

In the Matter of:)
)
Regular Board Meeting)
_____)

Location: 1500 Capitol Avenue
Hearing Room 72.167
Sacramento, CA 95814

WEDNESDAY, OCTOBER 4, 2023

California Reporting, LLC
(510) 224-4476

APPEARANCES

BOARD MEMBERS

Victoria Hassid, Chair

Barry Broad

Ralph Lightstone

Cinthia N. Flores

REGIONAL DIRECTORS

Jessica Arciniega, Oxnard

Yesenia de Luna, Visalia

STAFF

Santiago Avila-Gomez, Executive Secretary

Julia L. Montgomery, General Counsel

PANELISTS

Matthew Allen, Western Growers Association

Carl Borden, California Farm Bureau Federation

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P R O C E E D I N G S

WEDNESDAY, OCTOBER 4, 2023

CHAIR HASSID: Good morning, everyone. Before we get started, even if you are able to hear me now, in order to ensure that you have good audio quality in the meeting, please go. If you're in the Zoom application, go to the bottom right and there is a language button or it may say interpretation. Please either select English or Spanish, whichever your preferred audio is. This will ensure you're able to hear the meeting well throughout the proceedings and I will give a moment to have that message relayed in Spanish as well.

(INTRODUCTION WAS STARTED TO BE SHARED IN SPANISH)

EXECUTIVE SECRETARY AVILA-GOMEZ: We can switch. Thanks.

Good morning. Dealing with a little bit of technical difficulties this morning.

(INTRODUCTION WAS SHARED IN SPANISH)

CHAIR HASSID: Thank you, Santiago.

Okay, this meeting is now called to order. I will first go through the roll.

Board Member Broad?

BOARD MEMBER BROAD: Here.

CHAIR HASSID: Board Member Flores.

1 BOARD MEMBER FLORES: Present.

2 CHAIR HASSID: Board Member Hall is not able to
3 join us today.

4 Board member Lightstone

5 BOARD MEMBER LIGHTSTONE: Here.

6 CHAIR HASSID: Wonderful. Okay. Also present
7 today is a variety of staff for the ALRB - our Executive
8 Secretary, Mr. Santiago Avila-Gomez, who is going to
9 provide technical support. We will start today with the
10 open session portion of the meeting. We have several
11 presentations and members of the public will be able to
12 provide public comment immediately after those
13 presentations.

14 And we will have general public comment at the
15 end of the majority of the business items today prior to
16 the Board going into closed session. We do have limited
17 capabilities for managing participation during the meeting,
18 so we do ask that you keep your device on mute if you are
19 not speaking and when we call on you, please go off mute.
20 These instructions are also available on the ALRB's website
21 at alrb.ca.gov. On the meeting agenda, if you wish to make
22 a comment, please either send an email, use the raise hand
23 feature in the Zoom application or send a message if you
24 have an organization, please name your name and
25 organization if applicable and please do not include any

1 substantive messages in the Zoom chat when making comment.
2 Okay. And we will give a refresher of those during the
3 public comment period as well.

4 Alright, the first agenda item is to approve the
5 meeting minutes for our most recent meeting on September
6 27, 2023. May I have a motion?

7 BOARD MEMBER BROAD: So moved.

8 CHAIR HASSID: Board Member Broad moves. May I
9 have a second?

10 BOARD MEMBER FLORES: Second.

11 CHAIR HASSID: Board Member Flores seconds.

12 All those in favor say aye.

13 UNISON: Aye.

14 CHAIR HASSID: Wonderful, thank you. The minutes
15 have been approved.

16 Our next agenda item is the Chair's Report. As
17 noted, we will have a presentation from our General Counsel
18 on the restructuring of the regions. Briefly ahead of that
19 presentation, I do want to take a moment to acknowledge
20 that this coming Monday is indigenous people stay. I want
21 to give a land acknowledgement in honor of this event. This
22 is borrowed from our own City of Sacramento where we are
23 located today to the original people of this land, the
24 Nisenan people, the Southern Maidu, Valley and Plains
25 Miwok, Patwin Wintun peoples, and the people of the Wilton

1 Rancheria, Sacramento's only Federally recognized Tribe.
2 May we acknowledge and honor the native people who came
3 before us and still walk beside us today on these ancestral
4 lands by choosing to gather together today in the active
5 practice of acknowledgement and appreciation for
6 Sacramento's Indigenous people's history, contributions and
7 lives.

8 When I was looking at various ways to honor
9 Indigenous People's Day and bring awareness, I had been
10 familiar with the land acknowledgement tradition that has
11 been recently more broadly adopted, including by many local
12 governments, not just here in California but in other
13 states and jurisdictions. And there is a resource if you
14 wish, to see which Indigenous Peoples were based on your
15 land. And I'm going to ask Santiago to include that
16 resource in the chat. They do acknowledge that it's a work
17 in progress and built on the contributions of many people.
18 So it's not necessarily objective fact, but it is a great
19 resource if depending on where you're located, you want to
20 see what other peoples have been on the land that we now
21 have the privilege of being able to occupy.

22 And with that, I will turn it over to our General
23 Counsel, Julie Montgomery, to give her recommendation on
24 the restructuring of the regions and turn it over to her.

25 EXECUTIVE SECRETARY AVILA-GOMEZ: (TECHNICAL

1 DIFFICULTIES)

2 GENERAL COUNSEL MONTGOMERY: Good morning
3 everyone. Good to see everybody here in person and online.
4 So I am going to just reiterate a few points that I raised
5 in a memo that I previously provided to the Board as to why
6 I am proposing to restructure our regional offices.

