

**PROPOSED TEXT:**

Note: Amendments are shown in underline and ~~strikethrough~~ format to indicate additions and deletions, respectively.

**CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD**

**SUBCHAPTER 1. INTERNAL PROCEDURES**

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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3563, 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3562(b), 71639.1(a), ~~and~~ 71825(a) and 110003(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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3562(b), 71639.1(a), ~~and~~ 71825(a) and 110003(a), Government Code; and Section 99560.1(b), Public Utilities Code.

32036. IHSSEERA

“IHSSEERA” means the In-Home Supportive Services Employer-Employee Relations Act as contained in Title 23 of the Government Code (commencing with Section 110000).

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Section 110000, Government Code.

32037. Definition of Terms Under IHSSEERA

As applied to matters arising under IHSSEERA:

(a) “County implementation date” is defined in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code.

(b) “Employee” or “individual provider” means any person authorized to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and Sections 14132.95, 14132.952, and 14132.956 of the Welfare and Institutions Code, pursuant to the individual provider mode, as referenced in Section 12302.2 of the Welfare and Institutions Code. For purposes of these regulations, “employee” does not include any person providing in-home supportive services pursuant to the county-employed homemaker mode or the contractor mode, as authorized in Section 12302 of the Welfare and Institutions Code.

(c) “Employer” means, for the purposes of these regulations, the Statewide Authority.

(d) “Employee organization” means an organization that includes employees, as defined in subdivision (b), and that has as one of its primary purposes representing those employees in their relations with the Statewide Authority.

(e) “Exclusive representative” means an employee organization that: (1) has been recognized or certified as the exclusive bargaining agent pursuant to IHSSEERA; or (2) as of the county implementation date, has been previously recognized or certified as the exclusive bargaining agent pursuant to MMBA.

(f) “Predecessor agency” means a county, a local public authority, or a nonprofit consortium established pursuant to Section 12301.6 of the Welfare and Institutions Code before June 27, 2012.

(g) “Statewide Authority” means the California In-Home Supportive Services Authority established pursuant to Government Code section 6531.5.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 110003(b), (c), (d), (i), (j), (k), 110005, 110006 and 110009, Government Code.

32040. Executive Director.

“Executive Director” means the officer of that title appointed by the Board pursuant to Government Code Section 3541(f).

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Section 3541(f), 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3563(j), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(f), Public Utilities Code.

32085. Workday.

(a) EERA - “Workday,” as utilized in matters arising under EERA, means a day when schools in a district are in session, excluding Saturdays and Sundays, except that a day(s) may be included or excluded as a workday when the Board determines that a substantial number of affected employees would or would not be at work on that day(s).

(b) HEERA - “Workday,” as utilized in matters arising under HEERA, means Monday through Friday, from September 20 through May 20, excluding Thanksgiving Day, and the Friday following Thanksgiving Day, and also excluding December 20 through January 2, except that a day(s) may be included or excluded as a workday when the Board determines that a substantial number of affected employees would or would not be at work on that day(s).

(c) Ralph C. Dills Act - "Workday," as utilized in matters arising under Ralph C. Dills Act, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

(d) MMBA - "Workday," as utilized in matters arising under MMBA, means Monday through Friday, excluding any holiday defined under the applicable local rules or collective bargaining agreement.

(e) TEERA - "Workday," as utilized in matters arising under TEERA, means Monday through Friday, excluding the following holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Fourth of July (Independence Day), Labor Day, Thanksgiving and Christmas.

(f) Trial Court Act - "Workday," as utilized in matters arising under the Trial Court Act, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

(g) Court Interpreter Act - "Workday," as utilized in matters arising under the Court Interpreter Act, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

(h) IHSSEERA - "Workday," as utilized in matters arising under IHSSEERA, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

Authority cited: Sections 3509(a), 3541.3(g), 3563(f), 3513(h), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3541.3(n), 3563(m), 3513(h), 3541.3(g), 3563(f), 71639.1, ~~and~~ 71825 and 110015, 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, 3563, 71639.1(b), ~~and 71825(b)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3563, 3563.2, 71639.1, ~~and 71825~~ and 110015, 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 e-mail 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, 3563, 71639.1(b), ~~and 71825(b)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3563, 3563.2, 71639.1, ~~and 71825~~ and 110015, 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 Article 5 of Subchapter 6, shall apply to proceedings conducted under IHSSEERA and to Chapter 10 within this Division.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563, 3600, 3601, 3602, 3603, 3611, 71632.5, 71636, 71636.1, 71636.3, 71637, 71637.1, 71639.1, 71823, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; ~~;~~ and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3563, 71639.1, ~~and~~ 71825 and 110015, 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 IHSSEERA, the 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), 3563(f), 3513(h), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; ~~;~~ and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3524, 3541.3(n), 3563(m), 3541.3(f), (g), 71639.1, ~~and~~ 71825 and 110015, Government Code; ~~;~~ and Section 99561(m), Public Utilities Code.

32122. Place to File Representation Matters.

(a) Except as provided for in subsections (b) and (c) and Sections 32123 and 32124, the appropriate location for filing documents in representation matters shall be the regional office which serves the county in which the principal office of an employer is located, as described in Section 32075 of these regulations.

(b) The appropriate location for filing documents in representation matters under the Court Interpreter Act shall be as follows: in the case of Regions 1 and 4, the Los Angeles Regional Office; for Region 2, the San Francisco Regional Office; and for Region 3, the Sacramento Regional Office.

(c) The appropriate location for filing documents in representation matters under IHSSEERA shall be the regional office that serves the county in which individual providers are employed, as described in Section 32075 of these regulations.

Authority cited: Sections 3509, 3541.3(g), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3541.3(n), 71639.1, 71807, ~~and~~ 71825 and 110015, 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) and (g), 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3563, 3577(b), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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), 3563.5, 71639.1, 71639.15, 71825, ~~and~~ 71825.05, 110015 and 110016, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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 sections 71801(h) and 71807: the individual designated to receive service or the chair of the regional committee.

(8) in the case of the Statewide Authority as defined in Government Code section 110003(k): the individual designated to receive service at the Statewide Authority, the Department of Social Services and the Department of Human Resources.

