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## **TITLE 8. Industrial Relations**

### **DIVISION 3. Public Employment Relations Board**

#### **CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD**

##### **SUBCHAPTER 1. INTERNAL PROCEDURES**

###### **Article 1. Public Meetings**

###### **31001. Meetings.**

Except as permitted by law, the Public Employment Relations Board itself shall deliberate and take all actions only at public meetings. The Board's policy on public meetings shall be available to the public.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b), and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1, and 71825, Government Code; and Section 99561, Public Utilities Code.

## **SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS**

### **Article 1. Definitions**

#### **32020. Board.**

“Board” means the five-member Public Employment Relations Board, any individual Board member or any Board agent.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3551(a), 3555.5(c), 3562(b), 71639.1(a) and 71825(a), Government Code; and Section 99560.1(b), Public Utilities Code.

**32030. Board Itself.**

“Board itself” means only the five-member Public Employment Relations Board, or members thereof authorized by law to act on behalf of the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3551(a), 3555.5(c), 3562(b), 71639.1(a) and 71825(a), Government Code; and Section 99560.1(b), Public Utilities Code.

**32036. PECC.**

“PECC” means the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555).

Authority cited: Sections 3541.3 and 3555.5(c), Government Code. Reference: Section 3555.5(c), Government Code.

**32038. PEDD.**

“PEDD” means the Chapter titled Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550).

Authority Cited: Sections 3541.3 and 3551(a), Government Code. Reference: Section 3551(a), Government Code.

**32039. Definition of Terms Under the PEDD.**

As applied to matters arising under the PEDD:

(a) “Exclusive Representative” means an employee organization recognized or certified to represent public employees as defined in Government Code Section 3552(b), in their relations with the public employer as defined in Government Code Section 3552(c).

Authority Cited: Sections 3541.3 and 3551(a), Government Code. Reference: Sections 3551(a), 3552 and 3553, Government Code.

**32050. General Counsel.**

“General Counsel” means the officer of that title appointed pursuant to Government Code Section 3541(f).

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Section 3541(f), Government Code.

**32055. Chief Administrative Law Judge.**

“Chief Administrative Law Judge” means the officer of that title designated by the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3551(a), 3555.5(c), 3563(j), 71639.1 and 71825, Government Code; and Section 99561(j), Public Utilities Code.



**32060. Headquarters Office.**

“The headquarters office” means the main office of the Board itself, the General Counsel, the Chief Administrative Law Judge, and the Executive Director. The headquarters office shall be located in Sacramento, CA.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

**32075. Regional Office.**

“The regional office” means the office established by the Board which serves the county in which the principal office of an employer is located according to the following schedule:

Counties included in the Sacramento Regional Office jurisdiction: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba.

Counties included in San Francisco Regional Office jurisdiction: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma.

Counties included in Los Angeles Regional Office jurisdiction: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

**32080. Day.**

“Day” means calendar day unless otherwise specified.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(f), Public Utilities Code.

**32090. Fax Filing.**

(a) “Facsimile transmission” is the transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

(b) “Facsimile machine” means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union, in regular resolution. Any facsimile machine used to send documents must send at an initial transmission speed of no less than 4800 baud and be able to generate a transmission record. Facsimile machine includes, but is not limited to, a facsimile modem that is connected to a personal computer.

(c) “Facsimile filing” or “filing by fax” means the facsimile transmission of a document to PERB.

(d) “Fax” is an abbreviation for “facsimile,” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 99561 and 99561.2, Public Utilities Code.

**32091. Electronic Filing.**

(a) “Electronic filing” or “filing by electronic mail” means the transmission of a document to PERB via an electronic mail (e-mail) message.

(b) Electronic filing must be directed to the e-mail address currently published by PERB for that purpose on its website.

(c) Any attachments to an electronic filing shall be in PDF format and the total size of any email message, including attachments, shall not exceed 3 MB, unless the files are compressed (in a zip file format).

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 99561 and 99561.2, Public Utilities Code.

## Article 2. General Provisions

### 32100. Application of Regulations.

- (a) All rules and regulations within this Chapter shall apply to proceedings conducted under EERA, Ralph C. Dills Act, and HEERA and to Chapters 2, 3 and 4 within this Division.
- (b) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under MMBA and to Chapter 5 within this Division.
- (c) All rules and regulations within this Chapter, except for Article 6 of Subchapter 6, shall apply to proceedings conducted under TEERA and to Chapter 6 within this Division.
- (d) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under the Trial Court Act and to Chapter 7 within this Division.
- (e) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under the Court Interpreter Act and to Chapter 8 within this Division.
- (f) Except as expressly provided otherwise, the rules and regulations within this Chapter, and Chapters 2 through 8, do not apply to mediation, election or other services provided by mediators or conciliators pursuant to Government Code sections 3600 and 3601.
- (g) All rules and regulations within this Chapter, except for Subchapters 6 and 8, shall apply to proceedings conducted under the PEDD and the PECC, excluding the administration of interest arbitration pursuant to Government Code Section 3557(b)(4). The rules and regulations in Articles 1 and 2 of Subchapter 2, and Subchapter 10 within this Chapter, shall apply to the administration of interest arbitration conducted under the PECC pursuant to Government Code Section 3557(b)(4).

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Section 19604, Business and Professions Code; Section 57031, Food and Agricultural Code; Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3557, 3563, 3600, 3601, 3602, 3603, 3611, 71632.5, 71636, 71636.1, 71636.3, 71637, 71637.1, 71639.1, 71823 and 71825, Government Code; Section 2686, Labor Code; and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 99561, 100301, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4, and Appendix 2, Sections 13.90, 13.91, and 13.96, Public Utilities Code.

**32105. Severability.**

If any section, subsection, clause or provision of these regulations is found to be invalid, the same shall not affect the remaining portion of the regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1 and 71825, Government Code; and Section 99561, Public Utilities Code.

**32120. Filing Contracts with Board.**

Each employer entering into a written agreement or memorandum of understanding with an exclusive representative pursuant to the PEDD, PECC, Trial Court Act, Court Interpreter Act, TEERA, MMBA, EERA, Ralph C. Dills Act or HEERA, if requested by the Board, shall file one copy of the agreement and any amendments thereto with the Board within 15 days of the request.

Authority cited: Sections 3509(a), 3524, 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3513(h), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code.  
Reference: Sections 3509, 3513(h), 3524, 3541.3(n), 3551(a), 3555.5(c), 3563(m), 3541.3(f), 3541.3(g), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.



**32130. Computation of Time.**

(a) In computing any period of time under these regulations, except under Section 32776(c), (d), (e) and (f), the period of time begins to run the day after the act or occurrence referred to.

(b) Whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.

(c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. No extension of time applies in the case of documents served in person, or by facsimile transmission as defined in Section 32090.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3551(a), 3555.5(c), 3563, 3577(b), 71639.1 and 71825, Government Code; and Sections 99561 and 99564.4(b), Public Utilities Code.

**32132. Extension of Time.**

(a) A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to Section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.

(b) No extensions of time shall be granted in cases before the Board itself that are subject to the limitations described in Section 32305(b).

