

**REGULATIONS  
OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

**AMENDMENTS AND ADDITIONS  
CURRENT AS OF FEBRUARY 15, 2021**





**PUBLIC EMPLOYMENT RELATIONS BOARD  
REGULATIONS  
February 15, 2021**

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**CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD**

**SUBCHAPTER 1. INTERNAL PROCEDURES**

**Article 1. Public Meetings**

**31001. Meetings.**

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

**Article 2. Conflict of Interest Code**

**31100. General Provisions.**

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the conflict of interest code of the Public Employment Relations Board (PERB), except as provided below.

Designated employees shall file statements of economic interests with PERB who will make the statements available for public inspection and reproduction. (Gov. Code section 81008). Upon receipt of the statements of Board Members, PERB shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be maintained by PERB.

**APPENDIX**

Designated Positions	Disclosure Category
Board Members	(a) and (b)
Executive Director	(a) and (b)
Administrative Officer	(a) and (b)
General Counsel	(a) and (b)

Chief Administrative Law Judge	(a) and (b)
All attorneys employed in the Office of the General Counsel	(a)
All attorneys employed in the Division of Administrative Law	(a)
All persons employed as a Legal Adviser to a Board Member	(a)
Regional Directors	(a)
Administrative Assistant to the Chair	(a)
Legal Documents Examiner	(a)
All Public Employment Relations Representatives and Specialists	(a)
Business Services Officer	(b)

Consultant<sup>1</sup>

#### Disclosure Categories

(a) Designated employees assigned to this disclosure category shall disclose: Investments held in, income derived from, including gifts, loans, salary and reimbursements for expenses, travel or per diem, and any business positions held by a designated employee to the extent that they know or have reason to know that the entity or source is an organization of employers, employee organization, individual, law firm, labor negotiations firm or consulting firm, which is subject to the jurisdiction of the Public Employment Relations Board or has appeared within the last 12 months in a dispute before the Board as a party, a representative for a party, or has provided assistance to a party in preparation for an appearance in a dispute before the Board.

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<sup>1</sup> Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Executive Director or Administrative Officer may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's or Administrative Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(b) Designated employees assigned to this disclosure category shall disclose: Investments held in, income derived from, including gifts, loans, salary and reimbursements for expenses, travel or per diem, and any business positions held in any entity or source of the type which provides services, supplies, materials, machinery, leased space or equipment to the Public Employment Relations Board.

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

### **Article 1. Definitions**

#### **32000. EERA.**

“EERA” means the Educational Employment Relations Act as contained in Chapter 10.7 of Division 4 of Title 1 of the Government Code (commencing with Section 3540).

#### **32001. Definition of Terms Under EERA.**

As applied to matters arising under EERA:

(a) Employee Organization. “Employee organization” as defined in Government Code Section 3540.1(d) shall include any two or more employee organizations as defined therein who join together to become “joint requester,” “joint intervenor” or “joint petitioner.”

(b) Intervening Organization. “Intervening Organization” or “Intervenor” means either of the following:

(1) An employee organization filing a competing claim of representation or a challenge to the appropriateness of the unit pursuant to Government Code Section 3544.1(b); or

(2) An employee organization filing a request to appear on the ballot following the filing of an employee petition for a representation election pursuant to Government Code Section 3544.3.

(c) School District. “School District” as used in the EERA means a school district of any kind or class, including any public community college district, within the state.

(d) As used in Chapter 2, Subchapter 2 of these regulations, “academic year” means the period of time including, and limited to, July 1 of any year through June 30 of the succeeding year.

**32005. Ralph C. Dills Act.**

“Ralph C. Dills Act” or “Dills Act” means the State Employer-Employee Relations Act as contained in Chapter 10.3 of Division 4 of Title 1 of the Government Code (commencing with Section 3512).

**32006. Definition of Terms Under Ralph C. Dills.**

As applied to matters arising under Ralph C. Dills Act:

(a) Employee Organization. “Employee organization” as defined in Government Code Section 3513(a) shall include any two or more employee organizations as defined therein who join together to become “joint petitioner,” or “joint election intervenor.”

(b) Election Intervenor. “Election Intervenor” means any employee organization, whether or not a party to a unit determination hearing, which files an intervention to appear on the ballot for an election in an appropriate Ralph C. Dills Act unit.

**32010. HEERA.**

“HEERA” means the Higher Education Employer-Employee Relations Act as contained in Chapter 12 of Division 4 of Title 1 of the Government Code (commencing with Section 3560).

**32011. Definition of Terms Under HEERA.**

As applied to matters arising under HEERA:

(a) “Employee organization” as defined in Government Code Section 3562(f) shall include any two or more employee organizations defined therein who join together to become a “joint requester,” “joint intervenor” or “joint petitioner.”

(b) In Chapter 4 of these regulations:

(1) Requester. “Requester” means an employee organization which has filed a HEERA request for recognition.

(2) Intervenor. “Intervenor” means an employee organization filing a competing claim of representation or a challenge to the appropriateness of the unit pursuant to HEERA.

(3) Petitioner. “Petitioner” means an employee organization which has filed a HEERA petition for certification.

(4) Election Intervenor. “Election Intervenor” means an employee organization, whether or not a party to the unit determination hearing, which files an intervention to appear on the ballot for an election in an appropriate unit pursuant to HEERA.



(c) As used in Chapter 4, Subchapter 2 of these regulations, “academic year” means the period of time including, and limited to, July 1 of any year through June 30 of the succeeding year.

**32015. MMBA.**

“MMBA” means the Meyers-Milias-Brown Act as contained in Chapter 10 of Division 4 of Title 1 of the Government Code (commencing with Section 3500).

**32016. Definition of Terms Under MMBA.**

As applied to matters arising under MMBA:

(a) Public agency. “Public agency” means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation, every town, city, county, city and county and municipal corporation, whether incorporated and whether chartered or not. For purposes of these regulations, the term “public agency” shall exclude the City of Los Angeles, County of Los Angeles, and superior and municipal courts, and does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California. The term “public agency,” as used herein, also excludes any transit agency not subject to the MMBA.

(b) Exclusive representative. References in these regulations to an “exclusive representative” means an employee organization that has been recognized or certified as an exclusive or majority bargaining agent pursuant to MMBA.

(c) Local rules. “Local rules” means the rules and regulations of a public agency adopted pursuant to the MMBA.

**32017. TEERA.**

“TEERA” means the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act as contained in Chapter 7 of Part 11 of Division 10 of the Public Utilities Code (commencing with Section 99560).

**32018. Definition of Terms Under TEERA.**

As applied to matters arising under TEERA:

(a) “Employee organization” as defined in Public Utilities Code Section 99560.1(f) shall include any two or more employee organizations defined therein who join together to become a “joint requester,” “joint intervenor” or “joint petitioner.”

(b) “Exclusive representative” as defined in Public Utilities Code Section 99560.1(i) shall include any employee organization that, prior to January 1, 2004, was certified or recognized for a unit of supervisory employees, in accordance with Public Utilities Code Section 30750 et seq.

(c) “Established bargaining unit” shall include any unit of supervisory employees established prior to January 1, 2004, in accordance with Public Utilities Code Section 30750 et seq.

(d) In Chapter 6 of these regulations:

(1) Requester. “Requester” means an employee organization which has filed a TEERA request for recognition.

(2) Intervenor. “Intervenor” means an employee organization filing a competing claim of representation or a challenge to the appropriateness of the unit pursuant to TEERA.

(3) Petitioner. “Petitioner” means an employee organization which has filed a TEERA petition for certification.

(4) Election Intervenor. “Election Intervenor” means an employee organization, whether or not a party to the unit determination hearing, which files an intervention to appear on the ballot for an election in an appropriate unit pursuant to TEERA.

**32020. Board.**

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

**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.

**32032. Trial Court Act.**

“Trial Court Act” means the Trial Court Employment Protection and Governance Act as contained in Chapter 7 of Title 8 of the Government Code (commencing with Section 71600).

**32033. Definition of Terms Under Trial Court Act.**

As applied to matters arising under the Trial Court Act:

(a) Trial court. “Trial court” means a superior court.

(b) Exclusive representative. References in these regulations to an “exclusive representative” means an employee organization that has been recognized or certified as an exclusive or majority bargaining agent pursuant to the Trial Court Act.

(c) Local rules. "Local rules" means the rules and regulations of a trial court adopted pursuant to Section 71636 of the Trial Court Act.

**32034. Court Interpreter Act.**

"Court Interpreter Act" means the Trial Court Interpreter Employment and Labor Relations Act as contained in Chapter 7.5 of Title 8 of the Government Code (commencing with Section 71800).

**32035. Definition of Terms Under Court Interpreter Act.**

As applied to matters arising under the Court Interpreter Act:

(a) "Regional committee" means a regional court interpreter employment relations committee established under Government Code section 71807.

(b) Trial court. "Trial court" means a superior court.

(c) Exclusive representative. References in these regulations to an "exclusive representative" means an employee organization that has been recognized or certified as an exclusive or majority bargaining agent pursuant to the Court Interpreter Act.

(d) Local rules. "Local rules" means the rules and regulations of a regional committee adopted pursuant to Section 71823 of the Court Interpreter Act.

(e) Employer. As used in these regulations, the term "employer" includes a regional court interpreter employment relations committee established under Government Code section 71807.

**32036. PECC.**

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

**32038. PEDD.**

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

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

As applied to matters arising under the PEDD:

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

**32040. Executive Director.**

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

**32050. General Counsel.**

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

**32055. Chief Administrative Law Judge.**

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

**32056. State Mediation and Conciliation Service.**

(a) “Service,” “SMCS” or “Division of Mediation” means the California State Mediation and Conciliation Service, as described in Government Code section 3600.

(b) “Supervisor” means the officer of that title within the Division of Mediation designated by the Board.

**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.

**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.

**32080. Day.**

“Day” means calendar day unless otherwise specified.

**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.

**32090. e-PERB.**

“e-PERB” means the Public Employment Relations Board’s filing system accessible through the agency’s website.

**32091. Electronic Filing.**

“Electronic filing” means the transmission of a document to PERB via e-PERB.**32092. Electronic Signature.**

(a) “Electronic signature” means an electronic sound, symbol, or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the electronic record. Electronic signatures are permitted only where expressly authorized by statute or these PERB regulations.

(b) When a document to be filed electronically requires a signature of any person, whether under penalty of perjury or otherwise, the document is deemed to have been signed by that person when electronically filed. The filing party, when electronically filing a document, certifies that the document has been properly signed or electronically signed. This subsection (b) shall not apply to proof of support under section 32700.

**32093. Electronic Service.**

“Electronic service” means the service of documents under Section 32140 through e-PERB or e-mail.

**32094. Filed.**

“Filed” means a document is received and accepted by PERB after the filing party has complied with applicable statutory and regulatory filing requirements whether filing electronically, in person, or through a mail delivery service.

**Article 2. General Provisions**

**32100. Application of Regulations.**

(a) All rules and regulations within this Chapter shall apply to proceedings conducted under EERA, Ralph C. Dills Act, and HEERA and to Chapters 2, 3 and 4 within this Division.

(b) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under MMBA and to Chapter 5 within this Division.

(c) All rules and regulations within this Chapter, except for Article 6 of Subchapter 6, shall apply to proceedings conducted under TEERA and to Chapter 6 within this Division.

(d) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under the Trial Court Act and to Chapter 7 within this Division.

(e) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under the Court Interpreter Act and to Chapter 8 within this Division.

(f) Except as expressly provided otherwise, the rules and regulations within this Chapter, and Chapters 2 through 8, do not apply to mediation, election or other services provided by mediators or conciliators pursuant to Government Code sections 3600 and 3601.

(g) All rules and regulations within this Chapter, except for Subchapters 6 and 8, shall apply to proceedings conducted under the PEDD and the PECC, excluding the administration of interest arbitration pursuant to Government Code Section 3557(b)(4). The rules and regulations in Articles 1 and 2 of Subchapter 2, and Subchapter 10 within this Chapter, shall apply to the administration of interest arbitration conducted under the PECC pursuant to Government Code Section 3557(b)(4).

**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.

**32110. Electronic Filing Requirements.**

(a) Except as otherwise provided by this Chapter, electronic filing is mandatory when filing documents with PERB. For the initial filing of a case, the filing party shall serve all parties pursuant to Section 32140, subdivision (a), and electronically file with PERB the initial filing and a proof of service. After the initial filing of a case, service of documents shall occur automatically through ePERB, except for unrepresented individuals not utilizing ePERB, in which case the filing party must serve the documents by personal delivery, mail, or with another delivery service properly addressed. Electronic filing is not required when submitting documents at formal hearing.

(b) Electronic filing is available but not mandatory for an unrepresented individual. For purposes of this subsection, the term “unrepresented individual” shall mean an individual natural person not represented by an attorney or a union representative. However, an unrepresented individual that files electronically shall be required to electronically file all subsequent documents, and to accept electronic service, unless she or he provides written notice to all parties that future filings shall occur through a different authorized means.

(c) A party filing a document through e-PERB may use an electronic signature as defined in section 32092. However, a party submitting proof of support under section 32700 of these regulations, either through e-PERB or otherwise, may rely on electronic signatures only to the extent permitted under section 32700.

(d) Documents electronically filed shall be in PDF format and text searchable. However, a party lacking the capacity to make a PDF file text searchable

shall file the document in a non-text searchable PDF format, and shall telephonically notify the Board that it has done so. Unless documents are compressed (in a zip file format), the maximum size of any single document that can be electronically filed is 25 MB. For documents larger than 25 MB, the filer shall separate them into multiple parts so that each part is no larger than 25 MB.

