



DATE: June 9, 2023

TO: Interested Parties, Stakeholders, and Members of the Public

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member  
Barry Broad, Board Member

RE: Subcommittee Workshop to Discuss Subcommittee Report and Draft  
Regulations Regarding Proposed Rulemaking (AB 113): Majority Support  
Petitions and Appeal Bonds

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On May 15, 2023, Governor Newsom signed Assembly Bill No. 113 (AB 113). This bill sets forth the clarifying language agreed to by the administration and United Farm Workers and California Labor Federation when the Governor signed Assembly Bill No. 2183 last year. AB 113 revises the labor union election and appellate bonding provisions enacted by AB 2183.

With respect to labor union elections, AB 113 repeals the labor peace compact and non-labor peace election provisions, and replaces them with a new "majority support petition" process largely modeled after the non-labor peace election procedure enacted by AB 2183. Codified in new Labor Code section 1156.37, this majority support petition process allows certain labor organizations to become certified as the exclusive bargaining representative of an employer's agricultural employees upon the submission of petition signatures or authorization cards demonstrating support from a majority of the employees in the bargaining unit. To implement this procedure, the regulations subcommittee hereby issues a draft proposed regulation (new section 20391), which is set forth in **Attachment A** to this report. The subcommittee's proposed regulation follows the various procedures set forth in the statute and incorporates language modeled on the Board's existing regulations governing the investigation and processing of representation petitions. In this respect, we have included annotations referencing other regulations on which these provisions are modeled.

AB 113 also includes significant amendments to the appeal bond requirement adopted in AB 2183. Pursuant to these amendments, when the Board issues a decision in an unfair labor practice case ordering the respondent to pay a monetary remedy, the case shall proceed directly into administrative compliance proceedings to determine the specific amount of the monetary relief. (Lab. Code, §§ 1149.3, subd. (a), 1160.3.) Upon the completion of such compliance proceedings, an agricultural employer who seeks judicial review of the Board's decision, concerning the Board's findings during either the underlying unfair labor practice or subsequent compliance proceedings,

must post an appeal bond in the amount of the monetary remedy ordered by the Board. (Lab. Code, § 1160.11.)

To implement these amendments concerning the specification of a monetary remedy in our unfair labor practice proceedings, the regulations subcommittee hereby issues draft proposed regulations restructuring the Board's compliance regulations (current §§ 20290-20293). Because the proposed restructuring of our compliance proceedings as contemplated by these regulations is significant, the subcommittee proposes to repeal and replace these regulations. That said, however, this proposal largely is modeled on, and borrows from, the existing regulatory language. The subcommittee's proposal concerning these regulations is set forth in **Attachment B** to this report. Much of the language included in this proposal is based on existing regulatory language, and the proposal is annotated to reflect these instances.

# **ATTACHMENT A**

**SUBCOMMITTEE PROPOSAL RE: MAJORITY SUPPORT PETITIONS**

§ 20391. Majority Support Petitions Under Labor Code Section 1156.37.

(a) A labor organization filing a majority support petition shall do so using a form prepared by the Board and available on the Board's website or supplied by a regional office of the Board upon request. The petition shall be filed electronically pursuant to section 20169. A labor organization filing a majority support petition shall submit with the petition proof that the labor organization (1) has filed LM-2 reports with the federal Office of Labor-Management Standards for the preceding two years, and (2) is or was a party to a collective bargaining agreement covering agricultural employees as defined in subdivision (b) of Labor Code section 1140.4 that was in effect on May 15, 2023. The petition is deemed filed upon the appropriate regional office's receipt of all required information, including proof of service of the petition on the employer. Immediately upon confirming all required materials have been submitted, the regional office shall notify the employer by telephone and email, if available, of (1) the date and time of the filing of the petition, and (2) the case number assigned to the petition.

**Commented [A1]:** Cf. proposed amendments to reg. 20300(f) in the Board's separate rulemaking, file no. Z2022-1121-01.

(1) Evidence that a majority of the currently employed employees in the bargaining unit support the petitioner shall be submitted with the petition. Such evidence shall consist of either: (A) authorization cards, signed by employees, dated, and providing that the signer authorizes the union to be their collective bargaining representative, or (B) a petition to the same effect signed by employees, each signature dated.

(2) No employee authorization dated more than one year prior to the date of filing of the petition shall be counted to determine a showing of majority support. An authorization card or authorization petition signed by an employee at a time when the employee was not working for the employer named in the election petition shall, if otherwise valid, be counted in determining majority showing of interest.