7 So in essence, the main purpose of this proposal
8 is to better balance the supervision of attorneys between
9 the two Regional Directors. That is the primary purpose.
10 Right now our Salinas Regional Director supervises more
11 than twice the number of attorneys as our Visalia Regional
12 Director does. And so in looking to correct that imbalance,
13 we did look at our sub-regional offices. So we have two
14 main regional offices, of course, and then the three sub
15 regions. And right now our Salinas regional office has
16 Santa Rosa and Oxnard as sub-regions that it oversees.

17 And then in Visalia we have the one sub-regional
18 office of Indio. And so in looking at how to rebalance the
19 supervision, we looked at our two medium size regional sub-
20 regional offices, which are Oxnard and Santa Rosa. And so
21 we examined the possibility of moving either Oxnard over to
22 the Visalia region or Santa Rosa. And for a variety of
23 reasons we landed on Santa Rosa. And one big reason is that
24 the strawberry industry spans between Oxnard, Santa Maria
25 and Salinas. And of course that is a huge industry in

1 California and our Regional Director as well as the staff
2 in Salinas does develop expertise in the commodities that
3 of the cases that they see. And we do get a large
4 percentage of cases every year in the strawberry industry
5 in these areas. It's a huge industry for our state. In
6 addition, workers migrate between or among these three
7 areas.

8 And so there are some similarities in the workers
9 that show up at our various sub-regional offices. So we
10 thought it would make more sense to keep those offices in
11 one region with the one regional director and the staff
12 that is most accustomed to handling those cases. By
13 contrast, the Santa Rosa office sees mostly wine grape
14 cases or cases in that industry. And of course there are
15 also a lot of wine grapes in the Central Valley, which is
16 in the Visalia region. And in addition, we know that there
17 are a number of dairies north as well. And although we
18 haven't seen a whole lot of those cases, they are, we know
19 they're there. And of course the Central Valley is a huge
20 dairy producing region as well. So looking at the
21 similarity of commodities, we thought it made more sense to
22 have Santa Rosa be part of the Visalia region instead of
23 Oxnard.

24 An additional reason for including Santa Rosa is
25 that it is located fairly close to Sacramento and we do

1 have two Visalia region staff members placed in Sacramento.
2 We have a field examiner and an attorney who do work out of
3 Sacramento and part of their work is to help conduct
4 outreach and education to the community and to our
5 stakeholders in the northern Central Valley and the
6 northern California region. And given that Santa Rosa is
7 also in the northern part of the state, we thought it would
8 make more sense for collaborative purposes for outreach to
9 have them in one region. And, in fact, our outreach
10 specialist who covers the Visalia, or who's out of Visalia
11 office, actually did voice support for Santa Rosa being
12 included in the region. And she said that she felt that
13 would also help her work so that our staff can a little
14 more closely collaborate with one another. So those are the
15 primary reasons for wanting and needing to restructure the
16 regions and move Santa Rosa over to the visa region from
17 the Salinas region.

18 So I don't know if there are any questions, but
19 I'm happy to answer any if I can.

20 CHAIR HASSID: I'll look to my colleagues. Do any
21 of my colleagues have any questions? Okay, I do want to
22 acknowledge the general counsel has been really working
23 hard on this and also just kind of thinking overall how to
24 best support the program and the needs of the staff. And I
25 know it's been a challenge with a lot of different factors

1 and really commend your work and also appreciate that
2 you've consulted, I know, staff as well and sought staff
3 input. And so I know it's been a really challenging puzzle
4 and I think it's a great solution and appreciate your work
5 on this.

6 GENERAL COUNSEL MONTGOMERY: Thank you so much.
7 And I also just want to mention there's some proposals to
8 centralize their case numbering and also change the name of
9 the regions from being place-based to just numbered
10 regions. And I think with our current technology that it's
11 very easy to track what cases are filed where and numbers
12 of cases. And so having the suffix of SAL or VIS at the end
13 of a case, I think we should drop that. And then at a
14 glance you can also just see, okay, there's been so many
15 cases, this is number 37, CE 37, that means there's been 37
16 cases filed this year or whatever it is. So I just think
17 it'll be simplified if we also change that memory system. I
18 wanted to mention that's also in the proposal. Thank you
19 very much.

20 CHAIR HASSID: I agree. I will entertain a motion
21 to approve the general counsel's recommendation to
22 restructure the region's is detailed and change the case
23 numbering system.

24 BOARD MEMBER LIGHTSTONE: I'll make the motion.

25 CHAIR HASSID: Okay. And seconded by Member

1 Flores. All those in favor say aye. Aye.

2 UNISON: Aye.

3 CHAIR HASSID: Restructuring approved. Thank you
4 so much.

5 UNIDENTIFIED MALE SPEAKER: Thank you. Thank you.

6 CHAIR HASSID: Okay, our next Agenda Item is the
7 Executive Secretary's Report with Santiago Avela Gomez.
8 Santiago.

9 EXECUTIVE SECRETARY AVILA-GOMEZ: Thank you and
10 good morning Chair Hassid and members of the Board. For
11 today's report, there's matters that have had an action
12 since the last public Board Meeting on September 6th. So in
13 that timeframe there's been two complaints settled there
14 been Sonoma Cho doing business as Flora Terra and I was
15 remiss in mentioning that this report and all other reports
16 are listed on our website under the meetings tab. Going on
17 Sonoma Cho, sorry, returning to Sonoma Cho, a settlement
18 was reached on September 22nd.

