

AGRICULTURAL LABOR RELATIONS BOARD

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

SECTION-BY-SECTION EXPLANATION FOR ADOPTION

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. This authority to draw adverse inferences, or impose other evidentiary sanctions, for a party’s noncompliance with discovery requests or subpoenas is consistent with ALRB regulations and precedent, including a recent decision involving a labor peace agreement complaint, California precedent, and precedent under the National Labor Relations Act. (*Professional Technical Union, Local 33* (2023) 49 ALRB No. 3, pp. 9-10, and cases cited therein; see also *Nash de Camp Co.* (2000) 26 ALRB No. 4, pp. 7-8, and cases cited therein; Cal. Code Regs., tit. 8, § 20262, subd. (b) [authorizing an administrative law judge in unfair labor practice proceedings “to impose sanctions for failure to comply with appropriate subpoenas or notices to appear or produce”].)¹ 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 proposed regulation provides parties an opportunity to appeal adverse rulings when a petition to revoke is filed, and any such appeal must be filed within five days after service of the ruling in light of the 90-day statutory deadline. 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 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

¹ The ALRB’s decisions are available at < <https://www.alrb.ca.gov/legal-searches/decision-index/> >.

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. Parties, including the general counsel, are afforded an opportunity to respond to any appeal filed, provided that such responses are filed within five days after the date the appeal is filed. This response deadline is necessary in light of 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.