

AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF PROPOSED REGULATORY ACTION **TO AMEND TITLE 8, SECTIONS 20363, 20365, 20393, 20400, AND 20402**

November 2011

Notice is hereby given that the Agricultural Labor Relations Board (ALRB or Board), pursuant to the authority vested in it by section 1144 of the Labor Code to make, amend, or rescind rules and regulations as may be necessary to implement, interpret, and make specific the provisions of the Agricultural Labor Relations Act (ALRA) (Labor Code sec. 1140, et seq.), proposes to amend sections 20363, 20365, 20393, 20400, and 20402 of its regulations in order to implement Senate Bill No. 126 (SB 126; Chapt. 697, Stats. of 2011). The Board's regulations are codified in Title 8, California Code of Regulations, section 20100, et seq. The proposed amendments are described below in the Informative Digest. An initial statement of reasons for the amendment of these regulations, along with the text of proposed amendments, has been prepared by the ALRB and is available upon request by contacting J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 915 Capitol Mall, Third Floor, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: jbarbosa@alrb.ca.gov or Joseph A. Wender, Jr., Senior Board Counsel, same address and fax number as above, (916) 651-7620, e-mail: jwender@alrb.ca.gov. This notice, as well as the initial statement of reasons and text of the proposed regulation, also may be found on the Board's website at www.alrb.ca.gov. The final statement of reasons, once it has been prepared, shall be available in the same manner as the initial statement of reasons.

The ALRB invites all interested persons to submit written comments on the proposed amendments. Comments must be received at ALRB headquarters at the address listed above by 5:00 p.m. on December 28, 2011. A public hearing is not scheduled. However, any interested person or his or her duly authorized representative may submit, in writing, no later than December 13, 2011, a request that a public hearing be held on the proposed amendments.

ADOPTION OF PROPOSED REGULATION

After the comment period closes, and a hearing, if requested, is held, the Board will consider all public comment, written and oral, and decide whether to make any changes to the proposed amendments. The Board may adopt the proposed amendments if no substantial changes are made. If the Board decides to make substantial changes that are "sufficiently related" to the initial proposals, the public will be given notice of those

changes and will be given at least 15 days to provide comment. If the Board decides to make “major” changes to the proposals that are "not sufficiently related to" the initial proposals, a new notice of proposed action will issue allowing for a new 45-day comment period.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Amend Section 20363. Post-Election Determination of Challenges

SB 126 includes new subdivision (i) of Labor Code section 1156.3, the existing provision governing elections generally. Subdivision (i) sets forth various time limits for the resolution of challenged ballots and election objections. The time limit for the initial evaluation of whether challenged ballots or election objections warrant an evidentiary hearing is 21 days from the filing of election objections or the submittal of evidence in support of challenged ballots. Under existing regulations, challenged ballots are first evaluated by the Regional Director, who issues a challenged ballot report subject to appeal to the Board. Similarly, election objections are first evaluated by the Executive Secretary, with an opportunity for Board review of any objections dismissed. The 21-day time limit can not be met under this existing bi-level review structure. In order to meet the 21-day limit, the ALRB proposes to eliminate the initial review by the Regional Director and Executive Secretary and instead have the Board do the evaluation in the first instance.

In order to effectuate this change, it is proposed that section 20363 be amended to provide that the parties submit to the Board directly any evidence and argument in support of their positions on challenged ballots. The Regional Directors also would be required to forward to the Board, and serve on the parties, any challenged ballot declarations or other evidence in his or her possession. The Board would then directly make the determination on which challenges can be resolved and which require an evidentiary hearing.

Amend Section 20365. Post-Election Objections Procedure

The ALRB proposes to amend section 20365 for the reasons described above, i.e., in order to meet the new 21-day time period for determining whether election objections must be dismissed or require an evidentiary hearing. The proposed amendments would effectuate this change by deleting all language relating to evaluation of election objections by the Executive Secretary and replacing it, where necessary, with references to the Board. In addition, the proposal includes an amendment ensuring that before the Board issues a bargaining order pursuant to new subdivision (f) of Labor Code section 1156.3 the parties have an opportunity to brief the issue.