(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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3501(c), 3513(j), 3541.3(n), 3563(m), 71601(k), 71639.1, 71801(h), 71807, ~~and~~ 71825, 110003(k) and 110015, Government Code; and Section 99560.1(g), (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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 or 95150;
- (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 3601, 71639.1, ~~and~~ 71825 and 110015, 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 110017 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), 3563, 3603, 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563, 3564, 71639.1, 71639.4, 71825, ~~and~~ 71825.1, 110015 and 110017, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(g), Public Utilities Code.

### **SUBCHAPTER 3. HEARINGS**

32165. Application to Join a Representation Hearing As a Limited Party.

In a representation proceeding the Board agent may allow any person, employer, or employee organization which did not file a timely request for recognition, intervention or petition to join the hearing as a limited party provided:

(a) The person, employer, or employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the proceedings; and

(b) The Board agent determines that the person, employee organization or employer has an interest in the case and will not unduly impede the proceeding.

(c) The Board agent may grant participation in the hearing which shall be limited to the right to make an oral statement on the record and to file a written brief subject to such conditions as may be prescribed.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), (b), (h), (l), (m), (n), 3563(a), (c), (g), (k), (l), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(a), (c), (g), (k), (l), Public Utilities Code.

32166. Application to Join a Representation Hearing As a Full Party.

(a) An employee organization shall be allowed to participate fully in a representation hearing provided it has filed a written application with the regional office not less than 10 days prior to the commencement of the hearing, accompanied by either 10 percent support of any unit in dispute at the hearing, or 10 percent support of a proposed unit which overlaps another unit in

dispute at the hearing. Proof of support is defined in Chapter 1, Section 32700, Chapter 5, Section 61020, Chapter 7, Section 81020, and Chapter 8, Section 91020. A copy of the written application, excluding the proof of support, shall be served on the parties. Proof of service pursuant to Section 32140 is required.

(b) The Board agent may waive the deadline for filing an application pursuant to this Section for good cause.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), (b), (h), (l), (m), (n), 3563(a), (c), (g), (k), (l), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(a), (c), (g), (k), (l), Public Utilities Code.

#### 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), (k), 3563(g), (j), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(g), (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), (k), 3563(g), (j), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(g), (j), Public Utilities Code.

32175. Rules of Evidence: Representation Cases.

(a) 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. However, immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply.

(b) A party seeking to offer a written document into evidence shall provide a copy of the document for each party to the hearing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), (b), (h), (l), (m), 3563(a), (c), (g), (k), (l), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(a), (c), (g), (k), (l), 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), (i), 3563(g), (h), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(g), (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections

3509, 3513(h), 3541.3(h), (i), 3563(g), (h), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(g), (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), (i), and (n), 3563(g), (h) and (m), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(g), (h) and (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), (n); 3563 (f), (m); 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code.

Reference: Sections 3509, 3513(h), 3541.3 (a), (b), (e), (g), (h), (i), (l), (m), (n), 3563 (a), (b), (e), (f), (g), (h), (k), (l), (m), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1, ~~and~~ 71825 and 110015, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3563, 3563.2, 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 3603, 71639.1(b), ~~and~~ 71825(b) and 110015, 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), 3563(j), 3563(m), 71639.1, ~~and 71825~~ and 110015, 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~~ or 95150, 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), 3563(f), 71639.1(b), ~~and 71825(b)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(k), (n), 3541.35, 3563(j), (m), 3563.5, 71639.1, 71639.15, 71825, ~~and 71825.05~~, 110015 and 110016, Government Code; and Section 99561(j), (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), 3563(f), 3603, 71639.1(b), ~~and 71825(b)~~ and 110015, 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), 3563(j), 3563(m), 71639.1, ~~and 71825~~ and 110015, 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), 3563(f), 3603, 71639.1(b), ~~and~~ 71825(b) and 110015, 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), 3563(j), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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) 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 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 precedential. In determining whether all or part of such a decision or order shall be designated as 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(k), (n), 3563(j), (m), 3563.2, 11425.60, 71639.1, ~~and~~ 71825 and 110015, Government Code; and Sections 99561(j), (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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3563.3, 3564, 71639.1, 71639.4, 71825, ~~and~~ 71825.1, 110015 and 110017, 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.

(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), 3563(f), 3603, 71639.1(b), ~~and 71825(b) and 110015~~, 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), 3563(j), 3563(m), 71639.1, ~~and 71825 and 110015~~, 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.

#### 32360. Appeal Requirements.

(a) An appeal may be filed with the Board itself from any administrative decision, except as noted in Section 32380.

(b) An original and five copies of the appeal shall be filed with the Board itself in the headquarters office within 10 days following the date of service of the decision or letter of determination.

(c) The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

(d) Service and proof of service of the appeal pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b), ~~and 71825(b) and 110015~~, 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), 3563(j), 3563(m), 71639.1, ~~and 71825 and 110015~~, 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.

#### 32370. Request for Stay of Activity.

An appeal will not automatically prevent the Board from proceeding in a case. Parties seeking a stay of any activity may file a request for a stay with the administrative appeal which shall

include all pertinent facts and justification for the request. The Board may stay the matter, except as is otherwise provided in these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b), ~~and~~ 71825(b) and 110015, 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), 3563(j), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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.

32375. Response to the Administrative Appeal.

Within 10 days following the date of service of the appeal, any party may file a response to the appeal. 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b), ~~and~~ 71825(b) and 110015, 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), 3563(j), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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.

32380. Limitation of Appeals.

The following administrative decisions shall not be appealable:

- (a) A decision by a Board agent regarding the mechanics of an election provided the decision does not affect standing of a party to appear on a ballot;
- (b) Except as provided in Section 32200, any interlocutory order or ruling on a motion.
- (c) A decision by a Board agent pursuant to Section 32793 regarding the existence of an impasse.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b), ~~and~~ 71825(b) and 110015, 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 3505.4, 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1, ~~and 71825~~ and 110015, 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), 3563(f), 71639.1(b), ~~and 71825(b)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4, ~~and 71825.1~~ and 110017, 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), 3563(f), 3603, 71639.1(b), ~~and~~ 71825(b) and 110015, 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), 3563(j), 3563(m), 71639.1, ~~and~~ 71825 and 110015, 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), 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), (n), 3563(i), 71639.1, ~~and~~ 71825 and 110015, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3563(i), 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), (n), 3563(i), (m), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(i), (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), (n), 3563(i), (m), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(i), (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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541(f), (g), 3541.3(j), (k), 3563(i), (j), 71639.1, ~~and~~ 71825 and 110015, Government Code; and Section 99561(i), (j), Public Utilities Code.

