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Agricultural Labor Relations Board  
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As requested near the close of the ALRB Regulations Subcommittee's June 23 public workshop on the proposed regulations under Assembly Bill 113, California Farm Bureau ("CAFB") submits these written comments and proposed revisions to those proposed regulations.

The proposed regulations for majority support petitions are taken in several instances from provisions in the ALRB's regulations for petitions for certification by secret ballot election. This approach, however, ignores the immense and critical difference between the use in the secret ballot election process of a petition or authorization cards signed by a majority of the currently employed employees in the bargaining unit [Lab. Code, § 1156.3, subd. (a)—both referred to hereinafter for brevity's sake as "authorization cards" or simply "cards"] and the use in the majority support petition process of authorization cards. Lab. Code, § 1156.37, subd. (a).

In the former process, authorization cards are used to determine only whether "a bona fide question of representation exists." If the ALRB has reasonable cause to believe one does exist, then a "representation election by secret ballot" is held. Lab. Code, § 1156.3, subd. (b). Unless it determines there are sufficient grounds to refuse to do so, the ALRB certifies the election. Lab. Code, § 1156.3, subd. (e)(2).

In stark contrast, in the latter process, the ALRB relies on authorization cards themselves to determine whether proof of majority support for a labor organization ("LO") exists. If it determines proof of majority support exists, the ALRB certifies the LO as the exclusive bargaining representative of the employees in the bargaining unit. Lab. Code, § 1156.37, subd. (e)(3).

In the majority support petition process, therefore, authorization cards are the ultimate determinator of employee support of an LO. It is thus essential that when the ALRB—or specifically, the ALRB regional director ("RD") of the office making the determination of employee majority support—is evaluating cards to determine whether majority support exists, every card expresses the respective employee's then-current and true support of that LO.

In contrast, it is not essential that cards used to show employee interest in holding a secret ballot election express then-current support of an LO. That of course is because employees will express their current sentiments about unionization in the secret ballots they cast.

The current regulation at 8 CCR 20300(j)(1), which is for secret ballot elections, states in part: "No employee authorization dated more than one year prior to the date of filing of the election petition shall be counted to determine majority showing of interest." This regulation expresses the ALRB's determination that expressions of employee interest in having an election that are no more than one year old still reflect employee interest, while older expressions might not. In any case and as noted above, because employees can express their then-current sentiments in an election, the "freshness" or "staleness" of cards is not as critical as under the majority support petition process.

The regulation proposed at 8 CCR 20391(a)(2) for the majority support petition process uses a similar provision. The proposed regulation would work consistently with the current regulation in those instances where the RD determines the proof of support submitted with the petition sufficiently evidences employee majority support.

The proposed regulation, however, would not work consistently with the current regulation in those instances where the RD determines the proof of support submitted with the petition is insufficient and thus gives the LO 30 days to submit additional proof of support or to cure support submitted but found invalid by the RD. 8 CCR 20391(c)(2). In those instances under the proposed regulation, cards that are more than one year old—specifically, at least as old as one year plus 30 days—could be counted by the RD when re-determining proof of support.

To make it fully consistent with the current regulation’s one-year “freshness” limit, the first sentence of the regulation proposed for section 20391(a)(2) should be revised to read as follows:

No employee authorization dated more than one year prior to the date of filing of the ~~petition~~ determination of majority support shall be counted to determine a showing of majority support.

The ALRA confers on employees the rights to be represented by a specific LO or not to be represented at all. To protect and preserve those rights, determinations of employee majority support must be made based on the then-current expressions of employee sentiment. This principle is inherently preserved by secret ballot elections, wherein employees express their real-time choices about whether to be represented and, if so, by what LO if two or more are on the ballot. Each employee voting in a secret ballot election expresses that current choice—even if it differs from one expressed on an authorization card many months ago.

In contrast, in the majority support petition process, the RD determines majority support from authorization cards submitted by the petitioning LO. Over time—specifically, over the year that a card could be deemed valid—employees who signed cards may change their mind about which LO to support or about supporting any LO at all.

For example, an employee during that year might later sign one or more cards authorizing one or more other LOs to represent the employee. Is the first one signed to be counted by the RD even though it no longer reflects the employee’s choice? Or may the first card signed state it is not revocable?

CAFB asserts that both questions must be answered, “no.”

Nothing in AB 113 speaks to an employee’s ability to revoke an authorization, either by signing an authorization card for another LO or by signing a statement of revocation that leaves no LO with the employee’s authorization. The legislation did not need to do so: it is an employee’s inherent right to choose or not choose to be represented by an LO, and no employee is “locked in” to an authorization for any length of time. Indeed, the statute calls on the ALRB to determine employee majority support—in the present tense.

It is incumbent on the ALRB to preserve employee choice in this regard, including the right of employees to change their choices.

To that end, proposed section 20391(a)(1) should be amended by adding to it these sentences:

Each such authorization card or petition shall include the following provision in the same font size and language or languages as the text authorizing the labor organization to represent the employee: “This authorization revokes and replaces any prior authorization I may have signed for another labor organization to represent me. I may revoke this authorization by signing another authorization for another labor organization to represent me or by signing and delivering to the Agricultural Labor Relations Board a statement that I have revoked this authorization.”

Moreover, whether or not it is noted in regulation, the ALRB should post on its website an optional form employees could use to revoke authorizations, with instructions on how completed forms are to be delivered to the ALRB.

The principle of an employee’s right to revoke an authorization is recognized by both the National Labor Relations Board (see, e.g., *Blue Grass Industries, Inc.* (1987) 287 NLRB No. 28, 287 NLRB 274, 130 LRRM (BNA) 1131) and the California Public Employment Relations Board (see, e.g., *SEIU Local 399 v. Antelope Valley Health Care District* (2006) PERB Decision No. 1816-M).

These two decisions point to the importance of setting clear rules for the revocation of authorizations. Both cases involved questions about the effectiveness of employee attempts to revoke authorizations. To avoid such disputes and to ease the RD’s burden in deciding whether to count submitted authorizations, the regulation should provide clear rules in this regard.

CAFB appreciates this opportunity to submit these comments on and suggested revisions to the proposed regulation. CAFB will stay engaged in this rulemaking.

Sincerely,



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