

INITIAL STATEMENT OF REASONS

The changes proposed to the regulations of the Public Employment Relations Board (PERB or Board) are intended, in general, to provide more clarity and more transparency in the Board's processes, and to make PERB's procedures more accessible to affected members of the public.

The first area of change concerns filing and service of documents. At present, the only electronic filing allowed is through the use of an on-line filing system that is maintained on the PERB web site and that is only applicable to the filing of new or amended unfair practice charges. Other types of documents may be sent via facsimile transmission or by mail, but may not be filed electronically. The proposed changes primarily concern allowance for filing and service of documents by electronic mail, in most circumstances, while deleting the current on-line filing system that applies only to unfair practice charges. In addition, the proposed amendments are intended to eliminate unnecessary requirements and to provide greater clarity in the text of the regulations. The regulations amended include Sections 32135, 32140, 32450 and 32455, while Section 32613 would be repealed, and proposed Section 32091 would be adopted.

Second, the repeal of Sections 32810, 32811, 32812 and 32813, which provide for PERB's maintenance of a list of arbitrators is proposed due to the recent transfer to the State Mediation and Conciliation Service (SMCS) from the Department of Industrial Relations to PERB. Government Code section 3541.3(d) provides that the Board may "establish a list of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders." The Board has long maintained a Panel of Neutrals that includes person available to serve as arbitrators or factfinders, but not mediators. SMCS also maintains a list of arbitrators, and parties utilize that list far more often than they do PERB's. Thus, it is logical to eliminate the redundancy by eliminating the list that is least used. PERB will continue, however, to maintain a Panel of Neutrals for purposes of providing lists of neutral factfinders and for the appointment of factfinding panel chairpersons. A related change proposed concerns the selection of factfinders. Section 32798 addresses procedures for the appointment of a factfinding panel chairperson under the Educational Employment Relations Act (EERA) and the Higher Education Employer-Employee Relations Act (HEERA). As currently written, this section arguably prohibits parties under HEERA from agreeing to select and compensate a factfinding panel chairperson who would not be available for appointment by PERB. Current practice is to allow the parties to make such a selection by mutual agreement, and the proposed revisions would codify that practice.

Another area of rulemaking concerns Board decisions. These changes, in part, clarify when decisions become final, pursuant to the mandate of Senate Bill 609 (Chapter 242, Statutes of 2011), which requires that certain proposed decisions of an administrative law judge become final if the Board itself does not issue a decision in the case within 180 days from the date exceptions were filed with the Board. As amended, Sections 32132 and 32305 would prohibit extensions of time in representation cases subject to the 180-day limit set forth in Senate Bill 609. In addition, the amendments to Section 32320 would give the Board discretion to decide whether to designate decisions involving a review of a charge dismissal as precedential. All

other decisions would continue to be precedential. Also, amendments to Section 32147 would clarify and make more transparent the Board's policy on when cases may be expedited.

Another area concerns unfair practice charge processing. While several amendments are proposed, involving Sections 32615, 32620, and 32661, these changes largely are intended to be clarifying and not to make any major substantive change. The only substantive change proposed, in Section 32615, concerns the elimination of filing requirements that are not necessary and that instead cause confusion for some parties who are attempting to file an unfair practice charge.

The final area of amendments concerns the process under the Meyers-Milias-Brown Act (MMBA) for petitioning for certification or recognition as an exclusive representative. The changes proposed would clarify but make no substantive change in MMBA representation procedures, consistent with statutory changes enacted in 2001 (Chapter 790, Statutes of 2001; Assembly Bill 1281). The amendments to Sections 61090, 61210, 61220, 61240, 61250, 61260, and 61270, and the adoption of new Sections 61215, 61255, and 61275, are consistent with the procedures already in effect for cases arising under EERA and HEERA.