(e) Each document shall be filed individually. Attachments and exhibits are part of the document to which they are associated. Where a document exceeds the size limit specified under subsection (c), the document must be split into parts and each filed individually. When a document is filed in multiple parts, each part must be identified as part of the document, e.g., unfair practice charge part 1, unfair practice charge part 2, etc.

(f) Filers may electronically file a document through e-PERB at any time. However, all documents electronically filed after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed filed the next regular PERB business day. This section shall not apply to requests for injunctive relief whose filing requirements are governed by sections 32450 and 32455.

**32111. Notices to Employees Assigned Remote Work.**

(a) Notwithstanding any regulation under Chapters 1 through 10 of this Division, the Board may direct a public employer to provide notice of filing of a representation petition to its employees by electronic message, intranet, internet site, or other electronic means when the Board determines that a physical posting at the worksite is not practicable or effective because of remote work.

(b) For purposes of this section, the term “remote work” shall mean an arrangement where public employees perform their duties at a location other than a workplace provided by the public employer.

(c) Nothing herein shall prevent the Board from directing a public employer to provide notice by both physical and electronic means.

(d) This section does not limit or otherwise change the authority of the Board itself to order the posting of any notice.

**32115. Location to File Representation Matters.**

(a) This regulation applies to documents that are not electronically filed. Except as provided for in subsections (b), (c), (d), and (e), 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 Sacramento Regional Office shall be the appropriate location for filing all documents in representation matters relating to the State of California.

(d) The San Francisco Regional Office shall be the appropriate location for filing documents in representation matters relating to the University of California or Hastings College of the Law.

(e) The Los Angeles Regional Office shall be the appropriate location for filing documents in representation matters relating to the California State University.

(f) Notwithstanding the above, documents filed through e-PERB shall be deemed filed at the appropriate location.

**32120. Filing Contracts with Board.**

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

**32121. Place to File Matters with the SMCS.**

The San Francisco Regional Office shall be the appropriate location for filing documents in all matters relating to functions of the Division of Mediation.

**32125. Filing Confidential Documents**

(a) Unless the Board orders otherwise, in an electronic or paper filing that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of a social-security number or taxpayer-identification number, or, alternatively, a non-sensitive placeholder number in place of a social-security number or taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initial, or, alternatively, a non-sensitive, de-identified, and non-identifiable placeholder in place of the minor's name; and

(4) the last four digits of a financial-account number, or, alternatively, a non-sensitive placeholder number in place of a financial-account number.

(b) Prior to filing any document with PERB, a party shall redact the document as necessary to comply with subsection (a) and shall endeavor to redact other sensitive information that is not relevant to resolution of any matter before PERB. When redacting a document, a party shall endeavor to substitute non-sensitive and de-identified placeholders if needed to make a document or set of documents understandable.

(c) The Board may take any or all of the following measures to protect sensitive information:

(1) direct a party to refile or resubmit a document with redactions or modifications as requested by the Board, and in such cases the filing shall be deemed to be retroactive to the original filing date unless otherwise ordered by the Board; and

(2) protect sensitive information by redacting or modifying a document, placing all or part of a document under seal, or otherwise limiting public access to a document in a manner that complies with the Board's legal obligations and authority.

### **32130. Computation of Time.**

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

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

(c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. No extension of time applies in the case of documents served in person, or by electronic service as permitted by section 32140.

(d) A two day extension of time shall apply to any filing made in response to documents served by overnight delivery.

### **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. A Board agent may accept and approve a late filed request for an extension of time as provided for in Section 32136.

**32135. Non-Electronic Filing.**

The following rules shall apply to parties authorized to file documents by a mail delivery service or in person:

(a) All documents not filed through e-PERB shall be considered “filed” when the originals are actually received by the appropriate PERB office, as stated in section 32115 of these regulations, during a regular PERB business day. All documents, except for proof of support as described in sections 32700, must also be accompanied by proof of service pursuant to Section 32140.

(b) Documents must be scan-ready, which means that documents must not be stapled or otherwise bound. Parties may submit two-sided documents.

**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. An error or malfunction of e-PERB shall be deemed good cause for late filing.

**32140. Service; Proper Recipient for Filing or 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, or when sent by electronic service, as defined by Section 32093, and authorized in subdivision (b) of this section. 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.

(d) Whenever a document is required to be "filed" or "served" with any of the below listed entities, the proper recipient shall be:

(1) The Board: the appropriate or designated regional office (see, e.g. Section 32075) unless the headquarters office is specified, or the document is filed through e-PERB;

(2) The Board itself: only at the headquarters office unless the document is filed through e-PERB;

(3) An employer

(A) 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;

(B) in case of a state employer: The Governor or his designated representative on behalf of the State of California;

(C) in the case of a higher education employer:

(i) If the employer is the Regents of the University of California, the Office of the General Counsel of the University;

(ii) If the employer is the Directors of Hastings College of the Law, the Office of the General Counsel of Hastings;

(iii) 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.

(D) in the case of a public agency employer as defined in Government Code section 3501(c): the chief executive officer, chief legal counsel, or individual whose job responsibilities includes receiving official documents on behalf of the chief executive officer, governing board, or chief legal counsel.

(E) 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.

(F) 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.

(G) in the case of a regional committee employer as defined in Government Code section 71801(h) and 71807: the individual designated to receive service or the chair of the regional committee.

(H) in the case of the Judicial Council: the Administrative Director of the Courts or his or her designated representative.

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

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

(e) Documents filed electronically with PERB will be deemed to have been served with the appropriate recipient, except: (1) all initial filings with PERB must be served by personal delivery, mail or through another delivery service properly addressed, and (2) electronic service shall not qualify as sufficient for service on an unrepresented individual party who has declined to use e-PERB as permitted by section 32110 of PERB's regulations.

### **32143. Abeyances.**

(a) Upon request, the Board may place any matter in abeyance for a period that does not exceed six months. The Board may extend the abeyance for additional periods of six or less months if all parties agree. No case, however, shall remain in abeyance for more than two years without approval by the Board itself.

(b) Nothing herein shall preclude the Board from placing a matter in abeyance on its own accord.

(c) This section shall not apply to matters pending before the Board itself that are subject to the 180-day adjudication rule under section 32305 of these regulations.

**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.

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

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

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

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

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

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

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

**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.

**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.

(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.

**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, 71825.1 or 110017 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits.

### **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.

**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.

**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.

**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. 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.

**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.

**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.

**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.

**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.

**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.

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

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

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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 brief with the Board agent. Service and proof of service of the brief pursuant to Section 32140 are required.

**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.

**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.

**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.

**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.

**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.

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

- (a) Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.
- (b) In cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400 or 91450, and where exceptions are filed pursuant to Section 32300, the Board agent's decision shall become final unless the Board itself issues a decision not later than 180 days from the date the exceptions were filed with the Board.
- (c) The Board shall not grant extensions of time in cases before the Board itself that are subject to subparagraph (b), above.

**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.

**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.

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

(a) The Board itself may:

(1) Issue a decision based upon the record of hearing, or

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

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

(c) Unless expressly designated otherwise, 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.

(d) A majority of the Board members issuing a decision or order shall determine whether the decision or order, or any part thereof, shall be designated as non-precedential. In determining whether all or part of a decision or order shall be designated as non-precedential, the Board may consider whether the decision or order:

(1) Establishes new law or policy;

(2) Applies existing law to a set of facts significantly different from those stated in prior precedential decisions;

(3) Modifies, clarifies or explains existing law or policy;

(4) Resolves a conflict in law;

(5) Addresses a legal or factual issue of continuing interest;

(6) Provides an overview of existing law or policy; or

(7) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and designation of the majority and separate opinions as precedential would make a significant contribution to the development of public sector labor law.

(e) The Board itself may reverse, in whole or in part, the prior designation of a decision or order as precedential or non-precedential. A request to reverse the precedential or non-precedential designation of a decision or order shall be made within 20 days following the date of service of the decision or order. An original and five copies of the request shall be filed with the Board itself in the headquarters office. A request seeking designation of a decision as precedential shall state with specificity why one or more of the criteria in subparagraph (d) of this Section are satisfied. A request seeking designation of a decision as non-precedential shall state with specificity why none of the criteria in subparagraph (d) are satisfied. Service and proof of service of the request pursuant to Section 32140 are required.

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

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

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

**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.

**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,
- (3) a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215, or
- (4) a decision issued following interest arbitration conducted pursuant to Government Code Section 3557(b)(4).

(b) An administrative decision shall contain a statement of the issues, fact, law and rationale used in reaching the determination.

**32360. Appeal Requirements.**

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

(b) 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.

**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.

**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. 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.

**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.

**Article 4. Reconsideration**

**32400. Administrative Remedies.**

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

**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. 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 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.

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

### **32450. Request.**

(a) A request from a party that the Board seek injunctive relief shall be filed with the General Counsel at the headquarters office. Requests filed after PERB's regular business hours shall be deemed filed on the next regular business day. 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.

### **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 respondent's position statements or other documents filed with the General Counsel must be filed at the headquarters office, and service and proof of service on the opposite party. For purposes of this section, a Board agent shall establish and inform the parties of all filing deadlines, which shall include the date and time that a party must file a document. The Board agent may contact and question such persons as necessary to effectuate the investigation.

**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.

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

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

**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.

**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 of these Regulations, may file a request to seek judicial review within 20 days following the date of service of the decision. 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. 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.

## **SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS**

### **32602. Processing Violations.**

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

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

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

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

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

### **32603. Employer Unfair Practices under MMBA.**

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

(a) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.

(b) Deny to employee organizations rights guaranteed to them by Government Code section 3503, 3504.5, 3505.1, 3505.3, 3507.1, 3508(d) or 3508.5 or by any local rule adopted pursuant to Government Code section 3507.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 3505 or any local rule adopted pursuant to Government Code section 3507.

(d) Dominate or interfere with the formation or 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 Government Code section 3502 or 3508(d) or any local rule adopted pursuant to Government Code section 3507.



(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 3505 or 3505.2, or required by the MMBA or any local rule adopted pursuant to Government Code section 3507.

(f) Adopt or enforce a local rule that is not in conformance with MMBA.

(g) In any other way violate MMBA or any local rule adopted pursuant to Government Code section 3507.

**32604. Employee Organization Unfair Practices under MMBA.**

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

(a) Cause or attempt to cause a public agency to engage in conduct prohibited by the MMBA or by any local rule adopted pursuant to Government Code section 3507.

(b) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 3505 or by any local rule adopted pursuant to Government Code section 3507.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 3505 or 3505.2, or required by the MMBA or any local rule adopted pursuant to Government Code section 3507.

(e) In any other way violate MMBA or any local rule adopted pursuant to Government Code section 3507.

**32606. Employer Unfair Practices under Trial Court Act.**

It shall be an unfair practice for a trial court to do any of the following:

(a) Interfere with, intimidate, restrain, coerce or discriminate against trial court employees because of their exercise of rights guaranteed by Government Code section 71631 or by any local rule adopted pursuant to Government Code section 71636.

(b) Deny to employee organizations rights guaranteed to them by the Trial Court Act or by any local rule adopted pursuant to Government Code section 71636.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 71634.2 or any local rule adopted pursuant to Government Code section 71636.

(d) Dominate or interfere with the formation or 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 Government Code section 71631 or any local rule adopted pursuant to Government Code section 71636.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71634.4 or required by any local rule adopted pursuant to Government Code section 71636.

(f) Adopt or enforce a local rule that is not in conformance with the Trial Court Act.

(g) In any other way violate the Trial Court Act or any local rule adopted pursuant to Government Code section 71636.

**32607. Employee Organization Unfair Practices under Trial Court Act.**

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

(a) Cause or attempt to cause a trial court to engage in conduct prohibited by the Trial Court Act or by any local rule adopted pursuant to Government Code section 71636.

(b) Interfere with, intimidate, restrain, coerce or discriminate against trial court employees because of their exercise of rights guaranteed by Government Code section 71631 or by any local rule adopted pursuant to Government Code section 71636.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 71634.2 or by any local rule adopted pursuant to Government Code section 71636.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71634.4 or required by any local rule adopted pursuant to Government Code section 71636.

(e) In any other way violate the Trial Court Act or any local rule adopted pursuant to Government Code section 71636.

**32608. Employer Unfair Practices under Court Interpreter Act.**

It shall be an unfair practice for a trial court or regional committee to do any of the following:

(a) Interfere with, intimidate, restrain, coerce or discriminate against court interpreters because of their exercise of rights guaranteed by Government Code section 71813 or by any local rule adopted pursuant to Government Code section 71823.

(b) Deny to employee organizations rights guaranteed to them by the Court Interpreter Act or by any local rule adopted pursuant to Government Code section 71823.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 71818 or any local rule adopted pursuant to Government Code section 71823.

(d) Dominate or interfere with the formation or 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 Government Code section 71813 or any local rule adopted pursuant to Government Code section 71823.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71820 or required by any local rule adopted pursuant to Government Code section 71823.

(f) Adopt or enforce a local rule that is not in conformance with the Court Interpreter Act.

(g) In any other way violate the Court Interpreter Act or any local rule adopted pursuant to Government Code section 71823.

**32609. Employee Organization Unfair Practices under Court Interpreter Act.**

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

(a) Cause or attempt to cause a trial court or regional committee to engage in conduct prohibited by the Court Interpreter Act or by any local rule adopted pursuant to Government Code section 71823.

(b) Interfere with, intimidate, restrain, coerce or discriminate against court interpreters because of their exercise of rights guaranteed by Government Code section 71813 or by any local rule adopted pursuant to Government Code section 71823.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 71818 or by any local rule adopted pursuant to Government Code section 71823.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71820 or required by any local rule adopted pursuant to Government Code section 71823.

