

Proposed Regulation

Title 8, California Code of Regulations, to adopt section 20169 and to amend sections 20170, 20234, 20240, 20241, 20242, 20282, 20286, 20363, 20393, 20400, 20401, 20402, 20407, and 20408

20169. Provisions for Use of Electronic Filing and Service of Documents

(a) In lieu of the methods of service provided for above, the Board or any of its agents may serve papers on parties and parties may file papers with the Board or any of its agents and serve them on other parties by means of electronic mail [email] under the following conditions:

(1) All documents may be served by email except for unfair labor practice charges and representation petitions.

(2) Electronic service of a document is authorized only when a party has agreed to accept service electronically in that action. A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the Board. The notice must include the email address at which the party agrees to accept service; or

(B) Electronically filing any document in a case with the Board. The act of electronic filing is evidence that the party agrees to accept service of documents related to that case at the email address the party has furnished to the Board.

(3) The format and content of the document shall comply with sections 20150, Format of Pleadings and Papers, and 20155, Signing of Petitions, Pleadings, Motions, Applications, Requests, Responses, Briefs and Other Papers, and with the specific requirements of any other section of these regulations applicable to the particular matter involved.

(4) For a document to be considered received on the day in question, the electronic transmission must be time-stamped no later than 4:00 p.m. on that date.

(5) All documents filed by email must be in Portable Document Format (PDF) and cannot exceed 10 MB in file size. Documents larger than 10MB may be split into multiple files.

(6) The file name of any document filed by email must be in the following format: Year (followed by a dash) month (followed by a dash) day (followed by two spaces) followed by the name of the document from the caption on the face page of the document. For example, a document filed by email on March 12, 2016 would be named “2016-03-12 Respondent’s Exceptions to the Decision of the Administrative Law Judge.”

(b) Whenever “service” is required by the regulations, service shall be on all parties to the proceeding and may be served by email. Documents filed by email must include a copy of a proof of service. Where service is effected by the Board, copies shall be served on each party in the manner provide for in section 20164 along with proof of service to that effect.

(c) The multiple copy requirements of section 20160, Place of Filing and Number of Copies to be Filed, are waived whenever documents are electronically served or filed.

(d) In order to facilitate prompt processing and consideration of filings, the Executive Secretary may require that certain filings be by email.

(e) Once a document filed by email is received and accepted, a confirmation email will be sent to the email address on file by the close of the business day.

(f) The Board’s website (www.alrb.ca.gov) contains a link to the email address to be used for filing documents electronically.

NOTE: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), 1160.2, 1160.3 and 1160.5, Labor Code.

20170. Computation of Time Periods.

(a) The date of service shall be the day when the matter served is deposited in the mail, delivered in person, or transmitted pursuant to section 20168 and 20169 of these regulations.

(b) In computing time periods prescribed by these rules, the day of the mailing or other event which starts the time period running is not counted. The last day of the time period is included unless it falls on a Saturday, Sunday or a State or Federal legal holiday as defined in Government Code Section 6700, in which case the time period expires on the next business

day. Where a time period prescribed is less than seven days, intermediate Saturdays, Sundays and legal holidays are excluded from the computation. Whenever a time period begins to run from the time of service of a document on a party and such service is made by mail, three days shall be added to the prescribed period for response.

(c) Except as provided in section 20168(a)(5) and 20169(a)(4), documents required to be filed with the Board must be received by the Board by 5:00 p.m. on the last day of the time period unless mailed by registered or certified mail postmarked by that last day or deposited by the last day with a common carrier promising overnight delivery.

(d) In case of fax transmission, the time period shall begin to run upon service of the document in the manner provided for in section 20168(a)(5).

(e) In case of email transmission, the time period shall begin to run upon service of the document in the manner provided for in section 20169.

NOTE: Authority cited: Section 1144, Labor Code. Reference: Sections 1151.3, 1151.4(a), 1160.2, 1160.3 and 1160.5, Labor Code.

20234. Filing

The answer shall be filed with the Executive Secretary and the regional office that issued the complaint. The answer shall be filed and served as required by sections 20160, ~~and 20166~~ and 20169. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.2, Labor Code.

20240. Motions Before Prehearing and After Hearing

(a) With the exception of motions to correct the transcript, all motions made before the prehearing conference or after the close of hearing shall be filed with the executive secretary in accordance with sections 20160 and 20166 and 20169. Responses shall be filed within seven (7) days after the filing of the motion, or within such time as the executive secretary may direct, as provided in sections 20160, ~~and 20168~~ and 20169. No further

pleadings shall be filed in support of or in opposition to the motion unless requested by the executive secretary or assigned administrative law judge.

