



**STATE OF CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD
PUBLIC MEETING MINUTES
WEDNESDAY, October 4, 2023
10:00 A.M.**

**1500 Capitol Avenue, Hearing Room 72.167
Sacramento, CA 95814**

Board: Chair Victoria Hassid
Members Ralph Lightstone, Barry Broad, and Cinthia Flores
Executive Secretary Santiago Avila-Gomez
Chief Board Counsel Todd Ratshin

General Counsel: Julia Montgomery

Interpreter: Laura Ruiz

Open Session

1. Call to Order
 - Board Chair Victoria Hassid called the meeting to order at 10:02 a.m.
 - Board Members Lightstone, Broad, and Flores present.
2. Approval of Minutes from Public Board Meeting, September 27th, 2023
 - Board Member Broad moved to approve the minutes from the Public Board Meeting, September 27th, 2023.
 - Board Member Flores seconded the motion.
 - Motion approved by 4 to 0.
3. Board Chair's Report – presented by Victoria Hassid
 - Acknowledged Indigenous People's Day on October 9th, including land acknowledgment for the Nisenan, the Southern Maidu, Valley and Plains Miwok, and Patwin Wintun people, along with the Wilton Rancheria people. Further information available at:
<https://native-land.ca/>
 - Proposal to Restructure and Rename ALRB Regions and Change Case Numbering System (Appendix C; presented by General

Counsel Julia Montgomery), including explanation of reasons.

- Board Chair Hassid extended thanks to General Counsel and staff.
- Board Member Lightstone moved to approve the General Counsel's recommendation to restructure the Regions.
- Board Member Flores seconded the motion.
- Motion approved by 4 to 0.

4. Executive Officer's Report on Elections, Unfair Labor Practice Complaints, and Hearings

- See Appendix A.

5. Litigation Report

- None.

6. General Counsel's Report

- Reported on cases in Ventura and Sonoma Counties.
- Reported on outreach and participation with Community-Based Organizations in Santa Cruz, Monterey, Imperial, Salinas, Madera, Oxnard, Fresno, Kern, and Siskiyou Counties. Reported on participation in Facebook Live, radio, and TV programs.

7. Division of Administrative Services Report

- Reported on completion of Budget Change Proposals for review as part of the proposed 2024-2025 Governor's Budget.
- Reported on compliance audits for IT and HR.
- Reported on filling of Staff Services Manager position by Dalton Weber.

8. Legislative Report

- See Appendix B.

9. Regulations

- Board Member Broad presented report on Rulemaking Notice File No. Z2023-0313-01 Cannabis; Labor Peace Agreements (AB 195) (Appendix D).
- Board Chair Hassid moved to approve that regulations go forward as recommended by the Regulations Subcommittee.
- Board Member Broad seconded the motion.

- Motion approved by 4 to 0.
- Board Member Broad introduced report on Subcommittee Report and Draft Regulations Regarding Proposed Rulemaking (AB 113): Majority Support Petitions and Appeal Bonds (Appendix E).
- Chief Board Counsel Ratshin explained the report in detail. Chief Board Counsel Ratshin, Board Member Broad, and Board Member Lightstone responded to questions and comments from the Board, General Counsel, and members of the public.
 - Board Chair Hassid raised a question regarding appeal bonds.
 - Board Member Flores raised a question regarding appeal bonds.
 - Deputy General Counsel Franchesca Herrera raised a question regarding majority support petitions.
 - Carl Borden (California Farm Bureau) made comments regarding majority support petitions.
 - Matthew Allen (Western Growers' Association) made comments regarding majority support petitions.
- Board Chair Hassid moved to approve that regulations go forward as recommended by the Regulations Subcommittee.
- Board Member Broad seconded the motion.
- Motion approved by 4 to 0.

10. Public Comment (The Board additionally solicits public comment after discussion of each agenda item of the open meeting.)

- None.

Closed Session

11. Announcements

- The Regional Directors' Meeting is on October 4th, 2023.
- The next scheduled Public Board Meeting is on October 18th, 2023.

12. Adjourn Meeting

- Meeting adjourned at 11:39 am.

APPENDIX A:
EXECUTIVE OFFICER'S REPORT

Office of the Executive
Secretary
1325 J Street, Suite 1900-B



ALRB
AGRICULTURAL LABOR
RELATIONS BOARD



ALRB PUBLIC MEETING
EXECUTIVE OFFICER'S REPORT
ELECTIONS, UNFAIR LABOR PRACTICE COMPLAINTS, AND HEARINGS

DATE: October 4, 2023
TO: Agricultural Labor Relations Board
FROM: Santiago Avila-Gomez, Executive Secretary

Settled

1. *Sonoma Cho dba Flora Terra, 2022-CE-049 & 2023-CE-003-SAL (Cannabis; Sonoma County; September 22, 2023)*
2. *Linda Christie dba Sunny Knoll Vineyards and Christie Vineyards, 2022-CE-050-SAL (Grapes; Santa Cruz County; September 7, 2023)*

Administrative Order

1. *Ocean Mist Farms (2023) ALRB Admin. Order 2023-09 (September 11, 2023; Order Denying Respondent's Motion to Reconsider and/or Modify Order Denying General Counsel's Request for Enforcement of Subpoena Duces Tecum; 46 ALRB No. 5 [Case No. 2017-CE-006-VIS])*

Pending Matters

1. *National Agricultural Workers Union (NAWU), 2023-LPA-002 (September 21, 2023; General Counsel's Report and Recommendation)*

APPENDIX B:
LEGISLATIVE REPORT

Office of the Executive Secretary
1325 J Street, Suite 1900-B
Sacramento, CA 95814



ALRB
AGRICULTURAL LABOR
RELATIONS BOARD



**ALRB PUBLIC MEETING
LEGISLATIVE REPORT**

DATE: October 4, 2023

TO: Agricultural Labor Relations Board

FROM: Todd M. Ratshin, Chief Board Counsel

This report provides updates on legislative activity affecting the Agricultural Labor Relations Act (ALRA) or the Agricultural Labor Relations Board since the Board's September 20, 2023 meeting.