(e) In any other way violate the Court Interpreter Act or any local rule adopted pursuant to Government Code section 71823.

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

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

- (a) Provide the exclusive representative with less than 10 days' notice in advance of a new employee orientation as required by Government Code Section 3556.
- (b) Refuse or fail to provide the exclusive representative with access to a new employee orientation as required by Government Code Section 3556.
- (c) Refuse or fail to negotiate with the exclusive representative, upon request, over the structure, time, and manner of the exclusive representative's access to new employee orientations as required by Government Code Sections 3556 and 3557.
- (d) Disclose the date, time, and place of a new employee orientation to any party other than the employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation in violation of rights guaranteed by Government Code Section 3556.
- (e) Refuse or fail to provide the exclusive representative information required by Government Code Section 3558.
- (f) Refuse or fail to grant a reasonable leave of absence to a public employee upon request of the exclusive representative as required by Government Code Section 3558.8.
- (g) Refuse or fail to negotiate with the exclusive representative, upon request, over the procedures for requesting and granting leave as required by Government Code Section 3558.8.
- (h) In any other way violate the PECC.

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

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

- (a) Refuse or fail to negotiate with the public employer, upon request, over the structure, time, and manner of the exclusive representative's access to new employee orientations as required by Government Code Sections 3556 and 3557.
- (b) Refuse or fail to negotiate with the public employer, upon request, over the procedures for requesting and granting leave as required by Government Code Section 3558.8(b).
- (c) In any other way violate the PECC.

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

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

- (a) Deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing

representation by an employee organization, or from authorizing dues or fee deductions to an employee organization, in violation of Government Code Section 3550.

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

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

(d) In any other way violate the PEDD.

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

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

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

(b) In any other way violate the PEDD.

**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.

**32615. Contents of Charge.**

(a) A charge may be filed alleging that an unfair practice or practices have been committed. The charge shall be in writing, signed under penalty of perjury by the party

or its agent with the declaration that the charge is true, and complete to the best of the charging party's knowledge and belief, and contain the following information:

- (1) The name and address of the party alleged to have engaged in an unfair practice. If the party is the State of California, the name and address of the "appointing power" as defined in Government Code Section 18524, and of the Governor shall be set forth;
  - (2) The name, address, and telephone number of the charging party;
  - (3) The name, address, and telephone number of an authorized agent of the charging party to be contacted;
  - (4) The sections of the Government Code, the applicable local rules, the applicable rule or regulation adopted by the Statewide Authority pursuant to IHSSEERA or the sections of the Public Utilities Code, alleged to have been violated;
  - (5) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice; and
  - (6) A statement of the remedy sought by the charging party;
- (b) A charge filed under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act alleging a violation of local rules must also contain a copy of the applicable rule(s).
- (c) Service and proof of service on the respondent pursuant to Section 32140 are required.

**32620. Processing of Case.**

- (a) When a charge is filed, it shall be assigned to a Board agent for processing.
- (b) The powers and duties of such Board agent shall be to:
  - (1) Assist the charging party to state in proper form the information required by section 32615;
  - (2) Answer procedural questions of each party regarding the processing of the case;
  - (3) Facilitate communication and the exchange of information between the parties;
  - (4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.
  - (5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government

Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), or Public Utilities Code Section 99561.2; or if it is determined that a charge filed pursuant to Government Code section 3509(b) is based upon conduct occurring more than six months prior to the filing of the charge.

(6) Place the charge in abeyance if the dispute arises under MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act and is subject to deferral to final and binding arbitration pursuant to a collective bargaining agreement, and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act, as provided in section 32661.

(7) Issue a complaint pursuant to Section 32640.

(c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries. Any response must be in writing, and signed under penalty of perjury by the party or its agent with the declaration that the response is true and complete to the best of the respondent's knowledge and belief. Service and proof of service pursuant to Section 32140 are required.

(d) The Board agent shall advise the charging party in writing of any deficiencies in the charge in a warning letter, unless otherwise agreed by the Board agent and the charging party, prior to dismissal of any allegations contained in the charge. The warning letter shall identify the facts obtained from the charge or any response to the charge which reveal a deficiency in the charge. The dismissal of a charge shall also be in writing and must identify the deficiencies in the charging party's allegations.

**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.

**32625. Withdrawal of Charge.**

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

**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.

**32635. Review of Dismissals.**

(a) Within 20 days of the date of service of a dismissal, the charging party may file an appeal of the dismissal with the Board itself. 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. Service and proof of service of the statement pursuant to Section 32140 are required.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**32661. Repugnancy Claims.**

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

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

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

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

**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.

**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.

**SUBCHAPTER 6. REPRESENTATION PROCEEDINGS**

**Article 1. General Provisions**

**32700. Proof of Support.**

(a)(1) Proof of employee support for representation petitions, including petitions for certification, requests for recognition, severance requests or petitions, and those unit modification petitions for which proof of support is required, 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 shall clearly demonstrate that the employee no longer desires to be represented by the exclusive representative.

(3) This section governs proof of employee support under all statutes that the Board enforces, except to the extent that an MMBA, Trial Court Act, or Court Interpreter Act employer has promulgated differing reasonable rules regarding proof of employee support. It also governs proof of support under section 8434 of the Education Code and related provisions. When applying this section with respect to providers as defined under section 8431 of the Education Code, the term "employee" used in this section shall include such providers.

(b) Proof of support shall indicate each employee's name. An employee's proof of support shall remain valid provided it is used to support a petition or request that is first submitted within one (1) year from the date the proof of support was obtained, except

that proof of support pertaining to childcare providers, pursuant to Education Code Section 8434, shall remain valid provided it is used to support a petition or request that is first submitted within two (2) years from the date the proof of support was obtained. If the proof of support does not show the date on which it was obtained, the party claiming support shall have the burden of establishing by other means that the proof of support remained valid as of the time the relevant petition or request was first submitted. Any proof of support meeting the requirements of this section shall be considered valid even though the employee demonstrated support for more than one employee organization.

(c) 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.

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

(1) Original dues deduction authorization forms signed by employees, or proof of dues payments by the employees;

(2) Original membership applications signed by employees;

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

(4) A list of employees who are not exclusively represented by an employee organization and who have signed or electronically signed proofs of support clearly demonstrating a desire 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, or provided a pdf, screenshot, or image demonstrating their signatures on proofs of support clearly demonstrating such a desire. In order to validate such a list, the employee organization must submit to the Board a sample of such proofs of support, and must establish by sworn declaration that for each employee listed, the employee organization maintains for inspection by the Board, if the Board finds it necessary to request such inspection, one of the following:

(A) An original signed proof of support pursuant to subsection (d)(1), (d)(2), or (d)(3);

(B) Records showing that the employee organization obtained an electronic signature on a proof of support in compliance with the California Civil Code provisions collectively known as the Uniform Electronic Transactions Act, codified at Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the California Civil Code; or

(C) Records showing that an employee organization obtained a proof of support via a process that qualifies as an electronic signature by virtue of including each of the following elements: (i) The proof of support contains the employee's name

and a cellular phone number, email address, or home address; (ii) the employee organization sent a confirmation transmission to the cellular phone number, email address, or home address provided, indicating the language to which the employee agreed, and such language clearly demonstrates the employee's desire 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; and (iii) the employee organization has submitted to the Board any responses to such confirmation transmissions that the employee organization received by the time of submission.

(5) Other evidence as determined by the Board, provided that such evidence is consistent with the principles underlying this subsection (d).

(e) Documents submitted to the Board as proof of employee support, including all documents submitted to the Board under section (d)(4)(C), shall remain confidential and not be disclosed by the Board to any party other than the petitioner, and used only to indicate whether the proof of support is sufficient.

(f) 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.

## **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 I; Chapter 4, Subchapter 1 or 2; or Chapter 6 of these regulations.

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

### **32721. Parties.**

"Parties" means the 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).

**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.

**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.
- (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.

**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.

### **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.

### **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.

### **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.

**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.

**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.

**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.

**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.

### **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.

**32740. Withdrawal of Objections.**

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

**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.

**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.

**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.

**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.

**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.

**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.

**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.

### **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.

#### **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.

#### **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.

#### **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.

##### **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) 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.

(c) For Ralph C. Dills Act TEERA 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.

##### **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.

**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) 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 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.

## **Article 5. Petition for Unit Modification**

### **32781. Petition.**

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide an existing unit into two or more appropriate units;
- (3) To consolidate two or more established units into one appropriate unit.

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit;
- (2) To make technical changes to clarify or update the unit description.
- (3) To resolve a dispute as to unit placement or designation of a new classification or position.
- (4) To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the recognized or certified employee organization, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful written agreement or memorandum of understanding as defined in these regulations in Section 33020 for EERA, Section 40130 for Ralph C. Dills Act, Section 51026 for HEERA, or Section 71026 for TEERA.



(c) All affected recognized or certified employee organizations may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and shall include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(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 and the title(s) of the established unit(s);

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

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current written agreement or memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

**32783. Response to Petition.**

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

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

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

(5) The PERB unit modification case number.

**32784. Board Determination Regarding Proof of Support.**

(a) If proof of support has been filed pursuant to section 32781(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) 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 of the proof of support.

**32786. Disposition of Petitions.**

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition (1) if it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) if, within the previous 12 months, the employer has lawfully recognized, or the Board has certified, the exclusive representative in the described unit or a subdivision thereof.

(c) The Board may request proof of support or order an election among unrepresented employees to be added to a unit, if classifications found appropriate to be added to the unit do not include all classifications originally petitioned for.

(d) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 32754.

**Article 6. Impasse Procedures**

**32791. Parties' Selection of Mediator.**

At any time after a party declares impasse, the parties may mutually agree upon their own mediation procedures, including the right to arrange for a mediator of their choice, in lieu of the mediation procedure set forth in these regulations.

**32792. Request That Board Determine Impasse and Appoint Mediator.**

(a) After declaring impasse orally or in writing to the other party or after jointly declaring impasse, either or both parties may request the Board to determine that an impasse exists and appoint a mediator. This request may initially be made by telephone, but a request in writing shall follow. The request shall be signed under penalty of perjury that the information alleged therein is true and complete to the best of the requesting party's/parties' knowledge and belief, and contain the following information:

(1) The name, address and telephone number of the employer and the exclusive representative;

- (2) The name, title, address and telephone number of the agent to be contacted for each party;
  - (3) A description of the established unit, the approximate number of employees in the unit and the date the exclusive representative was recognized or certified;
  - (4) The type of dispute;
  - (5) The date(s) the parties' initial proposals were presented to the public;
  - (6) The date negotiations commenced, the number of negotiating sessions and the approximate total number of hours spent in negotiations to date;
  - (7) The status of negotiations, including the date impasse was declared by the party/parties pursuant to this section, the number and subject matter of issues on which the parties have reached tentative agreement, and the total number and subject matter of issues which remain in dispute;
  - (8) A clear and concise description of the negotiations which have occurred, including the extent to which the parties have made counter-proposals and have discussed the issues which remain in dispute, and any facts which indicate that future meetings without the assistance of a mediator would be futile.
- (b) 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.

**32793. Board Determination of Impasse.**

- (a) The Board shall, within five working days following the receipt of the written request for appointment of a mediator, orally notify the parties that the Board has determined that:
- (1) An impasse exists and a mediator has been appointed, or
  - (2) Impasse has not been reached.
- (b) Thereafter, the Board shall serve the parties with written notice of the determination.
- (c) In determining whether an impasse exists, the Board shall investigate and may consider the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made and discussed counter-proposals to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data.

(d) "Working days," for purposes of this Section only, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

(e) The determination as to whether an impasse exists shall not be appealable to the Board itself.

**32795. Subsequent Requests That Board Determine Impasse and Appoint Mediator.**

Following the Board's determination that an impasse does not exist, a party may subsequently request that the Board determine that an impasse exists and appoint a mediator whenever there is a change in the facts upon which the initial determination was based. Subsequent requests shall follow the procedures set forth in Section 32792.

**32797. Appointment of a Factfinder Under EERA and HEERA.**

Not sooner than 15 days after the appointment of a mediator by the Board, or not sooner than 15 days after the parties have attempted to resolve their dispute through a mediation procedure on which they have mutually agreed, the Board shall appoint a person to chair a factfinding panel, if:

(a) The mediator has filed a written declaration that factfinding is appropriate to the resolution of the dispute with the regional office, and

(b) Either party has requested by written notification to the other, that their differences be submitted to a factfinding panel. A copy of the written request shall be filed with the regional office.

**32798. Appointment of Person to Chair Factfinding Panel Under EERA and HEERA.**

(a) Under EERA, the Board shall select and appoint the chairperson unless notified by the parties that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by the Board.

(b) Under HEERA, the Board shall select and appoint the chairperson unless notified by the parties that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by the Board, and that the parties have agreed to waive any requirement that the Board bear the costs of the panel chairperson.

**32799. Parties' Statement for Factfinder Under EERA and HEERA.**

In cases where the Board has appointed a person to chair the factfinding panel, the parties shall prepare a statement of the issues to be placed before the panel. The statement should be jointly filed, if possible, although the parties may file separate statements if they disagree about the issues to be placed before the panel.

**32800. Publication of Factfinder's Report Under EERA and HEERA.**

(a) Under EERA, the employer shall make public the entire, verbatim final report signed by the chairperson of the factfinding panel within 10 days of its receipt by the parties.

(b) Under HEERA, should the factfinding panel decide to publish the report pursuant to Government Code Section 3593, such publication shall be made by the employer in the manner described in subsection (c) below.