**Commented [A2]:** Cf. current reg. 20300(j)(1).

(b) Within 48 hours after personal service of the petition on the employer named in the petition, the employer shall file with the Board and serve personally on the labor organization its response to the petition. 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. Service of employer's employee list in electronic format may be by email or pursuant to subdivision (b) of section 20169 if the response is filed electronically with the Board. The Board shall notify the labor organization promptly after the employer's response is filed and, if the labor organization contends it has not received proper service of the response, the Board shall serve the employer's response on the labor organization.

**Commented [A3]:** Cf. reg. 20310(d).

(c) The regional director of the office in which the majority support petition is filed shall commence an investigation regarding the validity of the petition and accompanying proof of support after the petition is filed. Within three days after receipt of the employer's response, the regional director shall notify the parties of its determination whether (i) a bona fide question of representation exists, (ii) the bargaining unit described in the petition is not appropriate, or (iii) the proof of support submitted with the petition is not sufficient.

**Commented [A4]:** Cf. reg. 20300(i)(1).

(1) If the regional director determines the petition must be dismissed because a bona fide question of representation does not exist or the unit described in the petition is not

appropriate, the regional director shall issue a dismissal letter to the parties setting forth the reasoning to support such determination.

**Commented [A5]:** Cf. current reg. 20300(i)(2).

(2) If the regional director determines the proof of support submitted with the petition is insufficient, the regional director shall notify the parties in writing of its determination. The labor organization shall have 30 days from the date of the regional director's notification to submit additional proof of support or to cure support submitted but found invalid by the regional director. In this regard, when the regional director has determined the labor organization's showing of support to be insufficient, the regional director shall return to the labor organization any support it has found invalid and shall state the reasons therefor. 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. If proof of majority support still has not been established, the regional director shall notify the executive secretary, and the executive secretary shall certify the disposition of the majority support petition.

**Commented [A6]:** Cf. reg. 20380.

(3) If the regional director has concluded that a bona fide question of representation exists, the unit described in the petition is appropriate, and that proof of majority support is established, the regional director shall immediately notify the parties and the executive secretary. Upon receiving such notification, the executive secretary shall issue a certification designating the labor organization as the exclusive bargaining representative of the employer's agricultural employees in the unit described in the petition.

(d) Within five days after service of the executive secretary's certification pursuant to subdivision (c)(3), the employer may file objections to the certification on grounds the allegations of the petition are false, the unit described in the petition is not appropriate, the regional office's review of the petition and proof of support were conducted improperly, or other misconduct affected the labor organization's proof of support. The objections shall be filed with the executive secretary pursuant to subdivision (a)(1) of section 20160 or electronically pursuant to section 20169. No extensions of time to file objections will be granted, nor may objections be amended or supplemented once filed.

**Commented [A7]:** Cf. reg. 20365(b).

(1) Objections alleging the regional director improperly determined the unit described in the petition to be appropriate or that the allegations of the petition are false shall be supported by a detailed statement of the facts and law relied upon in making such claims.

**Commented [A8]:** Cf. reg. 20365(c)(1).

(2) Objections alleging the regional office's review of the petition and proof of support were conducted improperly or that other misconduct affected the labor organization's proof of support shall be accompanied by declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to revoke the labor organization's certification.

**Commented [A9]:** Cf. reg. 20365(c)(2).

(e)(1) The Board shall dismiss objections that do not satisfy the requirements of subdivision (d)(1) or (d)(2) of this regulation.

**Commented [A10]:** Cf. reg. 20365(d).

(2) With respect to objections not dismissed pursuant to subdivision (e)(1), the Board shall dismiss objections that, even if true, would not be sufficient to revoke the labor

organization's certification. Where objections set forth allegations that would be sufficient to revoke the labor organization's certification and there are material facts in dispute, the Board shall direct an investigatory hearing regarding such objections. The hearing shall commence within 14 days of the date of the Board's order, unless the labor organization agrees to an extension, and shall be conducted in accordance with regulation 20370.

**Commented [A11]:** Cf. reg. 20365(f).

(f) If a majority support petition has been filed with an appropriate regional office of the Board and a second majority support petition pertaining to the same bargaining unit of agricultural employees is filed, the Board shall hold the second petition in abeyance pending resolution of the first petition, subject to paragraph (2).

(1) If it is determined the first petition filed with the Board has established proof of majority support and that the labor organization that filed the petition should be certified as the employees' exclusive bargaining representative, the Board shall proceed to dismiss the second petition.