(c) A request for an extension of time within which to file any document with a Board agent shall be in writing and shall be filed with the Board agent at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party. Extensions of time may be granted by the Board agent for good cause only.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(n), 3541.35, 3563(m), 3551(a), 3555.5(c), 3563.5, 71639.1, 71639.15, 71825 and 71825.05, Government Code; and Sections 99561(m) and 99561.4, Public Utilities Code.

**32135. Filing.**

(a) All documents shall be considered “filed” when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office during a regular PERB business day. All documents, except for proof of support as described in sections 32700, 61020, 81020 and 91020, must also be accompanied by proof of service pursuant to Section 32140.

(b) All documents, except proof of support as described in sections 32700, 61020, 81020 and 91020, shall also be considered “filed” when received during a regular PERB business day by facsimile transmission at the appropriate PERB office together with a Facsimile Transmission Cover Sheet, or when received by electronic mail in accordance with Section 32091.

(c) A party filing documents by facsimile transmission or by electronic mail must also deposit the original, together with the required proof of service and the required number of copies, in the U.S. mail or with a delivery service for delivery to the appropriate PERB office.

(d) A facsimile or electronic mail filing shall include the following information:

(1) The name of the party serving or filing papers and the name and telephone number of the agent transmitting the document;

(2) The name or title of the document being transmitted and the number of pages;

(3) The date and time of the transmission;

(4) The PERB case number, if any.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

**32136. Late Filing.**

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 12, 12(a) and 1013, Code of Civil Procedure; and Section 99561(m), Public Utilities Code.

**32140. Service.**

(a) All documents referred to in these regulations requiring “service,” except subpoenas, shall be considered “served” by the Board or a party when personally delivered, when deposited in the mail or with a delivery service properly addressed, when sent by facsimile transmission in accordance with the requirements of Sections 32090 and 32135(d), or when sent by electronic mail in accordance with the requirements of Section 32091, 32135(d) and 32140(b). All documents required to be served shall include a “proof of service” declaration signed under penalty of perjury which contains the following information: (1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, fax number(s) or electronic mail address(es) used for service on the party(ies); and (8) the date of service.

(b) Electronic service of a document is authorized only when a party has agreed to accept service electronically in that action. A party indicates that the party agrees to accept electronic service by:

(1) Serving a notice on all parties that the party accepts electronic service and filing the notice with the Board. The notice must include the electronic mail address at which the party agrees to accept service; or

(2) Electronically filing any document with the Board. The act of electronic filing is evidence that the party agrees to accept service at the electronic mail address the party has furnished to the Board.

(c) Whenever “service” is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

**32142. Proper Recipient for Filing or Service.**

Whenever a document is required to be “filed” or “served” with any of the below listed entities, the proper recipient shall be:

- (a) The Board: the appropriate or designated regional office (see, e.g. Sections 32075, 32122, or 32612) unless the headquarters office is specified;
- (b) The Board itself: only at the headquarters office;
- (c) An employer
  - (1) in the case of a public school employer: the superintendent, deputy superintendent, or a designated representative of a school district; or to the school board at a regular or extraordinary meeting;
  - (2) in the case of a state employer: the Governor or his designated representative on behalf of the State of California;
  - (3) in the case of a higher education employer:
    - (A) If the employer is the Regents of the University of California, the Office of the General Counsel of the University;
    - (B) If the employer is the Directors of Hastings College of the Law, the Office of the General Counsel of Hastings;
    - (C) If the employer is the Trustees of the California State University for unfair practice proceedings, service shall be on the Office of the General Counsel of the California State University; for representation proceedings, filing or service shall be on the Office of the Director of Employee Relations.
  - (4) in the case of a public agency employer as defined in Government Code section 3501(c): the individual designated to receive service or the chief executive officer.
  - (5) in the case of a transit district employer as defined in Public Utilities Code section 99560.1(g), any person authorized to act on behalf of the employer.
  - (6) in the case of a trial court employer as defined in Government Code section 71601(k) or 71801(k): the individual designated to receive service or the executive officer.
  - (7) in the case of a regional committee as defined in Government Code section 71801(h) and 71807: the individual designated to receive service or the chair of the regional committee.

(d) An employee organization: the individual designated to receive service or to the president or if there is no president, an officer of the organization.

(e) An individual: to the named person or to their representative of record.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3501(c), 3513(j), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71601(k), 71639.1, 71801(h), 71807 and 71825, Government Code; and Sections 99560.1(g) and 99560.1(h), Public Utilities Code.

**32145. Waiver of Time Periods.**

The Board itself may waive or all parties to a proceeding, subject to the approval of the Board, may jointly waive any time period allowed for action by a party or the Board in order to expedite any pending matter.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.



**32147. Expediting Matters Before the Board.**

The Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board, as follows:

(a) In any case arising under Section 32761, 32770, 32781, 32802, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, or 91450;

(b) In any case that presents an important question of law or policy under any statute administered by the Board, the early resolution of which is likely to improve labor relations between or among affected parties;

(c) In conjunction with any determination to seek injunctive relief pursuant to Section 32450 et seq.;

(d) In any case, as ordered or directed by the Board itself.

For purposes of this Section, the expediting of a matter means the matter shall be given priority and decided on an expedited basis, in the manner determined to be appropriate by, as applicable, the Board itself, the General Counsel, or the Chief Administrative Law Judge.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

**32149. Investigative Subpoenas.**

The Board may issue investigative subpoenas and subpoenas duces tecum compelling the attendance of witnesses and production of records at investigative proceedings. The provisions in Section 32150 governing issuance of subpoenas and motions to quash subpoenas shall be applicable to investigative subpoenas issued by the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32150. Subpoenas.**

(a) Before the hearing has commenced, the Board shall issue subpoenas at the request of any party for attendance of witnesses or production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena for production of documents. After the hearing has commenced the Board may issue subpoenas.

(b) Any subpoenas issued pursuant to subdivision (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of sections 1987 and 1988 of the Code of Civil Procedure.

(c) All witnesses appearing pursuant to subpoena, other than the parties, shall receive fees and mileage in the amount as prescribed by law for civil actions in a superior court. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

(d) A written motion to revoke a subpoena may be filed prior to the proceeding or made by an oral motion at the commencement of the proceeding. The Board shall revoke the subpoena if the evidence requested to be produced is not relevant to any matter under consideration in the proceeding or the subpoena is otherwise invalid.

(e) Upon a finding of the Board itself that a Board agent is essential to the resolution of a case and that no rational decision of the Board can be reached without such agent, the Board itself shall produce the agent if subpoenaed to do so by any party to the dispute. For purposes of this subdivision, the term "Board agent" includes a mediator or conciliator employed within the State Mediation and Conciliation Service. This subdivision shall not apply when the mediator or conciliator is performing services pursuant to Government Code section 3601 to which the confidentiality provisions of that section or section 703.5 and Chapter 2, commencing with section 1115, of Division 9 of the Evidence Code apply.