(c) Publication shall be made by posting a notice that the factfinder report has been issued and is available to the public. The notice shall be posted in the locations normally used for posting public notices regarding regular meetings of the employer and shall indicate the times and places where the public may inspect a copy of the report. The employer shall insure that a reasonable number of copies shall be made available to the public.

**32802. Request for Factfinding Under the MMBA.**

(a) An exclusive representative 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. Such a request may be filed:

(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules; or

(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.

(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)(1) or (2), 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.

(d) "Working days," for purposes of this Section and Section 32804, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

**32804. Appointment of Person to Chair Factfinding Panel Under the MMBA.**

If a request is determined to be sufficient under Section 32802, the Board shall, within five working days following this determination, 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.

**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.

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

**Article 1. Services**

**32998. Reimbursement for Services.**

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

services, shall include travel time and time spent with the parties to determine the content of the training and goals for the facilitation, and shall continue until the services are completed.

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

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

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

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

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

Election services shall be reimbursed as follows:

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

The cost of election services shall be split equally between or among the parties unless otherwise specified in local rules or agreed to by the parties. Which party or parties shall be responsible for reimbursement of SMCS, and in what amount, shall be



determined at the initial set up meeting and will be recorded in the memorandum of election agreement.

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

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

## **Article 2. Elections**

### **32999. Elections.**

(a) The provisions of this Article are applicable whenever SMCS conducts representation and agency shop elections pursuant to the local rules of an MMBA, Trial Court Act or Court Interpreter Act employer.

(b) SMCS shall conduct such elections only pursuant to a Consent Election Agreement entered into by all parties and SMCS. The term "Consent Election Agreement" means either an agreement by the parties as to the time, place and manner of an election, or an agreement by the parties that authorizes the election supervisor assigned by SMCS to determine the time, place and manner of the election.

### **33000. Ballots.**

(a) All elections shall be conducted by secret ballot under the supervision of SMCS.

(b) Ballots shall be prepared under the supervision of SMCS. The order of voting choices and the wording of each ballot entry shall be determined by SMCS in the absence of an agreement by the parties.

(c) Except in the case of a runoff election, the ballot entry of "No Organization" or "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 33003), an employee organization may file a request with SMCS 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.

**33001. Parties.**

“Parties” means the MMBA, Trial Court Act, or Court Interpreter 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 local rules of the employer.

**33002. Stay of Election.**

(a) Any party to an SMCS-conducted election may request that the Board stay the 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.

(b) A request for a stay of an election shall be filed with the appropriate regional office, in accordance with Sections 32075 and 32115. Service and proof of service pursuant to Section 32140 are required.

(c) 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.

**33003. Notice of Election.**

SMCS shall provide a notice of election to the parties. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. Unless otherwise agreed by the parties, 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. The posting shall be accomplished by the date specified in the Consent Election Agreement. The notice shall remain posted through the final day for casting ballots.

**33004. List of Voters.**

(a) At a date established by the Consent Election Agreement, the employer shall submit to the election supervisor assigned by SMCS a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility. Unless otherwise directed by SMCS, 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 SMCS, the voter list for a mailed ballot election shall be in alphabetical order and include the job title or classification and home address of each eligible voter, and shall be accompanied by two sets of name and home address labels for each eligible voter. The election supervisor may require that the voter list be submitted in an electronic format.

(b) The list of eligible voters which contains a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. 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.

(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.

### **33005. Voter Eligibility.**

Unless otherwise agreed by the parties, 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.

### **33006. Challenges.**

(a) In an on-site election, an authorized observer of any party to the election 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, 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 opening of ballot envelopes.

(c) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved in accordance with Section 33008, unless the Consent Election Agreement provides otherwise.

### **33007. 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, SMCS 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.

**33008. Resolution of Challenges.**

When the tally of ballots discloses that challenged ballots are sufficient in number to affect the outcome of the election, unless the Consent Election Agreement provides for an alternative procedure, the Board 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.

**33009. Objections.**

(a) Within 10 days following the service of the tally of ballots, any party to the election may file with the Board, at the appropriate 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 representation hearing pursuant to Section 32175. 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 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.

**33010. Powers and Duties of Board Agent Concerning Objections.**

Concerning objections, a 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.

**33011. Withdrawal of Objections.**

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

**33012. Hearings on Objections and Challenges.**

Objections to the conduct of an election which have not been dismissed pursuant to Section 33009(g) or 33010(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.

**33013. 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.

**33014. Definition of Arbitration Decision.**

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

(b) An arbitration decision is not:

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

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

**33014.5. Reimbursement for Arbitration Services.**

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

## CHAPTER 2. EDUCATIONAL EMPLOYMENT RELATIONS ACT

### SUBCHAPTER 1. REPRESENTATION PROCEEDINGS

#### Article 1. General Provisions

##### **33015. Parties.**

“Parties” means the public school employer, the employee organization which is the exclusive representative of any employee covered by a request, intervention or petition, any employee organization known to have an interest in representing any employees as demonstrated by having filed a pending request or intervention, or any group of employees which has filed a pending petition pursuant to Government Code Section 3544.3.

##### **33020. Window Period.**

“Window period” means the 29-day period established pursuant to Government Code Sections 3544.1(c) and 3544.7(b)(1) which is less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the exclusive representative. The written agreement expiration date means the last effective date of the agreement. Notwithstanding the provisions of Section 32130, the date on which the written agreement expires shall not be counted for the purpose of computing the window period.

#### Article 2. Request for Recognition and Intervention

##### **33050. Request for Recognition.**

(a) A request for recognition by an employee organization seeking to become the exclusive representative of an appropriate unit shall be filed with the employer. A copy of the request shall be filed concurrently with the regional office. The request shall be signed by an authorized agent of the employee organization and shall be on a form provided by the Board.

(b) A copy of the request and proof of majority support in the unit claimed to be appropriate shall be filed with the regional office concurrently with the filing of the request upon the employer. Proof of support is defined in Chapter 1, Section 32700 of these Regulations.

(c) Concurrent with the filing of the request, the employee organization shall concurrently serve a copy of the request, excluding the proof of majority support, on the parties and the regional office. Proof of service pursuant to Section 32140 is required.

(d) A request to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative shall be filed pursuant to this Article and in accordance with

the provisions of Article 6 (commencing with Section 33700). A petition to become the exclusive representative of all of the employees in an established unit represented by an exclusive representative shall be filed pursuant to Chapter 1, Subchapter 6, Article 4 (commencing with Section 32770) of these regulations.

**33060. Posting Notice of Request for Recognition.**

- (a) The employer shall post a notice of the request for recognition as soon as possible but in no event later than 10 days following receipt of the request.
- (b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 15 workdays.
- (d) The notice shall consist of a copy of the request for recognition 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 on the parties concurrent with the posting of the notice.

**33070. Intervention.**

- (a) Except as provided in Section 33700, an intervention by an employee organization shall be filed with the employer within 15 workdays following posting of the request for recognition. A copy of the intervention shall be filed concurrently with the regional office. The intervention shall be signed by an authorized agent of the employee organization and be on a form provided by the Board.
- (b) Proof of at least 30 percent support in the unit claimed to be appropriate shall be filed with the regional office concurrently with the filing of the intervention. Proof of support is defined in Chapter 1, Section 32700 of these regulations.
- (c) Concurrent with the filing of the intervention, the employee organization shall serve a copy of the intervention, excluding the proof of support, on the parties and the regional office. Proof of service pursuant to Section 32140 is required.

**33075. Determination of Showing of Support.**

- (a) Within 20 calendar days of the date of receipt of the request, unless otherwise directed by the Regional Director, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of employees employed in the claimed unit on the date the request for recognition was filed with the employer.
- (b) If, after initial determination, the showing is insufficient the Regional Director may allow up to 10 calendar days to perfect the showing of support.



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

**33080. Posting of Notice of Intervention.**

(a) The employer shall post a notice of the intervention as soon as possible but in no event later than 10 days following receipt of the intervention.

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

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

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

(e) The employer shall serve a copy of the notice of intervention on the regional office and on the parties concurrent with the posting of the notice.

**33085. Board Determination Regarding Proof of Support - Request for Recognition, Intervention.**

(a) Within 20 days of the date of receipt of the request or intervention, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the request or intervention was filed with the employer, 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.

**33090. Withdrawal of Request or Intervention.**

Any request for recognition or intervention may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal shall be filed with the employer and a copy served on the parties and the regional office. Proof of service pursuant to Section 32140 is required. A copy of the withdrawal shall be posted for 15 workdays on all employee bulletin boards in each facility of the employer in which members of the unit claimed to have been appropriate are employed.

**33100. Amendment of Request or Intervention; Posting Amendments.**

(a) A request for recognition or intervention may be amended to correct technical errors or to delete job classifications or positions from the proposed unit at any time prior to the issuance of a PERB notice of representation hearing or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement. The amendment shall be filed with the employer and copies concurrently served on the parties and the regional office. Proof of service pursuant to Section 32140 is required. No posting shall be required.

(b) A request for recognition or intervention may be amended to add job classifications or positions to a proposed unit, subject to the following:

(1) Except as provided in Section 33700(c), an amendment to add job classifications or positions to a proposed unit may be filed at any time prior to the issuance of a PERB notice of representation hearing, or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement.

(2) The amendment shall be filed with the employer. The employee organization shall concurrently serve a copy of the amendment on the parties and the regional office. Proof of service pursuant to Section 32140 is required. Additional proof of support, if needed to maintain standing as a requester or intervenor, shall be concurrently filed with the regional office.

(3) The employer shall post a notice of the amended request or intervention as soon as possible but in no event later than 10 days following receipt of the amendment. The notice shall conform to the requirements for posting an original request for recognition or intervention and shall remain posted for 15 workdays, during which time interventions may be filed on an amended request for recognition.

(4) An employer response to the amended request or intervention shall be filed with the regional office within 15 days following the service of the Board's determination of adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for employer decisions as set forth in Section 33190.

(c) Amendments to correct technical errors, add or delete job classifications or positions from a party's proposed unit which are requested after the issuance of the notice of hearing are subject to approval by the Board agent assigned to the hearing.

The Board agent may grant the requested amendment, if it will not unduly impede the hearing, and if sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the Board agent.

### **Article 3. Employer Decision; Request for Board Investigation**

#### **33190. Employer Decision Regarding Request for Recognition and Intervention.**

(a) Unless otherwise directed by the Board, within 15 days following service of the Board's determination regarding the adequacy of proof of support, the employer shall file a decision with the regional office.

(b) Service and proof of service of the employer decision pursuant to section 32140 are required.

(c) The employer shall use "Format A" if it has granted recognition pursuant to Government Code sections 3544 and 3544.1. As soon as possible, but in no event later than 10 days from its issuance, the employer shall post a copy of the employer decision conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit affected are employed. The decision shall remain posted for at least 15 workdays.

#### **Format A: RECOGNITION**

(1) The (name) School District has recognized (organization) as the exclusive representative for an appropriate unit of employees described below for purposes of meeting and negotiating with the district;

(2) No intervention has been filed during the posting period;

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

(4) The name, address and telephone number of the employee organization;

(5) A description of the grouping of jobs or positions which constitute the appropriate unit;

(6) The number of employees in the unit recognized;

(7) The date of recognition.

(d) The employer shall use "Format B" if it has not granted recognition.

#### **Format B: DENIAL OF RECOGNITION**

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

(2) Attach a copy of the request for recognition;

(3) Reasons for Denial of Recognition:

(A) Does the employer doubt the appropriateness of the proposed unit? If so, what classifications or positions remain in dispute? State the employer's position regarding the dispute.

(B) Was the request timely and appropriately filed? If not, fully explain any deficiencies.

(C) Is the employer unable to grant recognition because some or all of the employees in question are part of a negotiating unit that is already represented by an exclusive representative?

(D) Were any interventions filed within the 15 workday posting period? Attach a copy of each intervention. For each intervention, state the following:

1. Does the employer doubt the appropriateness of the unit proposed by the intervenor? If so, what classifications or positions remain in dispute? State the employer's position regarding the dispute.

2. Was the intervention timely and appropriately filed? If not, fully explain any deficiencies.

(4) If a unit dispute exists, does the employer request the Board to resolve the dispute pursuant to Government Code section 3544.5(a)?

**33230. Employee Organization Petition for Board Investigation.**

(a) Not later than 90 days following the date an employer decision is filed or required to be filed with the regional office, whichever occurs first, an employee organization may file a petition pursuant to Government Code Section 3544.5(b) or (c) requesting the Board to investigate and decide whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit. The petition shall allege one of the following grounds:

(1) The employer has filed a decision not to recognize the employee organization, but did not request a Board investigation; or

(2) The employer has failed to file an employer decision in response to a request for recognition or an intervention pursuant to Section 33190; or

(3) The employer has wrongfully denied a request for recognition or intervention.

(b) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.

(c) The petition 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 employee organization agent to be contacted;

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

(3) A copy of the request for recognition or intervention filed with the employer;

(4) A statement of the issues in dispute;

(5) A statement indicating what specific action(s) is requested of the Board.

**33235. Failure to File Petition for Board Investigation.**

If no petition for Board investigation is timely filed pursuant to section 33190 or 33230, the request for recognition shall be deemed invalid and shall not bar a subsequent request for recognition.

**33237. Board Investigation.**

(a) Whenever a petition regarding a representation matter 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.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) The conditions of Government Code Sections 3544.1(c) or (d) or 3544.7(b) exist. A petition filed less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and another employee organization must actually be received in the manner set out in Section 32135 during the "window period" as defined by Section 33020; or

(3) A valid 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.

## **Article 4. Representation Hearings**

### **33280. Withdrawal of a Petition.**

Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement among the parties.

