

## AGRICULTURAL LABOR RELATIONS BOARD

### INITIAL STATEMENT OF REASONS IN SUPPORT OF PROPOSED REGULATORY ACTION TO:

- **Adopt New Sections 20951, 20952, 20953, 20954, and 20955.**

#### PROBLEM STATEMENT

The Agricultural Labor Relations Board (ALRB or Board) is a quasi-judicial administrative agency charged with administering and enforcing the Agricultural Labor Relations Act (ALRA or Act), codified at Labor Code section 1140 et seq., a landmark law enacted in 1975 that extended collective bargaining rights to California farmworkers who were excluded from the coverage of the National Labor Relations Act. The ALRB enforces and protects the organizational rights of farmworkers and oversees labor relations disputes between growers and the unions representing farmworkers. The ALRB also is charged with responsibility for investigating complaints under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), codified at Business and Professions Code section 26000 et seq., that an employer licensed to conduct commercial cannabis activities has entered into a labor peace agreement with an organization that is not a bona fide labor organization.

The proposed regulations are intended to provide guidance and clarity to parties regarding their rights and obligations with respect to labor peace agreements as required by the MAUCRSA. Among other things, the MAUCRSA sets forth certain licensing requirements for persons engaged in the cultivation of cannabis. An applicant for a cultivation license must declare itself to be an “agricultural employer” under the ALRA. (Bus. & Prof. Code, § 26051.5, subd. (a)(8).) Applicants for a license to conduct commercial cannabis activities, including cultivation, with 20 or more employees must state they have, or will, enter into a labor peace agreement. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(A); see Bus. & Prof. Code, § 26001, subd. (aa).) Recent amendments which became effective with the adoption of Assembly Bill No. 195 (2021-2022 Reg. Sess.) § 3 (AB 195) lower the threshold at which point a licensee must enter into a labor peace agreement from 20 to 10 or more employees effective July 1, 2024. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(A).) AB 195 also establishes a procedure by which an employee or labor organization may file a complaint with the ALRB that an organization with whom a licensee has entered into a labor peace agreement is not a bona fide labor organization. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(D).)

However, existing statutes and regulations governing the cannabis industry do not provide guidance in situations where more than one labor organization seeks to represent a cannabis employer’s agricultural employees. For example, it may be unlawful for an employer to enter into a labor peace agreement with one labor organization while denying other labor organizations access to its employees on equal terms. (See *Maryland Live Casino* (Jan. 28, 2013) NLRB Gen. Counsel Advice Memo., case no. 05-CA-083966 [2013 NLRB GCM LEXIS 28], available at <<https://www.nlr.gov/case/05-CA-083966>>.) The Board’s proposed new regulation 20951 will provide guidance to cannabis employers where more than one labor organization seeks to enter into a labor peace agreement as a means of communicating with the employers’ agricultural

employees. The Board's proposed regulation 20951 also makes clear to affected parties that violations of labor peace agreements may constitute unfair labor practices under the ALRA for which recourse through the Board's processes is available.

Existing law following the adoption of AB 195 also does not specify the procedures by which the ALRB shall receive, investigate, and dispose of complaints a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization. The proposed regulatory action will establish clear guidelines and procedures to apprise affected parties of their rights and obligations with respect to such proceedings.

## **ANTICIPATED BENEFITS**

As indicated above, the proposed regulations are designed to offer greater clarity to parties with respect to the labor peace agreement requirements applicable to commercial cannabis licensees under the MAUCRSA. Existing law requires a licensee with 20 or more employees to enter into a labor peace agreement, or attest it will enter into such an agreement, with a labor organization. Effective July 1, 2024, employers with 10 or more employees must enter into labor peace agreements. However, existing law does not specify an employer's obligations when two labor organizations request to enter into a labor peace agreement with it. The proposed regulations will clarify an employer's obligations and provide guidance to parties in such circumstances. The regulations will also address circumstances where it is alleged that one party has violated its obligations under a labor peace agreement which may give rise to unfair labor practice liability when such conduct interferes with, restrains, or coerces employees in the free exercise of rights protected under the ALRA. This is intended to remove ambiguities in the law and aid parties in understanding their legal rights and obligations.

The proposed regulations also will provide guidance to parties regarding the procedures by which the ALRB will process and investigate complaints a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization. Such guidance will give affected parties a clearer understanding of the ALRB's procedures and information regarding their rights and obligations when engaged in such proceedings.

## **SECTION-BY-SECTION EXPLANATION FOR ADOPTION**

**Proposed Section 20951** adds provisions clarifying the rights and obligations of employers engaged in the cultivation of cannabis where more than one labor organization seeks to represent a bargaining unit or obtain a labor peace agreement and the circumstances under which an employer's conduct related to a labor peace agreement may constitute an unfair labor practice.

**Proposed Section 20952** adds provisions establishing the process by which a party may file a complaint that an employer licensed to conduct commercial cannabis activities has entered into a labor peace agreement with an organization that is not a bona fide labor organization, and the process by which the accused licensee and organization may respond to a complaint. The licensee and accused organization are provided 15 days to respond to notice of the complaint in order facilitate the general counsel's investigation of the complaint and for the Board to render a decision within the statutory 90 day deadline. Unlike unfair labor practice charges arising from

allegations a party has violated its obligations under a labor peace agreement as described under proposed regulation 20951, which may be filed in the applicable regional office of the ALRB where the alleged unfair labor practice occurred or is occurring in accordance with the ALRB's existing unfair labor practice procedures, the complaint process in this proposed regulation is designed to implement the complaint procedure established under the MAUCRSA where it is alleged a cannabis employer has entered into a labor peace agreement with an organization that is not a bona fide labor organization.