Senate Bill No. 544 – Bagley-Keene Open Meeting Act: Teleconferencing (D – Laird)

Senate Bill No. 544 (SB 544) was introduced on February 15, 2023. It was amended in the Senate on March 20, and again on April 27. The bill passed the Senate on May 15 by a 26-3 vote, and was ordered to the Assembly. It was read a first time in the Assembly on May 15, and referred to the Committee on Government Organization on May 26, where it passed on a 12-2 vote on July 12 and was re-referred to the Committee on Appropriations. The bill was amended on August 14, and on September 1 passed the Assembly Committee on Appropriations on a 14-0 vote. The bill was amended again on September 8, and was passed by the Assembly on September 13. The Senate concurred in the Assembly amendments on September 14, and the bill was enrolled and presented to the Governor on September 15. The Governor signed the bill on September 22, and it will take effect January 1, 2024.

SB 544 will make permanent several provisions of the Bagley-Keene Open Meeting Act regarding meetings conducted by teleconferencing that expire on January 1. (Cf. Gov. Code, § 11133, subd. (g).) Until January 1, 2026, this bill will allow a state body to conduct teleconference meetings subject to certain conditions. Specifically, this bill will require the state body to make available a physical meeting location at which the public may attend and require that a majority of the state body's members be physically present at the same location. Other members could participate in the meeting remotely, and the locations from which they do so need not be disclosed or made publicly available. After January 1, 2026, this bill will require the state body to designate a primary physical meeting location at which a quorum of the members of the state body would be required to attend. Other members could participate remotely and the locations from which they do would not be required to be publicly disclosed or made publicly accessible.

The full text of SB 544, and further information regarding it, is available at:
<https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB544>.

**APPENDIX C:
PROPOSAL TO RESTRUCTURE AND RENAME ALRB
REGIONS AND CHANGE CASE NUMBERING SYSTEM**

Office of the
General Counsel



ALRB
AGRICULTURAL LABOR
RELATIONS BOARD



GENERAL COUNSEL MEMORANDUM

To: ALRB Board Members

CC: Santiago Avila-Gomez, Executive Secretary

From: Julia Montgomery, General Counsel

Re: Proposal to Restructure and Rename ALRB Regions and Change Case Numbering System

Date: September 21, 2023

This memorandum proposes to restructure the ALRB's regions so that the Santa Rosa office is part of the Visalia Region instead of the Salinas region, and to change our region names and case numbering system. As explained below, restructuring the regions will balance out the supervisorial responsibilities of the Regional Directors (RDs) and revising the naming conventions will reduce confusion and allow for easier case tracking.

For the past seven years, the ALRB has maintained two regional hub offices and three subregional offices. The "Salinas Region" includes offices located in Salinas, Oxnard and Santa Rosa. The "Visalia Region" includes offices located in Visalia and Indio. Each region has an RD who manages the offices and staff in each of their region's locations. There is currently an imbalance in the number of attorneys that each RD supervises as the Salinas RD supervises more than twice the number of attorneys than does the Visalia RD. ALRB's HR Manager has recommended that the General Counsel program even out the attorney supervision between the RDs to balance the workload and facilitate better oversight. Moving the Santa Rosa office to the Visalia Region would correct this imbalance as the chart below illustrates:

	Current SAL Region	Current VIS Region	Proposed Region 1: Salinas & Oxnard	Proposed Region 2: Santa Rosa, Visalia & Indio
Attorneys	10	4	7	7
FE III	1	1	1	1
FE I & II	8	7	7	8
Support Staff	4	3	3	4

The General Counsel program leadership team considered proposing that Oxnard instead of Santa Rosa be moved to the Visalia Region. However, we concluded that it is a better option to include Santa Rosa together with Visalia and Indio so that we keep offices together in a region that handle cases with similar agricultural commodities. For example, most cases handled by the Salinas and Oxnard offices involve the strawberry industry. There has also been an influx of strawberry cases out of the Santa Maria area, which has also been historically handled by the Salinas Region. The Santa Rosa office on the other hand, covers areas in which the commodities of wine grapes and dairies are more prevalent – commodities which overlap with those found in the Central Valley. Keeping offices within a region where the commodities are similar will make the best use of our staff's expertise and will assist in communication with stakeholders.¹ In addition, the GC program has two Visalia Region staff members working out of the Sacramento office to better cover the northern Central Valley and inland areas north of Sacramento. Including Santa Rosa in their same region will facilitate better collaboration among staff located in the Sacramento and Santa Rosa offices.