### **33290. 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.

**33300. 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.

**33310. Posting Notice of Hearing.**

As soon as possible but in no event later than 10 days following issuance of the notice of hearing, the employer shall post a copy of the notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit described in the notice are employed. The notice shall remain posted through the date set for the hearing.

**33330. Conduct of Hearing.**

Hearings shall be conducted pursuant to procedures set forth in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

**33430. Withdrawal of a Petition.**

Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement among the parties. Service and proof of service of the withdrawal pursuant to Section 32140 are required. The employer shall post a copy of the withdrawal on all employee bulletin boards in each facility of the employer in which members of the unit described are employed.

**33440. 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.

**33450. Posting Notice of Decision.**

As soon as possible but in no event later than 10 days following issuance of the notice of decision, the employer shall post a copy of the notice of decision conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed. The notice of decision shall remain posted for a minimum of 15 workdays.

**Article 5. Representation Elections**

**33460. Elections in Consent Units.**

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of any election in a consent unit should not be

interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

**33470. Eligibility to Appear on Ballot.**

(a) Any employee organization which filed a valid request for recognition or intervention 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 unit found to be appropriate by the Board.

(b) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Section 33085 of these regulations.



**33480. Recognition.**

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the Board shall cancel the election, and certify the organization as the exclusive representative unless the employer has granted recognition.

**33485. Certification of Exclusive Representative.**

If the Board determines (1) the employee organization requesting recognition has demonstrated proof of support of more than 50 percent of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the employer has not granted recognition, the Board shall certify the petitioner as the exclusive representative.

**33490. Conduct of Elections.**

All elections shall be conducted by the Board in accordance with election procedures described in Chapter 1, Subchapter 6, Article 2 of these Regulations.

**Article 6. Severance Request**

**33700. Severance Request.**

(a) An employee organization may file a request to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provisions of Article 2 (commencing with Section 33050). All provisions of Articles 2 and 3 of this Subchapter shall be applicable to a severance request except as provided in this Article 6.

(b) Whenever the conditions of Government Code Section 3544.1(c) exist, a severance request for recognition or intervention must be filed in accordance with Section 32135 with the employer during the "window period" as defined by Section 33020.

(c) Any amendment to a request for recognition or intervention to add classifications or positions which are included in an established unit must be filed in the manner set out in Section 32135 during the "window period" defined by Section 33020.

**33710. Response to Severance Request.**

(a) The employer and the exclusive representative of the established unit may file a responding statement supporting or opposing the severance request. Such response shall be filed with the regional office within 20 days following the date of service of the severance request. Service and proof of service of the response pursuant to section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance request;

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

(3) A statement confirming or refuting the information contained in the severance request regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current agreement covering employees in the established unit:

(4) A concise statement setting forth support of or opposition to the unit proposed by the request.

## CHAPTER 3. STATE EMPLOYER-EMPLOYEE RELATIONS ACT

### SUBCHAPTER 1. REPRESENTATION PROCEDURES

#### Article 1. General Provisions

##### **40130. Window Period.**

“Window period” means the 29-day period which is less than 242 days, but more than 212 days prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum of understanding. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

##### **40145. Statement of Interest.**

Any employee organization which is not the exclusive representative of certain employees but which desires notice of filing of any certification, severance, decertification or unit modification petition or issuance of notice of hearing, decision or intent to conduct election affecting such employees may file a statement of interest with the regional office. Such statement shall be in writing and shall include a list of the employment classes which the employee organization has an interest in representing, including schematic codes and class codes as defined in “Pay Scales in California State Civil Service.” The filing shall remain valid for 12 months and may be renewed in writing thereafter.

##### **40160. Parties.**

“Parties” means the state employer, the employee organization which is the exclusive representative of any employee covered by a petition or intervention, any employee organization known to have an interest in representing any employees as demonstrated by having filed a current statement of interest pursuant to Section 40145, and any petitioner which has filed a valid petition pursuant to Section 40170 or 40400.

##### **40165. List of State Employee Mailing Addresses.**

(a) Except as prohibited by law, the state employer shall release to an exclusive representative a mailing list of home addresses of state employees it represents pursuant to a written request by the exclusive representative. The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of names on the mailing list, and (3) cost of production shall be subject to the collective bargaining process.

(b) Except as prohibited by law, the state employer shall not be precluded from releasing a mailing list of home addresses of state employees as defined in

Government Code Section 3513(c) or Section 3513(g) who are not in units represented by an exclusive representative to an employee organization as defined in Government Code Section 3513(a). The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of names or the mailing list, and (3) cost of production shall be determined by the state employer.

(c) As provided by Government Code Section 6254.3, and upon written request of a state employee, the state employer shall remove the state employee's home address from the mailing lists referenced in subsections (a) and (b) prior to the release of such lists.

**40170. Petition for Certification.**

(a) An employee organization may file a petition pursuant to Government Code Section 3520.5 to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit which is represented by an exclusive representative. The petition shall be filed with the Sacramento regional office; be signed by an authorized agent of the employee organization; provide the full name, address and telephone number of the employee organization; provide the name, title, address and phone number of the authorized representative of the employee organization; and identify the job titles or classifications of employees in the unit claimed to be appropriate.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. 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.

**40172. Posting Notice of Petition for Certification.**

(a) The employer shall post a notice of the petition, using a form provided by the Board, as soon as possible but in no event later than 15 days following service of a copy of the petition.

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

(c) The notice shall remain posted for 20 days.

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

**40174. 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 claimed 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 petition shall be dismissed if the Board determines that the petition lacks sufficient proof of support.

**40176. Withdrawal of Petition for Certification.**

Any petition for certification may be withdrawn by an authorized representative of the employee organization that filed it at any time prior to a final decision by the Board. Such withdrawal shall be filed with the regional office. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

**40178. Amendment of Petition for Certification.**

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct election. The amendment shall be filed with the regional office and provide the information required in Section 40170(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:

(1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 40180.

(c) Amendments to correct technical errors or to add or delete job classifications from a party's proposed unit 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 and

provided that sufficient proof of support is evidenced to support any request for addition of job classifications.

**40180. 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:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

**40182. Board Investigation.**

(a) 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.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) Any of the employees in the claimed unit are currently included in any established bargaining unit and are represented by an exclusive representative; or

(3) A valid 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

(4) The petition for certification was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

## **Article 2. Severance Petition**

### **40200. Severance Petition.**

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative. The petition shall be filed with the regional office on forms provided by the Board.

(b) The petition shall be accompanied by proof of majority support in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

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

### **40210. Posting Notice of Severance Petition.**

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

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

(c) The notice shall remain posted for 20 days.

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

### **40220. Board Determination Regarding Proof of Support - Severance Petition.**

(a) Within 20 days of the date of service of the petition, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed with the regional office, 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 or until the last day of the "window period" as defined by Section 40130, whichever occurs first, 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.

**40230. Response to Severance Petition.**

(a) The employer or the exclusive representative of the established unit may file a responding statement supporting or opposing the severance petition. Unless otherwise notified by the Board, such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

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

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current agreement covering employees in the established unit;

(4) A concise statement setting forth support of or opposition to the unit proposed by the petition.

**40240. Amendment of Severance Petition; Posting Amendments.**

(a) A severance petition may be amended to correct technical errors or to delete job classifications or positions from the proposed unit at any time prior to the issuance of a PERB notice of representation hearing or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement. The amendment shall be filed with the regional office on forms provided by the Board. Service and proof of service pursuant to Section 32140 are required.

(b) A severance petition may be amended to add job classifications or positions to the proposed unit, subject to the following:

(1) An amendment to add job classifications or positions to a proposed unit may be filed within the time frames listed in subsection (a) above, except that if there exists a memorandum of understanding between the employer and the exclusive representative covering any of the employees to be added to the proposed unit, the amendment must be filed in the manner set out in Section 32135 during the “window period” as defined by Section 40130.



(2) The amendment shall be filed with the regional office on forms provided by the Board. Service and proof of service pursuant to Section 32140 are required. Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office with the amendment.

(3) The employer shall post a notice of the amendment as soon as possible but in no event later than 15 days following service of the amendment. The notice shall conform to the requirements for posting an original petition and shall remain posted for 20 days.

(4) A response from any party to the amended petition may be filed with the regional office within 15 days following the service of the Board's determination of adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for responses as set forth in Section 40230.

(c) Amendments to correct technical errors, add or delete job classifications or positions from a party's proposed unit 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, and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the hearing officer.

#### **40250. Withdrawal of Severance Petition.**

Any severance petition may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal shall be filed with the regional office. Service and proof of service pursuant to Section 32140 are required.

#### **40260. Board Investigation.**

(a) Whenever a severance petition 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.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) 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 the severance petition, 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

(3) A valid 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.

### **Article 3. Representation Election**

#### **40300. Notice of Intent to Conduct Election.**

Upon determination to conduct a representation election, other than an election directed by a Board decision, the Board shall issue a notice of intent to conduct election to all interested parties. A notice of decision which orders a representation election shall serve as a notice of intent to conduct election.

#### **40310. Intervention to Appear on Ballot.**

(a) Within 20 days following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization may file an intervention to appear on ballot. The intervention shall be filed with the regional office on forms provided by the Board. The intervention shall be accompanied by proof of support of at least 30 percent of the employees in the appropriate unit. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(b) Service of the intervention, exclusive of the proof of support, and proof of service pursuant to Section 32140 are required.

#### **40320. Board Determination Regarding Proof of Support.**

(a) Within 20 days of issuance of a notice of intent to conduct election, the employer shall file with the regional office an alphabetical list, including job titles or classifications of employees employed in the appropriate unit, as of the last date of the payroll period immediately preceding the date of issuance of the notice of intent to conduct election, 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.

#### **40330. Conduct of Elections.**

All elections shall be conducted by the Board in accordance with election procedures described in Chapter 1, Subchapter 6, Article 2 of these regulations.

## CHAPTER 4. HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT

### SUBCHAPTER 1. REPRESENTATION PROCEDURES

#### Article 1. General Provisions

##### **51010. Parties.**

“Parties” means the higher education employer, the employee organization which is the exclusive representative of any employee covered by a request, intervention or petition for certification, or any employee organization known to have an interest in representing any employees as demonstrated by having filed a pending request, intervention, or petition for certification.

##### **51020. Statement of Interest.**

(a) Any employee organization may receive copies of requests for recognition, interventions or petitions, for certification, amendments to requests, interventions or petitions, any notice of informal conference, notice of representation hearing, notice of decision, notice of intent to conduct election, election intervention, unit modification petition, decertification petition or severance petition by filing a statement of interest with the Regional Office.

(b) A statement of interest shall be in writing on a form provided by the Board.

(c) A statement of interest shall remain valid for 12 months, and may be renewed thereafter.

##### **51026. Window Period.**

“Window period” means the 31-day period established pursuant to Government Code Sections 3574(c) and 3577(b)(1), which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the higher education employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

##### **51027. List of Higher Education Employee Mailing Addresses.**

(a) Except as prohibited by law, the higher education employer shall release to an exclusive representative a mailing list of home addresses of higher education employees it represents pursuant to a written request by the exclusive representative. The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of names or the mailing list, and (3) cost of production shall be subject to the collective bargaining process.

(b) Except as prohibited by law, the higher education employer shall not be precluded from releasing a mailing list of home addresses of higher education employees as defined in Government Code Section 3562(e) or Section 3580.3 who are not in units represented by an exclusive representative to an employee organization as defined in Government Code Section 3562(f). The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of names on the mailing list, and (3) cost of production shall be determined by the higher education employer.

(c) As provided by Government Code Section 6254.3, and upon written request of a higher education employee, the higher education employer shall remove the higher education employee's home address from the mailing lists referenced in subsections (a) and (b) prior to the release of such lists.

## **Article 2. Request for Recognition and Intervention**

### **51030. Request for Recognition.**

(a) A request for recognition by an employee organization seeking to become the exclusive representative of an appropriate unit shall be filed with the employer. A copy of the request shall be filed concurrently with the regional office. The request shall be signed by an authorized agent of the employee organization and be on a form provided by the Board.

(b) Proof of majority support in the unit claimed to be appropriate shall be filed with the regional office or with a mutually agreed upon third party concurrent with the filing of the request for recognition. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Concurrent with the filing of the request, the employee organization shall serve a copy of the request, excluding the proof of majority support, on the parties. Proof of service pursuant to Section 32140 is required.

(d) A petition to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative shall be filed pursuant to either Article 2 or Article 3 and in accordance with the provisions of Article 7 (commencing with Section 51680). A petition to become the exclusive representative of all of the employees in an established unit represented by an incumbent exclusive representative shall be filed pursuant to Chapter 1, Subchapter 6, Article 4 (commencing with Section 32770) of these regulations.

### **51035. Posting Notice of Request for Recognition.**

(a) The employer shall post a notice of the request for recognition as soon as possible but in no event later than 10 days following receipt of the request.

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

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

(d) The notice shall consist of a copy of the request for recognition 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 concurrent with the posting of the notice. Proof of service pursuant to Section 32140 is required.

**51040. Intervention.**

(a) Except as provided in Section 51680(c), an intervention by an employee organization shall be filed with the employer within 15 workdays following the posting of a notice of a request for recognition. A copy of the intervention shall be filed concurrently with the regional office. The intervention shall be signed by an authorized agent of the employee organization, and be on a form provided by the Board.

(b) Proof of at least 30 percent support of the employees in the unit claimed to be appropriate by the intervenor shall be filed with the regional office or with a mutually agreed upon third party concurrent with the filing of the intervention. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Concurrent with the filing of the intervention, the employee organization shall serve a copy of the intervention, excluding the proof of support, on the parties. Proof of service pursuant to Section 32140 is required.