(b) The executive secretary may rule on motions or forward them for ruling to the assigned administrative law judge. The ruling shall be in writing with reasons stated, and shall be served on all parties or, at the discretion of the administrative law judge, it may be incorporated into his or her decision.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Sections 1160.2 and 1160.3, Labor Code.

20241. Motions During or After Prehearing Conference and Before Close of Hearing

(a) With the exception of requests for continuances made prior to the opening of hearing and requests for continuances in excess of two days made during the hearing, motions and applications made at or after prehearing conference and prior to close of the hearing shall be directed to the assigned administrative law judge, and may be made orally on the record or in writing. If written, the motion, shall be filed and served in accordance with sections 20160, ~~and 20166~~ and 20169 ; provided, however, that a duplicate original shall be filed with the administrative law judge, and, if the hearing is in progress, copies shall be personally served on each party or its representative.

(b) Any party may respond to a written motion orally, at the prehearing conference or hearing, or in writing so long as a response is made within five (5) days after filing of the motion, or such time as the administrative law judge may direct. Written responses shall be served on each party or its representative. No further pleadings shall be filed in support of or in opposition to the motion unless requested by the administrative law judge.

(c) The administrative law judge shall rule on all motions either orally on the record or in writing, as may be appropriate. Rulings shall state the reasons therefor and, if in writing, shall be incorporated in the decision or separately served on all parties or their representatives and on the executive secretary.

(d) The administrative law judge may conduct a telephone conference call among the parties to hear argument or to rule on any motion before

him/her. When the conference call method is utilized, upon request of any party, or at the direction of the administrative law judge, the conference call shall be reported or recorded by appropriate means as determined by the administrative law judge, and shall become part of the official record of the proceeding. As an alternative to a telephone conference call, the administrative law judge may utilize any other means of electronic communication which the Board has designated as appropriate.

AUTHORITY: Note: Authority cited Section 1144, Labor Code.
Reference: Sections 1160.2 and 1160.3, Labor Code.

20242. Appeals of Executive Secretary and Administrative Law Judge Rulings

(a) All rulings and orders of every kind, by the executive secretary or by an administrative law judge, shall be a part of the record without the necessity of their being introduced into evidence, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby, as provided in section 20250.

(b) No ruling or order shall be appealable, except upon special permission from the Board; except that a ruling which dismisses a complaint in its entirety shall be reviewable as a matter of right. A party applying for special permission for an interim appeal from any ruling by the executive secretary or an administrative law judge shall, within five (5) days from the ruling, file with the executive secretary, to be forwarded to the Board for review, its application for permission to appeal, setting forth its position on the necessity for interim relief and on the merits of the appeal. The application shall be supported by declarations if the facts are in dispute and by such authorities as the party deems appropriate. Applications and supporting papers shall be filed and served in accordance with sections 20160, ~~and 20166~~ and 20169. Any party may file a statement opposing such application, with proof of service on the other parties as provided in sections 20160, ~~and 20166~~ and 20169, within such time as the executive secretary may direct. No further pleadings shall be filed in support of or in opposition to the appeal unless requested by the Board through the executive secretary.

(c) Parties intending to apply for special permission to appeal an oral ruling by an administrative law judge shall immediately notify the administrative law judge and arrange with the reporter for an expedited copy of the relevant portion of the hearing transcript which shall be lodged with the Board at the moving party's expense.

(d) Unless the executive secretary so directs, no hearing shall be delayed because an application was filed; nor shall the appeal or attempt to appeal a ruling or order delay the hearing unless the Board so directs.

(e) This section does not apply to decisions of administrative law judges as defined in sections 20279-86.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Sections 1160.2 and 1160.3, Labor Code.

§ 20282. Exceptions to the Administrative Law Judge's Decision

(a) Within 20 days after the service of the decision of the administrative law judge, or within such other period as the executive secretary may direct, any party may file with the executive secretary for submission to the Board the original and seven copies of exceptions to the decision or any other part of the proceedings, with an original and seven copies of a brief in support of the exceptions, accompanied by proof of service, as provided in section 20160, ~~and~~ 20166 and 20169.

(1) The exceptions shall state the ground for each exception, identify by page number that part of the administrative law judge's decision to which exception is taken, and cite to those portions of the record which support the exception.

