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To: Agricultural Labor Relations Board
Email: Santiago.Avila-Gomez@alrb.ca.gov
Re: Notice File No. Z2024-0226-02

California Farm Bureau (“CAFB”) submits these comments on the proposed regulations to implement amendments to the Agricultural Labor Relations Act (“ALRA”) enacted by Assembly Bill (“AB”) No. 113, Statutes of 2023, chapter 7.

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

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

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

In the MSP process, therefore, authorization cards are the ultimate determiner of employee support of a union. It is thus essential that when the ALRB—or specifically, the ALRB regional director (“RD”) of the office making the determination of employee majority support—is evaluating cards to determine whether majority support exists, every card expresses the respective employee’s then-current and true support of that union to represent in collective bargaining the agricultural employees of a particular agricultural employer.

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

Identification of Agricultural Employer’s Name: The regulation proposed at 8 CCR 20391(a)(1) requires authorization cards to “identify the name of the agricultural employer to which the cards or petitions pertain....” While a good start, this provision should be augmented to

further mandate that such identification be made before the cards are signed. Otherwise, the authorized union could add such identification at any time before the card is submitted to the ALRB in support of the union's MSP. Without the recommended augmentation, the provision will be ineffective in linking an employee's authorization to a particular employer at the time the employee signs the card.

CAFB recommends the following wording: "Authorization cards or petitions submitted as evidence of majority support also shall, before they are signed, identify the name...."

Revocation of Authorization: The regulation proposed at 8 CCR 20391(a)(1) requires authorization cards to "clearly state ... (iii) a signature on the card or petition may not be revoked."

A ban on authorization revocability is not authorized by statute and is contrary to applicable National Labor Relations Act ("NLRA") precedent, which the ALRB must follow. Lab. Code, § 1148. Clause (iii) should therefore be deleted from 20391(a)(1). Moreover, the right of revocation should be enshrined in that section.

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

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

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

CAFB asserts that both questions must be answered, "no."

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

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

To that end, proposed section 20391(a)(1) should be amended by deleting from it clause (iii), "a signature on the card or petition may not be revoked" and adding to it these sentences:

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

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

The principle of an employee’s right to revoke an authorization is recognized by the National Labor Relations Board; see, e.g., *Blue Grass Industries, Inc.* (1987) 287 NLRB 274, 291; *TMT Trailer Ferry, Inc.*, 152 NLRB 1495, 1507. And at least one federal circuit court has similarly recognized that right, in *NLRB v. Reeder Motor Co.* (6 Cir. 1953) 202 F.2d 802, 803-804.

The ALRB must “follow applicable precedents of the [NLRA], as amended.” Lab. Code, § 1148. CAFB recognizes that the NLRA and the ALRA differ in that under the NLRA, an employer may voluntarily recognize a union based on authorization cards evidencing employee majority support, whereas under the ALRA’s MSP process, the ALRB must certify a union based on the same. But that difference is immaterial.

What does matter is that under both regimes, signed cards are used to evidence employee majority support. A union authorization card signed by an employee who later no longer supports the union or who later realizes he or she signed it without understanding its effect or because he or she was misled into signing it must not be used in determining employee majority support under either regime because the employee in fact does not support the union at the time of the determination.

Honoring and protecting the expression of true employee sentiment on unionization is a core purpose of the ALRA. Stripping employees of their right to revoke a union authorization card contravenes that purpose.

Disclosure Language: The regulation proposed at 8 CCR 20391(a)(1) requires several disclosures to be included on authorization cards. At the end of that paragraph should be added this sentence: “The statements required by this paragraph (1) shall be printed in the language most readily understood by the employee signing the authorization card or authorization petition.”

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

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

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

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

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

Extension of 48-hour Period: The second sentence of the regulation proposed at 8 CCR 20391(b) provides: “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.”

While “legal holiday” includes Saturday (statutes are cited below) and thus it is not necessary to add Saturday to the quoted provision, the provision’s inclusion of Sunday as the only referenced day could lead one to wrongly conclude that the provision does not apply to Saturday.

Accordingly, CAFB recommends that “Saturday,” be added before “Sunday” in the provision.

The pertinent statutes are:

“The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” Code of Civ. Proc., § 12; underlining added.

“If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday. For purposes of this section, ‘holiday’ means all day on Saturdays....” Code of Civ. Proc., § 12a, subd. (a); underlining added.

Summary of Recommended Changes

1. Amend proposed section 20391(a)(1) by:
 - a. Adding to it a provision that authorization cards must, before they are signed, identify the name of the agricultural employer to which they pertain.
 - b. Deleting from it the signature-irrevocability provision in clause (iii) and adding to it a provision specifying how an authorization may be revoked.
 - c. Adding to it a provision requiring the disclosure statements on an authorization card to be printed in the language most readily understood by the employee signing it.

2. Amend proposed section 20391(a)(2) by specifying that no employee authorization dated more than one year before the date of the determination of majority support will be counted to determine a showing of majority support.
3. Amend proposed section 20391(b) by adding before “Sunday or legal holiday” Saturday as a day that causes the 48-hour period for the filing of the employer’s response to an MSP to be extended to the corresponding hour on the next business day.

In closing: CAFB appreciates this opportunity to submit these comments on and suggested revisions to the proposed regulations.

Sincerely,



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Senior Counsel