**51050. Board Determination Regarding Proof of Support - Request for Recognition, Intervention.**

(a) Within 20 days of the date of receipt of the request or intervention, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the request or intervention was filed with the employer, 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.

**51055. Determination Regarding Proof of Support by Third Party - Request for Recognition, Intervention.**

(a) An employee organization and an employer may mutually agree that the proof submitted in support of a request for recognition or intervention be filed with a third party rather than the Public Employment Relations Board. Such agreement must be reached prior to the filing of the request or intervention.

(b) Within 20 days of receipt of a request or intervention, the employer shall file with the mutually agreed upon third party an alphabetical list, including job titles and classification codes, of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the request or intervention was filed with the employer.

(c) The mutually agreed upon third party shall complete the review of the proof of support and issue to the parties a written determination as to its sufficiency or lack thereof within 15 days of receipt of the list of employees from the employer.

(d) The third party shall concurrently serve a copy of the proof of support determination, accompanied by the proof of support submitted by the requester or intervenor, on the regional office.

**51060. Withdrawal of Request or Intervention.**

Any request for recognition or intervention may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal shall be filed with the employer. Service and proof of service pursuant to Section 32140 are required.

**51070. Amendment of Request or Intervention.**

(a) A request for recognition or intervention may be amended to correct technical errors or to delete job classifications from the proposed unit at any time prior to the issuance of the notice of representation hearing, or, where no hearing has been held, issuance of the notice of intent to conduct an election. The amendment shall be filed with the employer utilizing forms provided by the Board. A copy shall be concurrently served on each party and the regional office. Proof of service pursuant to Section 32140 is required. No posting shall be required.

(b) Amendments to add job classifications or positions to a proposed unit shall be subject to the following:

(1) Except as provided in Section 51680(c), a request for recognition or intervention may be amended to add new job classifications to a proposed unit at any time prior to the issuance of a notice of representation hearing, or if no hearing is held, the issuance of a notice of intent to conduct election.

(2) The amendment shall be filed with the employer utilizing forms provided by the Board. The employee organization shall concurrently serve a copy of the amendment on each party and the regional office. Proof of service pursuant to Section 32140 is required. Additional proof of support, if needed to maintain standing as a requester or intervenor, shall be concurrently filed with the regional office.

(3) The employer shall post a notice of any amended request for recognition as soon as possible but in no event later than 10 days following receipt of the amendment. The notice shall conform to the requirements for posting an original request for recognition as set forth in Section 51035, and shall remain posted for 15 workdays, during which time interventions may be filed.

(4) An employer response to the amended request or intervention shall be filed with the regional office within 15 days following service of the Board's determination regarding the adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 51080.

(c) Amendments to correct technical errors, add or delete job classifications from a party's proposed unit 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 and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the hearing officer.

#### **51080. Employer Response.**

(a) Within 15 days following the service of the determination of adequacy of proof submitted in support of the request for recognition and any interventions, 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 "Format A" if it has granted recognition pursuant to Government Code sections 3573 and 3574. As soon as possible, but in no event later than 10 days from its issuance, the employer shall post a copy of the employer response conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit affected are employed. The response shall remain posted for at least 15 workdays.

#### **Format A: RECOGNITION**

(1) "The (employer) has recognized (organization) as the exclusive representative for an appropriate unit of employees described below for purposes of meeting and conferring with the employer;

- (2) No intervention has been filed during the posting period;
- (3) Name, address and telephone number of the employer;
- (4) Name, address and telephone number of the employee organization;
- (5) A description of the grouping of employment classes to be included in the claimed unit including class codes. Each employment class shall include the geographic locations if other than a statewide class is proposed.
- (6) The number of employees in the unit recognized;
- (7) The date of recognition.
- (d) The employer shall use "Format B" if it has not granted recognition.

#### Format B: DENIAL OF RECOGNITION

- (1) Name, address and telephone number of the employer, and name, address and telephone number of the employer agent to be contacted;
- (2) Attach a copy of the request for recognition;
- (3) Reasons for Denial of Recognition:
  - (A) Does the employer reasonably doubt the appropriateness of the proposed unit? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?
  - (B) Was the request timely and appropriately filed? If not, fully explain any deficiencies.
  - (C) Is the employer unable to grant recognition because some or all of the employees in question are part of a negotiating unit that is already represented by an exclusive representative?
  - (D) Were any interventions filed within the 15 workday posting period? Attach a copy of each intervention. For each intervention, state:
    1. Does the employer doubt the appropriateness of the unit proposed by the intervenor? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?
    2. Was the intervention timely and appropriately filed? If not, fully explain any deficiencies.
  - (E) If no interventions have been filed and no unit dispute exists, but the employer reasonably doubts that the employee organization has majority support, the employer shall set forth the reasons for its doubt of the majority support.



**51090. Employee Organization Petition for Board Investigation.**

(a) Not later than 90 days following the date an employer response is filed or is due, whichever occurs first, a petition for Board investigation may be filed by:

(1) An employee organization alleging that it has filed a request for recognition, pursuant to Section 51030 which has been denied or not acted upon by the employer within 30 days after the filing of the request; or

(2) An employee organization alleging that it has filed an intervention pursuant to Section 51040.

(b) A petition for Board investigation may request the Board to decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit.

(c) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.

(d) The petition 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 employee organization agent to be contacted;

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

(3) A copy of the request for recognition or intervention filed with the employer;

(4) A statement of the issues in dispute;

(5) A statement indicating what specific action(s) is requested of the Board.

**51095. Failure to File Petition for Board Investigation.**

If no petition for Board investigation is timely filed pursuant to Section 51090, the request for recognition and any interventions shall be deemed invalid and shall not bar a subsequent request for recognition.

**51096. Certification of Exclusive Representative.**

If the Board determines (1) the employee organization requesting recognition has demonstrated proof of support of more than 50 percent of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the employer has not granted recognition, the Board shall certify the petitioner as the exclusive representative.

### **Article 3. Petition for Certification**

#### **51100. Petition for Certification.**

(a) Subject to the limitations expressed in Section 51140(b), a petition for certification pursuant to Government Code Section 3575(c) by an employee organization wishing to be certified by the Board as the exclusive representative in an appropriate unit shall be filed with the regional office, utilizing forms provided by the Board. The petition shall be signed by an authorized agent of the employee organization.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. 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.

#### **51110. 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 claimed 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 determination as to sufficiency or lack thereof regarding the proof of support.

#### **51115. Withdrawal of Petition for Certification.**

Any petition for certification may be withdrawn by an authorized representative of the employee organization that filed it at any time prior to a final decision by the Board. Such withdrawal shall be filed with the regional office. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

#### **51120. Amendment of Petition for Certification.**

(a) A petition for certification may be amended to correct technical errors or to add (subject to the limitations set forth in Section 51680(c)) or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct election. The amendment shall be filed with the regional office utilizing forms provided by the Board. Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:

(1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 51130.

(c) Amendments to correct technical errors, add or delete job classifications from a party's proposed unit 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 and provided that sufficient proof of support is evidenced to support any request for addition of job classifications.

**51130. Employer Response Regarding Petition for Certification.**

(a) Within 15 days following service of the Board's determination regarding the adequacy of 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:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

## Article 4. Board Investigation

### 51140. Board Investigation.

(a) Whenever a petition filed pursuant to Government Code Section 3575 regarding a representation matter 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.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) 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 included in the unit described in the request for recognition, unless the request for recognition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum of understanding, provided that if such memorandum of understanding has been in effect for three years or more, there shall be no such restriction as to the time of filing the request. A petition filed not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding must actually be received in the manner set out in Section 32135 during the "window period" as defined by Section 51025; or

(3) The employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition; or

(4) A valid 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.

(5) The petition for Board investigation pursuant to this section or the petition for certification pursuant to Section 51100 was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

## **Article 5. Representation Hearings**

### **51200. Informal Conference.**

The Board may conduct an informal conference for the purposes of clarifying the issues and exploring settlement of the case. No record shall be made at such a conference.

### **51210. Notice of Representation Hearing.**

Upon determining that a hearing is necessary, the Board shall serve a notice of Representation Hearing on all interested parties pursuant to Section 51020. The notice shall state the date, time and place of the hearing. The notice shall also include information regarding how an employee organization may become a party to the hearing.

### **51225. Conduct of Hearing.**

Hearings shall be conducted pursuant to procedures set forth in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

### **51230. Withdrawal of a Petition.**

Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement between or among the parties regarding an appropriate unit.

### **51235. Notice of Decision.**

The Board shall serve on all interested parties pursuant to Section 51020 a notice of decision with either the decision of the Board itself or a final hearing officer decision.

## **Article 6. Representation Elections**

### **51300. Notice of Intent to Conduct Election.**

Upon determination to conduct a representation election, other than an election directed by a Board decision, the Board shall issue a notice of intent to conduct election to all interested parties pursuant to Section 51020. A notice of decision pursuant to Section 51235 which orders a representation election shall serve as a notice of intent to conduct election.

### **51310. Intervention to Appear on Ballot.**

(a) Within 15 workdays following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization, whether or not a party to the unit hearing, may file an intervention to appear on ballot. The intervention shall be filed with the regional office on forms provided by the Board. The intervention shall be

accompanied by proof of support of at least 10 percent of the employees in the appropriate unit. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(b) Service of the intervention, exclusive of the proof of support, and proof of service pursuant to Section 32140 are required.

**51320. Board Determination Regarding Proof of Support.**

(a) Within 20 days of issuance of a notice of intent to conduct election the employer shall file with the regional office an alphabetical list, including job titles or classifications of employees employed in the appropriate unit as of the last date of the payroll period immediately preceding the date of issuance of the notice of intent to conduct election, 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 showing of support.

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

**51330. Recognition.**

If only one organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the Board shall certify the organization as the exclusive representative and cancel the election.

**51340. Conduct of Elections.**

All elections shall be conducted by the Board in accordance with election procedures described in Chapter 1, Subchapter 6, Article 2 of these regulations.

**Article 7. Severance Petition**

**51680. Severance Petition.**

(a) An employee organization may file a petition to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provision of Article 2 (commencing with Section 51030) or by filing a petition for certification in accordance with the provisions of Article 3 (commencing with Section 51100). In the case of a request for recognition or intervention, all provisions of Article 2 and Article 4 of this Subchapter shall be applicable to a severance request except as provided in this Article 7. In the case of a petition for certification, all provisions of Article 3 and Article 4 of this Subchapter shall be applicable to a severance petition except as provided in this Article 7.

(b) Whenever the conditions of Government Code Sections 3574(c) or 3577(b)(1) exist, a severance request for recognition, an intervention or a petition for certification must be filed in the manner set out in Section 32135 during the “window period” as defined by Section 51026.

(c) Any amendment to add to a request for recognition, intervention or petition for certification classifications or positions which are included in an established unit must be filed in the manner set out in Section 32135 during the window period as defined by Section 51026.

**51685. Response to Severance Petition.**

(a) The employer and the exclusive representative of the established unit may file a responding statement supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance request. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

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

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit:

(4) A concise statement setting forth support of or opposition to the unit proposed by the petition.





## **CHAPTER 5. MEYERS-MILIAS-BROWN ACT**

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

#### **61000. Application of Regulations.**

Except as otherwise ordered pursuant to Chapter 1, or as provided for by Public Utilities Code, Division 10, Part 16, Chapter 5 (section 105140 et seq.), the Board will conduct representation proceedings under MMBA in accordance with the applicable provisions of this Chapter only where a public agency has not adopted local rules in accordance with MMBA section 3507.

#### **61005. Parties.**

“Parties” means the public agency, the employee organization that is the exclusive or majority 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 public employees which has filed a pending petition pursuant to Government Code Section 3502.5(d) or 3507.

#### **61010. 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 negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

#### **61030. 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.

#### **61040. 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.

**61050. 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.

**61055. 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.

**61060. 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.

**61065. Elections in Consent Units.**

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of an election in a consent unit should not be interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

**61070. 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.

**61072. Judicial Review.**

A request for judicial review of a decision by the Board itself may be filed pursuant to Section 32500 and shall be allowed: (1) when the board, in response to a petition from the employer or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

**61075. 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.

**61080. Conduct of Elections; Eligibility to Appear on Ballot.**

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this Chapter.

(b) 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 unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Chapter 1, Section 32700 of these Regulations.

**61090. Recognition.**

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the Board shall cancel the election, and certify the organization as the exclusive representative unless the public agency has granted recognition.

**Article 2. Elections**

**61100. 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 this Chapter. The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

**61105. 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 61145, or an election conducted pursuant to either Article 4 or 7 of this Chapter, 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 61110), 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.

**61110. 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 containing 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. 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.

(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.

**61115. 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.

**61120. 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, or temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

**61125. Observers.**

Each party shall be allowed to station an authorized observer selected from the employees of the employer at each polling site during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters.

**61130. 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.

**61135. 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.

**61140. 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.

**61145. 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.

**61150.        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.

**61155. 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.

**61160. Withdrawal of Objections.**

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

**61165. Hearings on Objections and Challenges.**

Objections to the conduct of an election which have not been dismissed pursuant to Section 61155(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.

**61170. 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 of these regulations.

**61175. 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.

**61180. 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 objections 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.

**61185. Certification of Results of Election or Certification of Exclusive Representative.**

Except in the case of elections conducted pursuant to either Article 4 or 7 of this Chapter, 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.

**61190. 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.

**61200. Bar to Conducting Election.**

The Board shall dismiss a petition requiring a representation election if it determines (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 of such memorandum, provided that if a 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.