This memorandum also proposes to rename our regions and change our case numbering to drop the office location suffix. Naming regions after a particular geographic area alone leads to confusion as we handle cases throughout the state. Moreover, designating our regions by number rather than office location will also be consistent with many other government entities, including the NLRB.² For this reason, we propose changing the Salinas Region to "Region 1" and the Visalia Region to "Region 2." Moreover, the ALRB's case numbering system has also been by region with the suffix "SAL" or "VIS." Each region thus has overlapping case numbers, save for the suffix at the end. This is also unnecessarily confusing as there is more than one case that will have the same number, such as "2023-CE-001" if a party omits the suffix of "SAL" or "VIS" at the end. By simply structuring our cases to be numbered sequentially regardless of the region in which they are filed, it will be easier for all to track the number of cases filed each year and reduce confusion. With our case management system eCourt, we already track the number of cases filed out of each office, so this data is easy to obtain upon request. For this reason, we propose that the region names and case numbering system change beginning on January 1, 2024.

For the foregoing reasons, I recommend that the Board take action to restructure ALRB's regions as described above, and to change the region names and case numbering system.

¹ Staff develop an expertise in particular commodities based on the cases they handle. For example, the Oxnard and Salinas staff have developed expertise in matters involving the strawberry industry. We also tend to see some of the same workers moving around the state within the same commodity, such as workers who start out harvesting strawberries in Oxnard and then move to Santa Maria and Salinas, which have later harvests. Employers in a particular commodity are also more likely to share the same attorneys.

² See: <https://www.nlrb.gov/about-nlrb/who-we-are/regional-offices>

**APPENDIX D:
REGULATIONS SUBCOMMITTEE REPORT FOR CANNABIS;
LABOR PEACE AGREEMENTS (AB 195)**

Office of the Executive Secretary
1325 J Street, Suite 1900-B
Sacramento, CA 95814



ALRB
AGRICULTURAL LABOR
RELATIONS BOARD



DATE: October 3, 2023

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member
Barry Broad, Board Member

RE: Rulemaking Notice File No. Z2023-0313-01
Cannabis; Labor Peace Agreements (AB 195)

On March 24, 2023, the Agricultural Labor Relations Board (ALRB or Board) published notice of this proposed regulatory action involving labor peace agreements in the cannabis industry, including implementation of the labor peace agreement complaint procedure established under AB 195 (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(D)). The public comment period closed on May 8, and no public comments were received. The subcommittee thereafter proposed a nonsubstantial change to proposed regulation 20953, subdivision (c)(4), which the Board approved at its May 17 public meeting.

On June 2, 2023, the Board published notice of modifications to the proposed regulations, consistent with above, and of materials added to the Board's rulemaking file for this matter. The 15-day public comment period closed on June 19, and no public comments were received. The Board approved the proposed rulemaking at its July 5 public meeting.

Following the Office of Administrative Law's review of the proposed rulemaking, further clarifying revisions were requested concerning the timeframes in which certain filings were required (see proposed regs. 20953(c)(4), 20955(a)(1)). On September 14, notice of these modifications was published, and the 15-day comment period closed on September 29. No public comments were received.

For the reasons discussed in the Board's original notice of proposed rulemaking and the subsequent notices of modifications thereto, as well as the Board's initial statement of reasons and addenda thereto in support of the proposed rulemaking, the Regulations Subcommittee recommends the Board approve this proposed rulemaking and authorize the subcommittee to proceed with finalizing this matter for re-submission to the Office of Administrative Law.

APPENDIX E:
REGULATIONS SUBCOMMITTEE REPORT AND DRAFT REGULATIONS REGARDING PROPOSED
RULEMAKING (AB 113): MAJORITY SUPPORT PETITIONS AND APPEAL BONDS

Office of the Executive Secretary
1325 J Street, Suite 1900-B
Sacramento, CA 95814



ALRB
AGRICULTURAL LABOR
RELATIONS BOARD



DATE: September 27, 2023

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member
Barry Broad, Board Member

RE: Subcommittee Report and Draft Regulations Regarding Proposed
Rulemaking (AB 113): Majority Support Petitions and Appeal Bonds

On May 15, 2023, Governor Newsom signed Assembly Bill No. 113 (AB 113). This bill sets forth the clarifying language agreed to by the administration and United Farm Workers and California Labor Federation when the Governor signed Assembly Bill No. 2183 last year. AB 113 revises the labor union election and appellate bonding provisions enacted by AB 2183. On June 9, the Board's regulations subcommittee published a report with proposed regulatory language to implement the provisions of AB 113. On June 23, the subcommittee hosted a public workshop to review the language and receive input from stakeholders and interested parties. Having considered the comments received at and following that workshop, the subcommittee now presents the attached updated proposed regulatory language. The proposed language is in "redline" format, with underlined language indicating new language added to the original June 9 proposal, and strikethrough language indicating language deleted from the original proposal.

Majority Support Petitions (Labor Code section 1156.37)

With respect to labor union elections, AB 113 repeals the labor peace compact and non-labor peace election provisions of AB 2183, and replaces them with a new "majority support petition" process largely modeled after the non-labor peace election procedure enacted by AB 2183. Codified in new Labor Code section 1156.37, this majority support petition process allows certain labor organizations to become certified as the exclusive bargaining representative of an employer's agricultural employees upon the submission of petition signatures or authorization cards demonstrating support from a majority of the employees in the bargaining unit. To implement this procedure, the regulations subcommittee hereby presents a draft proposed regulation (new section 20391), which is set forth in **Attachment A** to this report. The subcommittee's proposed regulation follows the various procedures set forth in the statute and incorporates language modeled on the Board's existing regulations governing the investigation and processing of representation petitions.