(2) A brief in support of exceptions which exceeds 20 pages shall contain a table of contents and a table of authorities cited. No brief shall exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs when necessary. The table of contents and the table of authorities cited shall not be counted as part of the 50 pages. If a post-hearing brief is incorporated by reference, the portions incorporated shall be identified by page number and shall count as part of the 50-page limitation on the brief in support of exceptions.

(b) Within ten (10) days following the filing of exceptions or within such other period as the executive secretary may direct, a party opposing the exceptions may file with the executive secretary for submission to the Board, an original and (7) seven copies of a brief answering the exceptions. An answering brief that exceeds 20 pages shall contain a table of contents and a table of authorities cited. This brief shall not exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs when necessary. The table of contents and the table of authorities cited shall not be counted as part of the 50 pages. The answering brief shall be filed and served in accordance with sections 20160, ~~and~~ 20166 and 20169.

(c) No further brief shall be filed except as requested by the Board. No extensions of time will be given to file exceptions or briefs except in extraordinary circumstances. Unless permission to file a brief exceeding the page limitations specified in subsection (a)(2) and (b) above has been obtained from the executive secretary in advance, only the first 50 pages of exceptions briefs and answering briefs shall be accepted and filed. Anything in excess of 50 pages will be returned to the party and will not be considered by the Board.

(d) No matter not included in the exceptions filed with the board may thereafter be raised by any party before the Board.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Section 1160.3, Labor Code.

20286. Board Action on Unfair Labor Practice Cases

(a) If no exceptions are filed, the decision of the administrative law judge shall automatically become final 20 days after the date on which the decision of the administrative law judge is served on the parties. Unless expressly adopted by the Board, the statement of reasons in support of the decision shall be without precedent for future cases.

(b) Where one or more parties take exception to the decision of the administrative law judge, the Board shall review the applicable law and the evidence and determine whether the factual findings are supported by a preponderance of the evidence taken.

(c) A party to an unfair labor practice proceeding before the Board may, because of extraordinary circumstances, move for reconsideration or reopening of the record after issuance of the Board's final decision and order, in accordance with the provisions set forth in section 20160(a)(1), and served on the parties, in accordance with the provisions set forth in sections 20166, ~~and 20168~~ and 20169. The motion may alternatively request reconsideration and reopening. Such motions shall be in writing and state with particularity the grounds for reconsideration or reopening. Any motion pursuant to this section shall be filed within 10 days after the service of the Board's final decision and order. A motion filed under this section shall not operate to stay the decision and order of the Board.

(d) A party to an unfair labor practice proceeding may, because of extraordinary circumstances, move for reconsideration of the record after issuance of any Board action

other than a final decision and order, in accordance with the provisions set forth in section 20286(c), except that the motion and supporting documents must be filed within five days after service of the non-final Board action.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code

§ 20363. Post-Election Determination of Challenges

(a) If the tally of ballots discloses that the unresolved challenged ballots are sufficient in number to affect the outcome of the election, the regional director shall, within two (2) working days, forward to the Board all challenged ballot declarations and all other evidence in his or her possession relevant to the eligibility of the challenged voters and shall serve the same on all parties to the election. However, should the evidence include any declarations or statements of non-supervisory agricultural employees other than those of the challenged voters, the regional director shall serve on the parties only a summary of such declarations, prepared in a manner that does not reveal the identity of the declarants. Within ten (10) days of service of the challenged ballot declarations and other evidence, the parties may file with the executive secretary, as agent of the Board, and serve on all other parties to the election, declarations and/or documentary evidence in support of their positions as to the eligibility of the challenged voters, accompanied by argument explaining their positions and the relevance of the proffered evidence. The 21-day period set forth in Labor Code section 1156.3, subdivision (i)(1)(A)(i) shall run from receipt by the Board of the evidence submitted by all parties, or the expiration of the 10-

day period to submit evidence, whichever occurs first. Within five (5) days of service of the other parties' evidence and argument, any party may file argument in response. Filing and service shall be in accordance with sections 20160, 20164, 20166, ~~and 20168~~ and 20169. At any time after the tally of ballots and prior to the issuance of its decision resolving challenges and/or setting them for hearing, the Board may request that the appropriate regional director conduct such investigation as the Board deems necessary. Any evidence obtained as a result of such investigation shall be submitted to the Board and served on the parties in the same manner as specified above.

(b) The Board shall, after considering the evidence and the parties' arguments, determine which challenges may be resolved thereon and which require the resolution of material factual disputes, and thus must be set for an evidentiary hearing in accordance with section 20370.