### **Article 3. Petition for Certification or Recognition**

#### **61210. Petition for Certification.**

(a) An employee organization may file a petition for certification, by means of an election, to become the exclusive representative of an appropriate unit consisting of a group 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 appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate 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 unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

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

#### **61215. Petition for Recognition.**

(a) An employee organization may file a petition for recognition as the exclusive representative of an appropriate unit consisting of a group 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 appropriate unit, including the classifications and positions to be included and those to be excluded;

- (4) The approximate number of employees in the proposed appropriate 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 majority support of the employees in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.
- (c) Service of the petition, excluding the proof of support, and proof of service pursuant to Section 32140 are required.

**61220. Posting Notice of Petition for Certification or Recognition.**

- (a) The employer shall post a notice of a petition filed pursuant to either section 61210 or 61215, 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 notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 15 workdays.
- (d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

**61240. Determination of Proof of Support.**

- (a) Within 20 days of the date of service of a copy of the petition for certification or recognition, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of the employees employed in the claimed 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.
- (d) A petition for certification shall be dismissed if the Board determines that the petition lacks at least 30 percent proof of support.
- (e) A petition for recognition shall be dismissed if the Board determines that the petition lacks proof of majority support.

**61250. Employer Response Regarding Petition for Certification.**

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of a petition for certification, 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:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

**61255. Employer Response Regarding Petition for Recognition.**

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of a petition for recognition, 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 recognition:

(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 recognition;

(3) Employer position regarding the petition for recognition:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why recognition should not be granted in the proposed unit? If so, please fully explain.

**61260. Amendment of Petition for Certification or Recognition.**

(a) A petition may be amended to correct technical errors or to add or delete job classifications from the proposed unit 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 61210(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:

(1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses set forth in Section 61250.

(c) Amendments to correct technical errors or to add or delete job classifications from a party's proposed unit 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 and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the Board agent.

**61270. Board Investigation.**

Whenever a petition for certification or recognition 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.

**61275. Certification of Exclusive Representative.**

If the Board determines (1) an employee organization requesting recognition has demonstrated at least majority proof of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the public agency has not granted recognition, the Board shall certify the petitioner as the exclusive representative.

## **Article 4. Petition for Amendment of Certification**

### **61300. Petition.**

(a) An employee organization may file with the regional office a petition 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 petition 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 title 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 petition pursuant to Section 32140 are required.

### **61310. Employer Response.**

The employer may file a responding statement to the petition filed pursuant to Section 61300. The statement shall be filed with the regional office within 15 days following the date of service of the petition. Service and proof of service pursuant to Section 32140 are required.

### **61320. Board Investigation.**

(a) Upon receipt of a petition filed pursuant to Section 61300, 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 petition.

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

(c) Upon approval of a petition, 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 61200 of these regulations.

## **Article 5. Decertification Petition**

### **61350. 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 and include the following information:

(1) The name, address and telephone number of the petitioning employee organization, if any, and/or the name, address and telephone number of the agent to be contacted on behalf of a petitioning employee organization or 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 and the title 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;

(6) The date on which the exclusive representative was recognized or certified;

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

(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.

### **61360. Posting Notice of Decertification Petition.**

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

(b) 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.

- (c) The notice shall remain posted for a minimum of 15 workdays.
- (d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

**61370. 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.

**61380. 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) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed during the window period defined in Section 61010 of these regulations, 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, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the unit.

**Article 6. Severance Petition**

**61400. Severance Petition.**

- (a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Chapter. Such a petition shall include the following information:

- (1) The name, address and telephone number of the petitioning 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 brief description and the title 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) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;
  - (6) The approximate number of employees in the proposed appropriate unit;
  - (7) The date on which the exclusive representative was recognized or certified;
  - (8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.
- (b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the “window period” defined by Section 61010.
- (c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

**61410. Response to Severance Petition.**

- (a) The public agency and the exclusive representative of the established unit may file responding statements supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.
- (b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:
- (1) A copy of the severance petition;
  - (2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;



(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit; and,

(4) A concise statement setting forth the basis for support of or opposition to the unit proposed by the petition.

**61420. Board Investigation.**

(a) Whenever a severance petition 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.

(b) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of any employees covered by a petition, unless the petition is filed during the window period defined in Section 61010 of these regulations, 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, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

**Article 7. Petition for Unit Modification**

**61450. Petition.**

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or

position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit;

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position;

(4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 61010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(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 and the title(s) of the established unit(s);

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

(5) The approximate number of employees covered by the petition;

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

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

**61460. Response to Petition.**

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

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

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

**61470. Board Determination Regarding Proof of Support.**

(a) If proof of support has been filed pursuant to section 61450(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees

proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) 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 of the proof of support.

**61480. Disposition of Petitions.**

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition if (1) it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

(c) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 61200.

**Article 8. Rescission of Agency Shop Agreement or Provision**

**61600. 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 3502.5(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 a 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 and the title 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;
  - (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 61020(b), (c), (d)(3), (e) and (f).
- (d) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

**61610. 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 public agency 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.

**61620. Employee Vote.**

- (a) Provided the rescission petition is timely and properly filed pursuant to this Article, and the proof submitted in support of the petition is determined to be adequate pursuant to Section 61600, 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.

**61630. 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.

## **CHAPTER 6. TRANSIT EMPLOYER-EMPLOYEE RELATIONS ACT**

### **SUBCHAPTER 1. REPRESENTATION PROCEDURES**

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

##### **71010. Parties.**

“Parties” means the transit district employer, the employee organization which is the exclusive representative of any employee covered by a request, intervention or petition for certification, or any employee organization known to have an interest in representing any employees as demonstrated by having filed a pending request, intervention, or petition for certification.

##### **71026. Window Period.**

“Window period” means the 31-day period established pursuant to Public Utilities Code Sections 99564.1(c) and 99564.4(b)(1), which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the transit district employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

##### **71027. List of Transit District Employee Mailing Addresses.**

(a) Except as prohibited by law, the transit district employer shall release to an exclusive representative a mailing list of home addresses of transit district employees it represents pursuant to a written request by the exclusive representative. The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of the mailing list, and (3) cost of production shall be subject to the collective bargaining process.

(b) Except as prohibited by law, the transit district employer may, upon request, release a mailing list of home addresses of its unrepresented employees to an employee organization. The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of the mailing list, and (3) cost of production shall be determined by the transit district employer.

#### **Article 2. Request for Recognition and Intervention**

##### **71030. Request for Recognition.**

(a) A request for recognition by an employee organization seeking to become the exclusive representative of an appropriate unit shall be filed with the employer. A copy of the request shall be filed concurrently with the regional office. The request

shall 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 appropriate unit, including the classifications and positions to be included and those to be excluded;
  - (4) The approximate number of employees in the proposed appropriate 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) Proof of majority support in the unit claimed to be appropriate shall be filed with the regional office or with a mutually agreed upon third party concurrent with the filing of the request for recognition. Proof of support is defined in Chapter 1, Section 32700 of these regulations.
- (c) Concurrent with the filing of the request, the employee organization shall serve a copy of the request, excluding the proof of majority support, on the parties. Proof of service pursuant to Section 32140 is required.
- (d) A petition to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative shall be filed pursuant to either Article 2 or Article 3 and in accordance with the provisions of Article 7 (commencing with Section 71680). A petition to become the exclusive representative of all of the employees in an established unit represented by an incumbent exclusive representative shall be filed pursuant to Chapter 1, Subchapter 6, Article 4 (commencing with Section 32770) of these regulations.

**71035. Posting Notice of Request for Recognition.**

- (a) The employer shall post a notice of the request for recognition as soon as possible but in no event later than 10 days following receipt of the request.
- (b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 15 workdays.
- (d) The notice shall include a copy of the request for recognition and shall also include the PERB case number, the date the request was received, the date the notice



is posted, the final date for posting, the final date for intervention on the request, and the signature of the employer's authorized agent.

(e) The employer shall serve a copy of the notice on the regional office and the parties concurrent with the posting of the notice. Proof of service pursuant to Section 32140 is required.

**71040. Intervention.**

(a) Except as provided in Section 71680(c), an intervention by an employee organization shall be filed with the employer within 15 workdays following the posting of a notice of a request for recognition. A copy of the intervention shall be filed concurrently with the regional office. The intervention shall 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 appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate 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) Proof of at least 30 percent or at least 10 percent support of the employees in the unit claimed to be appropriate by the intervenor shall be filed with the regional office or with a mutually agreed upon third party concurrent with the filing of the intervention. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(1) If the intervention is evidenced by at least 30 percent support, a question of representation shall be deemed to exist.

(2) If the intervention is evidenced by at least 10 percent support, the Board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the intervention. The Board shall notify all parties in writing of any determination made regarding such an intervention.

(c) Concurrent with the filing of the intervention, the employee organization shall serve a copy of the intervention, excluding the proof of support, on the parties. Proof of service pursuant to Section 32140 is required.

**71050. Board Determination Regarding Proof of Support - Request for Recognition, Intervention.**

(a) Within 20 days of the date of receipt of the request or intervention, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the request or intervention was filed with the employer, 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.

**71055. Determination Regarding Proof of Support by Third Party - Request for Recognition, Intervention.**

(a) An employee organization and an employer may mutually agree that the proof submitted in support of a request for recognition or intervention be filed with a third party rather than the Public Employment Relations Board. Such agreement must be reached prior to the filing of the request or intervention.

(b) Within 20 days of receipt of a request or intervention, the employer shall file with the mutually agreed upon third party an alphabetical list, including job titles and classification codes, of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the request or intervention was filed with the employer.

(c) The mutually agreed upon third party shall complete the review of the proof of support and issue to the parties a written determination as to its sufficiency or lack thereof within 15 days of receipt of the list of employees from the employer.

(d) The third party shall concurrently serve a copy of the proof of support determination, accompanied by the proof of support submitted by the requester or intervenor, on the regional office.

**71060. Withdrawal of Request or Intervention.**

Any request for recognition or intervention may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal may be filed with the employer or the board. Service and proof of service pursuant to Section 32140 are required.

**71070. Amendment of Request or Intervention.**

(a) A request for recognition or intervention may be amended to correct technical errors or to delete job classifications from the proposed unit at any time prior to the issuance of the notice of representation hearing, or, where no hearing has been held, issuance of the notice of intent to conduct an election. The amendment shall be filed with the employer and shall include the information described in Sections 71030(a) and 71040(a). A copy shall be concurrently served on each party and the regional office. Proof of service pursuant to Section 32140 is required. No posting shall be required.

(b) Amendments to add job classifications or positions to a proposed unit shall be subject to the following:

(1) Except as provided in Section 71680(c), a request for recognition or intervention may be amended to add new job classifications to a proposed unit at any time prior to the issuance of a notice of representation hearing, or if no hearing is held, the issuance of a notice of intent to conduct election.

(2) The amendment shall be filed with the employer. The employee organization shall concurrently serve a copy of the amendment on each party and the regional office. Proof of service pursuant to Section 32140 is required. Additional proof of support, if needed to maintain standing as a requester or intervenor, shall be concurrently filed with the regional office.

(3) The employer shall post a notice of any amended request for recognition as soon as possible but in no event later than 10 days following receipt of the amendment. The notice shall conform to the requirements for posting an original request for recognition as set forth in Section 71035, and shall remain posted for 15 workdays, during which time interventions may be filed.

(4) An employer response to the amended request or intervention shall be filed with the regional office within 15 days following service of the Board's determination regarding the adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 71080.

(c) Amendments to correct technical errors, add or delete job classifications from a party's proposed unit 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 and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the hearing officer.

**71080. Employer Response.**

(a) Within 15 days following the service of the determination of adequacy of proof submitted in support of the request for recognition and any interventions, 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, if it has granted voluntary recognition pursuant to Public Utilities Code sections 99564 and 99564.1, shall include the following information in its response:

(1) A statement that the employer has voluntarily recognized (organization) as the exclusive representative for an appropriate unit of employees described below for purposes of meeting and conferring with the employer;

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

(3) Name, address and telephone number of the employee organization;

(4) A description of the grouping of employment classes to be included in the claimed unit.

(5) The number of employees in the unit recognized;

(6) The date of recognition.

(d) The employer, if it has not granted voluntary recognition, shall provide the following information:

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

(2) Reasons for Denial of Recognition:

(A) Does the employer reasonably doubt the appropriateness of the proposed unit? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Was the request timely and appropriately filed? If not, fully explain any deficiencies.

(C) Is the employer unable to grant recognition because some or all of the employees in question are part of a negotiating unit that is already represented by an exclusive representative?

(D) Were any interventions filed within the 15 workday posting period? Attach a copy of each intervention. For each intervention, state:

1. Does the employer doubt the appropriateness of the unit proposed by the intervenor? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

2. Was the intervention timely and appropriately filed? If not, fully explain any deficiencies.

(E) If no interventions have been filed and no unit dispute exists, but the employer reasonably doubts that the employee organization has majority support, the employer shall set forth the reasons for its doubt of the majority support and request PERB to conduct a representation election.

**71090. Employee Organization Petition for Board Investigation.**

(a) Not later than 30 days following the date an employer response is filed or is due, whichever occurs first, a petition for Board investigation may be filed by:

(1) An employee organization alleging that it has filed a request for recognition, pursuant to Section 71030 which has been denied or not acted upon by the employer within 30 days after the filing of the request; or

(2) An employee organization alleging that it has filed an intervention pursuant to Section 71040.

(b) A petition for Board investigation may request the Board to decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit.

(c) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.

(d) The petition 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 employee organization agent to be contacted;

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

(3) A statement of the issues in dispute;

(4) A statement indicating what specific action(s) is requested of the Board.