Appeal Bonds

AB 113 also includes significant amendments to the appeal bond requirement adopted in AB 2183. Pursuant to these amendments, when the Board issues a decision in an unfair labor practice case ordering a respondent to pay a monetary remedy, the case shall proceed directly into administrative compliance proceedings to determine the specific amount of the monetary relief. (Lab. Code, §§ 1149.3, subd. (a), 1160.3.) Upon the completion of such compliance proceedings, an agricultural employer who seeks judicial review of the Board's decision, concerning the Board's findings during either the underlying unfair labor practice or subsequent compliance proceedings, must post an appeal bond in the amount of the monetary remedy ordered by the Board. (Lab. Code, § 1160.11.) AB 113 also amended Labor Code section 1164.5 to require a similar appeal bond when an employer appeals a decision by the Board ordering into effect a collective bargaining agreement following mandatory mediation and conciliation proceedings.

To implement these amendments concerning the specification of a monetary remedy in our unfair labor practice and mandatory mediation and conciliation proceedings, as well as rules governing the receipt and handling of appellate bonds, the regulations subcommittee presents draft proposed regulations restructuring the Board's compliance regulations. Because the proposed restructuring of our compliance proceedings as contemplated by these regulations is significant, the subcommittee proposes to repeal and replace the existing compliance regulations (current §§ 20290-20293). That said, however, this proposal largely is modeled on, and borrows from, the existing regulatory language. The subcommittee's proposal concerning these regulations is set forth in **Attachment B** to this report.

ATTACHMENT A

SUBCOMMITTEE PROPOSAL RE: MAJORITY SUPPORT PETITIONS

§ 20391. Majority Support Petitions Under Labor Code Section 1156.37.

(a) A ~~labor organization filing a~~ majority support petition shall be in writing and signed by hand or electronically. Printed forms for such petitions will be supplied by the regional offices of the Board upon request and also made available on the Board's web site. A petition shall contain a declaration, signed under penalty of perjury, that the petition's contents are true and correct to the best of the declarant's knowledge ~~shall do so using a form prepared by the Board and available on the Board's website or supplied by a regional office of the Board upon request.~~ The petition shall be filed electronically pursuant to section 20169. A labor organization filing a majority support petition shall submit with the petition proof that the labor organization (1) has filed LM-2 reports with the federal Office of Labor-Management Standards for the preceding two years, and (2) is or was a party to a collective bargaining agreement covering agricultural employees as defined in subdivision (b) of Labor Code section 1140.4 that was in effect on May 15, 2023. The petition is deemed filed upon the appropriate regional office's receipt of all required information, including proof of service of the petition on the employer. Immediately upon confirming all required materials have been submitted, the regional office shall notify the employer by telephone and email, if available, of (1) the date and time of the filing of the petition, and (2) the case number assigned to the petition.

(1) Evidence that a majority of the currently employed employees in the bargaining unit support the petitioner shall be ~~delivered, in person, to the appropriate regional office as soon as possible after the petition is filed pursuant to subdivision (a) submitted with the petition.~~ Such evidence shall consist of ~~originals of~~ either: (A) authorization cards, signed by employees, dated, and providing that the signer authorizes the union to be their collective bargaining representative, or (B) a petition to the same effect signed by employees, each signature dated. ~~Authorization cards or petitions submitted as evidence of majority support also shall identify the name of the agricultural employer to which the cards or petitions pertain and shall clearly state that (i) signing the card or petition is equivalent to a vote in support of the petitioning labor organization; (ii) a signature on the card or petition is valid for one year from the date it is signed; and (iii) a signature on the card or petition may not be revoked.~~

(2) No employee authorization dated more than one year prior to the date of filing of the petition shall be counted to determine a showing of majority support. An authorization card or authorization petition signed by an employee at a time when the employee was not working for the employer named in the election petition shall, if otherwise valid, be counted in determining ~~whether a showing of majority showing of interest~~ support is established.

(b) Within 48 hours after personal service of the petition on the employer named in the petition, the employer shall file with the Board and serve personally on the labor organization its response to the petition. If the 48-hour period expires on a Sunday or legal holiday, the time to file the response shall be extended to the corresponding hour on the next business day. Service of ~~the~~ employer's employee list in electronic format may be by email or pursuant to subdivision (b) of section 20169 if the response is filed electronically with the Board. The Board shall notify the labor organization promptly after the employer's response is filed and, if the labor organization contends it has not

received proper service of the response, the Board shall serve the employer's response on the labor organization.

(c) The regional director of the office in which the majority support petition is filed shall commence an investigation regarding the validity of the petition and accompanying proof of support after the petition is filed. Within three days after receipt of the employer's response, the regional director shall notify the parties of its determination whether (i) a bona fide question of representation exists, (ii) the bargaining unit described in the petition is not appropriate, or (iii) the proof of support submitted with the petition is not sufficient.

(1) If the regional director determines the petition must be dismissed because a bona fide question of representation does not exist or the unit described in the petition is not appropriate, the regional director shall issue a dismissal letter to the parties setting forth the reasoning to support such determination. A petitioner may amend a majority support petition, upon approval of the regional director, to cure a defect that otherwise would result in dismissal of the petition under this paragraph.