(c) In serving declarations and supporting documents on other parties pursuant to subdivision (a) above, the parties shall have the option of serving a detailed statement of facts in lieu of the declarations. This detailed statement of facts shall describe the contents of declarations in sufficient detail to allow an opposing party to secure its own witnesses and otherwise prepare itself to counter the evidence at an evidentiary hearing. A party electing to serve a detailed statement of facts on other parties shall also file the original and six copies of this statement with the executive secretary together with the declarations.

(d) The record before the Board shall consist of: the election petition, the notice and direction of election, the tally of ballots, the evidence and argument submitted by the parties, and the declarations and other evidence forwarded by the regional director.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Sections 1156.3 and 1157, Labor Code.

§ 20393. Requests for Review; Requests for Reconsideration of Board Action; Requests to Reopen the Record

(a) Dismissal of a representation petition, cross-petition, or intervention petition by a regional director pursuant to section 20300(i) may be reviewed by the Board pursuant to Labor Code section 1142(b), upon a written request for review filed by the party whose petition was dismissed. The request for review shall be filed with the Board within five days of service of the dismissal upon the party making the request. Requests for review of other delegated action reviewable under Labor Code section 1142(b), except those specifically provided for in subsection (b), *infra*, shall

also be filed with the board within five days of service of notice of the action for which review is requested. Such requests shall be filed in accordance with the provisions set forth in section 20160(a)(2), and served in accordance with the provisions set forth in sections 20166, ~~and~~ 20168 and 20169. The request shall set forth with particularity the basis for the request and shall be accompanied by six copies of the following:

(1) the evidence and legal arguments which the party seeking review contends support the request;

(2) the representation petition if the action to be reviewed concerns the dismissal of a representation, intervention, or cross-petition;

(3) the regional director's notice of dismissal of the representation petition, or notice of other action reviewable under Labor Code section 1142(b), and statement of reasons therefor, where applicable; and

(4) evidence that the aforementioned material has been served upon all parties pursuant to sections 20166, ~~and~~ 20168 and 20169.

(b) Review of any other actions of a regional director or his or her agent pursuant to the powers which may be delegated to him or her under Labor Code Section 1142(b) to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question of representation exists, and to direct an election shall be by means of a petition filed pursuant to Labor Code Section 1156.3(e) and Sections 20363, 20365 and 20370.

(c) A party to a representation proceeding may, because of extraordinary circumstances, move for reconsideration or reopening of the record, after the Board issues a decision or order in the case. A motion under this section must be filed with the Board within five days of service of the decision or order upon the party making the request, in accordance with the provisions set forth in section 20160(a)(2), and served on the parties, in accordance with the provisions set forth in sections 20166, ~~and~~ 20168 and 20169. A motion for reconsideration or reopening of the record shall set forth with particularity the basis for the motion and legal argument in support thereof and shall be accompanied by proof of service of the motion and accompanying documents upon all parties as provided in sections 20166, ~~and~~ 20168 and 20169. Only one request for reconsideration of or to reopen the record for any decision or order will be entertained. A motion filed after the issuance of a decision of the Board may alternatively request reconsideration and reopening. A motion filed under this section shall not operate to stay the decision and order of the Board.

(d) The Board, in its discretion, may request a response from the opposing party or parties prior to granting or denying a request for review under subsection (a) above or a request for reconsideration under subsection (c) above. Where an opportunity for response is to be provided, the Board shall serve notice thereof upon all parties as provided in section 20164, and shall set a reasonable period within which the opposing party or parties may file a response. Unless the Board requests it to do so, the party initially requesting review or reconsideration may not submit any material in addition to the petition for review or for reconsideration and its supporting documents.

(e) In any case in which a request for review is filed pursuant to this section of a dismissal of a representation petition, cross-petition or intervention petition by a regional director, the record on review by the Board shall consist of: the petition pursuant to Labor Code Section 1156.3(a), the cross-petition or intervention petition where applicable, the regional director's dismissal letter, and the request for review and supporting evidence and briefs.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Sections 1142(b), 1156.3 and 1156.7, Labor Code.