19 The next matter is Linda Christie doing business
20 as Sunny Knoll Vineyards (phonetic) and Christie Vineyards
21 (phonetic). And that was settled on September 7th. Moving
22 on to administrative orders issued by the Board, it's the
23 admin order 2023-09 that was issued on September 11th in
24 Ocean Mist Farms. And it was an order denying the
25 respondent's motion to reconsider and or modify the Board's

1 previous admin order. And that involves the Board's
2 decision in 46ALRB5. Finally turning to pending matters is
3 the National Agricultural Workers Union - NAWU. And that
4 case number is 2023-LPA-002 and the General Counsel issued
5 her report and recommendation on September 21st responding
6 to the complaint that was filed in July. That concludes my
7 report. Happy to answer any questions.

8 CHAIR HASSID: Thank you Santiago.

9 Our next agenda item is the Litigation Report. We
10 do not have a report today and so we will turn it back to
11 our General Counsel for her report.

12 GENERAL COUNSEL MONTGOMERY: So I'm going to
13 report on two settlements that we achieved in the past
14 month and I think one of them was executed later in the day
15 after our meeting that we had last month. So I didn't get a
16 chance to highlight it. And that one is a settlement
17 involving 3h Custom Farming. And in that case the Mixteco
18 Indigenous Community Organizing Project, MICOP, filed a
19 charge on behalf of butternut squash harvesters in Ventura
20 County alleging that 3h Custom Farming retaliated and
21 discriminated against workers by harassing them, changing
22 their work conditions and creating a hostile work
23 environment because they engaged in protected activity and
24 that this ultimately caused them to resign. And the workers
25 claimed that they complained about dirty restrooms, quality

1 and availability of drinking water, unsafe work conditions
2 and limited shade during hot weather. And the ALRB filed a
3 complaint on June 30th of this year. And in this case too,
4 I'll just mention that the harassment mentioned included
5 derogatory comments against Indigenous workers, calling
6 them names that were very derogatory based on their
7 ancestry. So that was just a concern. But we filed a
8 complaint on June 30th and the parties entered into a
9 settlement agreement on September 6th in which 3h Custom
10 Harvesting agreed to pay \$17,505 in lost wages and also
11 agreed to reinstate the two workers who filed the
12 complaint. And then of course they also agreed to the
13 standard noticing remedies.

14 And then the second settlement, which our
15 Executive Secretary mentioned involved Sonoma Cho, which is
16 a cannabis operation. And in that case the teamsters filed
17 a charge, I guess that company in Sonoma County in November
18 of 2022 alleging that Sonoma Cho had announced unilateral
19 changes in employees wages and working conditions without
20 giving notice to the union or offering to bargain with the
21 union about the changes. And another charge was filed by
22 one of the cannabis tremors claiming that the company
23 retaliated against him and others by reducing their piece
24 rate and retaliation for participating in union activity
25 and in prior ALRB investigations.

1 So we did file a complaint also on the June 30th
2 against that company and entered into a settlement
3 agreement on September 22nd. And that agreement states that
4 Sonoma Cho will pay \$11,900 in lost wages to the chief
5 workers who were adversely affected by the unilateral piece
6 rate change. And they also agreed to reinstate the prior
7 piece rate for 42 days while the teamsters and Sonoma Cho
8 bargain over the piece rate. And Sonoma Cho agreed to
9 participate in at least four bargaining sessions with the
10 teamsters within 42 days from the execution of the
11 settlement agreement.

12 And then they also agreed to the standard
13 noticing and posting remedies. So those are the two
14 settlements I have to report. And then we've also been very
15 active in conducting outreach and trainings. We've done
16 various presentations to different groups. I won't detail
17 them all here, but we've been in Salinas and Watsonville,
18 Monterey County. We did a virtual training for staff of the
19 California - Central California Environmental Network.
20 We've also been at 13 community events all over the state.
21 Indio, Salinas Madera, Oxnard, attended Guelaguetza
22 Indigenous culture celebrations in Fresno and Lamont in
23 Kern County. We had staff in Soledad in Monterey County,
24 Watsonville in Santa Cruz County, and Salinas. We had
25 someone go up to Tule Lake, which is in Siskiyou County,

1 the Oregon border very far to travel, so appreciate that.
2 And also in Indio. And then we've also been on radio and TV
3 and Facebook Live. I appeared on September 7th on the
4 Univision TV program Despierta Valle Central hosted by
5 Lupita Lomeli. We also have staff on in Oxnard, both in
6 Spanish and Mixteco, a Spanish and Triqui radio interview
7 called "La Hora Triqui" hosted by Radio Bilingue which
8 broadcast to central coast areas and also a Spanish radio
9 interview on "Comunidad Alerta" hosted by Radio Bilingue
10 which broadcasts all over the state and in addition to
11 other states like Arizona, Colorado, New Mexico, Texas. So
12 we're trying to get the word out about who we are and what
13 resources are available to folks. And now he's been busy.
14 So any questions?

15 CHAIR HASSID: I don't have any questions but
16 wonderful report. Thank you and I won't be getting my call.
17 Alright, thank you.

18 Okay, our next Agenda Item is a report from our
19 Chief of Administrative Services, Brian Dougherty. Brian,

20 MR. DOUGHERTY: Good morning. Have just a couple
21 of brief updates. Happy to announce that we have completed
22 all of our budget change proposals for review as part of
23 the proposed 2024/2025 Governor's budget. Those proposals
24 are currently under review within the administration, so
25 working closely to try to advocate to get those approved.

