

## **AGRICULTURAL LABOR RELATIONS BOARD**

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

#### **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. This section further specifies the manner in which labor peace agreement complaints must be served on an accused licensee and organization to ensure notice to those parties.

**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. The general counsel may propound interrogatories or issue subpoenas any time five days after the general counsel serves notice of the complaint on the licensee and challenged organization, which allows time for those parties to review the allegations against them and retain representation if they so desire. Parties must respond to interrogatories propounded by the general counsel within 10 days, which is necessary to ensure a prompt investigation of the complaint allegations in light of the 90-day statutory deadline for the Board to complete its investigation and issue a report on the complaint. The subpoena procedures are modeled after the Board's rules and procedures regarding subpoenas in unfair labor practice proceedings (see Cal. Code Regs., tit. 8, §§ 20217, 20250), including the five-day deadline for parties to object to subpoenas by the filing of a petition to revoke. The general counsel is entitled to draw inferences adverse to a party where a party fails to comply with a subpoena, and a party may not rely upon any materials it failed to produce in response to a subpoena to support any claim or defense

relevant to the allegation of a complaint. Such consequences are necessary to enforce the general counsel's investigatory responsibilities and ensure the prompt disposition of labor peace agreement complaints within the statutory timeframes.

**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. The general counsel must issue its report on the complaint allegations within 70 days after the complaint is filed, which is necessary to ensure sufficient time for the Board to review the report and any objections to it within the 90-day statutory deadline. The general counsel's report must include the general counsel's findings and any evidence relied upon, which will assist parties in understanding the reasoning supporting the general counsel's determinations. In order to prevent gamesmanship or refusals to comply with the general counsel's discovery requests during its investigation of a complaint, parties may not rely on any evidence or argument to object to the general counsel's report that was not previously submitted to the general counsel during its investigation. This section specifies that a hearing is not necessary to enable the general counsel to make findings of fact based on the parties' submissions, particularly in light of the short 90-day deadline in which the Board must conclude its investigation of a labor peace agreement complaint, but allows the general counsel the discretion to conduct a hearing if it determines it necessary in certain circumstances.

**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. Parties seeking to challenge the general counsel's findings must file an appeal with the Board within five days after service of the general counsel's decision, which is necessary to ensure compliance with the 90-day statutory deadline. The Board then must issue a final order within 10 days after the last appeal is filed or could have been filed, which also is necessary to ensure disposition of the labor peace agreement complaint within the 90-day statutory deadline. In cases where it is determined a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization, the Board must report such findings to the Department of Cannabis Control (DCC) so that the DCC may proceed to notify other licensees who have entered into labor peace agreements with that organization.