(2)(A) If the second petition alleges the first petition was filed by a labor organization assisted, supported, created, or dominated by an employer, the Board shall conduct a hearing on such allegations if both of the following are established:

(i) The second petition is filed while the first petition remains pending and before any certification regarding the first petition has issued; and

(ii) The second petition alleges facts of employer assistance, support, creation, or domination supported by declarations.

(B) In cases where the Board has determined it appropriate to conduct a hearing based on the allegations of the second petition, such a hearing shall commence within 14 days and the independent hearing examiner shall issue a recommended decision within 21 days after the conclusion of the hearing. Within 10 days after the independent hearing examiner issues a recommended decision, any party to the hearing may file with the Board exceptions and a brief in support of the exceptions to the recommended decision. A party opposing the exceptions may file an answer to them within 5 days. If exceptions are filed, the Board shall issue a decision within 90 days from the date the first petition was filed.

(C) If it is determined that the labor organization that filed the first petition was unlawfully created or dominated by an employer, that labor organization and its representatives, agents, or officers shall be disqualified permanently from filing any further representation petitions with the Board. If it is determined that the labor organization that filed the first petition was unlawfully assisted or supported by an employer, that labor organization and its representatives, agents, or officers shall be disqualified from filing any further representation petitions with the Board for a period of one year.

(D) The Board shall dismiss a second petition that does not satisfy the requirements of subparagraph (2)(A).

(g) When objections are filed by an employer or a second majority support petition has been filed alleging a first petition was filed by a labor organization unlawfully assisted, supported, created, or dominated by an employer, the executive secretary shall notify the general counsel and provide copies of such filings. Within 10 days after the executive secretary provides this notice to the general counsel, the general counsel may file with the Board a motion seeking to consolidate any unfair labor practice charges containing allegations that mirror the allegations of any employer objections or a second-filed petition. If consolidation is granted, any resulting hearing will be governed by the procedures set forth in Chapters 4 and 6 of the Act.

**Commented [A12]:** Cf. reg. 20335(c).

(h) For purposes of subdivisions (j) and (k) of Labor Code section 1156.37, a labor organization's majority support petition campaign shall be deemed underway if the labor organization is able to establish proof of support from at least 10% of the agricultural employees in the bargaining unit sought to be represented.

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1156.37, Labor Code.

# **ATTACHMENT B**

**SUBCOMMITTEE PROPOSAL RE: APPEAL BONDS; COMPLIANCE**



Repeal Existing Regulations 20290 – 20293.

Adopt New Regulations 20290 – 20296, as follows:

**§ 20290. Compliance With Board Decision Ordering Monetary Remedies.**

(a) If the Board has issued a decision finding the person named in the complaint has engaged in or is engaging in an unfair labor practice and ordering the payment of a monetary remedy, the executive secretary shall immediately assign the matter to an administrative law judge for further proceedings to determine the specific amount of monetary relief owed. Assignment to the administrative law judge who previously heard the case is preferred, but not required if the original judge is not available.

(b) Within 90 days after the date of the Board's decision ordering the payment of a monetary remedy, or such further time as the Board may permit, the regional director shall file and serve on the parties a compliance specification as provided in section 20292, which shall contain or be accompanied by a notice of hearing. In the alternative and in appropriate circumstances, the regional director shall issue and serve on the parties a notice of hearing without a specification as provided in subdivision (d) of section 20292. The notice of hearing with or without specification may provide for a hearing to be held before the administrative law judge not less than fifteen (15) days after service of the notice, and shall be filed with the executive secretary and served on all parties.

**Commented [A13]:** Cf. reg. 20290(a).

(c) Each person alleged as a respondent in the specification or notice of hearing without specification shall file and serve an answer thereto within 15 days from the date of service of the specification or notice of hearing without specification. The answer shall state specifically which facts alleged in the specification or notice of hearing without specification are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. Any allegation not expressly denied shall be deemed admitted. Except for matters not reasonably ascertainable by a respondent, a general denial or a denial on information and belief shall not suffice. As to such reasonably ascertainable matters, including, but not limited to, gross backpay, actual wages, comparable contract(s), and fringe benefits, if a respondent disputes either the accuracy of the facts or figures in the specification or the premises on which they are based, it shall specifically state the basis for its disagreement, setting forth in detail its position as to the applicable premises and furnishing the appropriate supporting facts and figures, including a specific alternative methodology for computing amounts owed should the respondent dispute the validity of the methodology used in the specification.