1 In addition, on the administrative front, we have been
2 notified that we have two regularly scheduled hearing
3 compliance audits that are being scheduled. One on our IT
4 policies that is going to be conducted by the Department of
5 Technology. They're supposed to engage ALRB starting next
6 week and we were just notified on Monday, but the State
7 Personnel Board will be doing their biannual compliance
8 review of all of our HR practices as well. So we expect to
9 begin engagement in the month of October with the State
10 Personnel Board staff on that as well. I'm also happy to
11 announce that we have filled our opening for our Staff
12 Services Manager I in an administration unit. The position
13 that's over are fiscal and procurement and facility
14 operations. We've had Dalton Weber (phonetic) who's been
15 working out of class and filling in since Jan Shores
16 (phonetic) left in April and I'm happy to announce that we
17 permanently have offered that position to Dalton effective
18 today and he has accepted. So Dalton is looking forward to
19 his new role here at ALRB and I wish everybody can reach
20 out to him and appreciate all of his hard work over the
21 coming months in this new role.

22 CHAIR HASSID: Thank you, Brian. And also
23 congratulations to Dalton. We're so appreciative of all the
24 work he's done and excited to see him continue to grow in
25 this new role. So great work. That concludes the

1 administrative services report.

2 Our next agenda item is legislation which we'll
3 have with Chief Board Council Todd Ratshin. And then from
4 there we'll also have the regulations report. Todd.

5 MR. RATSHIN: Okay, is this thing still on for
6 the legislative report? Very short report. There's a report
7 available on the website as well on the meeting page on
8 September 22nd, the governor assigned Senate Bill 544, this
9 has Bagley-Keene Open Meeting Act reform to make permanent
10 certain provisions regarding teleconference meetings
11 permanent until 2026, at least until then.

12 CHAIR HASSID: Alright, thank you Todd. Oh, and
13 the regulations report. I think you're going to want to -
14 may want to stay up there for a minute.

15 MR. RATSHIN: Yeah, sorry. So we have two reports
16 today I believe Member Broad will present the report on the
17 cannabis and LPA implementing reg from AB 195. And then the
18 subcommittee has asked me to prepare or to present the AB
19 113 implementing reg after that.

20 BOARD MEMBER BROAD: Good morning. So the way we
21 were sort of hoping to proceed is that we'll do each of the
22 two packages. Todd will make sort of detail - we'll
23 introduce him, Todd will make detailed comments then we
24 thought, with your approval, then you would take comments
25 from Board members followed by any public comment on each

1 of them.

2 CHAIR HASSID: Sure. Okay.

3 BOARD MEMBER BROAD: So good morning everyone. We
4 have two proposals. The first AB 1 95 deals with labor
5 peace agreements in the cannabis industry. This is a
6 request for final approval of the regulations. What is
7 before us today are technical - fairly technical amendments
8 that are a consequence of discussion with the Office of
9 Administrative Law and they're very minor and technical as
10 I mentioned. Todd, do you have any specific, specific
11 discussion of them you want to mention?

12 MR. RATSHIN: Yeah, just briefly the two real
13 changes related to a couple filing deadlines that are set
14 forth in the proposed regulations for when certain types of
15 filings would be due and just specifying whether those
16 would be due within five days after service of a document
17 or five days after filing of the document. So the changes
18 are of that nature.

19 BOARD MEMBER BROAD: Okay. So we're done with
20 that.

21 CHAIR HASSID: Okay. I don't have any questions.
22 Do any of my colleagues have any questions on that
23 proposal? Any questions from the public or anyone else on
24 the cannabis regulatory proposal?

25 Okay, I'll move to approve the regulations go

1 forward as recommended by the subcommittee and I have a
2 second.

3 UNIDENTIFIED MALE SPEAKER: Second.

4 CHAIR HASSID: Alright, all those in favor say
5 aye.

6 UNISON: Aye.

7 CHAIR HASSID: Wonderful. Okay. Alright. On to a
8 blockbuster reg package for AB 113.

9 BOARD MEMBER BROAD: Yeah, so this regulation
10 package is a new regulation package implementing AB 113,
11 which was the legislation that modified legislation last
12 year to establish our new system for majority support, I
13 guess well let's call it card check - a card check system
14 for determining majority support in union organizing
15 campaigns. The subcommittee held a workshop for interested
16 members of the public that was well attended and we had a
17 spirited discussion which was I would characterize as very
18 helpful to the subcommittee in understanding the positions
19 of the parties and issues that might arise. And we tried in
20 revising our original proposal to address some of those.
21 I'll ask Todd to go over these in detail and then we can
22 get into the discussion.

23 MR. RATSHIN: All right. Thank you, Barry. I
24 won't be going into too much detail. The proposal that the
25 subcommittee released last week is in a red line format to

1 indicate the changes from the original proposal several
2 months ago. And so much of this has been out in the public
3 domain for a few months now. And so there'll probably be,
4 I'll try to focus a bit more on some of the changes that
5 have been made and then going to reflect it in the red
6 line. Just a brief overview, 30,000 foot view of how this
7 process would work, at least in of the majority support
8 petition and new labor code 1156.37. And then I'll also
9 touch briefly on the revisions to the compliance
10 regulations and the new statutory provisions on appeal
11 bonds and then turn it back to the Board and the public for
12 comment question.