(f) Upon the failure of any person to comply with a subpoena, the Board may apply to an appropriate superior court for an order requiring such person to appear and produce evidence and give testimony regarding the matter under investigation or in question. Requests for compliance with a subpoena shall be made to the Board agent assigned the case. If the Board agent deems it appropriate, he or she shall promptly recommend to the General Counsel that the Board seek enforcement of the subpoena. A request that the Board apply for an order may be made by the General Counsel at any stage of the proceedings. The Board shall seek enforcement on recommendation of the General Counsel unless in the judgment of the Board the enforcement of such subpoena or notice would be inconsistent with law or the policies of the applicable Act. If the request is granted, the record will remain open in the matter until the Board determines that the court order will not be forthcoming, or that further delay would

frustrate the policies of the applicable Act, or until the testimony sought is included in the record.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 3601, 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32155. Disqualification of Board Agent or Board Members.**

(a) No Board member, and no Board agent performing an adjudicatory function, and no mediator or conciliator employed within the State Mediation and Conciliation Service, shall decide or otherwise participate in any case or proceeding:

(1) In which he or she has a financial interest in the outcome.

(2) When he or she is related to any party or to an agent or officer of any party, or to an attorney or counsel of any party by consanguinity or affinity within the third degree computed according to the rules of law, or when he or she is indebted, through money borrowed as a loan, to any party or to an attorney or counsel of any party.

(3) When, in the case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level.

(4) When it is made to appear probable that, by reason of prejudice of such Board member or Board agent, a fair and impartial consideration of the case cannot be had before him or her.

(b) Whenever such a Board agent shall have knowledge of any facts, which under the provisions of this rule disqualify him or her from presiding over any aspect of a hearing or investigation, it shall be his or her duty immediately to notify the General Counsel or the Chief Administrative Law Judge, as appropriate, setting forth all reasons for his or her belief.

(c) Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts supporting it. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such Board agent admits his or her disqualification, such admission shall be immediately communicated to the General Counsel or the Chief Administrative Law Judge, as appropriate, who shall designate another Board agent to hear the matter.

Notwithstanding his or her disqualification, a Board agent who is disqualified may request another Board agent who has been agreed upon by all parties to conduct the hearing or investigation.

(d) If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed

with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

(e) Whenever a Board member shall have knowledge of any facts which, under the provisions of this rule, disqualify him or her to consider any case before the Board, it shall be his or her duty to declare the disqualification to the Board immediately upon learning of such facts. This declaration shall be made part of the official record of the Board. The Board member shall then refrain from participating and shall attempt in no way to influence any other person with respect to the matter.

(f) Any party to a case before the Board may file directly with the Board member a motion for his or her recusal from the case when exceptions are filed with the Board or within ten days of discovering a disqualifying interest provided that such facts were not available at the time exceptions were filed. The motion shall be supported by sworn affidavits stating the facts constituting the ground for disqualification of the Board member. Copies of the motion and supporting affidavits shall be served on all parties to the case.

(g) Within ten days after the filing of a motion for recusal, the Board member alleged to be disqualified shall render a decision stating the reasons therefore. If the Board member is not on the panel assigned to hear the case, he or she shall so inform the parties and indicate that he or she does not intend to participate in the case. In the event that the Board member decides to participate, he or she shall render a decision on the motion for recusal before doing so.

(h) Any party aggrieved by a determination made pursuant to subsections (d) or (g) of this rule may include the matter of claimed disqualification in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3551(a), 3555.5(c), 3557, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561, 99562, 100301, 101344, 102403, 103401, 120505, and 125521, Public Utilities Code.

**32162. Confidentiality of Board Investigations.**

The Board shall not disclose any confidential statement submitted by a party, or the identity of any person who submits such a statement, unless the person submitting the statement agrees to disclosure or disclosure is required:

- (a) Pursuant to Section 32206, concerning production of statements of witnesses after direct testimony;
- (b) In a court proceeding upon a complaint for injunctive relief;
- (c) By order of the Board itself;
- (d) By final order of a court of competent jurisdiction.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32164. Application for Joinder of Parties.**

(a) Any employee, employee organization or employer may file with the Board agent an application for joinder as a party in a case. Service and proof of service of the application pursuant to Section 32140 are required.

(b) The application for joinder shall be in writing, signed by the representative filing it and contain a statement of the extent to which joinder is sought and a statement of all the facts upon which the application is based. The Board shall allow each party an opportunity to oppose the application.

(c) The Board may allow joinder if it determines that the party has a substantial interest in the case or will contribute substantially to a just resolution of the case and will not unduly impede the proceeding.

(d) The Board may order joinder of an employer, employee organization or individual, subject to its jurisdiction, on application of any party or its own motion if it determines that:

(1) In the absence of the employer, employee organization or individual, as a party, complete relief cannot be accorded; or

(2) The employer, employee organization or individual has an interest relating to the subject of the action and is so situated that the disposition of the action in their absence may:

(A) As a practical matter impair or impede their ability to protect that interest; or

(B) Leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of said interest.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.



### SUBCHAPTER 3. HEARINGS

#### **32168. Conduct of Hearing.**

(a) Hearings shall be conducted by a Board agent designated by the Board, except that the Board itself or a Board member may act as a hearing officer.

(b) A Board agent may be substituted for another Board agent at any time during the proceeding at the discretion of the Chief Administrative Law Judge in unfair practice cases or the General Counsel in representation matters. Prior to ordering a substitution the parties shall be notified and provided an opportunity to state objections to the proposed substitution. Substitutions of Board agents shall be appealable only in accordance with Sections 32200 or 32300.

(c) Hearings shall be open to the public, except as provided in Section 32170.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3 (k), 3551(a), 3555.5(c), 3563(g), 3563(j), 71639.1 and 71825, Government Code; and Sections 99561(g) and 99561(j), Public Utilities Code.

**32169. Depositions.**

The Board may order the taking of testimony of a material witness within or outside the State by deposition in the manner prescribed for civil actions only upon the filing of an application by a party showing that:

- (a) The witness is unable to attend the hearing because of illness, infirmity or imprisonment; or
- (b) The witness cannot be compelled to attend the hearing by subpoena.

The application shall state the case number, name and address of the witness, show the materiality of the testimony, and shall request an order requiring the witness to appear and testify before a named officer authorized by law to take depositions. Where the witness resides outside the State and the Board has authorized a deposition of the witness, the Board shall obtain an order of the Superior Court in Sacramento County for that purpose pursuant to Section 11189 of the Government Code.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32170. Powers and Duties of Board Agent Conducting a Hearing.**

The board agent conducting a hearing shall have the powers and duties to:

- (a) Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;
- (b) Authorize the taking of depositions;
- (c) Issue subpoenas and rule upon petitions to revoke subpoenas;
- (d) Regulate the course and conduct of the hearing, including the power to exclude a witness from the hearing room;
- (e) Hold conferences for the settlement or simplification of issues;
- (f) Rule on objections, motions and questions of procedure;
- (g) Administer oaths and affirmations;
- (h) Take evidence and rule on the admissibility of evidence;
- (i) Examine witnesses for the purpose of clarifying the facts and issues;
- (j) Authorize the submission of briefs and set the time for the filing thereof;
- (k) Hear oral argument;
- (l) Render and serve the proposed decision on each party;
- (m) Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(k), 3551(a), 3555.5(c), 3563(g), 3563(j), 71639.1 and 71825, Government Code; and Section 99561(g) and 99561(j), Public Utilities Code.