### **Article 6. Request for Judicial Review**

32500. Review of Representation Case.

(a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, Chapter 7, ~~or~~ Chapter 8 or Chapter 10 of these Regulations, may file a request to seek judicial review within 20 days following the date of service of the decision. An original and five copies of the request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. Service and proof of service of the request pursuant to Section 32140 are required.

(b) Any party shall have 20 days following the date of service of the request to file a response. 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 request pursuant to Section 32140 are required.

(c) The Board may join in a request for judicial review or may decline to join, at its discretion.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4, ~~and~~ 71825.1 and 110017, Government Code; and Section 99562, 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 and IHSSEERA, ~~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)~~ or 110019(e) may only be filed by the employer or an affected employee.

Authority cited: Sections 3509, 3513, 3541.3, 3563, 71639.1(b), ~~and 71825(b)~~ and 110015, 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, 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~~, 110015, 110019 and 110035, Government Code; and Sections 99561(h), 9561.2, 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), 3563(f), 71639.1(b), ~~and 71825(b)~~ and 110015, Government Code; ~~and~~ Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3523, 3541.3(i), (n), 3541.5, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823, ~~and 71825~~, 110015 and 110019, Government Code; ~~and~~ Sections 99561(h), 99561.2, 99566.3, and 99569, Public Utilities Code.

#### 32610. Employer Unfair Practices Under IHSSEERA

It shall be an unfair practice for the Statewide Authority to do any of the following:

(a) Interfere with, intimidate, restrain, coerce or discriminate against employees because of their exercise of rights guaranteed by IHSSEERA.

(b) Deny to any employee organization rights guaranteed to it by IHSSEERA.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by IHSSEERA.

(d) Dominate or interfere with the formation and administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another in violation of rights guaranteed by IHSSEERA.

(e) Fail to exercise good faith while participating in any impasse procedure required by IHSSEERA.

(f) Adopt or enforce a rule or regulation that is not in conformance with IHSSEERA.

(g) In any other way violate IHSSEERA or any rule or regulation adopted pursuant to Government Code section 110035.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 110002, 110006, 110007, 110009, 110010, 110011, 110018, 110020, 110021, 110022, 110023, 110024, 110025, 110026, 110027, 110029, 110030, 110032, 110033, 110034 and 110035, Government Code.

### 32611. Employee Organization Unfair Practices Under IHSSEERA

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

(a) Cause or attempt to cause the Statewide Authority to engage in conduct prohibited by IHSSEERA.

(b) Interfere with, intimidate, restrain, coerce or discriminate against employees because of their exercise of rights guaranteed to them by IHSSEERA.

(c) Refuse or fail to meet and confer in good faith as required by IHSSEERA.

(d) Fail to exercise good faith while participating in any impasse procedure required by IHSSEERA.

(e) In any other way violate IHSSEERA or any rule or regulation adopted pursuant to Government Code section 110035.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 110002, 110010, 110015, 110018, 110019, 110023, 110025, 110026, 110029, 110030, 110032 and 110035, 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.

(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 transfer any case to a different regional office. The Board may consolidate charges as it deems appropriate.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), and 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(i), 3541.5, 3563(h), 3563.2, 71639.1, 71807, and 71825 and 110015, 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 ~~and/or, under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act~~, 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, 3563, 71639.1(b), ~~and~~ 71825(b), 110015 and 110035, 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, 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015, 110019 and 110035, 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 or IHSSEERA 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 or IHSSEERA, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, ~~and~~ 71825, 110015 and 110019, 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, 3563, 71639.1(b), ~~and~~ 71825(b) 110015, 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, 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, 110015 and 110019~~, 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 refile 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, 3563, 71639.1(b), ~~and 71825(b) and 110015~~, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513, 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and 71825, 110015 and 110019~~, 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), 3563(f), 71639.1(b), ~~and 71825(b) and 110015~~, 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 (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and 71825, 110015 and 110019~~, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3514.5(a), 3541.5(a), 3563.2, 71639.1, ~~and~~ 71825 and 110015, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, Government Code; and Sections 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, 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 or IHSSEERA, 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563.2, 3571, 3571.1, 3571.3, 3589, 71639.1, ~~and~~ 71825 and 110015, 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), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and~~ 71825, 110015 and 110019, Government Code; and Sections 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), 3563(f), 71639.1(b), ~~and 71825(b)~~ and 110015, 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, 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, ~~and 71825, 110015 and 110019~~, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

## **SUBCHAPTER 6. REPRESENTATION PROCEEDINGS**

### **Article 1. General Provisions**

32700. Proof of Support.

(a)(1) Proof of employee support for representation petitions, including decertification petitions, petitions for certification, requests for recognition, severance requests or petitions, and unit modification petitions, shall clearly demonstrate that the employee desires to be represented by the petitioning employee organization for the purpose of meeting and negotiating or meeting and conferring on wages, hours and other terms and conditions of employment.

(2) Proof of employee support for a decertification petition filed pursuant to section 32770(b)(1) shall clearly demonstrate that the employee no longer desires to be represented by the exclusive representative.

(3) Proof of employee support for a rescission petition filed pursuant to section 34020(c), 40400(c), 51700, ~~or 71700~~ or 95300 shall clearly demonstrate that the employee desires a vote to rescind the existing organizational security arrangement.

(4) Proof of employee support for a reinstatement petition filed pursuant to section 34050, 51725 or 71725 shall clearly demonstrate that the employee desires to reinstate the organizational security provision.

(b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signatory has executed authorizations for more than one employee organization.

(c) Any proof of support validly obtained within one year immediately prior to the date the petition or amendment requiring employee support is filed shall remain valid and may be used as proof of support to qualify for appearance on the ballot in an election, provided the employee's job classification is included in the unit in which the election is to be conducted.

