AGRICULTURAL LABOR RELATIONS BOARD

EUREKA

CALIFORNIA

OVERVIEW OF THE ALRB

- Agricultural Labor Relations Act (ALRA) provides rights to farmworkers to protest working conditions to employer and/or to participate in efforts to unionize the employer. Unlawful for employer to retaliate against employees for either effort.
- ALRB responsible for:
- Investigation, Prosecution & Adjudication of ULP Charges
- Conducting Union Elections: Secret Ballot, Mail-in Ballot or Card Check
- Conducting Investigative Hearings on Specified Election Matters
- Carrying out the Policy of the State of California to **Encourage** and **Protect** the Rights of Agricultural Employees (Includes Outreach & Education of Employees, Employers, FLCs & Unions)

Issues in Agricultural Labor & Employment

IMPORTANT CHANGES

- UNION ACCESS is prohibited (Except in Cannabis under Labor Peace Agreements & under Labor Peace Compacts (new))
- CREATION OF ALTERNATIVES TO SECRET BALLOT UNION ELECTION (**Mail-In Ballots** or **Proof of Majority Support** aka card check)
- CREATION OF A NEW MISCLASSIFICATION OF EMPLOYEES ULP (And imposing fines for misclassifying)
- Creation of a $10,000 fine for each ULP violation found by the Board
- CREATION OF AUTHORITY TO INVESTIGATE CANNABIS LAOR PEACE AGREEMENTS WITH NON-BONAFIDE LABOR ORGANIZATIONS (Not limited to Cultivators)

Elections: Mail-In and Card Check (new)

AB 2183:

- Creates two alternatives to secret ballot election which are the "labor peace election" (aka Mail-in Ballot) and "non-labor peace election" (aka Card Check)
- Grower can indicate a voluntary preference for a **labor peace election** by "enrolls and agrees to a labor peace election". For the 2023 calendar year, the Grower must submit its enrollment between January 1 through February 1. If grower doesn't enroll then this indicates that a Mail-In Ballot election cannot occur. Leaves the Non-labor peace election or the Secret Ballot Election (aka polling place election) as the only choices on employee voting for/against union representation. (It's union selection of the method.)

The Labor Peace Compact

- Enrollment for the Mail-in Ballot process requires employer agreement to Labor Peace Compact requirements.
- What is a Labor Peace Compact (aka Employer Neutrality)?

1. Agree to not make any statements to its employees or publicly for or against union representation in writing or verbally at anytime during employees' employment or after a NO or NA or election petition for any type election has been filed.
2. Agree to allow NA/NO type access per previous ALRB regulations
3. Agree not to hold any "captive audience meetings"
4. Agree not to disparage the union in writing or verbally to employees or to the public
5. Agree not to express any preference for one union over another

Compacts (continued)

All of these requirements apply to the FLC **If** the Grower enters into a Legal Peace Compact (Mail-in Ballot process)

A labor peace compact does not prohibit an employer (or FLC) from communicating truthful statements to employees regarding workplace policies or benefits. However, statements can make no reference to any union, unionization efforts, or other protected concerted activity

A Labor Peace Compact violation could be considered to be a ULP depending on nature of violation; otherwise, the process to determine whether a violation occurred, and the appropriate remedy for it, remains unclear until regulations are written

Access

- A Labor Peace Compact also requires that the Employer agree to:
- “(V)oluntarily allow labor organization access as previously permitted under this part…”
- Access allows union organizers to speak to employees at the workplace before work, after work and during their meal break.
- In 2021, US Supreme Court found the ALRA Access provisions unconstitutional.

For All Types of Elections

- FLC needs to make sure that their payroll records have the following:

1. A complete and accurate list of the full names, current street addresses, telephone numbers (cell phone)
2. Job classifications and crew or department of all employed employees (keep current)
3. When employee list is required for an election: it needs to be organized as follows: employee first name, middle name or initial, last name, address, city, state, zip code, telephone number, classification, and crew or department; all in separate columns

EMPLOYEE MISCLASSIFICATION

Who is an Employee?

- Labor Code defines Agricultural Employee by defining Agriculture in Section 1140.4 (a) The term “agriculture” includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

MISCLASSIFICATION (continued)

1140.4 (b) The term “agricultural employee” or “employee” shall mean one engaged in agriculture, as such term is defined in subdivision (a). However, nothing in this subdivision shall be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

MISCLASSIFICATION (continued)

- (a) It is unlawful for any person or employer to engage in any of the following activities:
- (1) **Willful misclassification** of an individual as an independent contractor. *(Labor Code section 226.8)*

- **Willful** means: "avoiding employee status for an individual by voluntarily and **knowingly** misclassifying that individual as an independent contractor." *(Labor Code section 226.8 (i)(4))*
- ALRB Board in *Cinagro Farms* (2022) 48 ALRB No. 2 at pp. 44-45 determined that the Grower knew that he was misclassifying his employees. Finding willfulness, the Board found it had authority under the statute to assess a penalty within a range between $5,000 and $15,000 for each violation.

Commission of ULP will also carry a fine!

- Labor Code section 1160.10(a)(1) Any employer who commits an unfair labor practice (Section 1153(a) Concerted Activity) shall, in addition to any remedy ordered by the the board, be **subject to a civil penalty** in an amount not to exceed ten thousand dollars ($10,000) for each violation.

- Where the violation concerns union activity (Section 1153(c)) or an employee testifying at a hearing (Section 1153(d)) the fine can go up to twenty-five thousand dollars ($25,000) for each violation.

Contact Information

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