13 So in terms of the majority support petition
14 process subdivision A - well, I will say again that the
15 statute is pretty detailed in a lot of the procedures on
16 how this process works. So a lot of the regulation is in
17 the nature of gap filling where possible and where we
18 believe it makes sense. We've borrowed from existing
19 procedures, for instance, regulation 20300 in terms of
20 procedures governing the investigation and review of
21 petitions for certification. So a lot of the language is
22 borrowed from those regulations. Subdivision A under
23 proposed section 20391 really governs the filing and
24 service requirements for majority support petitions.
25 Subdivision A one focuses on the requirements and the

1 content of petitions or authorization cards. This was a
2 topic of some discussion at the public workshop at the end
3 of June and some of the comments the Board received
4 regarding whether to adopt procedures to allow for the
5 revocation of signatures or expressions of support or
6 language clarifying on the cards themselves that an
7 expression of support on a card is the equivalent of a vote
8 in an election that would not be revocable during the one
9 year time period from the date of signature.

10 And so the procedure proposed here would be
11 adding that type of language to the card that it is in the
12 nature of a vote in favor of the union that is valid for
13 one year and not revocable within that timeframe.

14 Subdivisions B and C governed the regional
15 directors and the regional offices review of a petition in
16 terms of unit determinations and other questions regarding
17 whether a bonafide question or representation exists.

18 Subdivision C two and three would relate to more in the
19 nature of the determination of the proof of support and
20 whether majority support has been established. If on the
21 first review of the petition and the support received the
22 amount of cards or signatures received is insufficient,
23 doesn't meet the majority threshold then under a statute
24 that's returned to the labor organization for 30 days to
25 cure invalid cards or to obtain additional support. And so

1 at the end of that period, the end of the card count
2 whether support is established or not. The proposal here
3 would have the regional director prepare something in the
4 nature of what the Board sees when a secret ballot election
5 has been conducted. And so a sort of tally to indicate what
6 the final count came out as. Those are some of the new
7 changes that were updated since the original proposal I
8 from there, subdivision D governs the objections process
9 that is briefly laid out in statute if a labor organization
10 is certified following the count and the following
11 subdivisions relate to instances where a second majority
12 support petition may be filed while a first is being
13 processed under statute. Generally the second petition
14 would be barred unless it contains certain types of
15 allegations in the nature that the labor organization has
16 been created or assisted by the employer. And then there is
17 a provision in here, I think it is an E two which relates
18 to, I'm sorry, moving down to subdivision G, A procedure
19 for consolidating objections with pending unfair labor
20 practice charges that may be on file with general counsel's
21 office that is borrowed largely from existing law for
22 consolidating those types of allegations in the context of
23 the typical petition for certification. And then the final
24 subdivision in this section, the statute 1156.37 has a
25 couple provisions regarding employer misconduct that occurs

1 during a time that a majority supportive petition campaign
2 is underway. So the final subdivision of this regulation
3 would provide some guidance in terms of those statutory
4 provisions establishing a 10% threshold that if a liberal
5 organization is able to demonstrate support of at least 10%
6 of the employees that would be sufficient for purposes of
7 those statutory provisions for saying that a campaign was
8 underway to trigger the consequences of the types of
9 employer misconduct that is defined in those statutes. Then
10 there's been some pretty significant overhaul of the
11 compliance regulations. A lot of it is mainly the numbering
12 and the reorganization of the compliance sections of our
13 current regulations. And this is in order to comply with
14 the new requirements under the new statutory amendments to
15 our act where a monetary remedy has been ordered by the
16 Board after making an unfair labor practice.

17 Finding the decision is not final for purposes of
18 1160.8 judicial review, but rather is referred directly
19 back into compliance proceedings for determination of the
20 amount of the monetary remedy owed. And then at the
21 conclusion of that process, once the monetary remedy is
22 specified, that would set the amount of an appeal bond that
23 an employer would be required to pay or to post as a bond
24 in order to seek judicial review of the entire proceedings
25 of both the liability and any issues that arose during the

1 compliance proceedings. And so this is a pretty significant
2 change from existing law where compliance proceedings
3 typically would occur following judicial review and
4 finality of those proceedings. So a lot of this is really a
5 lot of the original proposal from June remains intact.
6 There were some questions received during the public
7 workshop at the end of June just regarding the mechanics of
8 the bonding procedures and how the Board would handle the
9 bonds or cash deposits that received. And so there are a
10 few new sections and red line towards the end of this
11 proposal regarding the bonds that would be required in
12 unfair labor practice or mandatory mediation and
13 affiliation proceedings. And a lot of this is taken from
14 just the code of civil procedure bond and undertaking law
15 that chapter. And so it's basically the sections that these
16 procedures are drawn from are all listed in the reference
17 notes.

18 I'm sure everybody is eager with their questions
19 and comments, so I'll turn it back to you.

20 CHAIR HASSID: Thank you. And before we open it
21 up for questions, I just want to remind everyone, Board
22 Members, staff and members of the public, we do have one
23 pending majority support petition that's in a cure period
24 right now and we just need to be mindful to, we should not
25 be discussing any pending matters or alluding to any

1 pending matters and the Board cannot resolve any questions
2 about or accept any parte communications related to that.
3 So with that I will open up the floor.

4 I don't know if any of my colleagues have any
5 questions. I had one question, some that I went over with
6 Todd yesterday, but one on proposed section 20290. This is
7 one of the appeal bond 20290(d). So it states if a
8 respondent fails to file an answer within the time
9 prescribed by this section, the Administrative Law Judge
10 may either with or without taking evidence in support of
11 the allegations and without notice to the respondent find
12 the allegations of the specification or the notice of
13 hearing. I just was unclear about the without Notice to the
14 Respondent. I think I even in rereading it, I may have
15 resolved it. So is this that the ALJ doesn't have to give
16 additional notice or what? I just want to make sure I'm
17 understanding that without notice to the respondent, I
18 don't disagree that there should be sanctions if someone
19 fails to respond, but the notice part, I just want to
20 check.