§ 20400. Filing of Declaration Requesting Mandatory Mediation and Conciliation

(a) Where the certification issued prior to January 1, 2003:

A declaration pursuant to Labor Code section 1164, subdivision (a)(1) may be filed with the Board by either the agricultural employer or the certified labor organization at any time at least 90 days after a renewed demand to bargain, as defined in subdivision (2) below. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, ~~and 20168~~ and 20169. The declaration shall be signed under penalty of perjury by an authorized representative of the filing party, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, and shall state that (A) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (B) the employer has committed an unfair labor practice, describing the nature of the violation, and providing the corresponding Board decision number or case number, (C) the parties have not previously had a binding contract between them, and (D) the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any

documentary or other evidence that supports the above statements and establishes the date of the renewed demand to bargain.

(1) The unfair labor practice referred to above is one where a final Board decision has issued or where there is a settlement agreement that includes an admission of liability.

(2) The renewed demand to bargain referred to above is one that occurred on or after January 1, 2003.

(b) Where the certification issued after January 1, 2003:

A declaration pursuant to Labor Code section 1164, subdivision (a)(2) may be filed with the Board by the agricultural employer or the certified labor organization at any time at least 90 days after the initial request to bargain by either party following the certification. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, ~~and 20168~~ and 20169. The declaration shall be signed under penalty of perjury, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, shall provide the date of the initial request to bargain, and shall state that the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements.

(c) Where the request for mandatory mediation and conciliation is based on certification of a labor organization pursuant to Labor Code section 1156.3, subdivision (f), or the dismissal of a decertification petition pursuant to Labor Code section 1164, subdivision (a)(4):

A declaration pursuant to Labor Code section 1164, subdivision (a)(3) or (a)(4) may be filed with the Board by the agricultural employer or the certified labor organization at any time at least 60 days after the date the certification was issued or the decertification petition was dismissed, as appropriate. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, ~~and 20168~~ and 20169. The declaration shall be signed under penalty of perjury, shall state that the parties are subject to an existing certification and have no collective bargaining agreement currently in effect, shall provide a citation to the Board order qualifying the request pursuant to Labor Code section 1164, subdivision (a)(3) or (a)(4), and shall state that the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements.

(d) For the purpose of determining the number of declarations permitted to be filed by a labor organization, the term "party" as used in Labor Code section 1164.12 shall refer to the labor organization named in the Board's certifications.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Sections 1156.3, 1164, 1164.11 and 1164.12, Labor Code.

§ 20401. Answer to Declaration

(a) Within three (3) days of service of a declaration, the other party to the collective bargaining relationship (or alleged bargaining relationship) may file an answer to the declaration. The answer shall be served and filed in accordance with sections 20160, 20164, 20166, ~~and 20168~~ and 20169. The answer shall be signed under penalty of perjury by an authorized representative of the filing party, and shall identify any statements in the declaration that are disputed. In addition, the answer shall be accompanied by any documentary or other supporting evidence. If it is claimed that the employer has not engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of the declaration seeking referral to mandatory mediation, payroll records sufficient to support the claim shall be submitted with the answer. Payroll records shall be submitted in electronic form if kept in that form in the normal course of business.

(b) All statements in a declaration that are not expressly denied in the answer shall be deemed admitted.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Sections 1164, 1164.11 and 1164.12, Labor Code.

§ 20402. Evaluation of the Declaration and Answer

(a) The Board shall dismiss any declaration that fails to include all of the requirements of section 20400, subdivision (a), (b), or (c), as applicable.

(b) If no answer to the declaration is timely filed, or if the answer admits the truth of all factual prerequisites to the validity of the declaration, the Board shall immediately issue an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

(c) Where a timely filed answer disputes the existence of any of the prerequisites for referral to mediation, the Board shall attempt to resolve the dispute on the basis of the parties' filing and/or upon investigation. The Board shall issue a decision within 5 days of receipt of the answer either (1)

dismissing the petition, or (2) referring the matter to mediation, or (3) scheduling an expedited evidentiary hearing to resolve any factual issues material to the question of the existence of any of the prerequisites.

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:

(1) Notice of hearing shall be served in the manner required by Section 20164.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.

(B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and

six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 ~~and 20168~~ and 20169. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order; directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

AUTHORITY: Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151, 1164, 1164.11 and 1164.12, Labor Code.

§ 20407. The Mediation and Conciliation Process

(a) Mediation shall proceed in accordance with Labor Code section 1164, subdivisions (b), (c), and (d). The 30-day periods referred to in Labor Code section 1164, subdivision (c) shall commence on the date of the first scheduled mediation session, shall proceed for consecutive calendar days, and shall not include any pre-mediation conference. The 30-day timelines may be waived by mutual agreement of the parties and with the approval of the mediator. Pre-mediation conferences may be scheduled at the discretion of the mediator.

