

**Agricultural Labor Relations Board
Rulemaking File No. Z2024-0226-02**

UPDATED INFORMATIVE DIGEST

A. Compliance Proceedings

Proposed Section 20290, subdivision (d):

This provision addresses situations where a respondent fails to answer a compliance specification. As originally proposed, the first sentence of this subdivision would have allowed an administrative law judge to accept the allegations of the specification as true when an answer is not timely filed, including “without notice to the respondent.” While this subdivision is a continuation of current law in existing regulation 20292, subdivision (c), the original proposal has been modified to remove in subdivision (d) of proposed regulation 20290 the language “and without notice to the respondent” so that a respondent will receive notice when the prescribed consequences for a failure to timely answer a specification are being sought.

Proposed Section 20291, subdivision (a):

As originally proposed, this provision allowed a regional director to consolidate a compliance specification with an unfair labor practice complaint when deemed appropriate “to effectuate the purposes and policies of the Act or to avoid unnecessary costs and delay.” While this language is a continuation of current law in existing regulation 20290, subdivision (b), the reference “to effectuate the purposes and policies of the Act” has been removed.

Proposed section 20292, subdivision (c)(2):

Subdivision (c) as originally proposed authorizes a regional director to proceed on a partial specification when unable to prepare a full specification and for good cause shown. Subparagraph (2) has been added to the originally proposed subdivision to address circumstances where a regional director’s inability to prepare a full specification is attributable to a respondent’s noncooperation during a compliance proceeding, and allows a regional director the ability to move forward with a specification notwithstanding a respondent’s noncooperation.

B. Unfair Labor Practice Appeal Bonds

Proposed section 20297, subdivision (a)(2):

This section sets forth requirements for an agricultural employer who must post an appeal bond with the Board as a condition to seeking judicial review of a Board decision in an unfair labor practice case. This section further details the required contents of the bond the employer must post with the Board. Proposed section 20297, subdivision (a)(2) has been modified to add language requiring an employer to provide certain further contact information, specifically the name, street address, telephone number and email address, for its, or its surety’s agent for service of process.

Proposed section 20297.5, subdivision (b)(1):

This provision addresses requirements for the delivery of cash deposits to satisfy the bond requirement, and as originally proposed, specified the delivery location as the Department of General Services headquarters in West Sacramento. Proposed regulation 20297.5, subdivision (b)(1) has been modified to delete the specified delivery location of the cash deposit to allow flexibility, if warranted or necessary in any particular case, or in the event a different location is necessary for the deposit.

Proposed section 20297.5, subdivisions (b)(2) and (c)(2):

This provision addresses requirements for cash deposits or cash equivalent deposits to satisfy the bond requirement and agreements authorizing the Board to collect or otherwise apply a deposit to enforce liability. Proposed section 20297.5, subdivisions (b)(2) and (c)(2) have been modified to add language requiring the agreements to include certain further contact information, specifically the name, street address, telephone number and email address, for the employer's, or its surety's agent for service of process.

C. Majority Support Petitions, Proposed section 20391

Proposed section 20391, subdivision (a):

Proposed section 20391, subdivision (a) describes the requirements for filing and serving a majority support petition. As originally proposed, subdivision (a) stated that printed forms for such petitions will be supplied by the regional offices of the Board upon request. Subdivision (a) has been modified to delete the word "printed."

Proposed section 20391, subdivision (a) as originally proposed would have required a majority support petition, itself, be electronically filed pursuant to Board regulation 20169, but that the evidence of support to be submitted with the petition must be delivered in person. This subdivision has been modified to eliminate the electronic filing requirement for the petition and to add the requirement that the petition itself be filed in person at the nearest regional office. Language has also been added to subdivision (a) clarifying that the labor organization's evidence of support must be submitted with the petition for the petition to be deemed filed.

Proposed section 20391, subdivision (a) as originally proposed would have required a petitioning labor organization to "submit proof" it has filed LM-2 reports the preceding two years and is or was a party to a collective bargaining agreement in effect when AB 113 took effect. The language has been amended to allow a labor organization to attest to these facts rather than requiring the filing of lengthy reports or contracts, at least in the absence of any dispute about the labor organization's standing to file a majority support petition.

Proposed section 20391, subdivision (a)(1):

Originally proposed section 20391, subdivision (a)(1) was renumbered to section 20391, subdivision (a)(2).

New proposed section 20391, subdivision (a)(1) describes the requirements for service of a majority support petition on an employer, and adds language specifying the manner by which to effect service on an employer with modifications to reflect the statutory requirement of personal service.

Proposed section 20391, subdivisions (a)(2)(A) and (B):

Proposed section 20391, subdivision (a)(2) was originally numbered as subdivisions (a)(1). Subdivisions (a)(1)(A) and (B) (now subdivisions (a)(2)(A) and (B)) were added to prescribe the required format and content of authorization cards and petitions used for purposes of a majority support petition. The requirement that regional offices provide hard copies of authorization cards in originally proposed section 20391, subdivision (a) was removed in light of the separate requirement in section 20391, subdivision (a)(2)(A) that authorization cards be made available on the ALRB web site.