21 MR. RATSHIN: So this section, the subdivision D
22 is modeled after current regulation 20292(c). A lot of the
23 language is taken from that. So that's something that can
24 certainly take a look back on. I would imagine consistent
25 with when the Board sees a default case in an unfair labor

1 practice matter on a liability issue where a respondent has
2 not answered within the time we're doing. So there
3 typically is a motion for entry default and to see the
4 allegations submitted and so I'd imagine it would follow
5 that type of procedure that the respondent would be
6 notified one way or another.

7 CHAIR HASSID: Okay. Okay. That was one of my
8 only outstanding questions.

9 UNIDENTIFIED FEMALE SPEAKER: I just wanted to
10 make a comment before maybe point of clarification. So
11 generally speaking, I want to really appreciate the work of
12 the subcommittee. I think this draft is very robust and in
13 particular, I know you noted Todd subdivision a one, I
14 really appreciate the detailed to what would constitute an
15 actual signing of the card and what that means. And I think
16 you've all done a very good job of clearly communicating to
17 folks that I know that was a topic of this discussion
18 previously. And similarly with the appeals bond section, I
19 think it goes very into detail and pretty clear.

20 I did have just a general question for cash or
21 cash equivalent deposits. It's noted in Section (b)3 that
22 the deposits will be entrusted to the Board in an interest
23 bearing account. Generally speaking, the decision to hold
24 in an interest bearing account, is that just a consequence
25 of the type of account that's available or is that specific

1 or is there a specific reason for holding it in an interest
2 bearing account?

3 MR. RATSHIN: That's a provision of statute in
4 the bond and undertaking law where a cash deposit is made
5 in lieu of an appeal bond that the officer here would be,
6 the Board would be required to hold that money in trust in
7 an interest bearing account is all set forth in statute and
8 then interest that accrues on the principal would be
9 payable back to the employer who made the deposit on a
10 quarterly basis if they so desired. If they requested that.

11 CHAIR HASSID: Thank you.

12 MR. RATSHIN: Yes.

13 CHAIR HASSID: Thank you.

14 We do have various members of the general counsel
15 staff and regional director staff here. Do we have any
16 comments from our staff in the room on the proposed
17 regulations?

18 ACTING REGIONAL DIRECTOR DE LUNA: I have a short
19 question - a technicality.

20 CHAIR HASSID: Can I ask you to just go, sorry to
21 go up there just so then the folks on the Zoom can hear you
22 as well.

23 ACTING REGIONAL DIRECTOR DE LUNA: On 20391 (a),
24 it says the petition shall be filed electronically, that's
25 after the red line, but the cards have to be delivered in

1 person. So I'm wondering why we're requiring electronic
2 filing in addition to the physical delivery of cards and
3 whether a petition could be physically delivered instead of
4 electronically filed.

5 MR. RATSHIN: Thank you.

6 CHAIR HASSID: I read it that it can be filed by
7 - oh, okay. It has two different things. Alright, I see it
8 now.

9 MR. RATSHIN: Yes. In some of the language here
10 in terms of electric filing, the influence by the new
11 regulations that just took effect on the birth of this
12 month, which require electronic filing as a general rule by
13 represented parties. I mean we're in pre-rulemaking now the
14 different process makes sense. I mean that's certainly
15 something that the Board can consider here. I do recognize
16 a bit of inconsistency in requiring the petition itself to
17 be electronically filed, but we do have to accommodate in
18 addition to that the actual delivery of the support to the
19 appropriate regional office.

20 BOARD MEMBER BROAD: Yeah, let me add to that
21 that our thinking there on this particular subject emanates
22 from the general view of the subcommittee that these cards
23 are akin to ballots in an election and that if there are to
24 be objections or questions related to the cards themselves,
25 the process in which they were gathered or whether they're

1 real or whatever, someone could invent or allege, I
2 shouldn't say invent allege as an objection that the Board
3 is going to need the original documents anyway just as in
4 an election you need the ballots. I do think you may be
5 raising a good question about whether we need to do both or
6 just say deliver the cards. So that's a good question and
7 one that we might consider as the process moves forward.
8 But I think we do believe in any event minimally the
9 original cards need to be delivered to the Board. Yeah, I
10 would just like to ask Francesca a question about her
11 comment, which is are you saying that you would, given your
12 experience, you would prefer that the petition itself be
13 done on paper?

14 ACTING REGIONAL DIRECTOR DE LUNA: I think we
15 should allow for the possibility that someone could just
16 deliver a paper and not add an additional layer of
17 bureaucracy requiring electronic delivery and then the
18 physical delivery. That's all.

19 BOARD MEMBER BROAD: Thank you.

20 CHAIR HASSID: Okay, any other comments from our
21 staff in the room?

22 Okay, we'll open up the comment queue. I believe
23 we have at least one member of the public Carl Borden from
24 the California Farm Bureau is first up. Carl.

25 MR. BORDEN: Thank you Chair Person, Hassid. I'm

1 Carl Borden, senior counsel with California Farm Bureau
2 Federation, located in Sacramento. And we promote the
3 interests of state's agriculturalists farmers and ranchers.
4 I did participate in the June 23rd public workshop,
5 followed up a week later by submitting written comments
6 reflecting what I said during the public workshop. And so I
7 will be brief here because what I will say - reiterate I
8 don't know if you've had an opportunity to see my written
9 remarks. And also I do understand that California Farm
10 Bureau will have an opportunity to comment once the
11 rulemaking package is formally released.