(d) For purposes of determining proof of support, a joint petitioner may meet the required percentage by combining the total of the proofs of support for each of the employee organizations which make up the joint petitioner.

(e) Subject to subsections (a), (b), (c) and (d) of this section, proof of support may consist of any one of the following original documents or a combination thereof:

(1) Current dues deduction authorization forms;

(2) Membership applications;

(3) Authorization cards or petitions signed by employees. The purpose of the petition shall be clearly stated on each page thereof;

(4) A notarized membership list, provided it is accompanied by the date of each member's signature on an enrollment form, membership application, or designation card or cards, supported by a declaration under penalty of perjury that the employee organization has on file the aforementioned documents which indicate the employee's desire to be represented by the employee organization. A sample of such signed forms shall accompany the list.

(5) Other evidence as determined by the Board.

(f) Documents submitted to the board as proof of employee support shall remain confidential and not be disclosed by the board to any party other than the petitioner, except to indicate whether the proof of support is sufficient.

(g) Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such

contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall conduct further investigations. If, as a result of such investigation, the Board determines that the showing of support is inadequate because of such misconduct, the petition shall be dismissed.

Authority cited: Sections 3513, 3513(h), 3541.3, 3541.3(g), 3563, ~~and 3563(f)~~, and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3515.7(d), 3520.5, 3544, 3544.1, 3544.3, 3544.5, 3544.7, 3546, 3573, 3574, 3575, 3576, 3577, ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

## Article 2. Elections

32720. Authority to Conduct Elections.

An election shall be conducted when the Board issues a decision directing an election or approves an agreement for a consent election, pursuant to the provisions of Articles 3, 4 or 5 of this Subchapter; Chapter 2, Subchapters 1 and 2; Chapter 3, Subchapter 1; Chapter 4, Subchapter 1 or 2; ~~or Chapter 6;~~ or Chapter 10 of these regulations.

The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3541.3(c), (e), (g), (l) and (m), 3513(h), 3520.5(b), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32721. Parties.

“Parties” means the IHSSEERA, TEERA, EERA, HEERA or Ralph C. Dills Act employer, the employee organization which is the exclusive representative of employees in the voting unit, any employee organization eligible to appear on the ballot in a representation election, or any group of employees which has filed a valid petition pursuant to Section 32770(a), 34020(a), 40400(a), 51700, ~~or 71700~~ or 95300.

Authority cited: Sections 3513, 3541.3, ~~and 3563~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3544.1(a), 3544.3, 3544.7(a), 3546, 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code;

and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32722. Ballot.

- (a) All elections shall be conducted by secret ballot under the supervision of the Board.
- (b) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.
- (c) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 32736, or an election conducted pursuant to either Article 3 of this Chapter or section 32781(c), the ballot entry of “No Representation” shall appear on each ballot in a representation election.
- (d) At any time prior to issuance of the notice of election (pursuant to section 32724(b)), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3541.3(e) and (m), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5~~, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32724. Directed Election Order/Consent Election Agreement; Notice of Election.

- (a) When the Board has determined that an election is required, the Board shall serve on the employer and the parties a Directed Election Order maintaining specific instructions regarding the conduct of the election. The Board may approve a Consent Election Agreement of the parties regarding the conduct of an election.
- (b) Thereafter, the Board shall serve a notice of election on the parties. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process.
- (1) Unless otherwise directed by the Board, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed.

(2) Where a notice of election is required to be posted in a representation case arising under IHSSEERA, the employer shall provide employees in the described unit with such notice by mail, electronic mail, or other means reasonably calculated to provide notice to the greatest number of affected employees.

(c) The Board shall supply the employer with sufficient copies of the notice for posting. The posting shall be accomplished by the date specified in the Consent Election Agreement or the Directed Election Order. The notice shall remain posted through the final day for casting ballots.

Authority cited: Sections 3513, 3541.3, ~~and~~ 3563 and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3544.1(a), 3544.3, 3544.7(a), 3546, 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32726. List of Voters.

(a) At a date established by the Board, the employer shall file with the regional office a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility. Unless otherwise directed by the Board, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by the Board, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and home address of each eligible voter, and shall be accompanied by two sets of name and home address labels for each eligible voter.

(b) A list of eligible voters which meets the requirements of subsection (a) above but which contains in lieu of the home address a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. Proof of service shall be filed with the regional office. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if the Board shall determine that the release of home addresses is likely to be harmful to the employees.

(c) Any party which receives the mailing addresses of eligible voters pursuant to this section shall keep these addresses confidential and shall neither distribute them to any other organization or individual nor utilize them for any other purpose.

Authority cited: Sections 3513, 3541.3, ~~and~~ 3563 and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3544.1(a), 3544.3, 3544.7(a), 3546, 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32728. Voter Eligibility.

Unless otherwise directed by the Board, to be eligible to vote in an election, employees must be employed in the voting unit as of the cutoff date for voter eligibility, and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32730. Observers.

Each party shall be allowed to station an authorized observer selected from the nonmanagement, nonsupervisory employees of the employer at each polling place during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters. If the unit consists of supervisory employees the parties may designate supervisors as observers.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32732. Challenges.

(a) In an on-site election, a Board agent or an authorized observer may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In a mailed ballot election, a Board agent or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the tally of the ballots.

(c) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32734. Tally of Ballots.

(a) Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

(b) At the conclusion of the counting of ballots, the Board shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32735. Resolution of Challenges.

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, the Board agent shall conduct an investigation and, where appropriate, conduct a hearing or take such other action as deemed necessary to determine the eligibility of the challenged voters. Any determination made by a Board agent pursuant to this Section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: Sections 3513, 3541.3, ~~and 3563~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3544.1(a), 3544.3, 3544.7(a), 3546, 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32736. Runoff Elections.

In a representation election, the Board shall direct a runoff election when a valid election results in none of the choices receiving a majority of the valid votes cast. The ballot for the

runoff election shall provide for a selection between the two ballot entries receiving the largest and second largest number of valid votes cast in the election.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5~~, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32738.           Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file with the regional office objections to the conduct of the election. Any objections must be filed within the 10 day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

(b) Service and proof of service of the objections pursuant to Section 32140 are required.

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

(e) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a PERB election objections hearing. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by him or her to be true under penalty of perjury.