(A) The regional director shall issue a dismissal letter to the petitioning labor organization and employer when the regional director has determined that the petition shall be dismissed based on grounds set forth in paragraph (1).

(B) The Board may review a dismissal based on the grounds set forth in paragraph (1) pursuant to the provisions of section 20393 and subdivision (b) of Labor Code section 1142. Board review of a petition dismissed by a regional director pursuant to paragraph (1) does not constitute a review of a majority support petition for purposes of Labor Code section 1156.5.

(2) If the regional director determines the petition satisfies the requirements of Labor Code section 1156.37 and this section but that the proof of support submitted with the petition is insufficient, the regional director shall notify the parties in writing of its determination. The labor organization shall have 30 days from the date of the regional director's notification to submit additional proof of support or to cure support submitted but found invalid by the regional director. In this regard, when the regional director has determined the labor organization's showing of support to be insufficient, the regional director shall return to the labor organization any support it has found invalid and shall state the reasons therefor. Within two days after any new support is submitted by the labor organization, the regional director shall notify the parties whether proof of majority support has been established. If proof of majority support still has not been established, the regional director shall notify the executive secretary of its determination, setting forth a tally of the count conducted by the regional director that includes (1) the total number of employees in the bargaining unit, (2) the number of cards or petition signatures received, and (3) the number of cards or petition signatures found invalid. ~~and~~ Upon receiving this notice from the regional director, the executive secretary shall certify the disposition of the majority support petition.

(3) If the regional director has concluded that a bona fide question of representation exists, the unit described in the petition is appropriate, and that proof of majority support is established, the regional director shall immediately notify the parties and the executive secretary of its findings. The regional director's notice shall include a tally of

the count conducted by the regional director in determining that proof of majority support has been established, setting forth (1) the total number of employees in the bargaining unit, (2) the number of cards or petition signatures received, and (3) the number of cards or petition signatures found invalid. Upon receiving such notification, the executive secretary shall issue a certification designating the labor organization as the exclusive bargaining representative of the employer's agricultural employees in the unit described in the petition.

(d) Within five days after service of the executive secretary's certification pursuant to subdivision (c)(3), the employer may file objections to the certification on grounds the allegations of the petition are false, the unit described in the petition is not appropriate, the regional office's review of the petition and proof of support were conducted improperly, or other misconduct affected the labor organization's proof of support. The objections shall be filed with the executive secretary pursuant to subdivision (a)(1) of section 20160 or electronically pursuant to section 20169. No extensions of time to file objections will be granted, nor may objections be amended or supplemented once filed.

(1) Objections alleging the regional director improperly determined the unit described in the petition to be appropriate or that the allegations of the petition are false shall be supported by a detailed statement of the facts and law relied upon in making such claims.

(2) Objections alleging the regional office's review of the petition and proof of support were conducted improperly or that other misconduct affected the labor organization's proof of support shall be accompanied by declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to revoke the labor organization's certification.

(e)(1) The Board shall dismiss objections that do not satisfy the requirements of subdivision (d)(1) or (d)(2) of this regulation.

(2) With respect to objections not dismissed pursuant to subdivision (e)(1), the Board shall dismiss objections that, even if true, would not be sufficient to revoke the labor organization's certification. Where objections set forth allegations that would be sufficient to revoke the labor organization's certification and there are material facts in dispute, the Board shall direct an investigatory hearing regarding such objections. The hearing shall commence within 14 days of the date of the Board's order, unless the labor organization agrees to an extension, and shall be conducted in accordance with regulation 20370.

(f) If a majority support petition has been filed with an appropriate regional office of the Board and a second majority support petition pertaining to the same bargaining unit of agricultural employees is filed, the Board shall hold the second petition in abeyance pending resolution of the first petition, subject to paragraph (2).

(1) If it is determined the first petition filed with the Board has established proof of majority support and that the labor organization that filed the petition should be certified as the employees' exclusive bargaining representative, the Board shall proceed to dismiss the second petition.

(2)(A) If the second petition alleges the first petition was filed by a labor organization assisted, supported, created, or dominated by an employer, the Board shall conduct a hearing on such allegations if both of the following are established:

(i) The second petition is filed while the first petition remains pending and before any certification regarding the first petition has issued; and

(ii) The second petition alleges facts of employer assistance, support, creation, or domination supported by declarations.

(B) In cases where the Board has determined it appropriate to conduct a hearing based on the allegations of the second petition, such a hearing shall commence within 14 days and the independent hearing examiner shall issue a recommended decision within 21 days after the conclusion of the hearing. Within 10 days after the independent hearing examiner issues a recommended decision, any party to the hearing may file with the Board exceptions and a brief in support of the exceptions to the recommended decision. A party opposing the exceptions may file an answer to them within 5 days **after service of the exceptions and brief**. If exceptions are filed, the Board shall issue a decision within 90 days from the date the first petition was filed.

(C) If it is determined that the labor organization that filed the first petition was unlawfully created or dominated by an employer, that labor organization and its representatives, agents, or officers shall be disqualified permanently from filing any further representation petitions with the Board. If it is determined that the labor organization that filed the first petition was unlawfully assisted or supported by an employer, that labor organization and its representatives, agents, or officers shall be disqualified from filing any further representation petitions with the Board for a period of one year.

(D) The Board shall dismiss a second petition that does not satisfy the requirements of subparagraph (2)(A).