12 So there's two points I'd like to make, both of
13 which go to provisions in proposed 20391(a)1. And the first
14 is that in the newly added language, a signature on the
15 card or petition is valid for one year from the date it is
16 signed. In my oral and written comments, I had said that
17 given the fact that there is a 30-day grace period offered
18 to a union that was unable on the submission of the
19 petition to prove employee majority support to gather and
20 submit to the Board additional signature.

21 And what that means is that there might be
22 instances where cards that were, or petitions that were
23 signed early on that could then become essentially stale
24 and exceed that one year limit of validity. And so even
25 though that they were valid at the time, the majority

1 support petition was filed, the clock continues to tick and
2 they could become invalid because they would be more than a
3 year old at the time. The determination is ultimately made
4 after that 30-day additional grace period is offered to the
5 union. And in fact, the addition of this language conflicts
6 with the initially proposed language that's in A two where
7 it says no employee authorization dated more than one year
8 prior to the date of filing of the petition shall be
9 counted to determine a showing of majority support. I think
10 that creates a conflict between these two provisions. I
11 had, excuse me, in my written remarks, suggested an
12 alternative in that rather than following in lockstep the
13 existing provision for showing majority support for a
14 secret ballot election that it should read no employee
15 authorization dated more than one year prior to the date of
16 the determination of majority support shall be counted to
17 determine a showing of majority support.

18 But again, I'll reiterate that in subsequent
19 comments that we will file. Secondly, the question of the
20 employee's right to revoke an authorization previously
21 given I had urged that ALRB regulations reflect what I
22 consider to be applicable NLRB precedent as required by
23 Labor Code Section 1148 that employees under NLRB case law
24 do have the right to revoke their authorizations previously
25 given to a union. The initial draft that I was commenting

1 on was silent in that regard. And I see now that instead of
2 heading the direction that I had suggested, the regulation
3 goes the opposite way and says that a signature given is
4 not revocable during that one year period. Because as I
5 heard it expressed earlier in this meeting that it's
6 considered a vote. Well, it's really a conditional vote. It
7 doesn't become a vote until the time that the majority
8 support petition is filed. And then ultimately a
9 determination is made.

10 And as I expressed in the written comments, it's
11 a different situation when we're talking about this
12 conditional vote becoming an actual vote versus an employee
13 signing an authorization card that could be used by a union
14 to call for a secret ballot election because in the latter
15 situation we're being used to call for secret ballot
16 election, the employee's real time expression of sentiment
17 towards unionization will become manifest during the secret
18 ballot election. So even if the employee gave many months
19 before the secret ballot election and authorization card
20 that calls for a secret battle of election, it supports
21 one, the employee will then be able to express his or her
22 or their real time sentiment. But this is a different
23 situation where you have the employee signing an
24 authorization card perhaps many, many months before the
25 union files its majority support petition during which time

1 employee may have changed jobs.

2 There could be different situation with the
3 employer. That employee now no longer feels a need to have
4 a third party union get between the employee and the
5 employee's employer. Even at the time when the union
6 authorization card was filed, the employee might not have
7 been an employee of anyone. As an aside, it also this, even
8 though this is put in there that it's not revocable, it
9 doesn't deal with a situation where the employee after
10 signing one union authorization card signs one or more
11 other union authorization cards authorizing one or more
12 other unions. That's conceivable that you could have, well,
13 I guess under, I'll take that back. I was going to say you
14 could have a situation like in the secret ballot election
15 process where you have two or more unions vying to
16 represent the same bargaining unit, but I realize now that
17 the structure of this is, it's really one union at a time,
18 so I won't withdraw what I was going to say. So anyway, I
19 hope that the agency will reconsider its position in this
20 regard and follow the applicable MLRA precedent.

21 Thank you very much. And by the way, that
22 applicable precedent as I cited in my letter is Bluegrass
23 Industries Inc. At the 1987 MLRB decision at 287 MLRB,
24 number 28 and yeah. Okay, thank you.

25 (TECHNICAL DIFFICULTIES)

1 MR. RATSHIN: You have to restart. I'm sure
2 people don't want to, okay, so I'll just start over. This
3 is pre-rule making, so there will be for future
4 opportunities for comment regardless of any action taken
5 today, whether revisions are requested or when it does
6 eventually proceed to formal rulemaking through the Office
7 of Administrative Law. There will be future opportunities
8 for comment and comments, written comments that were
9 received following the workshop in June. Those are
10 available on our website on our rulemaking page as well. I
11 will just briefly for the Board touch on the two issues
12 raised. I, in terms of revocation rights, there is NLRB
13 precedent regarding employee rights to revoke a prior
14 authorization given or support express and what the
15 requirements would be for that exactly how you would
16 express your desire to revoke a prior authorization.

17 Now whether that's an inherent right of the
18 employees, I don't think that those cases necessarily
19 establish that there is Public Employment Relations Board
20 precedent regarding revocations where representation
21 petition has been filed and there was one perb order where
22 neither the statute or the regulations provided for
23 revocation rights that revocations that were produced in an
24 effort to defeat a petition were disregarded by the Board
25 because they were not authorized by the statute of

1 regulation. And then in terms of signature validity for the
2 one year time period, I see the language of one and two. I
3 don't necessarily believe those operates inconsistently or
4 present a contradiction or conflict with one another. I
5 think for purposes of predictability and adding some
6 certainty to the process that when a filing is made, if a
7 signature and a support, whether it's a card or a signature
8 on petition, if that was valid at the time of filing and
9 the time it is initially counted by the regional director,
10 I think it would offer just some awkwardness, some
11 unpredictability if you kept everything in fluxx so that
12 cards that were valid later become invalid during the
13 subsequent cure period because there's no subsequent cure
14 periods allowed beyond the 30 days for those situations.