(g) The Board agent shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32739. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, the Board agent has the power to:

- (a) Direct any party to submit evidence through declarations or documents;
- (b) Order the inspection of documents by Board agents or the parties;
- (c) Direct any party to submit an offer of proof;
- (d) Obtain declarations from witnesses based on personal knowledge;
- (e) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;
- (f) Dismiss any objections which, after investigation, do not warrant setting aside the election. Any such dismissal is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (g) Issue a written determination setting aside the election when, after investigation, it appears that such action is warranted, and that no material factual disputes exist. Such determination shall be in writing and served on the parties. Any such determination is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (h) Schedule a hearing when substantial and material factual disputes exist. Any hearing shall be limited to the issues set forth in the notice of hearing.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h) 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (g), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32740. Withdrawal of Objections.

Any party may withdraw its objections to an election prior to a final decision by the Board.

Authority cited: Sections 3513(h); 3541.3(g)(n); 3563(f)(m); 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32742. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 32739(f), or unresolved challenged ballots sufficient in number to affect the outcome of the election may be resolved through the hearing procedures described in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), (h), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), (g), 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (g), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32744. Exception to Decision on Objections or Challenges.

Exceptions to a Board agent's proposed decision on objections to the conduct of the election or challenged ballots may be taken in accordance with the procedures set forth in Chapter 1, Subchapter 4, Article 2 (commencing with Section 32300) of these regulations.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), (h), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), (m), 3574(a), 3577, 3579(e), ~~and~~ 3583.5, 110019, 110027 and 110035, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32746. Revised Tally of Ballots.

Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, the Board shall serve a revised tally of ballots on each party at the conclusion of the counting and/or voiding of such ballots. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

Authority cited: Sections 3513, 3541.3, ~~and 3563~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3544.1(a), 3544.3, 544.7(a), 3546, 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32748.           Objections to Revised Tally of Ballots.

(a) Within 10 days following the service of a revised tally of ballots, any party may file with the regional office objection to the revised tally.

(b) Service and proof of service of the objections pursuant to Section 32140 are required.

(c) Objections to a revised tally of ballots shall be entertained by the Board only on the grounds of serious irregularity in the conduct of the challenged ballot count or issuance of the revised tally.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32750.           Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to section 32763 or section 32786(a), the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32752.           Stay of Election.

The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. Any determination to stay an election made by the Board pursuant to this section may be appealed

to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5, 110019, 110027 and 110035~~, Government Code; and Sections 99561(c), (e), (k), (l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

32754. Bar to Conducting Election.

The Board shall dismiss a petition requiring a representation election if it determines:

- (a) Under the EERA, either that the conditions of Government Code Section 3544.7(b)(1) or (2) exist or that a representation election result has been certified affecting the described unit or a portion thereof within the 12 months immediately preceding the date of filing of the petition; or
- (b) Under the Dills Act, (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 242 days but more than 212 days prior to the expiration date of such memorandum or the end of the third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition; or
- (c) Under the HEERA, either of the conditions of Government Code Section 3577(b)(1) or (2) exist; or
- (d) Under the TEERA, either of the conditions of Public Utilities Code Section 99564.4(b)(1) or (2) exist; or
- (e) Under IHSSEERA, (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration date of such memorandum; or, (2) that a representation election result has been certified affecting the described unit within the 12 months immediately preceding the date of the filing of the petition.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3541.3(c),

3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), ~~and 3583.5 and 110027~~, Government Code; and Sections 99561(c), (k), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

### **Article 3. Request for Amendment of Certification**

#### **32761. Request.**

(a) An employee organization may file with the regional office a request to amend its certification or recognition in the event of a merger, amalgamation, affiliation or transfer of jurisdiction, or in the event of a change in the name or jurisdiction of the employer.

(b) The request shall be in writing, signed by an authorized agent of the employee organization and shall contain the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

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

(3) A brief description and the PERB case number of the established unit;

(4) A clear and concise statement of the nature of the merger, amalgamation, affiliation or other change in jurisdiction and the new name of the employee organization and/or employer.

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

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f) and 110015~~, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3541.3(m), ~~and 3563(l) and 110027~~, Government Code; and Section 99561(l), Public Utilities Code.

#### **32762. Employer Response.**

The employer may file a responding statement to the request filed pursuant to Section 32761. The statement shall be filed with the regional office within 15 days following the date of service of the request. Service and proof of service pursuant to Section 32140 are required.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f) and 110015~~, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3541.3(m), ~~and 3563(l) and 110027~~, Government Code; and Section 99561(l), Public Utilities Code.

32763. Board Investigation.

(a) Upon receipt of a request filed pursuant to Section 32761, the Board shall conduct such inquiries and investigations or hold such hearings as deemed necessary, and/or conduct a representation election, in order to decide the questions raised by the request.

(b) The Board may dismiss the request if the requester has no standing to petition for the action requested or if the request is improperly filed. The Board may deny a request based on the investigation conducted pursuant to subsection (a) above.

(c) Upon approval of a request, the Board shall issue a certification reflecting the new identity of the exclusive representative and/or employer. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 32754 of these regulations.

(d) Any determination made by the Board pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3541.3(h), (m), ~~and~~ 3563(g), (l) and 110027, Government Code; and Section 99561(g), (l), Public Utilities Code.

#### **Article 4. Decertification Petition**

32770. Petition.

(a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office utilizing forms provided by the Board.

(b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

(1) No longer desire to be represented by the incumbent exclusive representative; or

(2) Wish to be represented by another employee organization.

Proof of support is defined in Chapter 1, section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3541.3(g), ~~and~~ 3563(k),

110027 and 110035(b), Government Code; and Sections 99561(k) and 99564.3, Public Utilities Code.

32772. Posting Notice of Decertification Petition.

(a) The employer shall post a notice of the decertification petition as soon as possible but in no event later than 15 days following service of a copy of the petition.

(b)(1) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the established unit are employed.

(2) Where the notice is required to be posted pursuant to IHSSEERA, the employer shall provide the employees in the established unit with notice of the petition by mail, electronic mail, or other means reasonably calculated to provide notice to the greatest number of affected employees.