(1) No later than seven (7) days after receipt of a Board order directing the parties to mandatory mediation and conciliation, and prior to their first discovery requests pursuant to section 20406 above, each party shall identify for the mediator those issues that are in dispute and those that are not in dispute, identify the standards which they propose to resolve the disputed issues, and provide agreed upon contract language for those issues not in dispute. This information shall be served on the other party immediately and on the mediator upon his or her selection. During the mediation, the parties shall provide the mediator with a detailed rationale for each of its contract proposals on issues that are in dispute, and shall provide on the record supporting evidence to justify those proposals. The failure of any party to participate or cooperate in the mediation and conciliation process shall not prevent the mediator from filing a report with the Board that resolves all issues and establishes the final terms of a

collective bargaining agreement, based on the presentation of the other party.

(2) The mediator shall preside at the mediation, shall rule on the admission and exclusion of evidence and on questions of procedure and shall exercise all powers relating to the conduct of the mediation. All evidence upon which the mediator relies in writing the report required by section 1164, subdivision (d) shall be preserved in an official record through the use of a court reporting service or, with the consent of both parties and the approval of the mediator, by a stipulated record. The mediator shall cite evidence in the record that supports his or her findings and conclusions. The mediator shall retain the discretion to go off the record at any time to clarify or resolve issues informally. All communications taking place off the record shall be subject to the limitations on admissibility and disclosure provided by Evidence Code section 1119, subdivisions (a) and (c), and shall not be the basis for any findings and conclusions in the mediator's report.

(3) The parties shall have the right to be represented by counsel or other representative.

(4) The parties to the mediation are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. The testimony of witnesses shall be given under oath.

(b) In determining the issues in dispute, the mediator may consider those factors commonly applied in similar proceedings, such as, but not limited to:

(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer makes a plea of inability to meet the union's wage and benefit demands.

(3) Comparison of corresponding wages, benefits, and terms and conditions of employment in collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) Comparison of corresponding wages, benefits, and terms and conditions of employment in comparable firms or industries in geographical areas with similar economic conditions, considering the size of the employer, the skills, experience, and training required of the employees, as well as the difficulty and nature of the work.

(5) The average consumer prices for goods and services, commonly known as the Consumer Price Index, and the overall cost of living in the area where the work is performed.

(c) The mediator shall issue his or her report within twenty-one (21) days of the last mediation session. Upon completion of the mediator's report, the report shall be served on the parties and filed with the Board in accordance with sections 20164 ~~and 20168~~ and 20169. Upon the filing of the report, the mediator also shall transfer the official record of the proceeding to the Board.

(d) The issuance of any document signed by the mediator which reflects the determination of the issues in dispute and fixes the terms of a collective bargaining agreement shall be deemed a "report" pursuant to Labor Code sections 1164 through 1164.13, and these regulations.

(e) Where the parties agree to a collective bargaining agreement without the issuance of a mediator's report, as defined in subdivision (d), the parties shall notify the Board and submit a copy of the signed agreement pursuant to Regulation 20450.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Section 1164, Labor Code.

§ 20408. Board Review of the Mediator's Report

(a) Within seven (7) days of the filing of first or second report by the mediator, either party may file a petition for review of the report. The petition shall be served and filed in accordance with sections 20160, 20164, 20166, ~~and 20168~~ and 20169. The petition shall be based on any one or more of the grounds set forth in Labor Code section 1164.3, subdivision (a) or subdivision (e). The petitioning party shall specify the particular provisions of the mediator's report for which it is seeking review, shall specify the specific grounds authorizing review, and shall cite the portions of the record that support the petition. In the event the petition is based on the grounds set forth in Labor Code section 1164.3, subdivision (e), the petitioning party may attach declarations that describe pertinent

events that took place off the record, if necessary to establish the grounds for review stated in the petition.

(b) The Board shall issue a decision on the petition in accordance with Labor Code section 1164.3. Where the petition is based on the grounds specified in Labor Code section 1164.3, subdivision (e), and the Board determines that there are material facts in dispute that are outside the

official record of the mediation, the Board may order an expedited evidentiary hearing to resolve the dispute, to be conducted, in accordance with the procedures set forth in section 20402 of these regulations.

(c) Where the Board orders additional mediation pursuant to Labor Code section 1164.3, subdivision (c), the mediation shall commence within thirty (30) days of the issuance of the Board's order, or as soon as practical.

AUTHORITY: Note: Authority cited: Section 1144, Labor Code.
Reference: Section 1164.3, Labor Code.