Proposed section 20391, subdivisions (a)(2)(A) and (B) were further modified to provide for the grandfathering of authorization cards or petitions procured before the effective date of the regulation. Language providing that both English and Spanish language versions of the authorization cards and petition forms will be available on the Board's web site was also added.

Proposed section 20391, subdivision (a)(3):

Originally proposed section 20391, subdivision (a)(2) was renumbered to section 20391, subdivision (a)(3). The originally proposed subdivision inadvertently included language describing an "election petition." This language was modified to delete the reference to an election petition.

Proposed section 20391, subdivision (a)(4):

This subdivision was added following the initial written comment period to require that notice be provided to the employer's agricultural employees of the filing of a majority support petition. It was numbered as proposed section 20391, subdivision (a)(3) when added. It has now been renumbered to section 20391, subdivision (a)(4).

Proposed section 20391, subdivision (b):

Subdivision (b) describes the requirements for an employer to file a response to the petition, including a list of its agricultural employees. The employer's response and employee list must be filed and served within 48 hours after personal service of the majority support petition on the employer. As originally proposed, the employer's response to a majority support petition would be extended to the next business day when the deadline falls on a Sunday or a holiday. This subdivision was modified to also allow the employer's response to a majority support petition be extended to the next business day when the deadline falls on a Saturday.

Proposed section 20391, subdivisions (b)(1) and (2):

As originally proposed, section 20391, subdivisions (b) did not specify the required contents of an employer response to a majority support petition. Accordingly, proposed regulation 20931, subdivision (b) was modified by the addition of subdivisions (b)(1) and (2) to include language describing the required contents of an employer response and the list of the employer's currently employed agricultural employees that must accompany the response.

Proposed section 20391, subdivision (c):

Subdivision (c) describes the investigation a regional director must conduct upon the filing of a majority support petition, including that the regional director must dismiss a petition when certain requirements necessary to determine a question of representation are not met. As originally proposed, the regional director is required to make an initial determination regarding majority support within three days of receipt of the employer's response. Subdivision (c) was modified to allow the regional director's initial determination whether a majority support petition is proper and whether majority support is established to be extended to the next business day when the deadline falls on a Saturday, Sunday, or legal holiday. Subdivisions (c)(ii) and (iii) have also been modified to delete the word "not" before the words "appropriate" and "sufficient."

Proposed section 20391, subdivision (c)(2):

Proposed section 20391, subdivision (c)(2) describes the timeframe when a determination of majority support must be made by a regional director after a labor organization is allowed an opportunity to produce additional support. Labor Code section 1156.37, subdivision (e)(4) states the Board shall grant a labor organization 30 days to produce additional support if it is determined the labor organization's initial showing of support was insufficient. The statute provides no timeframe in which a determination of majority support must be made following this 30-day "cure period." To address this, proposed regulation 20391, subdivision (c)(2) as originally proposed provided "Within two days after any new support is submitted by the labor organization, the regional director shall notify the parties whether proof of majority support has been established." In order to provide further clarity regarding this timeframe, the Board amended the proposed language to measure the timeframe from the time the 30-day cure period closes, and to delete language measuring the timeframe from the date any new support is submitted by the labor organization.

Proposed section 20391, subdivision (c)(4):

Proposed section 20391, subdivision (c)(4) describes procedures applicable to a regional director's investigation of a majority support petition when disputes arise concerning the eligibility of individuals to be counted as agricultural employees for determining the size of the bargaining unit and whether a labor organization has demonstrated proof of majority support. This subdivision was added following the initial written comment period to provide guidance to staff and the parties concerning the manner in which such disputes will be addressed and

resolved, providing transparency in the handling and resolution of such disputes, and ensuring parties are advised regarding the disposition of eligibility disputes. This subdivision was modified following the second written comment period.

The proposed regulation sets out a process that has the employer litigate its eligibility issues through the objections process set out in the statute and provides a separate administrative appeal process for the union to use in cases where the eligibility determinations cause the union to fall below majority support.

Under **proposed section 20391, subdivision (c)(4)(A)**, either the Regional Director or labor organization may assert challenges to individuals included on an employer's list or the labor organization may assert claims that the employer's list omits eligible employees. For individuals allegedly omitted from the employer's list, the labor organization is required to provide a written statement and all evidence in its possession to support its claim. For individuals allegedly omitted from the employer's list, this paragraph requires the regional director to not disclose to the employer the individuals' names.

Proposed section 20391, subdivision (c)(4)(B) generally provides that if the number of individuals whose eligibility is in dispute is in an amount sufficient to affect the outcome of the region's investigation whether the labor organization has established proof of majority support, then the regional director may refrain from making eligibility determinations at such time in order to allow for further investigation of the claims and to allow the labor organization to invoke the 30-day cure period under Labor Code section 1156.37, subdivision (e)(2) to procure additional employee support. However, if the number of individuals whose eligibility is in dispute is limited or the regional director is otherwise able to determine the eligibility of individuals within the initial 5-day investigation period, then the regional director may proceed to do so.