Section by Section

Proposed Section 32091 would provide for the filing of documents through the use of electronic mail messages (e-mail). Currently, the only electronic filing allowed under PERB regulations is the on-line filing of unfair practice charges, through a program maintained on the PERB web site that requires persons using it to register and to have an e-mail address. The intent is to broaden the use of electronic filing in order to facilitate timelier processing of cases, and to eliminate the use of a proprietary system that itself requires the investment of time and resources.

Section 32132 establishes procedures for the granting of extensions of time. The only change proposed, other than the updating of reference citations, is a cross-reference to changes proposed to Section 32305, pursuant to the mandate of Senate Bill 609 (Chapter 242, Statutes of 2011).

Section 32135 defines the requirement for filing documents with PERB. The changes proposed involve clarification as to when proof of service must accompany documents filed with PERB, and revisions related to the adoption of proposed Section 32091 (e-mail filing).

Section 32140 sets forth the requirements related to service of documents on other interested parties. Most of the changes proposed to this section are intended to provide clarity with respect to the use of electronic mail for filing and service of documents. In addition, the prohibition against a party to a case signing his or her own proof of service document would be deleted.

Section 32147 addresses expediting matters before the Board. The current language of this section refers to "policy established by the Board itself," but does not otherwise clarify or identify when matters will be expedited. Over the years, a body of practice has developed

around this question, and the intent here is to make the policy more transparent by setting it forth in the text of the regulation itself. The policy described by the proposed changes is also consistent with the mandate of Senate Bill 609 (Chapter 242, Statutes of 2011) regarding timely processing of representation disputes.

Section 32160 provides for circumstances when the Board may order the taking of testimony by deposition. The only change proposed here is to renumber the section so that it appears in Subchapter 3 (Hearings), rather than Subchapter 2 (Definitions and General Provisions) of Chapter 1.

Section 32305 addresses when proposed decisions become final. This section would be re-titled and amended consistent with the mandate of Senate Bill 609 (Chapter 242, Statutes of 2011), which requires that certain proposed decisions of an administrative law judge become final if the Board itself does not issue a decision in the case within 180 days from the date exceptions were filed with the Board.

Section 32320 concerns decisions issued by the Board itself. The proposed amendments to Section 32320 would give the Board the discretion to decide whether to designate decisions involving a review of a charge dismissal as precedential. All other decisions would continue to be precedential.

Section 32450 provides for the filing of requests for injunctive relief. Section 32455 addresses the investigation for a request for injunctive relief. The only changes proposed to these sections are for purposes of clarifying the language, and to incorporate reference to the use of electronic mail for filing and service.

Section 32613 currently provides for on-line filing of unfair practice charges. This section would be repealed, as maintenance of the current, limited on-line filing system would be unnecessary with the adoption of proposed changes allowing for filing via use of electronic mail.

Section 32615 identifies the required contents of an unfair practice charge. The only changes involve the removal of two items of information currently required; namely, a statement whether a collective bargaining agreement is in effect, and the date and duration of such agreement, and whether a grievance procedure or public notice complaint procedure has been invoked. In many cases, neither item of information is relevant or necessary, and the requirement of answers in order to have a valid charge filed causes confusion.

Section 32620 concerns the processing of an unfair practice charge by a Board agent. Several clarifying changes are proposed here, but no substantive change in the meaning or administration of this section is intended.

Section 32661 addresses the filing of an unfair practice charge based on the claim that an arbitration decision is repugnant to the applicable collective bargaining statute. A clarifying correction to the cross-reference to other regulation sections is proposed. Again, this would have no substantive impact.

Section 32798 addresses procedures for the appointment of a factfinding panel chairperson under the Educational Employment Relations Act (EERA) and the Higher Education Employer-Employee Relations Act (HEERA). As currently written, this section arguably prohibits parties under HEERA from agreeing to select and compensate a factfinding panel chairperson who would not be available for appointment by PERB. Current practice is to allow the parties to make such a selection by mutual agreement, and the proposed revisions would codify that practice.