**Commented [A14]:** Cf. reg. 20292(a)-(b).

(d) If a respondent fails to file an answer within the time prescribed by this section, the administrative law judge may, either with or without taking evidence in support of the allegations and without notice to the respondent, find the allegations of the specification or the notice of hearing without specification to be true and issue an appropriate recommended order. If a respondent files an answer, but fails to deny any allegation of the specification or notice of hearing without specification in the manner required by subsection (c) of this section, such allegation shall be deemed admitted and may be so found without the taking of evidence supporting such allegation, and

the respondent shall be precluded from introducing any evidence controverting said allegation.

**Commented [A15]:** Cf. reg. 20292(c).

(e) Specifications, notices of hearings without specification, and answers to them may be amended in the same manner as complaints and answers to complaints. Specifications and notices of hearing without specification may be withdrawn in the same manner as complaints. After the issuance of a specification or notice of hearing without specification, the procedures provided for in sections 20235 through 20298 shall be followed so far as applicable.

**Commented [A16]:** Cf. reg. 20293(a).

**Commented [A17]:** Cf. reg. 20293(b).

**Commented [A18]:** Cf. reg. 20293(c).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

### **§ 20291. Compliance; Consolidation.**

**Commented [A19]:** Cf. reg. 20290(b).

(a) Whenever the regional director deems it appropriate in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs and delay, the regional director may consolidate with a complaint and notice of hearing issued pursuant to section 20220, a compliance specification based on that complaint. The compliance specification shall be prepared in accordance with section 20292. After the opening of the pre-hearing conference, consolidation shall be subject to approval of the administrative law judge or the Board as provided in section 20244.

(b) Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in an administrative or judicial forum which the Board or regional director determines to be appropriate for obtaining compliance with a Board order.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

### **§ 20292. Contents of Compliance Specification Involving Monetary Remedies or Notice of Hearing without Specification.**

(a) A specification concerning the amount of backpay owed to an employee or employees shall specifically and in detail show, for each employee:

**Commented [A20]:** Cf. reg. 20291(a).

(1) The backpay period;

(2) The amount of gross backpay owed, the method of its computation, the data used in making the computation, and the reasons for selecting the method and data utilized;

(3) The amount and source of interim earnings, the method of allocation, e.g., weekly average, and the reasons for selecting that method;

(4) Amount and type of expenses claimed;

(5) Net backpay, including the method of calculation and the reasons for selecting that method.

(6) Missing or deceased discriminatees and the requested method for handling their claims;

(7) The interest due to the date of the specification and a demand for appropriate interest thereafter;

(8) Any other pertinent information.

(b) A specification concerning the amount of bargaining makewhole due to employees in a represented bargaining unit or units shall specifically and in detail show for all employees entitled to bargaining makewhole, including employees entitled to a makewhole supplement to backpay;

**Commented [A21]:** Cf. reg. 20291(b).

(1) The bargaining makewhole period;

(2) Actual gross earnings, or gross backpay for discriminatees not working during the bargaining makewhole period;

(3) The bargaining makewhole wage rate; the comparable contract(s) or other economic measures upon which it is based, together with the reasons for their selection; and the manner in which the makewhole rate was derived from the comparable contract(s) or other economic measures;

(4) Fringe benefits owed, the contract(s) or other economic data from which they were derived, the reasons for utilizing the contract(s) or other data, and the method by which fringe benefits were derived from the contract(s) or other data;

(5) Net bargaining makewhole and/or bargaining makewhole supplement due;

(6) The interest due to the date of the specification and a demand for appropriate interest thereafter;

(7) Any other pertinent information;

(c) Where, for good cause alleged and established at hearing, the regional director is unable to prepare a full specification as described in subdivisions (a) or (b), the regional director may issue a partial specification alleging in detail all information which is reasonably ascertainable, and the matter shall proceed on that basis;

**Commented [A22]:** Cf. reg. 20291(d).

(d) In appropriate circumstances, the regional director may file a notice of hearing, without a specification, containing a clear and detailed statement of the matters in controversy and any relief sought. The regional director shall include in the notice of hearing the reason or reasons for dispensing with a specification and must substantiate such reasons if they are called into question during the course of the proceedings;