Proposed section 20391, subdivision (c)(4)(C) provides that if a matter is referred to a 30-day cure period, the regional director shall use such time to investigate pending or newly raised eligibility disputes.

Proposed section 20391, subdivision (c)(4)(D) provides that the regional director shall have five days from the close of the cure period to notify the parties of a determination whether majority support has been established in cases where there are outstanding eligibility disputes. When the margin of victory or defeat is larger than the number of eligibility claims in dispute, the regional director need not resolve the eligibility disputes on the basis that doing so will not affect the outcome of the process. In such cases, the regional director will prepare a tally in order to inform the parties of the final count in terms of the number of employees in the bargaining unit, the number of cards submitted, and the number of cards deemed valid, as well as the number of eligibility disputes. However, when the number of eligibility disputes is sufficient to affect the outcome, the regional director must notify the parties of the number of disputes and the resolution of each by the regional director, which will be reflected in the tally prepared by the regional director. This will inform the parties of the resolution of all such disputes, and further the employer at this time may be informed of the names of individuals omitted from the

employer's list but deemed eligible to be included in the bargaining unit, as well as evidence in the region's possession regarding the eligibility of the individuals.

Proposed section 20391, subdivision (c)(4)(E) effectuates the employer's right to object to eligibility determinations made by the regional director in post-certification objections pursuant to subdivision (f) of Labor Code section 1156.37. If any eligibility objections are set for hearing, this paragraph further restricts the scope of the hearing to the eligibility of the individuals in dispute. This paragraph further provides that in cases where the regional director finds the labor organization has not established majority support, the labor organization may obtain review of eligibility disputes resolved against it. In such matters, the labor organization's administrative appeal must be filed within five days of the regional director's notice to the parties, which is consistent with the five-day time period for an employer to file post-certification objections when a labor organization has established majority support. The labor organization's appeal must set forth in detail the basis for its positions on the individuals' eligibility and the evidence in support thereof.

Proposed section 20391, subdivision (d):

Originally proposed section 20391, subdivision (d) was renumbered to section 20391, subdivision (e). New proposed section 20391, subdivision (d) was added following the initial written comment period. This subdivision prescribes consequences where an employer does not cooperate with a regional director's investigation regarding a majority support petition, including failures to respond to a petition or instances where an employee list is incomplete or inaccurate. In such instances, a regional director is entitled to invoke certain presumptions in order to allow for the continued processing of the majority support petition and to prevent employers from frustrating the process of investigating a majority support petition. This subdivision further provides an employer may not be excused from the consequences of this subdivision by claiming its employees are supplied by a farm labor contractor. This subdivision also specifies that an employee list containing missing or incorrect employee contact information may be deemed to constitute voter suppression within the meaning of Labor Code section 1156.37, subdivision (j).

Proposed section 20391, subdivision (e):

Proposed section 20391, subdivision (e) was originally numbered as proposed section 20391, subdivision (d). As initially proposed this subdivision described the requirements for an employer filing objections to the certification of a labor organization. The Board modified the proposed regulatory language in proposed regulation 20391, subdivision (e) by adding subparagraph (e)(1) to codify a labor organization's ability to obtain review of the results of a majority support proceeding based on employer misconduct as described in Labor Code section 1156.37, subdivision (j). Under subparagraph (e)(1), the labor organization's application for review must set forth facts, supported by declarations, sufficient to make a prima facie case to warrant a hearing on the labor organization's claims. The labor organization's application for review must be filed within five days after issuance of a certification. This subparagraph also would require the Board to dismiss an application for review which is untimely or does not meet the requirements of the regulation. The Board also may dismiss an application for review which does not establish a basis for reversing the certification even if the factual allegations of the

application are deemed true. In cases where the Board sets a labor organization's allegations for hearing, such hearing shall begin within 14 days. With the addition of subparagraph (e)(1), the subparagraph describing the requirements for an employer filing objections to the certification was renumbered to subparagraph (e)(2).

Proposed section 20391, subdivisions (f) and (g):

These subdivisions have been renumbered from previous subdivisions (g) and (h), respectively, as set forth in the regulatory text for proposed section 20391. Proposed section 20391, subdivision (g) was modified to be consistent with the addition of subparagraph (e)(1) which codifies a labor organization's ability to obtain review of the results of a majority support proceeding based on employer misconduct, and to be consistent with the renumbering of subparagraph (e)(2), describing the requirements for an employer filing objections to the certification.

Proposed section 20391, subdivision (i):

This subdivision is renumbered from previous subdivision (h) as set forth in the originally noticed regulatory text for proposed section 20391. This subdivision stated that a majority support petition "campaign" by a labor organization would be deemed to be underway if the labor organization could establish proof of support of at least 10% of an employer's agricultural employees. Proposed section 20391, subdivision (i) was deleted following the second written comment period.

There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Rulemaking.

Dated: December 30, 2024

/s/ Santiago Avila-Gomez
Santiago Avila-Gomez
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Agricultural Labor Relations Board