

AGRICULTURAL LABOR RELATIONS BOARD

ADDENDUM TO INITIAL STATEMENT OF REASONS IN SUPPORT OF PROPOSED REGULATORY ACTION

SECTION-BY-SECTION EXPLANATION FOR ADOPTION

A. Adoption of New Sections

Proposed Section 20247.1 requires a case management conference to be held in an unfair labor practice case between the parties and assigned administrative law judge. The conference is to be scheduled within 20 days after a respondent files an answer to an unfair labor practice complaint. Parties also must meet and confer and file with the assigned administrative law judge a case management conference statement at least five days before the scheduled conference. These timeframes allow parties a sufficient opportunity to review and consider the issues involved in the case, and to meet and confer over such matters in order to identify any discovery needs or disputed issues promptly. This will aid in the expedient processing of unfair labor practice cases. The administrative law judge may take the conference off calendar if it is determined the parties adequately have addressed in their case management conference statement(s) the issues that would have been considered at the conference. These procedures are similar to case management conference requirements in California state courts.

Proposed Section 20410 adds procedures to govern supplemental mandatory mediation and conciliation proceedings between a certified labor organization and agricultural employer. A party seeking supplemental mandatory mediation and conciliation must notify the other party of its intent to do so, including identifying the provision(s) that will be subject to its request, at least five days before filing any request with the Board. The party also must endeavor to obtain the other party's position on such contract provisions that are the subject of the supplemental mandatory mediation and conciliation request. These requirements balance the need for prompt resolution of such contract terms while preserving general principles applicable in impasse mediation, fact-finding, or interest arbitration procedures that parties first should attempt to resolve issues informally before seeking third-party assistance. After a request for supplemental mandatory mediation and conciliation is filed with the Board, the other party may have 10 days to answer the request, after which the Board shall issue an order granting or denying the request for referral to supplemental mandatory mediation and conciliation. These timeframes are consistent with the need for promptly resolving disputed contract terms to facilitate the expedient implementation of a contract previously ordered into effect during mandatory mediation and conciliation proceedings, while affording parties a sufficient opportunity to consider and address the contract terms alleged to be in dispute.

B. Amendments to the Text of Existing Regulations

Section 20160 states the office locations where parties should file certain types of documents and the number of copies to be submitted. The proposed amendments require all parties represented by counsel or other representative to file documents with the Board electronically,

while parties not represented by counsel or other representative may continue to file hard-copy documents with the Board. Attorneys and other legal representatives generally have access to technologies used for electronically filing documents, and the proposed changes are consistent with other judicial and administrative forums which require represented parties to electronically file documents. Allowing unrepresented parties to continue to file hard-copy documents with the Board is necessary to ensure access to the Board's processes to individuals who may lack access to technologies required to electronically file documents. Allowing unrepresented parties to file hard-copy documents also is consistent with filing rules in other judicial and administrative forums. The proposed amendments remove the requirements a party file multiple copies of a document with the Board for hard-copy filings.

Section 20169 states requirements for electronically filing documents with the Board. The proposed amendments require parties represented by counsel or other representative to file documents with the Board electronically, while unrepresented parties may file hard-copy documents with the Board. The proposed amendments further describe certain formatting requirements for electronic filings, including pagination, document naming, and file-size requirements. The proposed amendments also change the deadline from 4:00 p.m. to 5:00 p.m. for a document filed electronically to be considered filed that same business day. Requiring documents to be received before 5:00 p.m. to be considered filed that same day is consistent with requiring actions to be completed by the close of the normal business day, and this rule also avoids discrepancies between filing deadlines for unrepresented parties who file hard-copy documents with the Board and whose filings must be received by the close of the business day to be deemed filed that same day. The proposed amendments also describe methods for electronically serving other parties. The proposed amendments also impose a file-size limit of 25 MB for electronically filed documents to avoid excessively large files and ensure the electronic transmission of documents using email systems which may not be capable of transmitting files in excess of this limit. Requiring the consecutive pagination of records divided into multiple files will allow the Board to combine records after their receipt into a single file and avoid pagination discrepancies after doing so. The proposed amendments state a party may request permission to file a document in hard-copy form where file-size or other technical complications prevent use of electronic filing.

Section 20216 directs a regional director to investigate the allegations contained in an unfair labor practice charge. The proposed amendments allow the regional director limited authority to serve interrogatories to the charged party during the investigation any time that is 10 days after service of the charge on the charged party. This timing requirement balances the regional director's need to conduct investigations efficiently against allowing the charged party an opportunity to review the allegations of the charge and consult with legal counsel or representative prior to the propounding of interrogatories. Requiring a response to interrogatories within 20 days is consistent with ensuring the regional director's ability to promptly investigate charges and allows a sufficient opportunity to a charged party to respond to such interrogatories, which are limited in scope and confined to threshold inquiries related to the proper identification of parties and individuals.