(c) For Ralph C. Dills Act, ~~and~~ TEERA and IHSSEERA petitions, the notice shall remain posted for a minimum of 20 days. For EERA and HEERA petitions, the notice shall remain posted for at least 15 workdays.

(d) The notice shall consist of a copy of the decertification petition with the appropriate portion of the form completed by the employer prior to posting.

(e) The employer shall serve a copy of the notice on the regional office and the parties when the notice is posted.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3524, 3541.3(g), ~~and~~ 3563(k), 110027 and 110035(b), Government Code; and Sections 99561(k) and 99564.3, Public Utilities Code.

32774. Board Determination Regarding Proof of Support.

(a) Within 20 days of the date the decertification petition is filed with the regional office, the employer shall file with the regional office a description of the established unit and an alphabetical list, including job titles or classifications, of employees in the established unit as of the last date of the payroll period immediately preceding the date the decertification petition was filed, unless otherwise directed by the Board.

(b) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

Authority cited: Sections 3513(h), 3541.3(g), ~~and~~ 3563(f) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3541.3(g), ~~and~~ 3563(k),

110027 and 110035(b), Government Code; and Sections 99561(k) and 99564.3, Public Utilities Code.

32776. Board Investigation/Election.

(a) Upon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary.

(b) The petition shall be dismissed if the existing exclusive representative files a valid disclaimer of interest in representing employees in the unit within 20 days of the date the petition is filed with the regional office.

(c) Under EERA, the petition shall be dismissed whenever either of the conditions of Government Code Section 3544.7(b)(1) or (2) exist or a representation election result has been certified affecting the described unit or a portion thereof within the 12 months immediately preceding the date of filing of the petition.

(d) Under Ralph C. Dills Act, the petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed during the window period defined in Section 40130 of these regulations, or the end of the third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

(e) Under HEERA, the petition shall be dismissed whenever either of the conditions of Government Code Sections 3577(b)(1) or (2) exist.

(f) Under TEERA, the petition shall be dismissed whenever either of the conditions of Public Utilities Code Section 99564.4(b)(1) or (2) exist.

(g) Under IHSSEERA, the petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed during the window period defined in Section 95010; or, (2) whenever a representation election result has been certified affecting the described unit within the 12 months immediately preceding the date of the filing of the petition.

~~(g)~~ (h) The “window period” in the term of an existing memorandum of understanding for filing a decertification petition is defined for Ralph C. Dills Act in Section 40130, for HEERA in Section 51026, and for TEERA in Section 71026 and for IHSSEERA in Section 95010 of

these regulations. The “window period” in the term of an existing lawful written agreement for filing a decertification petition is defined for EERA in Section 33020 of these regulations.

Authority cited: Sections 3513(h), 3541.3(g), ~~and 3563(f)~~ and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3541.3(g), 3520.5, ~~and 3563(k), 110027 and 110035(b)~~, Government Code; and Sections 99561(k), 99564.3 and 99564.4, Public Utilities Code.

## **Article 6. Impasse Procedures**

### 32806. Appointment of a Mediator Under IHSSEERA

(a) If the parties are unable to select a mediator mutually agreeable to the parties, either party may request in writing that the Board appoint a mediator. Unless the request is made jointly, the filing party shall concurrently serve a copy of the written request on the other party. Proof of service pursuant to Section 32140 shall be filed with the regional office.

(b) The Board shall appoint a mediator within five working days following receipt of the written request for appointment of a mediator.

(c) “Working days,” for purposes of this Section and Sections 32808 and 32810, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

(d) Whether the mediator is selected by mutual agreement of the parties or appointed by the Board, the costs of mediation shall be divided one-half to the employer and one-half to the recognized employee organization or recognized employee organizations.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Section 110029, Government Code.

### 32808. Request for Factfinding Under IHSSEERA

(a) If the parties are unable to effect settlement of the controversy within 30 days following the appointment or selection of a mediator, either party may request that the parties’ differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement.

(b) A request for factfinding must be filed with the appropriate regional office; service and proof of service pursuant to Section 32140 are required.

(c) Within five working days from the date the request is filed, the Board shall notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a), above, no further action shall be taken by the Board.

If the request is determined to be sufficient, the Board shall request that each party provide notification of the name and contact information of its panel member within five working days.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Section 110030, Government Code.

32810. Appointment of Person to Chair Factfinding Panel Under IHSSEERA

Within five working days following the receipt of the name and contact information of the parties' panel members, the Board shall submit to the parties the names of seven persons drawn from the list of neutral factfinders established pursuant to Government Code section 3541.3(d). The Board will thereafter designate one of the seven persons to serve as the chairperson unless notified by the parties within five working days that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by the Board. In no case will the Board be responsible for the costs of the chairperson.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Section 110030, Government 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, 3563, 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3563.3, 3564, 71639.1, 71639.4, 71825, ~~and~~ 71825.1, 110015 and 110017, 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 8. AGENCY FEE REGULATIONS

### Article 1. Agency Fee

32990. Agency Fee.

“Fair share” and “agency shop” forms of organizational security shall be known herein as “agency fee.” All agency fee arrangements, agreements and provisions (hereinafter referred to as “provisions”) shall be subject to the following regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), (i) and (n), 3563(f), (h) and (m), 71639.1(b), ~~and~~ 71825(b) ~~and~~ 110015, Government Code; and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5, ~~and~~ 71814 ~~and~~ 110019, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32992. Notification of Nonmember.

(a) The exclusive representative shall provide annual written notice to each nonmember who will be required to pay an agency fee. The notice shall include:

- (1) The amount of the exclusive representative’s dues and the agency fee;
- (2) The percentage of the agency fee amount that is attributable to chargeable expenditures and the basis for this calculation;
- (3) The amount of the agency fee to be paid by a nonmember who objects to the payment of an agency fee amount that includes nonchargeable expenditures (hereinafter referred to as an “agency fee objector”); and
- (4) Procedures for (A) objecting to the payment of an agency fee amount that includes nonchargeable expenditures and (B) challenging the calculation of the nonchargeable expenditures.