**32176. Rules of Evidence: Unfair Practice Cases.**

Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply. Evidence of any discussion of the case that occurs in an informal settlement conference shall be inadmissible in accordance with Evidence Code Section 1152.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3551(a), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code; and Section 99561(g) and 99561(h), Public Utilities Code.

**32178. Burden of Proof: Unfair Practice Cases.**

The charging party shall prove the complaint by a preponderance of the evidence in order to prevail.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3551(a), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code; and Section 99561(g) and 99561(h), Public Utilities Code.

**32180. Rights of Parties.**

Each party to the hearing shall have the right to appear in person, by counsel or by other representative, and to call, examine and cross-examine witnesses and introduce documentary and other evidence on the issues.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32185. Ex Parte Communications.**

(a) No party to a formal hearing before the Board on an unfair practice complaint shall, outside the hearing of the other parties, orally communicate about the merits of the matter at issue with the Board agent presiding. Nor shall any party to a formal hearing communicate in writing with the Board agent presiding without providing a copy of the writing to the other parties.

(b) A Board agent who receives such an ex parte communication shall state on the record that the communication was made, identify the person who made it and either summarize the contents of the communication, or provide all parties with a copy of such communication. The Board agent shall then afford the other parties to the hearing the opportunity to rebut the communication on the record.

Authority cited: Sections 3509(a), 3541.3, 3513(h), 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3541.3(n), 3551(a), 3555.5(c), 3563(g), 3563 (h) 3563(m), 71639.1 and 71825, Government Code; and Sections 99561(g), 99561 (h) 99561(m), Public Utilities Code.

**32190. Motions.**

(a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(b) Responses to motions shall be filed with the Board agent within fourteen days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required.

(c) During the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board may hear oral argument or take evidence on any motion.

(e) No hearing shall be delayed because a motion is filed unless the Board so directs.

(f) Rulings on motions shall not be appealable except as specified in Sections 32200 and 32360.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.



**32200. Appeal of Rulings on Motions and Interlocutory Matters.**

A party may object to a Board agent's interlocutory order or ruling on a motion and request a ruling by the Board itself. The request shall be in writing to the Board agent and a copy shall be sent to the Board itself. Service and proof of service pursuant to Section 32140 are required. The Board agent may refuse the request, or may join in the request and certify the matter to the Board. The Board itself will not accept the request unless the Board agent joins in the request. The Board agent may join in the request only where all of the following apply:

- (a) The issue involved is one of law;
- (b) The issue involved is controlling in the case;
- (c) An immediate appeal will materially advance the resolution of the case.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32205. Continuances.**

A party may file a request for a continuance of the formal hearing no later than five days prior to such hearing. Such request shall be in writing, signed by the party or its agent, state the grounds for the request, and state the position of each party regarding the request. An oral request or a request for continuance submitted less than five days prior to the hearing may be made only under unusual circumstances. A request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32206. Production of Statements of Witnesses After Direct Testimony.**

(a) After direct examination of a witness, and upon motion of any party, the hearing officer shall order the production of any statement made by the witness to a Board agent that relates to the subject matter of the testimony.

(b) A statement includes a written declaration by the witness, signed or otherwise approved by the witness, or a recording or a transcription of a recording which is a verbatim recital of something said by the witness.

(c) If the party sponsoring the testimony claims that a statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony, the party shall deliver the statement to the hearing officer for his or her private inspection. The hearing officer may excise those portions of the statements which do not relate to the subject matter of the testimony. The remainder of the statement shall be delivered to the moving party.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32207. Hearings.**

The parties may submit stipulated facts where appropriate to the Board agent. No hearing shall be required unless the parties dispute the facts in the case.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32209. Correction of Transcript.**

A motion to correct alleged errors in the transcript of a proceeding before a Board agent must be filed with the Board agent presiding at the proceeding within 20 days of the date of service of the transcript. The motion shall specify the alleged errors and provide a proposed corrected version. Within 10 days following the date of service of such a motion, any party may file with the Board agent a response to the motion. Service and proof of service of the motion and of any response to a motion pursuant to Section 32140 are required. Failure to file a timely motion to correct will be deemed a waiver of any objection to the accuracy of the transcript.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32210. Informational Briefs and Arguments.**

(a) Any person may file a petition to submit an informational brief or to argue orally in any case at a hearing or before the Board itself.

(b) The petition shall include the following information:

(1) The case number;

(2) The title of the case;

(3) The name, address, telephone number and any affiliation of the petitioner;

(4) The name, address and telephone number of any agent to be contacted;

(5) A statement setting forth the nature of the petitioner's interest or involvement in the case;

(6) A statement setting forth the specific issues of procedure, fact, law or policy which the petitioner wishes to address.

(c) The petition may be granted or denied at the discretion of the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3541.3(n), 3551(a), 3555.5(c), 3563(f), 3563(m), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(e), 3541.3(g), 3541.3(h), 3541.3(i), 3541.3(l), 3541.3(m), 3541.3(n), 3551(a), 3555.5(c), 3563(a), 3563(b), 3563(e), 3563(f), 3563(g), 3563(h), 3563(k), 3563(l), 3563(m), 71639.1 and 71825, Government Code; and Section 99561, Public Utilities Code.

**32212. Briefs and Oral Argument.**

Prior to the close of the hearing, the Board agent shall rule on any request to make oral argument or to file a written brief. The Board agent shall set the time required for the filing of briefs. Any party filing a brief shall file the original and one copy with the Board agent. Service and proof of service of the brief pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32215. Proposed Decision.**

A Board agent shall issue a written proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself. The Board shall serve the proposed decision on each party. Unless expressly adopted by the Board itself, a proposed or final Board agent decision, including supporting rationale, shall be without precedent for future cases.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.



**32220. Contemptuous Conduct.**

Contemptuous conduct of a party or its agent shall be grounds for the exclusion of the party or agent from any proceeding related to the case.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**32230. Refusal of Witness to Testify.**

The refusal of a witness at a hearing to answer any question which has been ruled proper by the Board agent conducting the hearing may be grounds for striking the full testimony of such witness on the same matter and or such other action as deemed appropriate by the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

## **SUBCHAPTER 4. DECISIONS OF THE BOARD ITSELF**

### **Article 1. Ex Parte Communications**

#### **32295. Ex Parte Communications.**

No party shall communicate with the Board itself, any member of the Board itself or any legal adviser to a member of the Board, orally or in writing, about any matter pending before the Board except as provided for in these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 99561 and 99561.2, Public Utilities Code.

## **Article 2. Appeal of Board Agent Decision to the Board Itself**

### **32300. Exceptions to Board Agent Decision.**

(a) A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to Section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in Section 32310. The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. Service and proof of service of the statement and brief pursuant to Section 32140 are required. The statement of exceptions or brief shall:

- (1) State the specific issues of procedure, fact, law or rationale to which each exception is taken;
- (2) Identify the page or part of the decision to which each exception is taken;
- (3) Designate by page citation or exhibit number the portions of the record, if any, relied upon for each exception;
- (4) State the grounds for each exception.