Section 32810 provides for a list of arbitrators maintained by PERB. Section 32811 provides for requests by parties for the names of arbitrators. Section 32812 provides for the parties to notify PERB when they have selected an arbitrator. Section 32813 specifies that the costs of arbitration are borne by the parties. The repeal of these sections is proposed because an equivalent process is available through the State Mediation and Conciliation Service (SMCS), which is now a division of PERB. While PERB receives only one or two requests for arbitrator lists each year, SMCS processes hundreds of such requests.

Section 61090 provides for a public agency subject to the Meyers-Milias-Brown Act (MMBA) to grant recognition to an employee organization under specified circumstances. The amendments to this section would clarify and make more certain the provisions, consistent with the wording of similar sections applicable under other statutes (see, e.g., Section 33480, applicable to cases arising under EERA).

Section 61210 provides for the filing of a petition for certification under the MMBA. The proposed amendments would clarify that this type of petition is one that, if successful, would lead to an election, and would be distinguished from a petition for recognition based on proof of support.

Proposed Section 61215 would provide for the filing of a petition for recognition under the MMBA. Consistent with the changes proposed to Section 61210, this new section would provide for a separate type of petition where an employee organization seeking recognition or certification as an exclusive representative does so based on the submission of proof of majority support.

Section 61220 provides for the posting of a notice of the filing of a petition for certification. Changes to the title and text would clarify that the posting requirements are applicable to both a petition for certification and a petition for recognition.

Section 61240 concerns the Board's determination as to the adequacy of proof of support for a petition for certification. The proposed amendments are for the purpose of harmonizing the provisions of this section with the other changes proposed to related sections, including the adoption of proposed Section 61215.

Section 61250 provides for an employer response to a petition for certification. Minor changes to the text are proposed that are consistent with the establishment of separate processes for petitions for certification and petitions for recognition.

Proposed Section 61255 would provide for an employer response to a petition for recognition. This new section is required by the adoption of proposed Section 61215.

Section 61260 provides for amendments to a petition for certification. Changes to the title and text would clarify that the both a petition for certification and a petition for recognition may be amended, and that the requirements for an amendment are applicable in both types of case.

Section 61270 concerns the Board's investigation of disputes concerning a petition for certification. The proposed amendment would make explicit the application of the section to both petitions for certification and petitions for recognition.

Proposed Section 61275 would provide for the Board's certification of an exclusive representative, based on proof of support, under specified circumstances. The adoption of this new section would clarify and make more certain the process whereby an employee organization may obtain exclusive representative status without an election under certain circumstances, consistent with the wording of similar sections applicable under other statutes (see, e.g., Section 33485, applicable to cases arising under EERA). Adoption of this new section is more consistent with statutory changes enacted in 2001 (Chapter 790, Statutes of 2001; Assembly Bill 1281) than existing regulations.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

These regulations and changes will improve the public sector labor environment and the collective bargaining process by clarifying PERB procedures, making the Board's processes more transparent and accessible, and updating regulations consistent with current law.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

PERB has not identified any alternatives that would lessen any adverse impact on small business and has not identified any adverse impacts on small businesses as a result of these proposed regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON, ECONOMIC IMPACT ASSESSMENT

PERB did not rely upon any technical, theoretical, or empirical studies, report or documents in proposing the adoption of these regulations. The adoption of the proposed amendments and sections will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The adoption of the proposed amendment will benefit public employers, employees, employees' representatives and the community at-large by further facilitating the resolution of public sector labor disputes by clarifying PERB procedures, making the Board's processes more transparent and accessible, and eliminating redundant procedures. In so doing, California residents' welfare will receive the benefit of stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that these

employers and employees provide to California communities. PERB will continue to investigate the potential for economic impact through this rulemaking process.

MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT

PERB's proposed regulations do not mandate the use of any specific technologies or equipment.