(b) (1) The calculation of the chargeable and nonchargeable expenditures will be based on an audited financial report, and the notice will include either a copy of the audited financial report used to calculate the chargeable and nonchargeable expenditures or a certification from the independent auditor that the summarized chargeable and nonchargeable expenditures contained in the notice have been audited and correctly reproduced from the audited report, or

(2) the calculation of the chargeable and nonchargeable expenditures may be based on an unaudited financial report if the exclusive representative’s annual revenues are less than \$50,000 and a nonmember is afforded a procedure sufficiently reliable to ensure that a

nonmember can independently verify that the employee organization spent its money as stated in the notice.

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) At least 30 days prior to collection of the agency fee; or

(2) Concurrent with the initial agency fee collection provided escrow requirements in Section 32995 are met; or

(3) In the case of public school employees, where the agency fee year covers the traditional school year, on or before October 15 of the school year, provided escrow requirements in Section 32995 are met.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5, ~~and~~ 71814 and 110019, Government Code; Section 99566.1, Public Utilities Code; Harik v. California Teachers Association (9th Cir. 2003) 326 F.3d 1042, Grunwald v. San Bernardino Unified School District (9th Cir. 1990) 994 F.2d 1370, *cert. denied*, 510 U.S. 964 (1993), Cummings v. Connell (9th Cir. 2003) 316 F.3d 886, and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32993. Exclusive Representative's Objection Procedure.

Each exclusive representative that has an agency fee provision shall administer an Objection Procedure in accordance with the following:

(a) An agency fee objection shall be filed in writing with the designated representative of the exclusive representative.

(b) The procedure shall allow at least 30 days following distribution of the notice required under Section 32992 of these regulations for the filing of an agency fee objection.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 71632.5, ~~and~~ 71814 and 110019, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32994. Exclusive Representative's Challenge Procedure.

(a) An agency fee payer who disagrees with the exclusive representative's determination of the chargeable expenditures contained in the agency fee amount and who files a timely agency fee challenge with the exclusive representative shall be hereafter known as an "agency fee challenger." An agency fee challenger may file an unfair practice charge that challenges the determination of the chargeable expenditures contained in the agency fee amount; however, no complaint shall issue until the agency fee challenger has first exhausted the Exclusive Representative's Challenge Procedure. No agency fee challenger shall be required to exhaust the Exclusive Representative's Challenge Procedure where it is insufficient on its face.

(b) Each exclusive representative that has an agency fee provision shall administer a Challenge Procedure in accordance with the following:

(1) An agency fee challenge shall be filed in writing with the official designated by the exclusive representative in the annual notice.

(2) The procedure shall allow at least 30 days following distribution of the notice required under Section 32992 of these regulations for the filing of an agency fee challenge.

(3) Upon receipt of an agency fee challenge, the exclusive representative shall within 45 days of the last day for filing a challenge request a prompt hearing regarding the agency fee before an impartial decisionmaker.

(4) The impartial decisionmaker shall be selected by the American Arbitration Association or the California State Mediation Service. The selection between these entities shall be made by the exclusive representative.

(5) Any party may make a request for a consolidated hearing of multiple agency fee challenges based on case similarities, including but not limited to, hearing location. At any time prior to the start of the hearing, any party may make a motion to the impartial decisionmaker challenging any consolidation of the hearing.

(6) The exclusive representative bears the burden of establishing the reasonableness of the amount of the chargeable expenditures.

(7) Agency fee challenge hearings shall be fair, informal proceedings conducted in conformance with basic precepts of due process.

(8) All decisions of the impartial decisionmaker shall be in writing, and shall be rendered no later than 30 days after the close of the hearing.

(9) All hearing costs shall be borne by the exclusive representative, unless the exclusive representative and the agency fee challenger agree otherwise.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5, ~~and~~ 71814 and 110019, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32995. Escrow of Agency Fees.

(a) If agency fee objectors are identified before fee collection begins for the agency fee year, there shall be an advance reduction in fees and/or advance rebate for those agency fee objectors.

(b) If agency fees are collected before agency fee objectors are identified, the exclusive representative shall place in escrow, in an independently controlled escrow account, in an independent financial institution, all agency fees collected until the exclusive representative provides appropriate rebates and/or fee reductions for agency fee objectors.

(c) If not otherwise escrowed, the exclusive representative shall place in escrow, in an independently controlled escrow account, in an independent financial institution, all agency fee amounts reasonably in dispute until all agency fee challengers are identified and, thereafter, continue to escrow the amounts in dispute for all agency fee challengers until the challenges are resolved by the impartial decision maker or mutual agreement between the agency fee challenger and the exclusive representative has been reached on the proper amount of the agency fee, whichever comes first.

(d) Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5, ~~and~~ 71814 and 110019, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292 and Grunwald v. San Bernardino Unified School District (9th Cir. 1990) 994 F.2d 1370, *cert. denied*, 510 U.S. 964 (1993).

32996. Filing of Notice and Agency Fee Appeal Procedures.

The Board may require an exclusive representative with an agency fee provision to file a copy of its annual notice, Objection Procedure and/or Challenge Procedure with the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5, ~~and~~ 71814 and 110019,

Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292 .

32997. Compliance.

It shall be an unfair practice for an exclusive representative to collect agency fees in violation of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g) and (i), 3563(f), 71639.1(b), ~~and~~ 71825(b) and 110015, Government Code; and Section 99561(f), (h), (m). Reference: Sections 3502.5, 3515.7, 3519.5, 3540.1(i), 3542(d), 3543.6, 3543, 3546, 3546.5, 3563.2, 3564(d), 3571.1, 3583.5, 71632.5, ~~and~~ 71814 and 110019, Government Code; Sections 99563.8, 99566.1 and 99566.3, Public Utilities Code; Harik v. California Teachers Association (9th Cir. 2003) 326 F.3d 1042, Grunwald v. San Bernardino Unified School District (9th Cir. 1990) 994 F.2d 1370, *cert. denied*, 510 U.S. 964 (1993), Cummings v. Connell (9th Cir. 2003) 316 F.3d 886, and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

## **CHAPTER 10. IN-HOME SUPPORTIVE SERVICES EMPLOYER-EMPLOYEE RELATIONS ACT**

### **Article 1. General Provisions**

95000. Parties.

“Parties” means the Statewide Authority, the employee organization that is the exclusive representative of any employee covered by a petition, any employee organization known to have an interest in representing any employees as demonstrated by having filed a pending petition, and/or any group of employees which has filed a pending petition pursuant Government Code Section 110019.