(b) Reference shall be made in the statement of exceptions only to matters contained in the record of the case.

(c) An exception not specifically urged shall be waived.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

**32305. Finality of Board Agent Decisions.**

(a) Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.

(b) In cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, or 91450, and where exceptions are filed pursuant to Section 32300, the Board agent's decision shall become final unless the Board itself issues a decision not later than 180 days from the date the exceptions were filed with the Board.

(c) The Board shall not grant extensions of time in cases before the Board itself that are subject to subparagraph (b), above.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(k), 3541.3(n), 3541.35, 3551(a), 3555.5(c), 3563(j), 3563(m), 3563.5, 71639.1, 71639.15, 71825 and 71825.05, Government Code; and Section 99561(j), 99561(m), and 99561.4, Public Utilities Code.

**32310. Response to Exceptions.**

Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself an original and five copies of a response to the statement of exceptions and a supporting brief. The response shall be filed with the Board itself in the headquarters office. The response may contain a statement of any exceptions the responding party wishes to take to the recommended decision. Any such statement of exceptions shall comply in form with the requirements of Section 32300. A response to such exceptions may be filed within 20 days. Such response shall comply in form with the provisions of this Section. Service and proof of service of these documents pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1, and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505, and 125521, Public Utilities Code.

**32315. Oral Argument on Exceptions.**

A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1, and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

**32320. Decision of the Board Itself.**

(a) The Board itself may:

- (1) Issue a decision based upon the record of hearing, or
- (2) Affirm, modify or reverse the proposed decision, order the record re-opened for the taking of further evidence, or take such other action as it considers proper.

(b) The Board shall serve a copy of the decision on each party.

(c) Unless expressly designated otherwise, ~~a~~All decisions and orders issued by the Board itself are precedential and may be cited in any matter pending before a Board agent or the Board itself, ~~except as set forth in subsection (d). The precedential status of decisions issued by the Board itself includes all decisions issued prior to July 1, 2013.~~

(d) ~~Effective July 1, 2013, a~~A majority of the Board members issuing a decision or order ~~pursuant to an appeal filed under Section 32635~~ shall determine whether the decision or order, or any part thereof, shall be designated as non-precedential. In determining whether all or part of ~~such~~ a decision or order shall be designated as non-precedential, the Board may consider whether the decision or order:

- (1) Establishes new law or policy;
- (2) Applies existing law to a set of facts significantly different from those stated in prior precedential decisions;
- (3) Modifies, clarifies or explains existing law or policy;
- (4) Resolves a conflict in law;
- (5) Addresses a legal or factual issue of continuing interest;
- (6) Provides an overview of existing law or policy; or
- (7) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and designation of the majority and separate opinions as precedential would make a significant contribution to the development of public sector labor law.

(e) The Board itself may reverse, in whole or in part, the prior designation of a decision or order as precedential or non-precedential. A request to reverse the precedential or non-precedential designation of a decision or order shall be made within 20 days following the date of service of the decision or order. An original and five copies of the request shall be filed



with the Board itself in the headquarters office. A request seeking designation of a decision as precedential shall state with specificity why one or more of the criteria in subparagraph (d) of this Section are satisfied. A request seeking designation of a decision as non-precedential shall state with specificity why none of the criteria in subparagraph (d) are satisfied. Service and proof of service of the request pursuant to Section 32140 are required.

(f) Any response to a request to change the precedential or non-precedential designation of a decision or order must be filed within 20 days from service of the request. An original and five copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(g) A request to change the precedential or non-precedential designation of a decision or order shall not stay the effectiveness of the decision or order.

(h) A ruling on a request to change the precedential or non-precedential designation of a decision or order is not subject to reconsideration under Section 32410.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 3563.2, 11425.60, 71639.1, and 71825, Government Code; and Sections 99561(j), 99561(m) and 99561.2, Public Utilities Code.

**32325. Remedial Power of the Board.**

The Board shall have the power to issue a decision and order in an unfair practice case directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of the applicable statute.

Authority cited: Sections 3509(a), 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3551(a), 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; Section 99561(f), Public Utilities Code; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

### Article 3. Administrative Appeals

#### 32350. Definition of Administrative Decision.

- (a) An administrative decision is any determination made by a Board agent other than:
- (1) a refusal to issue a complaint in an unfair practice case pursuant to Section 32630,
  - (2) a dismissal of an unfair practice charge, ~~or~~
  - (3) a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215, or
  - (4) a decision issued following interest arbitration conducted pursuant to Government Code Section 3557(b)(4).
- (b) An administrative decision shall contain a statement of the issues, fact, law and rationale used in reaching the determination.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3557, 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

## **Article 4. Reconsideration**

### **32400. Administrative Remedies.**

A motion for reconsideration need not be filed to exhaust administrative remedies.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3551(a), 3555.5(c), 3564, 71639.4 and 71825.1, Government Code; and Section 99562, Public Utilities Code.

**32410. Request for Reconsideration.**

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

(b) Any party shall have 20 days from service to file a response to the request for reconsideration. An original and five copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(c) Unless otherwise ordered by the Board, the filing of a Request for Reconsideration shall not stay the effectiveness of a decision of the Board itself except that the Board's order in an unfair practice case shall automatically be stayed upon filing of a Request for Reconsideration.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

## **Article 5. Request for Injunctive Relief**

### **32450. Request.**

(a) An original and six (6) copies of a request from a party that the Board seek injunctive relief shall be filed with the General Counsel at the headquarters office. A copy shall be concurrently served on the appropriate regional office as designated in sections 32075 and 32612. The request shall include:

- (1) The written request, accompanied by reasons stating why injunctive relief is appropriate;
- (2) A copy of the unfair practice charge or complaint on which the request is based; and
- (3) Declarations, on personal knowledge, setting forth in detail all pertinent facts underlying the request for injunctive relief.

(b) Service and proof of service on the respondent is required of all documents filed with the General Counsel. Under this section, service and proof of service shall be conducted pursuant to section 32140 except that service must be by personal delivery, facsimile transmission, or electronic mail.

(c) Notice that such a request is being made shall be provided no less than 24 hours prior to the filing to the General Counsel and the party against whom the relief is sought. Such notice may be by telephone or in person, or by any other means reasonably calculated to provide notice.

(d) An affidavit of notice shall be filed with the request. Such affidavit shall indicate to whom, at what time, and in what manner the notice required by subparagraph (c) above was accomplished.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3551(a), 3555.5(c), 3541.3(j), 3541.3(n), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

**32455. Investigation.**

Upon filing of a request for the Board to seek injunctive relief, the General Counsel shall initiate an investigation. The General Counsel shall give notice reasonably calculated to inform the parties an investigation is proceeding. The respondent shall be apprised of the allegations against it, and may state its position in the course of the inquiries. The original and six (6) copies of any written position statements or other documents filed with the General Counsel must be filed at the headquarters office with a copy to the appropriate regional office as designated in section 32075, and service and proof of service on the opposite party. Any filing with the General Counsel in accordance with this section shall be by personal delivery, express mail, or by another common carrier promising overnight delivery thereof. Service and proof of service on the opposing party shall be pursuant to section 32140 except that service shall be by facsimile transmission, electronic mail, or personal delivery. The Board agent may contact and question such persons as necessary to effectuate the investigation.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3551(a), 3555.5(c), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

**32460. Recommendation.**

After investigation, the General Counsel shall make a recommendation to the Board within 120 hours after the receipt of a request, unless the request is made during a work stoppage or lockout, in which case the General Counsel shall make a recommendation to the Board within 24 hours after the request is received.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3541.3(n), 3551(a), 3555.5(c), 3563(i), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(i) and 99561(m), Public Utilities Code.



