

## **AGRICULTURAL LABOR RELATIONS BOARD**

### **INITIAL STATEMENT OF REASONS IN SUPPORT OF PROPOSED REGULATORY ACTION TO AMEND TITLE 8, SECTIONS 20363, 20365, 20393, 20400, and 20402**

#### **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. Even if the initial evaluation could take place within 21 days, the additional time necessary for parties to file requests for review and for Board decision would result in a cumulative period far exceeding 21 days. 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. The Board can absorb any increase in workload that results. This has the added advantage of redistributing workload away from the most burdened component of the agency, the regional offices.

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. Generally, the Board will be able to issue its decision within the 21-day period. In exceptionally lengthy or complex cases, the Board will be able to utilize the authority provided under new Labor Code subdivision (i) (3) to extend the time limit for good cause.

### **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. To avoid any confusion, in practice the Board typically provides for responses in all cases and then resolves the merits of the request. 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.