Section 20217 states procedures governing subpoenas issued by the General Counsel during the investigation of an unfair labor practice charge. The proposed amendments confirm the authority

of the General Counsel to issue subpoenas requiring the attendance of a witness to provide testimony, in addition to subpoenas requiring the production of documents. The proposed amendments also require a party objecting to a subpoena on privilege grounds to produce a privilege log. The proposed amendments also provide a party opposing an application to enforce a subpoena an opportunity to respond to the application within five days. This deadline is consistent with the five-day deadline for a party to file a petition to revoke a subpoena and will ensure the expedient resolution of disputes and avoid disruption or delays in the investigation of charges. The proposed amendments also confirm that the Board may delegate authority to the General Counsel to seek judicial enforcement of a subpoena, and also that the General Counsel may seek evidentiary sanctions against a party who refuses to comply with a subpoena. The proposed amendments also replace gendered terms with non-gendered language and make other technical non-substantive changes to the language.

Section 20248 allows an administrative law judge the option to hold a settlement conference with parties to an unfair labor practice proceeding. The proposed amendments requires administrative law judges to hold settlement conferences, and make other technical non-substantive changes to the language. Settlement conferences must be scheduled within 30 days after issuance of a case management conference order. These timeframes will ensure the expedient processing of unfair labor practice cases, including encouraging the informal resolution of charges and labor disputes or the prompt disposition of such matters that cannot be informally resolved consistent with the purposes and policies of the Agricultural Labor Relations Act.

Section 20300 states the requirements for filing a petition for certification. The proposed amendments allow a petition for certification to be signed by hand or electronically and remove the requirement of filing multiple copies of a certification petition with the Board. The proposed amendments also allow service of a certification petition involving an employer engaged in the cannabis industry on a security guard stationed at a location where employees are working and state the petitioning party must notify the employer by email and overnight delivery where service of the petition is made on anyone other than an officer, owner, or director of the employer. This will facilitate a labor organization's ability to serve a petition for certification on such employers and avoid obstacles to requirements that a petition be served personally on an owner, officer, or director of the employer in light of existing laws regarding protecting the security of such facilities. The proposed amendments also confirm a regional director's authority to dismiss a petition where there is pending an unfair labor practice complaint against the employer containing certain allegations of unlawful conduct and state the regional director may order an election to proceed, with the ballots cast in the election impounded, if there are charges of unfair labor practices against the employer for which no complaint has yet issued. The proposed amendments also replace gendered terms with non-gendered language and make other technical non-substantive changes to the language.

Section 20360 states the process for counting ballots cast in a representation election, and confirms the Board's authority to impound (i.e., securely store but not count) ballots cast in an election where there are unresolved allegations of misconduct or unlawful conduct. The proposed amendments state ballots may be impounded based on unresolved unfair labor practice allegations and specify the timeframes for which the ballots may remain impounded.

Specifically, ballots impounded based on allegations contained in an unfair labor practice complaint will remain impounded until disposition of the unfair labor practice complaint, while ballots impounded based on allegations contained in an unfair labor practice charge for which no complaint has issued may remain impounded only for up to 60 days after the election is held unless a complaint issues first, in which case the ballots may remain impounded pending disposition of the complaint. This process will ensure the prompt resolution of charge investigations, particularly where the results of an election are pending. These procedures generally are consistent with the National Labor Relations Board's procedures in similar circumstances involving the impoundment of ballots and related unfair labor practice allegations, including the 60-day limit on impounding ballots based on unfair labor practice charges pending investigation and for which no complaint has issued. The proposed amendments also add authority and reference citations.

Section 20390 states the procedures for filing a petition to decertify a labor organization as the exclusive bargaining representative of an employer's agricultural employees. The proposed amendments confirm the authority of a regional director to dismiss a decertification petition where there is pending an unfair labor practice complaint against the employer containing certain allegations of unlawful conduct or, alternatively, may order an election to proceed with the ballots to be impounded. Specifically, a petition may be dismissed based on certain types of allegations contained in an unfair labor practice complaint involving conduct that would interfere with employee free choice in an election, the employer or its representatives instigated or assisted in obtaining support for decertifying an incumbent union, or the employer has failed or refused to recognize or bargain with a certified union. Such conduct has been recognized by the Board as grounds for dismissing a petition seeking to decertify and remove an existing certified bargaining representative, and identification of these grounds here will provide clearer guidance to parties involved in the Board's proceedings. These amendments also preserve a regional director's discretion to proceed with an election while impounding ballots when circumstances may dictate such an approach to be appropriate. The proposed amendments also state the regional director may order an election to proceed, with the ballots cast in the election impounded, if there are charges of unfair labor practices against the employer for which no complaint has yet issued. The proposed amendments also require a party filing a decertification petition to provide the email address of its representative and replace gendered terms with non-gendered language and make other technical non-substantive changes to the language.

Section 20910 allows a labor organization to obtain a list of an agricultural employer's agricultural employees before filing a petition for a representation election if the labor organization can show support from at least 10% of the employees. The proposed amendments allow a labor organization to obtain a pre-petition list of employees without the requirement of filing a previous notice of intent to take access and provide the labor organization may obtain only one employee list in any 120-day period. This time limitation will protect employers from being subjected to repetitive requests for employee lists, while accommodating a labor organization's need to conduct an organizing campaign during peak seasons which may last longer than that time period or where an employer has multiple harvests satisfying peak requirements in a single year. The proposed amendments also replace gendered terms with non-gendered language.