15 And so I think it is feasible and workable that a
16 card that is valid at the time the petition is filed, it
17 offers that predictability that the parties all under the
18 ground rules and cards that are valid then are going to
19 remain part of the count and they're not going to be lost
20 when the labor organization, if it is in a cure period
21 subsequently produces additional support.

22 CHAIR HASSID: One question I had, because I've
23 heard some of these arguments, and I think one of the
24 things that I appreciate that the regulation does is says
25 regardless if there's a time period, whether you offer a

1 right to revoke or not, it needs to be clear that whoever
2 is signing a card is informed. And I think this regulation
3 gets to that. Going to Mr. Borden's point, one of his
4 points, if an employee signs a card, say in August, 2023,
5 the cards are submitted in June, 2024, that's when you get
6 the employee list and that employee is no longer employed
7 with that employer. Would that card count towards majority
8 support?

9 MR. RATSHIN: I don't believe it would under
10 existing law in a petition for certification context
11 because there is the requirement, and it is spelled out in
12 one of the provisions here, that a card can be signed at
13 any time. But I think for purposes of determining
14 eligibility that employee for their card, if they did sign
15 a card for that to be counted towards the proof of support,
16 they must be on the payroll for the preceding pay period.

17 CHAIR HASSID: Got it.

18 MR. RATSHIN: For the filing of the petition so
19 that employment requirement remains.

20 CHAIR HASSID: Okay. Okay, that's helpful.

21 Barry.

22 BOARD MEMBER BROAD: Yeah, I wanted to discuss
23 the, at least from my perspective about a revocation, the
24 ALRB under this statute looks - or ALRA under the statute
25 is substantially different from the NLRA. Very, very

1 different. And the statute is completely silent about
2 whether there can be revocation and I don't believe under
3 basic rules of statutory construction that that silence can
4 be inferred as authority for the ALRB to establish a
5 process that isn't available under the statute. And if you
6 think about it, when you start talking about revoking
7 something you would need, and I believe the legislature
8 would have to provide that and think through it, a whole
9 process for revocation when revocation is valid, how long
10 revocation is valid for, can an employee sign a blanket
11 revocation? All of these are questions which we would just
12 have to make up an answer for. And I think if the
13 legislature had intended to provide for revocation of these
14 cards, it would've put it in the statute. And so I don't
15 believe we have the legal authority whether it's a good
16 policy idea or not, I don't think we have the legal
17 authority to adopt that. And that if that's a problem out
18 there for folks, they need to amend the statute. I see that
19 Mr. Borden has raised his hand.

20 MR. BORDEN: Very briefly in response to Member
21 Broad's comment. I think the same thing could be said for
22 the fact that the statute is silent as to in the
23 regulation, a prohibition against revocation.

24 CHAIR HASSID: Okay. I see Matthew Allen's hand
25 is up.

1 MR. ALLEN: Good morning, Matthew Allen with
2 Western Growers Association. I appreciate the opportunity
3 to speak this morning. I just would just concur with all
4 the comments that Carl has made with the California Farm
5 Bureau, especially as it regards the issue of revocation of
6 the cards. I think there's some understanding that up to a
7 point of the petition being filed, that's sort of a
8 different narrative about the potential to revoke that
9 authorization. But up to that point, it seems to be just a
10 fundamental fairness issue. Strikes me as that. And I agree
11 with Carl's last point, that if the statute is silent on
12 it, this seems to go further than what's currently in the
13 act. So this piece of it is concerning for us.

14 CHAIR HASSID: Noted. Are there any other people
15 in the comment queue wishing to make the comment?

16 EXECUTIVE SECRETARY AVILA-GOMEZ: Not at this
17 time.

18 CHAIR HASSID: Okay. Give a moment here to see if
19 anyone else wishes to on the regulatory package and do any
20 of my colleagues okay with that? Then I will make a motion
21 to move the proposed regulations as recommended by the
22 subcommittee for AB 113 forward and prepare package for
23 formal rulemaking. Can I have a second?

24 BOARD MEMBER BROAD: Second.

25 CHAIR HASSID: Thank you, Member Broad. All those

1 in favor?

2 UNISON: Aye. Aye.

3 CHAIR HASSID: Alright, thank you. And we'll
4 provide any more information once we enter formal
5 rulemaking. Thank you.

6 Okay. And now prior to going into closed session,
7 the Board will open it up for general public comment.
8 Please state your name and organization if applicable and
9 you can either raise your hand or make a note in the chat
10 feature and we will take comments and order received.

11 Okay. Not seeing anyone that wishes to make a
12 comment. The Board will now gavel into closed session.
13 Thank you.

14 (WHEREUPON THE BOARD ADJOURNED TO CLOSED
15 SESSION.)

16 (WHEREUPON THE BOARD RETURNED FROM CLOSED
17 SESSION.)

18 Okay. The Board is now returned from closed
19 session 11:39 AM Our last agenda item is announcements. We
20 will have our regional directors meeting at 2:00 p.m. today
21 and the agenda is posted on our website. If you would like
22 the dial-in information, it will be virtual. And then our
23 next regular Public Board meeting is scheduled for
24 Wednesday, October 18th. Thank you. This meeting is now
25 adjourned.

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(OFF THE RECORD)

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

December 15, 2023