**32465.            Decision of the Board Itself.**

Upon receipt of the General Counsel's report, the Board itself shall determine whether to seek injunctive relief.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3541.3(n), 3551(a), 3555.5(c), 3563(i), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(i) and 99561(m), Public Utilities Code.

**32470. Lack of Board Quorum.**

In the event that a quorum of the Board itself is unavailable to act upon the request for injunctive relief within 24 hours after the time the General Counsel's recommendation is filed, the Board authorizes the General Counsel to seek injunctive relief in every case in which the General Counsel has reasonable cause to believe that such action is in accordance with Board policy and that legal grounds for injunctive relief are present.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541(f), 3541(g), 3541.3(j), 3541.3(k), 3551(a), 3555.5(c), 3563(i), 3563(j), 71639.1 and 71825, Government Code; and Section 99561(i) and 99561(j), Public Utilities Code.

## SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

### 32602. Processing Violations.

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, the PECC, the PEDD, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act or Court Interpreter Act, and alleged violations of rules or regulations adopted by the Statewide Authority pursuant to IHSSEERA, shall be processed as unfair practice charges.

(b) Except as provided in subsections (c), (d) and (e), unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer.

(c) A charge alleging that an employer or an exclusive representative has failed to comply with Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569, may be filed by any affected member of the public.

(d) A charge alleging that an exclusive representative has failed to comply with Government Code section 3515.7(e), 3546.5, 3584(b), or 3587, or Public Utilities Code Section 99566.3 may only be filed by an affected employee.

(e) A charge alleging that an exclusive representative has failed to comply with Government Code Section 3502.5(f), 71632.5(f), or 71814(f) may only be filed by the employer or an affected employee.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32605. Copies of Unfair Practice Charges Required To Be Filed.**

Any party filing an unfair practice charge or amended charge must file the original and one copy with the appropriate regional office.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3523, 3541.3(i), 3541.3(n), 3541.5, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code; and Sections 99561(h), 99561.2, 99566.3 and 99569, Public Utilities Code.

**32610. Employer Unfair Practices under the PECC.**

It shall be an unfair practice for a public employer to do any of the following:

(a) Provide the exclusive representative with less than 10 days' notice in advance of a new employee orientation as required by Government Code Section 3556.

(b) Refuse or fail to provide the exclusive representative with access to a new employee orientation as required by Government Code Section 3556.

(c) Refuse or fail to negotiate with the exclusive representative, upon request, over the structure, time, and manner of the exclusive representative's access to new employee orientations as required by Government Code Sections 3556 and 3557.

(d) Disclose the date, time, and place of a new employee orientation to any party other than the employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation in violation of rights guaranteed by Government Code Section 3556.

(e) Refuse or fail to provide the exclusive representative information required by Government Code Section 3558.

(f) Refuse or fail to grant a reasonable leave of absence to a public employee upon request of the exclusive representative as required by Government Code Section 3558.8.

(g) Refuse or fail to negotiate with the exclusive representative, upon request, over the procedures for requesting and granting leave as required by Government Code Section 3558.8.

(h) In any other way violate the PECC.

Authority cited: Sections 3541.3 and 3555.5(c), Government Code. Reference: Sections 3555.5(c), 3556, 3558, 3558.8(a), 3558.8 (b) and 3558.8(h), Government Code.

**32610.5. Exclusive Representative Unfair Practices under the PECC.**

It shall be an unfair practice for an exclusive representative to do any of the following:

(a) Refuse or fail to negotiate with the public employer, upon request, over the structure, time, and manner of the exclusive representative's access to new employee orientations as required by Government Code Sections 3556 and 3557.

(b) Refuse or fail to negotiate with the public employer, upon request, over the procedures for requesting and granting leave as required by Government Code Section 3558.8(b).

(c) In any other way violate the PECC.

Authority cited: Sections 3541.3 and 3555.5(c), Government Code. Reference: Sections 3555.5(c), 3556 and 3558.8(b), Government Code.

**32611. Employer Unfair Practices under the PEDD.**

It shall be an unfair practice for a public employer to do any of the following:

(a) Deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization, in violation of Government Code Section 3550.

(b) Disseminate a mass communication to public employees or applicants, without first meeting and conferring with the exclusive representative over the contents of the communication, as required by Government Code Section 3553.

(c) Refuse or fail to distribute the exclusive representative's message in addition to and at the same time as the employer's message, in the event that the public employer and exclusive representative do not agree to the contents of the employer's mass communication, as required by Section 3553.

(d) In any other way violate the PEDD.

Authority Cited: Sections 3541.3 and 3551(a), Government Code. Reference: Sections 3550 and 3553, Government Code.

**32611.5. Exclusive Representative Unfair Practices under the PEDD.**

It shall be an unfair practice for an employee organization to do any of the following:

(a) Fail to meet and confer with the public employer over the contents of a mass communication as required by Government Code Section 3553.

(b) In any other way violate the PEDD.

Authority Cited: Sections 3541.3 and 3551(a), Government Code. Reference: Section 3553, Government Code.



**32612. Venue of Charge.**

(a) Except as otherwise provided in this section, a charge may be filed in any regional office described in Section 32075 which serves any county in which the conduct or act constituting the alleged unfair practice occurred or is occurring, the county in which any employee affected by the alleged unfair practice works, or the county in which the principal office of the employer is located.

(b) Any charge involving a worksite located outside the State of California shall be filed with the regional office serving the county in which the principal office of the employer is located. The Board may transfer any case to a different regional office.

(c) Any charge involving a regional committee established pursuant to Government Code section 71807 shall be filed with the Los Angeles Regional Office in the cases of Regions 1 and 4; with the San Francisco Regional Office in the case of Region 2; and with the Sacramento Regional Office in the case of Region 3.

(d) The Board may consolidate charges as it deems appropriate.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(i), 3541.5, 3551(a), 3555.5(c), 3563(h), 3563.2, 71639.1, 71807 and 71825, Government Code; and Sections 99561(h) and 99561.2, Public Utilities Code.

**32615. Contents of Charge.**

(a) A charge may be filed alleging that an unfair practice or practices have been committed. The charge shall be in writing, signed under penalty of perjury by the party or its agent with the declaration that the charge is true, and complete to the best of the charging party's knowledge and belief, and contain the following information:

(1) The name and address of the party alleged to have engaged in an unfair practice. If the party is the State of California, the name and address of the "appointing power" as defined in Government Code Section 18524, and of the Governor shall be set forth;

(2) The name, address, and telephone number of the charging party;

(3) The name, address, and telephone number of an authorized agent of the charging party to be contacted;

(4) The sections of the Government Code, the applicable local rules, the applicable rule or regulation adopted by the Statewide Authority pursuant to IHSSEERA or the sections of the Public Utilities Code, alleged to have been violated;

(5) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice; and

(6) A statement of the remedy sought by the charging party.