(g) When objections are filed by an employer or a second majority support petition has been filed alleging a first petition was filed by a labor organization unlawfully assisted, supported, created, or dominated by an employer, the executive secretary shall notify the general counsel and provide copies of such filings. Within 10 days after the executive secretary provides this notice to the general counsel, the general counsel may file with the Board a motion seeking to consolidate any unfair labor practice charges containing allegations that mirror the allegations of any employer objections or a second-filed petition. If consolidation is granted, any resulting hearing will be governed by the procedures set forth in Chapters 4 and 6 of the Act.

(h) For purposes of subdivisions (j) and (k) of Labor Code section 1156.37, a labor organization's majority support petition campaign shall be deemed underway if the labor organization is able to establish proof of support from at least 10% of the agricultural employees in the bargaining unit sought to be represented.

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1156.37, Labor Code.

ATTACHMENT B

SUBCOMMITTEE PROPOSAL RE: APPEAL BONDS; COMPLIANCE

Repeal Existing Regulations 20290 – 20293.

Adopt New Regulations 20290 – 2029~~67.5~~, and 20411, as follows:

§ 20290. Compliance With Board Decision Ordering Monetary Remedies.

(a) If the Board has issued a decision finding the person named in the complaint has engaged ~~in~~ or is engaging in an unfair labor practice and ordering the payment of a monetary remedy, the executive secretary shall immediately assign the matter to an administrative law judge for further proceedings to determine the specific amount of monetary relief owed. Assignment to the administrative law judge who previously heard the case is preferred, but not required if the original judge is not available.

(b) Within 90 days after the date of the Board's decision ordering the payment of a monetary remedy, or such further time as the Board may permit, the regional director shall file and serve on the parties a compliance specification as provided in section 20292, which shall contain or be accompanied by a notice of hearing. In the alternative and in appropriate circumstances, the regional director shall issue and serve on the parties a notice of hearing without a specification as provided in subdivision (d) of section 20292. The notice of hearing with or without specification may provide for a hearing to be held before the administrative law judge not less than ~~fifteen (15)~~ days after service of the notice, and shall be filed with the executive secretary and served on all parties.

(c) Each person alleged as a respondent in the specification or notice of hearing without specification shall file and serve an answer thereto within 15 days from the date of service of the specification or notice of hearing without specification. The answer shall state specifically which facts alleged in the specification or notice of hearing without specification are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. Any allegation not expressly denied shall be deemed admitted. Except for matters not reasonably ascertainable by a respondent, a general denial or a denial on information and belief shall not suffice. As to such reasonably ascertainable matters, including, but not limited to, gross backpay, actual wages, comparable contract(s), and fringe benefits, if a respondent disputes either the accuracy of the facts or figures in the specification or the premises on which they are based, it shall specifically state the basis for its disagreement, setting forth in detail its position as to the applicable premises and furnishing the appropriate supporting facts and figures, including a specific alternative methodology for computing amounts owed should the respondent dispute the validity of the methodology used in the specification.

(d) If a respondent fails to file an answer within the time prescribed by this section, the administrative law judge may, either with or without taking evidence in support of the allegations and without notice to the respondent, find the allegations of the specification or the notice of hearing without specification to be true and issue an appropriate recommended order. If a respondent files an answer, but fails to deny any allegation of the specification or notice of hearing without specification in the manner required by subsection (c) of this section, such allegation shall be deemed admitted and may be so found without the taking of evidence supporting such allegation, and

the respondent shall be precluded from introducing any evidence controverting said allegation.

(e) Specifications, notices of hearings without specification, and answers to them may be amended in the same manner as complaints and answers to complaints. Specifications and notices of hearing without specification may be withdrawn in the same manner as complaints. After the issuance of a specification or notice of hearing without specification, the procedures provided for in sections 20235 through 20298 shall be followed so far as applicable.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

§ 20291. Compliance; Consolidation.

(a) Whenever the regional director deems it appropriate in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs and delay, the regional director may consolidate ~~with~~ a complaint and notice of hearing issued pursuant to section 20220, ~~with~~ a compliance specification based on that complaint. The compliance specification shall be prepared in accordance with section 20292. After the opening of the pre-hearing conference, consolidation shall be subject to approval of the administrative law judge or the Board as provided in section 20244.

(b) Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in an administrative or judicial forum which the Board or regional director determines to be appropriate for obtaining compliance with a Board order.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

§ 20292. Contents of Compliance Specification Involving Monetary Remedies or Notice of Hearing without Specification.

(a) A specification concerning the amount of backpay owed to an employee or employees shall specifically and in detail show, for each employee:

(1) The backpay period;

(2) The amount of gross backpay owed, the method of its computation, the data used in making the computation, and the reasons for selecting the method and data utilized;

(3) The amount and source of interim earnings, the method of allocation, e.g., weekly average, and the reasons for selecting that method;

(4) Amount and type of expenses claimed;

(5) Net backpay, including the method of calculation and the reasons for selecting that method.

(6) Missing or deceased discriminatees and the requested method for handling their claims;

(7) The interest due to the date of the specification and a demand for appropriate interest thereafter;

(8) Any other pertinent information.