**Proposed Section 20953** adds provisions establishing the general counsel's authority to conduct investigations of labor peace agreement complaints and clarifies the rights and obligations of parties in such proceedings, including the duty to respond to interrogatories and subpoenas issued by the general counsel and negative inferences that may be drawn if a party fails to respond.

**Proposed Section 20954** adds provisions regarding the general counsel's authority to issue decisions on labor peace agreement complaints, the timing and contents of such decisions, provisions regarding how to request a hearing, and the general counsel's authority to decide whether to hold a hearing.

**Proposed Section 20955** adds provisions regarding the rights of a party aggrieved by a decision reached by the general counsel on a labor peace agreement complaint to seek review of such decision before the board itself, and the obligation of the board to report to the Department of Cannabis Control any decisions finding an organization with whom a licensee has entered into a labor peace agreement is not a bona fide labor organization.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board announced at its August 10, 2022 public meeting that it would be developing regulations to implement the labor peace agreement complaint provisions of AB 195. The Board's designated regulations subcommittee published proposed regulatory language in underline and strike-through format on August 26, 2022, and presented its recommendation to the Board at its August 31, 2022 public meeting. The Board approved the subcommittee's recommendation.

## **ECONOMIC IMPACT ASSESSMENT (Gov. Code, § 11346.3, subd. (b))**

The proposed regulations are designed to implement the labor peace agreement complaint procedures established under the MAUCRSA and otherwise inform interested parties and stakeholders of their rights and obligations with respect to the labor peace agreement requirements under the MAUCRSA.

In accordance with Government Code section 11346.3, subdivision (b), the ALRB has made the following assessments regarding the proposed regulations:

### Creation or Elimination of Jobs Within the State of California

The proposed regulations are designed to implement complaint procedures regarding labor peace agreements under the MAUCRSA, as well as inform interested stakeholders of their rights and obligations with respect to labor peace agreements. In doing so, no jobs in California will be created or eliminated.

### Creation of New Businesses or Elimination of Existing Businesses Within the State of California

The proposed regulations are designed to implement complaint procedures regarding labor peace agreements under the MAUCRSA, as well as inform interested stakeholders of their rights and obligations with respect to labor peace agreements. In making these changes, no new businesses will be created or existing businesses eliminated, and the ability of businesses in California to compete with businesses in other states will not be impacted.

### Expansion of Businesses Within the State of California

The proposed regulations are designed to implement complaint procedures regarding labor peace agreements under the MAUCRSA, as well as inform interested stakeholders of their rights and obligations with respect to labor peace agreements. The only parties affected by this regulatory action are employees, labor organizations, and employers engaged in the cannabis industry. This regulatory action will not result in the expansion of any existing businesses in the California.

The ALRB will continue to investigate the potential for economic impact throughout this rulemaking process.

### Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

By providing clear guidance to affected stakeholders regarding the procedures by which the Board will process and investigate labor peace agreement complaints under the MAUCRSA, including the parties' rights and obligations in such proceedings, the Board's proposed regulatory action will improve administration of the MAUCRSA's licensing and labor peace agreement requirements. The proposed regulatory action further will provide clear information to parties affected by such labor peace agreement requirements of their rights and obligations with respect to allegations a party is in violation of a labor peace agreement and establish efficient and effective procedures by which such complaints are processed. The proposed regulations thus will benefit workers, labor organizations, and employers licensed to conduct commercial cannabis activities concerning their rights with respect to labor peace agreements.

The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the state's environment. The proposed regulatory action will further the policies underlying prompt resolution of labor disputes, and this will benefit administration of the MAUCRSA's labor peace agreement requirements, which themselves are designed to ensure labor peace and avoid workplace disruptions in California's burgeoning cannabis

industry. California residents' general welfare will be benefitted by stable labor relations and dispute resolution, which translates to less risk of disruption in California's cannabis industry.

**INFORMATION RELIED UPON TO SUPPORT ALRB'S INITIAL DETERMINATION THAT THE PROPOSED REGULATORY ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

The ALRB is charged with administering the provisions of the ALRA and enforcing the labor rights and obligations of agricultural employees, agricultural employers, and labor organizations representing agricultural employees. The ALRB also is charged with administering labor peace agreement complaint procedures where it is alleged an employer licensed to conduct commercial cannabis activities has entered into a labor peace agreement with an organization that is not a bona fide labor organization. This regulatory action is designed to provide clarity regarding the MAUCRSA's existing labor peace agreement complaint procedures and to provide guidance and instruction to parties appearing before the Board asserting rights under existing law. As such, the ALRB initially has determined this proposed regulatory action will not have a significant adverse economic impact on business.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The ALRB has not identified any adverse impacts on small business as a result of these proposed regulations and has not identified alternatives that would lessen any adverse impact on small business. Thus, no such alternative has been proposed.

**MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The ALRB's proposed regulatory action does not mandate the use of specific technologies or equipment.