



California LABOR Federation

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Lorena Gonzalez Fletcher, *Executive Secretary-Treasurer* Kathryn Lybarger, *President* www.CaliforniaLabor.org

June 15, 2023

Chair Richard C. Miadich
Commissioner Catharine Baker
Commissioner E. Dotson Wilson
Commissioner Abby Wood
California Fair Political Practices Commission
1102 Q Street, Suite 3050
Sacramento, CA 95811

RE: Comment Letter on Proposed Repeal, Adoption, and Amendment of Levine Act Regulations (18438-18438.8, 18705)

Dear Chair Miadich and Commissioners Baker, Wilson, and Wood:

I am writing on behalf of the California Labor Federation to urge an amendment to the proposed FPPC regulations implementing Senate Bill 1439 (2022). We offer this amendment to clarify the labor contract exception in the proposed regulations and to eliminate uncertainty in the treatment of labor unions and labor contracts in the regulations governing the financial interest of participants to proceedings. Section 84308 of the Government Code, as amended by SB 1439, exempts from the definition of “party” any person who files an application for or is the subject of a proceeding involving a labor contract. Proposed Section 18438.2(a)(3)(B) makes clear that labor contracts include project labor agreements (PLAs), such that unions seeking approval for PLAs with public entities are not subject to Section 84308. Similarly, a union is not a “party” to a private entity’s application or proceeding covered by Section 84308 merely by virtue of having signed a PLA with the private entity.

But the current regulations leave uncertainty in the definition of “participant” that, without clarification, could lead public officials to engage in complex case-by-case analyses of each project covered by a PLA. Under section 84308, a participant is a person who “actively supports or opposes a particular decision” and who has a “financial interest in the decision,” as interpreted by this Commission to cover material financial effects on non-profit organizations that would result in an increase or decrease in an organization’s annual gross receipts that is at least \$1 million or five percent of annual gross receipts. 2 Cal. Code Regs. §18702.

Although PLAs entered into by unions affiliated with the State Building Trades and the California Labor Federation would rarely meet the monetary thresholds required for a material financial effect, any potential application of this test to unions with PLAs could cause confusion and uncertainty. Public officials who believe the test applies to projects covered by a PLA would need to engage in a burdensome case-by-case analysis of the impact of each project covered by the PLA, including the potential increases or decreases in union revenues caused by changes to union employee hours worked, before engaging in any proceedings for fear of risking a violation.

We urge the Commission to adopt a more straightforward, bright-line rule for unions acting as participants to remove any uncertainty about whether officers covered by section 84308 are permitted to vote on matters involving PLAs or projects covered by a PLA. We suggest incorporating the following language into the proposed regulations:

“A potential increase or decrease in jobs or work hours for employees represented by a labor organization does not give rise to a financial interest of the labor organization for purposes of this section.”

This proposed language adds certainty in the calculation of financial interest and aligns with the legislative intent expressed in the exemption of PLAs entirely from coverage when the union is directly advocating for their adoption or approval.

We thank the Commission and your staff for the opportunity to comment on the proposed regulations. Please contact the Federation’s General Counsel, Caitlin Vega, at (916) 402-6450 with any questions related to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lorena', with a large, stylized initial 'L' and a horizontal flourish extending to the right.

Lorena Gonzalez Fletcher
Executive Secretary Treasurer
SM: OPEIU 29 AFL CIO