(b) A specification concerning the amount of bargaining makewhole due to employees in a represented bargaining unit or units shall specifically and in detail show for all employees entitled to bargaining makewhole, including employees entitled to a makewhole supplement to backpay:

(1) The bargaining makewhole period;

(2) Actual gross earnings, or gross backpay for discriminatees not working during the bargaining makewhole period;

(3) The bargaining makewhole wage rate; the comparable contract(s) or other economic measures upon which it is based, together with the reasons for their selection; and the manner in which the makewhole rate was derived from the comparable contract(s) or other economic measures;

(4) Fringe benefits owed, the contract(s) or other economic data from which they were derived, the reasons for utilizing the contract(s) or other data, and the method by which fringe benefits were derived from the contract(s) or other data;

(5) Net bargaining makewhole and/or bargaining makewhole supplement due;

(6) The interest due to the date of the specification and a demand for appropriate interest thereafter;

(7) Any other pertinent information;

(c) Where, for good cause alleged and established at hearing, the regional director is unable to prepare a full specification as described in subdivisions (a) or (b), the regional director may issue a partial specification alleging in detail all information which is reasonably ascertainable, and the matter shall proceed on that basis.

(d) In appropriate circumstances, the regional director may file a notice of hearing, without a specification, containing a clear and detailed statement of the matters in controversy and any relief sought. The regional director shall include in the notice of hearing the reason or reasons for dispensing with a specification and must substantiate such reasons if they are called into question during the course of the proceedings.

(e) Where the regional director believes that a person not named in a Board order, court decree, or final administrative law judge's decision, is jointly or derivatively liable to comply with such order, decree, or decision, that liability may be determined in a compliance proceeding initiated under this section or section 20293 in which the

regional director has named the person as a respondent and has alleged the legal and factual basis for their joint or derivative liability.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

§ 20293. Compliance With Non-Monetary Remedies.

(a) Where a Board decision orders only non-monetary remedies and it appears there is a controversy with respect to compliance with such Board order or court decree enforcing a Board order, and such controversy cannot be resolved without a formal proceeding, the regional director shall file and serve on all parties a compliance specification as described in subdivision (b) or a notice of hearing without a specification consistent with subdivision (d) of section 20292. The specification or notice of hearing shall be filed within 90 days after the Board's decision becomes final or within such further time as the Board may permit. The provisions of subdivisions (c), (d), and (e) of section 20290 regarding the filing of an answer to a compliance specification or notice of hearing and other applicable procedures shall apply in proceedings regarding compliance with non-monetary remedies ordered by the Board.

(b) With respect to allegations other than the amount of backpay or makewhole due, including, but not limited to, cease and desist orders, notice remedies, or bargaining orders not involving bargaining makewhole, the specification shall contain a detailed description of the respects in which the person named as respondent has failed to comply with the Board order or court decree, including the remedial acts claimed to be necessary for compliance by the respondent.

(c) Where a Board decision orders both monetary and non-monetary remedies, the regional director may include in a specification or notice of hearing without a specification as described in section 20292 allegations concerning compliance with the non-monetary remedies ordered by the Board. If the non-monetary remedies are not included in such proceedings, separate compliance proceedings concerning such non-monetary remedies may be initiated within 90 days after the Board's decision becomes final, or such further time as the Board may permit. A Board decision ordering the payment of monetary remedies is deemed final when the Board issues a determination of the specific amount of the monetary remedies following the initiation of compliance proceedings and no appeal is sought therefrom or when a reviewing court dismisses an employer's appeal or otherwise affirms the Board's decision.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

§ 20294. Compliance; Determination of Amount of Civil Penalties.

(a) If the Board has issued a decision finding an agricultural employer has engaged in- or is engaging in an unfair labor practice, the regional director shall file and serve a specification as described in subdivision (b), or a notice of hearing without a specification as described in subdivision (d) of section 20292, to determine the amount of civil penalties to be assessed against the employer. The specification or notice of hearing shall be filed within 90 days after the Board's decision becomes final or within

such further time as the Board may permit. The provisions of subdivisions (c), (d), and (e) of section 20290 regarding the filing of an answer to a compliance specification or notice of hearing and other applicable procedures shall apply in proceedings to determine the amount of civil penalties owed by an employer.

(b) A specification concerning the amount of civil penalties owed by an employer shall specifically set forth facts relevant to a determination of the amount of the penalties to be assessed in accordance with the governing statute authorizing such penalties.

(c) A specification concerning the amount of civil penalties owed by an employer may be included:

(1) With a specification, or notice of hearing without a specification, pursuant to section 20292 where monetary remedies also have been ordered by the Board;

(2) With a specification, or notice of hearing without a specification, pursuant to section 20293 where the Board has not ordered monetary remedies; or

(3) With a specification, or notice of hearing without specification, pursuant to section 20295 where an administrative law judge's decision has become final.

(d) When a specification involving civil penalties owed by an employer is included with another specification or notice of hearing as described in subdivision (c), the timeframes governing such other type of specification shall apply.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.

§ 20295. Compliance; Final Administrative Law Judge Decision.

In cases where an administrative law judge's decision has found the person named in the complaint has engaged ~~in~~ or is engaging in an unfair labor practice and such decision becomes final pursuant to subdivision (a) of section 20286 because no exceptions were filed, compliance proceedings concerning such remedies or civil penalties ordered by the administrative law judge shall proceed in accordance with the timeframes and requirements set forth in section 20290, subdivision (a) of section 20293, or subdivision (a) of section 20294, as applicable.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.

§ 20296. Compliance; Continuing Monetary Liability During Review.