(b) A charge filed under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act alleging a violation of local rules must also contain a copy of the applicable rule(s).

(c) Service and proof of service on the respondent pursuant to Section 32140 are required.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32620. Processing of Case.**

- (a) When a charge is filed, it shall be assigned to a Board agent for processing.
- (b) The powers and duties of such Board agent shall be to:
  - (1) Assist the charging party to state in proper form the information required by section 32615;
  - (2) Answer procedural questions of each party regarding the processing of the case;
  - (3) Facilitate communication and the exchange of information between the parties;
  - (4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.
  - (5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), or Public Utilities Code Section 99561.2; or if it is determined that a charge filed pursuant to Government Code section 3509(b) is based upon conduct occurring more than six months prior to the filing of the charge.
  - (6) Place the charge in abeyance if the dispute arises under MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act and is subject to deferral to final and binding arbitration pursuant to a collective bargaining agreement, and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act, as provided in section 32661.
  - (7) Issue a complaint pursuant to Section 32640.
- (c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries. Any response must be in writing, and signed under penalty of perjury by the party or its agent with the declaration that the response is true and complete to the best of the respondent's knowledge and belief. Service and proof of service pursuant to Section 32140 are required.
- (d) The Board agent shall advise the charging party in writing of any deficiencies in the charge in a warning letter, unless otherwise agreed by the Board agent and the charging party, prior to dismissal of any allegations contained in the charge. The warning letter shall identify the facts obtained from the charge or any response to the charge which reveal a deficiency in the charge.

The dismissal of a charge shall also be in writing and must identify the deficiencies in the charging party's allegations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1 and 71825, Government Code; Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code; *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608; and *Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.

**32621. Amendment of Charge.**

Before the Board agent issues or refuses to issue a complaint, the charging party may file an amended charge. The amended charge must contain all allegations on which the charging party relies and must meet all of the requirements of Section 32615. The amended charge shall be processed pursuant to Section 32620.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

**32625. Withdrawal of Charge.**

Any request for withdrawal of the charge shall be in writing, signed by the charging party or its agent, and state whether the party desires the withdrawal to be with or without prejudice. Request for withdrawal of the charge before complaint has issued shall be granted. Repeated withdrawal and refiling of charges alleging substantially identical conduct may result in refusal to issue a complaint. If the complaint has issued, the Board agent shall determine whether the withdrawal shall be with or without prejudice. If, during hearing, the respondent objects to withdrawal, the hearing officer may refuse to allow it. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513, 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

**32630. Dismissal/Refusal to Issue a Complaint.**

If the Board agent concludes that the charge or the evidence is insufficient to establish a prima facie case, the Board agent shall refuse to issue a complaint, in whole or in part. The refusal shall constitute a dismissal of the charge. The refusal, including a statement of the grounds for refusal, shall be in writing and shall be served on the charging party and respondent.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i) and 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32635. Review of Dismissals.**

(a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

The Appeal shall:

(1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;

(2) Identify the page or part of the dismissal to which each appeal is taken;

(3) State the grounds for each issue stated.

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

(c) If the charging party files a timely appeal of the dismissal, any other party may file a statement in opposition to the appeal within 20 days following the date of service of the appeal. The original opposition and five (5) copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the filing party. Service and proof of service of the statement pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.



**32640. Issuance of Complaint.**

(a) The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case. The complaint shall contain a statement of the specific facts upon which Board jurisdiction is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair practice. The complaint shall include, when known, when and where the conduct alleged to constitute an unfair practice occurred or is occurring, and the name(s) of the person(s) who allegedly committed the acts in question. The Board may disregard any error or defect in the complaint that does not substantially affect the rights of the parties.

(b) The Board shall serve the complaint on the charging party and respondent.

(c) The decision of a Board agent to issue a complaint is not appealable to the Board itself except in accordance with Section 32200.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32644. Answer.**

(a) The respondent shall file with the Board an answer to the complaint within 20 days or at a time set by the Board agent following the date of service of the complaint. Service and proof of service of the answer pursuant to Section 32140 are required. If a formal hearing is set less than 20 days after the complaint is served, the answer shall be filed no later than the date of hearing stated in the notice of hearing or as otherwise directed by the Board agent. Amended complaints served after the answer is filed shall be deemed denied, except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

(b) The answer shall be in writing, signed by the party or its agent and contain the following information:

(1) The case number appearing on the complaint;

(2) The name of the charging party;

(3) The name, address, telephone number and any affiliation of the respondent;

(4) The name, address, telephone number and capacity of any agent of the respondent to be contacted;

(5) A specific admission or denial of each allegation contained in the complaint. If the respondent does not have knowledge of information sufficient to form a belief as to the truth of a particular allegation, the respondent shall so state and such statement shall operate as a denial of the allegation;

(6) A statement of any affirmative defense;

(7) Notwithstanding the Code of Civil Procedure Section 446, a declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief.

(c) If the respondent fails to file an answer as provided in this section, the Board may find such failure constitutes an admission of the truth of the material facts alleged in the charge and a waiver of respondent's right to a hearing.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government

Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32645. Non-Prejudicial Error.**

The Board may disregard any error or defect in the original or amended charge, complaint, answer or other pleading which does not affect the substantial rights of the parties.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3514.5(a), 3541.5(a), 3551(a), 3555.5(c), 3563.2, 71639.1 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7 and 99563.8, Public Utilities Code.

**32647. Amendment of Complaint Before Hearing.**

After issuance of a complaint, the charging party may move to amend the complaint by filing with the Board agent:

- (a) a request to amend the complaint, and
- (b) an amended charge meeting the requirements of Section 32615.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

**32648. Amendment of Complaint During Hearing.**

During hearing, the charging party may move to amend the complaint by amending the charge in writing, or by oral motion on the record. If the Board agent determines that amendment of the charge and complaint is appropriate, the Board agent shall permit an amendment. In determining the appropriateness of the amendment, the Board agent shall consider, among other factors, the possibility of prejudice to the respondent.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32649. Answer to Amendment.**

Within 20 days or a time set by the Board agent after service of an amendment to the complaint, the Board agent may require the respondent to file an amendment to its answer, which shall respond only to the new allegations in the amended complaint. The respondent shall file with the Board proof of service of its amended answer.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32650. Informal Conference.**

(a) A Board agent may conduct an informal conference or conferences to clarify the issues and explore the possibility of voluntary settlement. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.



**32661. Repugnancy Claims.**

(a) An unfair practice charge concerning conduct subject to Government Code Section 3514.5(a)(2) or 3541.5(a)(2), or subject to final and binding arbitration pursuant to a collective bargaining agreement for parties governed by the TEERA, MMBA, HEERA, Trial Court Act, or Court Interpreter Act, may be filed based on a claim that the settlement or arbitration award is repugnant to the applicable Act.

