9
> 1 Year	6
> 18 Months	5
> 2 Years	3
> 3 Years	

Settlements	
Total	31

< 1 Year	18
> 1 Year	6
> 18 Months	5
> 2 Years	2
> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	35	41%
> 1 Year	18	21%
> 18 Months	20	24%
> 2 Years	6	7%
> 3 Years		

Charges Pending:

	Total	% of Total Number of Charges Filed
< 1 Year		
> 1 Year		
> 18 Months		
> 2 Years	4	5%
> 3 Years	2	2%

**based on information available as of 2/1/2023*

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2019

Total Charges
83

Complaints Issued	
Total	14

< 1 Year	8
> 1 Year	3
> 18 Months	2
> 2 Years	1
> 3 Years	

Withdrawals	
Total	8

< 1 Year	8
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Dismissals	
Total	33

< 1 Year	18
> 1 Year	6
> 18 Months	3
> 2 Years	6
> 3 Years	

Settlements	
Total	18

< 1 Year	15
> 1 Year	
> 18 Months	
> 2 Years	3
> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	49	59%
> 1 Year	9	11%
> 18 Months	5	6%
> 2 Years	10	12%
> 3 Years		

Charges Pending:

	Total	% of Total Number of Charges Filed
< 1 Year		
> 1 Year		
> 18 Months		
> 2 Years		
> 3 Years	10	12%

**based on information available as of 2/1/2023*

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2018

Total Charges
103

Complaints Issued	
Total	29

< 1 Year	18
> 1 Year	3
> 18 Months	2
> 2 Years	4
> 3 Years	2

Withdrawals	
Total	13

< 1 Year	10
> 1 Year	1
> 18 Months	
> 2 Years	1
> 3 Years	1

Dismissals	
Total	36

< 1 Year	15
> 1 Year	13
> 18 Months	2
> 2 Years	3
> 3 Years	3

Settlements	
Total	25

< 1 Year	13
> 1 Year	7
> 18 Months	2
> 2 Years	2
> 3 Years	1

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	56	54%
> 1 Year	24	23%
> 18 Months	6	6%
> 2 Years	10	10%
> 3 Years	7	7%

*based on information available as of 2/1/2023

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2017

Total Charges
133

Complaints Issued	
Total	29

< 1 Year	14
> 1 Year	6
> 18 Months	5
> 2 Years	2
> 3 Years	2

Withdrawals	
Total	28

< 1 Year	25
> 1 Year	1
> 18 Months	1
> 2 Years	
> 3 Years	1

Dismissals	
Total	44

< 1 Year	26
> 1 Year	6
> 18 Months	8
> 2 Years	3
> 3 Years	1

Settlements	
Total	32

< 1 Year	26
> 1 Year	3
> 18 Months	1
> 2 Years	2
> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	91	68%
> 1 Year	16	12%
> 18 Months	15	11%
> 2 Years	7	5%
> 3 Years	4	3%

*based on information available as of 2/1/2023

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2016

Total Charges
80

Complaints Issued	
Total	22

< 1 Year	10
> 1 Year	5
> 18 Months	5
> 2 Years	1
> 3 Years	1

Withdrawals	
Total	13

< 1 Year	11
> 1 Year	1
> 18 Months	1
> 2 Years	
> 3 Years	

Dismissals	
Total	35

< 1 Year	16
> 1 Year	9
> 18 Months	2
> 2 Years	6
> 3 Years	2

Settlements	
Total	10

< 1 Year	2
> 1 Year	4
> 18 Months	2
> 2 Years	1
> 3 Years	1

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	39	49%
> 1 Year	19	24%
> 18 Months	10	13%
> 2 Years	8	10%
> 3 Years	4	5%

**based on information available as of 2/1/2023*