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

The proposed amendments to section 20393 delete references to requests for review of the Executive Secretary's evaluation of election objections, a function that would be eliminated per the proposed changes to section 20365. The proposed amendments also would clarify the regulation with regard to the filing of responses to a request for review. Presently, the regulation reflects a cumbersome and time-consuming two-step process in evaluating a request for review. The first step is to determine whether to grant or summarily deny review, with the provision of a response from opposing parties a matter of Board discretion. Second, if request is granted, then a response is a matter of right and then the Board determines the ultimate merit of the request for review. The proposed amendments eliminate confusion over the procedure by making review a simple one-step process which leaves the filing of responses to the discretion of the Board.

Amend Section 20400. Filing of Declaration Requesting Mandatory Mediation and Conciliation

SB 126 makes two changes to the Mandatory Mediation and Conciliation (MMC) provisions of the Agricultural Labor Relations Act. One, for certifications issued after January 1, 2003, it changes the minimum time after an initial request to bargain that must elapse before requesting referral to MMC. Second, it expands the circumstances when referral to MMC may be requested to include a) when the Board has issued a bargaining order pursuant to new subdivision (f) of section 1156.3 of the Labor Code, or b) when the Board has dismissed a decertification petition upon a finding of unlawful employer involvement with the petition. The proposed amendments to section 20400 simply conform the regulation to these changes.

Amend Section 20402. Evaluation of the Declaration and Answer

The proposed amendment to section 20402, subdivision (a) conforms the regulation to the proposed changes in section 20400 by adding a necessary reference to new subdivision (c) of section 20400.

RULEMAKING FILE

Pursuant to Government Code sections 11346.5 and 11347.3, the Board shall maintain a rulemaking file containing all materials considered in the rulemaking process.

The file currently contains:

1. A copy of this notice
2. A copy of the Initial Statement of Reasons

3. Text of the Proposed Amendments to Sections 20363, 20365, 20393, 20400, and 20402.

As other materials are received, such as written comments, studies, reports, etc., they will be added to the rulemaking file. The file is available for inspection at the headquarters office of the ALRB, 915 Capitol Mall, Third Floor, Sacramento, CA, during normal business hours.

ALTERNATIVES TO PROPOSED ACTION

The Administrative Procedure Act requires that the Board, in taking any regulatory action, determine that no alternative considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

LOCAL MANDATE STATEMENT

The proposed regulatory changes would not impose any mandate on local agencies or school districts.

IMPACT STATEMENTS

- A. Estimated fiscal impact on local government or school districts: None.
- B. The proposed changes would result in no cost or savings to any state agency, or cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, nor impose other nondiscretionary cost or savings on local agencies or affect cost or savings in federal funding.
- C. Fiscal effect on private persons or businesses directly affected: No increase in costs. The ALRB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- D. The proposed changes would have no effect on small business because the changes impose no new burdens upon parties appearing before the Board.
- E. The proposed changes would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to

compete with businesses in other states.

F. The proposed changes would have no effect on the creation or elimination of jobs within the State of California, no effect on the creation of new businesses or the elimination of existing businesses within the State of California, and no effect on the expansion of businesses currently doing business within the State of California.

G. The proposed changes would have no effect on housing costs.

INQUIRIES

Any inquiries concerning any aspect of the proposed regulatory action noticed herein should be directed to J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 915 Capitol Mall, Third Floor, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: jbarbosa@alrb.ca.gov or Joseph A. Wender, Senior Board Counsel, same address and fax number as above, (916) 651-7620, e-mail: jwender@alrb.ca.gov. Questions concerning the substance of the proposed amendments may be directed to Mr. Wender.