Authority cited: Section 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019 and 110027, Government Code.

95010. Window Period.

“Window period” means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding (MOU) negotiated by the Statewide Authority or a predecessor agency and the exclusive representative. Expiration date means the last effective date of the MOU. Notwithstanding the provisions of Section 32130, the date on which the MOU expires shall not be counted for the purpose of computing the window period.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015 and 110027, Government Code.

95020. Withdrawal of a Petition.

Any petition may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

95030. Informal Conference.

(a) A Board agent may conduct an informal conference to clarify the issues and explore settlement of the case. 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 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

95040. Notice of Hearing.

If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

95045. Conduct of Hearing; Issuance of Proposed Decision.

Hearings shall be conducted and proposed decisions shall be issued pursuant to procedures set forth in Chapter 1, Subchapter 3 of these Regulations.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

95050. Administrative Decision.

Any determination rendered without a hearing shall be issued in accordance with Section 32350 and may be appealed pursuant to Section 32360 of these Regulations.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

95070. Decisions of the Board Itself.

Procedures before the Board itself shall be in accordance with Chapter 1, Subchapter 4, Articles 1 through 4 of these Regulations.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

95080. Notice of Decision.

When the Board itself issues a decision or when a hearing officer decision becomes final, the Board shall serve the decision and a notice of decision on the parties.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

95090. Eligibility to Appear on Ballot.

(a) Any employee organization which filed a valid petition or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the the appropriate unit.

(b) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Section 32700 of these Regulations.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110008, 110015, 110019, 110027 and 110035, Government Code.

95100. Conduct of Elections.

If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Chapter 1, Subchapter 6, Article 2 of these regulations.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015, 110019, 110027 and 110035, Government Code.

## **Article 2. Petition for Certification**

95150. Petition for Certification.

(a) An employee organization may file a petition to become the exclusive representative of a unit consisting of employees who are not included in an established unit represented by an exclusive representative. The petition shall be filed with the appropriate regional office, be signed by an authorized agent of the employee organization, and include the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A description of the proposed unit;

(4) The approximate number of employees in the proposed unit;

(5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the proposed unit. Proof of support is defined in Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110008, 110015 and 110027, Government Code.

95160. Posting Notice of Petition for Certification.

(a) The employer shall post a notice of the petition, as provided by the Board, as soon as possible, but in no event later than 10 days following service of a copy of the petition.

(b) The employer shall provide the notice to employees in the proposed unit by mail, electronic mail, or other means reasonably calculated to provide notice to the greatest number of affected employees.

(c) The notice shall remain posted for 15 workdays.

(d) The employer shall inform the regional office and the parties in writing of the method, locations and date of posting of the notice.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110008, 110015 and 110027, Government Code.

95170. Determination of Proof of Support.

(a) Within 20 days of the date of service of a copy of the petition for certification, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of the employees employed in the proposed unit as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. The Board's determination shall also indicate whether proof of majority support has been established. The petition shall be dismissed if the Board determines that the petition lacks at least 30 percent proof of support.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110008, 110015 and 110027, Government Code.

95180. Employer Response Regarding Petition for Certification.

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of the petition, the employer shall file a written response with the regional office.

(b) Service and proof of service of the response pursuant to Section 32140 are required.

(c) The employer shall use the following format for its response regarding a petition for certification:

(1) Name, address and telephone number of the employer and name, address and telephone number of the employer's agent to be contacted;

(2) Attach a copy of the petition for certification;

(3) Employer position regarding the petition for certification: Does the employer believe that there is any reason why a representation election should not be held in the proposed unit? If so, please fully explain.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110008, 110015 and 110027, Government Code.

95190. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors at any time prior to the issuance of a notice of hearing. The amendment shall be filed with the regional office and provide the information required in Section 95150. Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) Amendments to correct technical errors which are requested after the issuance of the notice of hearing are subject to approval by the hearing officer. The hearing officer may grant the requested amendment, so long as it will not serve to unduly impede the hearing. Posting of any such amendments shall be at the discretion of the Board agent.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110008, 110015 and 110027, Government Code.

95200. Board Investigation.

Whenever a petition for certification is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition. A petition that does not describe a bargaining unit in conformance with Government Code section 110008 shall be dismissed by the Board without any further action.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110008, 110015 and 110027, Government Code.

### **Article 3. Rescission of Agency Shop Agreement or Provision**

#### **95300. Employee Petition.**

(a) A group of employees in an established unit may file with the regional office a petition to rescind an existing agency shop agreement or provision pursuant to Government Code Section 110019(d).

(b) The petition shall be signed by an authorized representative of the group of employees and shall include the following information:

(1) The name, address and telephone number of the agent to be contacted on behalf of the petitioning group of employees;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) The approximate number of employees in the established unit; and

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the unit.

(c) Proof that at least 30 percent of the employees in the unit desire a vote to rescind the existing agency shop provision shall be filed with the regional office concurrent with the petition. Proof of support shall conform to the requirements of Section 32700 (b), (c), (e)(3), (f) and (g).

(d) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015 and 110019, Government Code.

#### **95310. Board Determination Regarding Proof of Support.**

(a) Within 20 days following the filing of the petition to rescind an agency shop agreement or provision, the Statewide Authority shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit

described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015 and 110019, Government Code.

95320. Employee Vote.

(a) Provided the rescission petition is timely and properly filed pursuant to this Article 3, and the proof submitted in support of the petition is determined to be adequate pursuant to Section 32700, a rescission election among the employees in the established unit shall be conducted under procedures established by the Board and in accordance with election procedures described in these regulations.

(b) The agency shop agreement or provision shall be rescinded if a majority of the employees in the negotiating unit covered by the provision vote to rescind the agreement.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015 and 110019, Government Code.

95330. Bar to Rescission.

The Board shall dismiss any petition to rescind the existing agency shop agreement or provision if the results of a prior rescission election concerning the agreement or provision in the same unit were certified during the term of the same memorandum of understanding.

Authority cited: Sections 3541.3(g) and 110015, Government Code. Reference: Sections 3541.3, 110015 and 110019, Government Code.