If the Board has issued a decision ordering the payment of a monetary remedy and the amount of that monetary remedy has continued to accrue during the course of judicial proceedings to review the Board's decision, and the challenge to the Board's decision is dismissed or the Board's decision otherwise is affirmed, the regional director shall commence a compliance proceeding to determine the amount of such remaining monetary liability in accordance with the procedures set forth in section 20291.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.

§ 20297. Unfair Labor Practice Appeal Bonds.

(a) The appeal bond required by Labor Code section 1160.11 shall be executed by a licensed surety. The term "licensed surety" has the same meaning as the term "admitted surety insurer" as defined in section 995.120 of the Code of Civil Procedure within the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.). The bond shall be in writing, signed by the surety under oath, and include the following:

(1) A statement that the surety is liable on the obligations of Labor Code section 1160.11 as the statute providing for the bond; and

(2) The address at which the agricultural employer who has given the bond and surety may be served with notices, papers, and other documents, including as provided for under Code of Civil Procedure section 995.010 et seq.

(b) The bond shall be in the following form:

"Agricultural Labor Relations Board Decision: (Decision name, year, volume, and number.)

Whereas (name of the agricultural employer) desires to give a bond for the filing of (a petition, appeal, or specify other applicable form of seeking judicial review of an order of the Board) in (name of the court where the action has been or will be filed) as provided by Labor Code section 1160.11; now, therefore, the undersigned (surety) hereby obligates itself to the Agricultural Labor Relations Board under the statutory obligations, in the amount of ... dollars."

(c) Upon receipt of the bond, the Board shall promptly file the bond with the reviewing court.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code; Sections 995.020, 995.120, 995.130, 995.140, 995.160, 995.170, 995.185, 995.320, 995.330, 995.340, Code of Civil Procedure.

§ 20297.5. Cash Deposits in Lieu of Appeal Bond.

(a) Pursuant to subdivision (b) of section 1160.11 of the Labor Code, an agricultural employer may make a cash deposit with the Board in lieu of an appeal bond. The deposit shall be in an amount equal to or in excess of the amount that would be required to be secured by the bond if the bond were given by a licensed surety. For purposes of this section, the term "cash" means lawful coin or currency of the United States, and also includes cash equivalent forms of payment such as checks, cashier's checks, and money orders.

(b)(1) Cash Deposits. An agricultural employer who chooses to deposit cash, in the form of currency or coin of the United States, with the Board in lieu of an appeal bond shall provide the executive secretary with written notice of its intent to do so. Such notice

must be received no later than 10 days after the date of the Board's order from which the employer seeks to obtain judicial review. The notice may be sent directly to the executive secretary, including by email, and need not be served on other parties to the proceeding. The executive secretary shall coordinate and arrange a time with the employer to deliver the cash deposit to the Department of General Services headquarters office in West Sacramento.

(2) An agent of the Board shall be present at the time of delivery of the cash deposit. The deposit shall be accompanied by an agreement executed by the agricultural employer authorizing the Board to collect or otherwise apply the deposit to enforce the liability of the agricultural employer on the deposit. The agreement shall include the address at which the agricultural employer may be served with notices, papers, and other documents. The agreement shall be signed under penalty of perjury and further shall expressly state the individual signing it has authority to do so on behalf of the agricultural employer. The Board will make a form available to the agricultural employer for use in complying with the requirements of this subdivision.

(3) Upon verifying the amount of the cash deposit, the Board agent shall provide the agricultural employer a receipt confirming the deposit with the Board. The deposit shall be held in trust by the Board in an interest-bearing account.

(c)(1) Cash Equivalent Deposits. An agricultural employer who chooses to make a deposit with the Board in the form of a check, cashier's check, or money order in lieu of an appeal bond shall submit such deposit to the executive secretary. The deposit must be received by the executive secretary no later than 20 days after the date of the Board's order from which the employer seeks to obtain judicial review. The check or money order shall be made payable to the "Agricultural Labor Relations Board"

(2) The deposit shall be accompanied by an agreement executed by the agricultural employer authorizing the Board to collect or otherwise apply the deposit to enforce the liability of the agricultural employer on the deposit. The agreement shall include the address at which the agricultural employer may be served with notices, papers, and other documents. The agreement shall be signed under penalty of perjury and further shall expressly state the individual signing it has authority to do so on behalf of the agricultural employer. The Board will make a form available to the agricultural employer for use in complying with the requirements of this subdivision.

(3) The deposit shall be held by the Board in trust in an interest-bearing account. Upon the successful deposit of the check or money order into the account, the executive secretary shall provide a written receipt to the agricultural employer confirming the deposit with the Board.

Note: Authority cited: Section 1144, Labor Code; Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code; Sections 995.130, 995.160, 995.170, 995.710, 995.740, Code of Civil Procedure.

§ 20411. Appeal Bonds and Cash Deposits in Mandatory Mediation and Conciliation Proceedings.

(a) The appeal bond required by Labor Code section 1164.5 shall be subject to the requirements and procedures described in section 20297, and the bond shall reference Labor Code section 1164.5 in place of section 1160.11 as applicable.

(b) A cash deposit in lieu of an appeal bond, as allowed under Labor Code section 1164.5, shall be subject to the requirements and procedures described in section 20297.5.

Note: Authority cited: 1144, Labor Code. Reference: Sections 1164, 1164.3, 1164.5, 1164.10, Labor Code; Sections 995.020, 995.120, 995.130, 995.140, 995.160, 995.170, 995.185, 995.320, 995.330, 995.340, 995.710, 995.740, Code of Civil Procedure.