(b) The charge shall comply with the requirements of Section 32615. It shall allege with specificity the facts underlying the charging party's claim that the arbitrator's award is repugnant to the purposes of the applicable Act.

(c) In reviewing the charge to determine whether a complaint shall issue, the Board agent shall have all of the powers and duties specified in Sections 32620, 32630, and 32640. A Board agent's issuance of a complaint under this section shall not be appealable to the Board itself except as provided in Section 32360.

(d) The Board itself may, at any time, direct that the record be submitted to the Board itself for decision.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3506.5, 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3551(a), 3555.5(c), 3558.8, 3563.2, 3571, 3571.1, 3571.3, 3589, 71639.1 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8 and 99567, Public Utilities Code.

**32680. Formal Hearing.**

If the informal conference procedure fails to result in voluntary settlement, the Board may order a hearing. The hearing shall be conducted by the Board according to the provisions of Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

**32690. Notice of Formal Hearing and Prehearing Memorandum.**

(a) The Board shall serve on each party a notice of the formal hearing which shall state the date, time and place of the hearing.

(b) The Board may also serve on each party a pre-hearing memorandum which shall set forth the following information:

(1) A summary of the proceedings to date, including but not limited to a statement of the charge, a summary of any negotiations excluding offers of settlement and a statement of the issues settled;

(2) A statement of the issues to be decided at the formal hearing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

## SUBCHAPTER 7. COMPLIANCE

### Article 1. Compliance

#### 32980. Compliance.

(a) The General Counsel is responsible for determining that parties have complied with final Board orders. The General Counsel or his/her designate may conduct an inquiry, informal conference, investigation, or hearing, as appropriate, concerning any compliance matter. The Board itself may, based on a recommendation of the General Counsel, authorize the General Counsel to seek court enforcement of a final Board order.

(b) If an administrative decision based on an investigation is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(c) If a proposed decision based on a hearing is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.

Authority cited: Sections 3509(a), 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3551(a), 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 99561.3 and 99562, Public Utilities Code; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

## **SUBCHAPTER 9. STATE MEDIATION AND CONCILIATION SERVICE**

### **Article 1. Services**

#### **32998. Reimbursement for Services.**

(a) Beginning July 1, 2010, training and facilitation services provided by the SMCS pursuant to Section 3602 of the Government Code and representation services, other than election services, relating to public transit labor relations pursuant to the Public Utilities Code shall be reimbursed at the rate of one hundred and fifteen dollars (\$115.00) per hour, prorated for each quarter hour of work that is less than a full hour. The actual time charged shall begin when a mediator commences providing such services, shall include travel time and time spent with the parties to determine the content of the training and goals for the facilitation, and shall continue until the services are completed.

(1) Facilitation services include facilitation of collective bargaining prior to impasse, facilitation of labor-management processes such as labor-management committees, and facilitation of workplace dispute resolution processes. Facilitation services do not include mediation services resulting from certification of impasse by the Board, mediation under Government Code section 3611, mediation of collective bargaining disputes in which the parties have bargained to impasse and have requested mediation, or mediation of grievances arising under a collective bargaining agreement or memorandum of understanding.

(2) Representation services shall include all services related to the investigation and resolution of questions concerning representation of transit district employees other than election services.

(3) Hearing officer services related to representation services provided under the Public Utilities Code, unless provided by a Board agent, shall be divided equally between or among the parties to the hearing.

(4) SMCS shall bill the parties for training, facilitation and representation services after completion of the work. The matter of which party or parties will be responsible for reimbursement of SMCS will be determined between or among the parties and will be recorded in a memorandum of agreement signed by all parties. The cost of representation services shall be split equally between or among the parties unless otherwise agreed to by the parties as permitted by law.

(b) Beginning July 1, 2010, election services provided by SMCS shall be reimbursed at a flat rate depending upon the size of the bargaining unit. Election services covered by this regulation do not include representation elections (certification, decertification and unit clarification), agency shop elections, and card and petition checks relating to a petition for

recognition or certification, but will include the conduct of other elections, including but not limited to contract ratification votes.

(1) Election services shall be reimbursed as follows:

(A) Bargaining units of 1 to 49 employees:	\$1,000.00;
(B) Bargaining units of 50 to 199 employees:	\$1,250.00;
(C) Bargaining units of 200 to 999 employees:	\$2,000.00;
(D) Bargaining units of 1000 or more employees:	\$4,000.00.

The cost of election services shall be split equally between or among the parties unless otherwise specified in local rules or agreed to by the parties. Which party or parties shall be responsible for reimbursement of SMCS, and in what amount, shall be determined at the initial set up meeting and will be recorded in the memorandum of election agreement.

(c) Beginning July 1, 2010, each arbitrator shall pay one hundred and fifty dollars (\$150.00) per fiscal year (July 1 to June 30) to join and to remain listed on SMCS's statewide panel of private arbitrators. An arbitrator shall be removed from the panel if payment of the annual fee is not made within thirty (30) days of notice that it is past due.

(1) A party requesting a list of arbitrators shall pay fifty dollars (\$50.00) for each list of arbitrators requested. Payment for a list of arbitrators must be made at the time each list is requested. There will be no charge for substitute lists for the same case.

Authority cited: Sections 3541.3(g), 3551(a), 3555.5(c), 3602 and 3603, Government Code. Reference: Sections 3551(a), 3555.5(c), 3557, 3600, 3601, 3602, 3603 and 3611, Government Code; Sections 25051, 25052, 28850, 28852, 30750, 30751, 30756, 40120, 40122, 50120, 50121, 70120, 70121, 95650, 95651, 98162.5, 100301, 100304, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 120502, 120503, 120505, 125521, 125524, 125525 and 125526; Appendix 1, Section 4.1 and Appendix 2, Section 13.90, Public Utilities Code; Section 11010, Government Code; and Sections 8740 and 8752, State Administrative Manual.

**SUBCHAPTER 10: INTEREST ARBITRATION.**

**Article 1. General Provisions**

**33014. Definition of Arbitration Decision.**

(a) An arbitration decision is a decision issued by an Administrative Law Judge or other Board agent following interest arbitration conducted pursuant to Government Code Section 3557(b)(4).

(b) An arbitration decision is not:

(1) a proposed decision as set forth in Section 32215, or

(2) an administrative decision as set forth in Section 32350.

Authority cited: Sections 3541.3 and 3555.5(c), Government Code. Reference: Section 3557, Government Code.

## Article 2. Services

### **33014.5. Reimbursement for Arbitration Services.**

Arbitration services provided by a PERB Administrative Law Judge or other PERB employee pursuant to Government Code Section 3557(b)(4) shall be reimbursed at the rate of two hundred and eighty dollars (\$280.00) per hour, prorated for each quarter hour of work that is less than a full hour. The actual time charged shall begin when a Board agent commences providing such services, shall include travel time and time spent preparing for the arbitration, and shall continue until the services are completed.

Authority cited: Sections 3541.3, 3555.5(c) and 3557, Government Code. Reference: Section 3557, Government Code.