**Commented [A23]:** Cf. reg. 20291(e).

(e) Where the regional director believes that a person not named in a Board order, court decree, or final administrative law judge's decision, is jointly or derivatively liable

to comply with such order, decree, or decision, that liability may be determined in a compliance proceeding initiated under this section or section 20293 in which the regional director has named the person as a respondent and has alleged the legal and factual basis for their joint or derivative liability.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

#### **§ 20293. Compliance With Non-Monetary Remedies.**

(a) Where a Board decision orders only non-monetary remedies and it appears there is a controversy with respect to compliance with such Board order or court decree enforcing a Board order, and such controversy cannot be resolved without a formal proceeding, the regional director shall file and serve on all parties a compliance specification as described in subdivision (b) or a notice of hearing without a specification consistent with subdivision (d) of section 20292. The specification or notice of hearing shall be filed within 90 days after the Board's decision becomes final or within such further time as the Board may permit. The provisions of subdivisions (c), (d), and (e) of section 20290 regarding the filing of an answer to a compliance specification or notice of hearing and other applicable procedures shall apply in proceedings regarding compliance with non-monetary remedies ordered by the Board.

(b) With respect to allegations other than the amount of backpay or makewhole due, including, but not limited to, cease and desist orders, notice remedies, or bargaining orders not involving bargaining makewhole, the specification shall contain a detailed description of the respects in which the person named as respondent has failed to comply with the Board order or court decree, including the remedial acts claimed to be necessary for compliance by the respondent.

Commented [A24]: Cf. reg. 20291(c).

(c) Where a Board decision orders both monetary and non-monetary remedies, the regional director may include in a specification or notice of hearing without a specification as described in section 20292 allegations concerning compliance with the non-monetary remedies ordered by the Board. If the non-monetary remedies are not included in such proceedings, separate compliance proceedings concerning such non-monetary remedies may be initiated within 90 days after the Board's decision becomes final, or such further time as the Board may permit. A Board decision ordering the payment of monetary remedies is deemed final when the Board issues a determination of the specific amount of the monetary remedies following the initiation of compliance proceedings and no appeal is sought therefrom or when a reviewing court dismisses an employer's appeal or otherwise affirms the Board's decision.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

#### **§ 20294. Compliance; Determination of Amount of Civil Penalties.**

(a) If the Board has issued a decision finding an agricultural employer has engaged in or is engaging in an unfair labor practice, the regional director shall file and serve a

specification as described in subdivision (b), or a notice of hearing without a specification as described in subdivision (d) of section 20292, to determine the amount of civil penalties to be assessed against the employer. The specification or notice of hearing shall be filed within 90 days after the Board's decision becomes final or within such further time as the Board may permit. The provisions of subdivisions (c), (d), and (e) of section 20290 regarding the filing of an answer to a compliance specification or notice of hearing and other applicable procedures shall apply in proceedings to determine the amount of civil penalties owed by an employer.

(b) A specification concerning the amount of civil penalties owed by an employer shall specifically set forth facts relevant to a determination of the amount of the penalties to be assessed in accordance with the governing statute authorizing such penalties.

(c) A specification concerning the amount of civil penalties owed by an employer may be included:

(1) With a specification, or notice of hearing without a specification, pursuant to section 20292 where monetary remedies also have been ordered by the Board;

(2) With a specification, or notice of hearing without a specification, pursuant to section 20293 where the Board has not ordered monetary remedies; or

(3) With a specification, or notice of hearing without specification, pursuant to section 20295 where an administrative law judge's decision has become final.

(d) When a specification involving civil penalties owed by an employer is included with another specification or notice of hearing as described in subdivision (c), the timeframes governing such other type of specification shall apply.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.

#### **§ 20295. Compliance; Final Administrative Law Judge Decision.**

In cases where an administrative law judge's decision has found the person named in the complaint has engaged in or is engaging in an unfair labor practice and such decision becomes final pursuant to subdivision (a) of section 20286 because no exceptions were filed, compliance proceedings concerning such remedies or civil penalties ordered by the administrative law judge shall proceed in accordance with the timeframes and requirements set forth in section 20290, subdivision (a) of section 20293, or subdivision (a) of section 20294, as applicable.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.

**§ 20296. Compliance; Continuing Monetary Liability During Review.**

If the Board has issued a decision ordering the payment of a monetary remedy and the amount of that monetary remedy has continued to accrue during the course of judicial proceedings to review the Board's decision, and the challenge to the Board's decision is dismissed or the Board's decision otherwise is affirmed, the regional director shall commence a compliance proceeding to determine the amount of such remaining monetary liability in accordance with the procedures set forth in section 20291.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.