**71095. Failure to File Petition for Board Investigation.**

If no petition for Board investigation is timely filed pursuant to Section 71080 or 71090, the request for recognition and any interventions shall be deemed invalid and shall not bar a subsequent request for recognition.

### **Article 3. Petition for Certification**

#### **71100. Petition for Certification.**

(a) Subject to the limitations expressed in Section 71140(b), a petition for certification pursuant to Public Utilities Code Section 99564.2(c) by an employee organization wishing to be certified by the Board as the exclusive representative in an appropriate unit shall be filed with the regional office. The petition shall 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 appropriate unit, including the classifications and positions to be included and those to be excluded;
- (4) The approximate number of employees in the proposed appropriate 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 unit claimed to be appropriate. 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.

#### **71110. 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 claimed 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 determination as to sufficiency or lack thereof regarding the proof of support.

**71115. Withdrawal of Petition for Certification.**

Any petition for certification may be withdrawn by an authorized representative of the employee organization that filed it at any time prior to a final decision by the Board. Such withdrawal shall be filed with the regional office. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

**71120. Amendment of Petition for Certification.**

(a) A petition for certification may be amended to correct technical errors or to add (subject to the limitations set forth in Section 71680(c)) or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct election. The amendment shall be filed with the regional office and include the information described in Section 71100(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:

(1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 71130.

(c) Amendments to correct technical errors, add or delete job classifications from a party's proposed unit 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 and provided that sufficient proof of support is evidenced to support any request for addition of job classifications.

**71130. Employer Response Regarding Petition for Certification.**

(a) Within 15 days following service of the Board's determination regarding the adequacy of 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 include the following information in 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) Employer position regarding the petition for certification:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

#### **Article 4. Board Investigation**

##### **71140. Board Investigation.**

(a) Whenever a petition regarding a representation matter is filed with the Board pursuant to Public Utilities Code section 99564.1 or 99564.2, 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.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) 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 included in the unit described in the request for recognition, unless the request for recognition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum of understanding, provided that if such memorandum of understanding has been in effect for three years or more, there shall be no such restriction as to the time of filing the request. A petition filed not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding must actually be received in the manner set out in Section 32135 during the "window period" as defined by Section 71025; or

(3) The employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition; or

(4) A valid 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



(5) The petition for Board investigation was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

## **Article 5. Representation Hearings**

### **71200. Informal Conference.**

The Board may conduct an informal conference for the purposes of clarifying the issues and exploring settlement of the case. No record shall be made at such a conference.

### **71210. Notice of Representation Hearing.**

Upon determining that a hearing is necessary, the Board shall serve a notice on all interested parties pursuant to Section 71020. The notice shall state the date, time and place of the hearing. The notice shall also include information regarding how an employee organization may become a party to the hearing.

### **71225. Conduct of Hearing.**

Hearings shall be conducted pursuant to procedures set forth in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

### **71230. Withdrawal of a Petition.**

Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement between or among the parties regarding an appropriate unit.

### **71235. Notice of Decision.**

The Board shall serve on all interested parties pursuant to Section 71020 a notice of decision with either the decision of the Board itself or a final hearing officer decision.

## **Article 6. Representation Elections**

### **71300. Notice of Intent to Conduct Election.**

Upon determination to conduct a representation election, other than an election directed by a Board decision, the Board shall issue a notice of intent to conduct election to all interested parties pursuant to Section 71020. A notice of decision pursuant to Section 71235 which orders a representation election shall serve as a notice of intent to conduct election.

### **71310. Intervention to Appear on Ballot.**

(a) Within 15 workdays following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization, whether or not a party to the unit

hearing, may file an intervention to appear on ballot. The intervention shall be filed with the regional office 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 unit for which the intervention is filed.

(b) The intervention shall be accompanied by proof of support of at least 10 percent of the employees in the appropriate unit. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the intervention, exclusive of the proof of support, and proof of service pursuant to Section 32140 are required.

**71320. Board Determination Regarding Proof of Support.**

(a) Within 20 days of issuance of a notice of intent to conduct election the employer shall file with the regional office an alphabetical list, including job titles or classifications of employees employed in the appropriate unit as of the last date of the payroll period immediately preceding the date of issuance of the notice of intent to conduct election, 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 showing of support.

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

**71330. Voluntary Recognition.**

If only one organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the employer may grant voluntary recognition and notify the Board to cancel the election.

**71340. Conduct of Elections.**

All elections shall be conducted by the Board in accordance with election procedures described in Chapter 1, Subchapter 6, Article 2 of these regulations.

## **Article 7. Severance Petition**

### **71680. Severance Petition.**

(a) An employee organization may file a petition to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provision of Article 2 (commencing with Section 71030) or by filing a petition for certification in accordance with the provisions of Article 3 (commencing with Section 71100). In the case of a request for recognition or intervention, all provisions of Article 2 and Article 4 of this Subchapter shall be applicable to a severance request except as provided in this Article 7. In the case of a petition for certification, all provisions of Article 3 and Article 4 of this Subchapter shall be applicable to a severance petition except as provided in this Article 7.

(b) Whenever the conditions of Public Utilities Code Section 99564.1(c) or 99564.4(b)(1) exist, a severance petition, or any amendment to add classifications or positions to a severance petition, must be filed in the manner set out in Section 32135 during the “window period” as defined by Section 71026.

### **71685. Response to Severance Petition.**

(a) The employer and the exclusive representative of the established unit shall file a responding statement supporting or opposing the severance petition within 20 days following the date of service of the severance request. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

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

(2) A statement regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit:

(3) A concise statement setting forth support of or opposition to the unit proposed by the petition.



**CHAPTER 7. TRIAL COURT EMPLOYMENT PROTECTION  
AND GOVERNANCE ACT**

**Article 1. General Provisions**

**81000. Application of Regulations.**

Except as otherwise ordered pursuant to Chapter 1, the Board will conduct representation proceedings under the Trial Court Act in accordance with the applicable provisions of this Chapter only where a trial court has not adopted local rules in accordance with Government Code Section 71636, 71636.3 or 71637.1.

**81005. Parties.**

“Parties” means the trial court, the employee organization that is the exclusive or majority 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 trial court employees which has filed a pending petition pursuant to Government Code Section 71632.5(b) or 71636.

**81010. 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 negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

**81030. 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.

**81040. 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.

**81050. 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.

**81055. 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.

**81060. 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.

**81065. Elections in Consent Units.**

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of an election in a consent unit should not be interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

**81070. 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.

**81075. 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.

**81080. Conduct of Elections; Eligibility to Appear on Ballot.**

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this Chapter.

(b) 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 unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Chapter 1, Section 32700 of these Regulations.

**81090. Recognition.**

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the trial court shall grant recognition.

**Article 2. Elections**

**81100. 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 this Chapter. The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

**81105. 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 81145, or an election conducted pursuant to either Article 4 or 7 of this Chapter, 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 81110), 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.

**81110. 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 containing 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. 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.

(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.

**81115. 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.



**81120. 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, or temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

**81125. Observers.**

Each party shall be allowed to station an authorized observer selected from the employees of the employer at each polling site during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters.

**81130. 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.

**81135. 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.

**81140. 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.

**81145. 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.

**81150. 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.

**81155. 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.

**81160. Withdrawal of Objections.**

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

**81165. Hearings on Objections and Challenges.**

Objections to the conduct of an election which have not been dismissed pursuant to Section 81155(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.

**81170. 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 of these regulations.

**81175. 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.

**81180. 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 objections 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.

**81185. Certification of Results of Election or Certification of Exclusive Representative.**

Except in the case of elections conducted pursuant to either Article 4 or 7 of this Chapter, 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.

**81190. 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.

**81200. Bar to Conducting Election.**

The Board shall dismiss a petition requiring a representation election if it determines (a) 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 of such memorandum, provided that if a memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (b) 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.

**Article 3. Petition for Certification**

**81210. Petition for Certification.**

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group 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 appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate 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 unit claimed to be appropriate. 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.

**81220. 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 notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 15 workdays.
- (d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

**81240. 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 claimed 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.

**81250. 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:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

**81260. Amendment of Petition for Certification.**

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit 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 81210(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:

(1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses set forth in Section 81250.

(c) Amendments to correct technical errors or to add or delete job classifications from a party's proposed unit 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 and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the Board agent.

**81270. 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.

## **Article 4. Petition for Amendment of Certification**

### **81300. Petition.**

(a) An employee organization may file with the regional office a petition 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 petition 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 title 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 petition pursuant to Section 32140 are required.

### **81310. Employer Response.**

The employer may file a responding statement to the petition filed pursuant to Section 81300. The statement shall be filed with the regional office within 15 days following the date of service of the petition. Service and proof of service pursuant to Section 32140 are required.

### **81320. Board Investigation.**

(a) Upon receipt of a petition filed pursuant to Section 81300, 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 petition.

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

(c) Upon approval of a petition, 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 81200 of these regulations.



## **Article 5. Decertification Petition**

### **81350. 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 and include the following information:

(1) The name, address and telephone number of the petitioning employee organization, if any, and/or the name, address and telephone number of the agent to be contacted on behalf of a petitioning employee organization or 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 and the title 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;

(6) The date on which the exclusive representative was recognized or certified;

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

(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.

### **81360. Posting Notice of Decertification Petition.**

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

(b) 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.

- (c) The notice shall remain posted for a minimum of 15 workdays.
- (d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

**81370. 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.

**81380. 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) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed during the window period defined in Section 81010 of these regulations, 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, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the unit.

**Article 6. Severance Petition**

**81400. Severance Petition.**

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Chapter. Such a petition shall include the following information:

- (1) The name, address and telephone number of the petitioning 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 brief description and the title 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) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;
  - (6) The approximate number of employees in the proposed appropriate unit;
  - (7) The date on which the exclusive representative was recognized or certified;
  - (8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.
- (b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the “window period” defined by Section 81010.
- (c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

**81410. Response to Severance Petition.**

- (a) The public agency and the exclusive representative of the established unit may file responding statements supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.
- (b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:
- (1) A copy of the severance petition;
  - (2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit; and,

(4) A concise statement setting forth the basis for support of or opposition to the unit proposed by the petition.

**81420. Board Investigation.**

(a) Whenever a severance petition 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.

(b) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of any employees covered by a petition, unless the petition is filed during the window period defined in Section 81010 of these regulations, 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, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

**Article 7. Petition for Unit Modification**

**81450. Petition.**

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or

position(s) are not covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit;

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position;

(4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 81010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(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 and the title(s) of the established unit(s);

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

(5) The approximate number of employees covered by the petition;

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

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

**81460. Response to Petition.**

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

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

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

**81470. Board Determination Regarding Proof of Support.**

(a) If proof of support has been filed pursuant to section 81450(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees

proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) 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 of the proof of support.

**81480. Disposition of Petitions.**

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition if (1) it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

(c) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 81200.





## **CHAPTER 8. TRIAL COURT INTERPRETER EMPLOYMENT AND LABOR RELATIONS ACT**

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

#### **91000. Application of Regulations.**

Except as otherwise ordered pursuant to Chapter 1, the Board will conduct representation proceedings under the Court Interpreter Act in accordance with the applicable provisions of this Chapter only where a regional committee has not adopted local rules in accordance with Government Code Section 71823.

#### **91005. Parties.**

“Parties” means the trial court, regional committee, the employee organization that is the exclusive or majority 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 trial court employees which has filed a pending petition pursuant to Government Code Section 71814(b) or 71823.

#### **91010. 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 negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

#### **91030. 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.

#### **91040. 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.

**91050. 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.

**91055. 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.

**91060. 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.

**91065. Elections in Consent Units.**

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of an election in a consent unit should not be interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

**91070. 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.

**91075. 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.

**91080. Conduct of Elections; Eligibility to Appear on Ballot.**

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this Chapter.

(b) 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 unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Chapter 1, Section 32700 of these Regulations.

**91090. Recognition.**

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the regional committee shall grant recognition.

**Article 2. Elections**

**91100. 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 this Chapter. The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

**91105. 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 91145, or an election conducted pursuant to either Article 4 or 7 of this Chapter, 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 91110), 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.

**91110. 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 containing 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. 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.

(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.

**91115. 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.

**91120. 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, or temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

**91125. Observers.**

Each party shall be allowed to station an authorized observer selected from the employees of the employer at each polling site during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters.

**91130. 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.

**91135. 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.

**91140. 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.

**91145. 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.

**91150. 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.

**91155. 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.

**91160. Withdrawal of Objections.**

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

**91165. Hearings on Objections and Challenges.**

Objections to the conduct of an election which have not been dismissed pursuant to Section 91155(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.

**91170. 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 of these regulations.

**91175. 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.

**91180. 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 objections 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.

**91185. Certification of Results of Election or Certification of Exclusive Representative.**

Except in the case of elections conducted pursuant to either Article 4 or 7 of this Chapter, 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.

**91190. 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.

**91200. Bar to Conducting Election.**

The Board shall dismiss a petition requiring a representation election if it determines (a) 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 of such memorandum, provided that if a memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (b) 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.

**Article 3. Petition for Certification**

**91210. Petition for Certification.**

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group 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 appropriate unit, including the classifications and positions to be included and those to be excluded;
  - (4) The approximate number of employees in the proposed appropriate 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 unit claimed to be appropriate. 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.

**91220. 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 notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 15 workdays.
- (d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

**91240. 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 claimed 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.

**91250. 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:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

**91260. Amendment of Petition for Certification.**

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit 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 91210(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:

(1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses set forth in Section 91250.

(c) Amendments to correct technical errors or to add or delete job classifications from a party's proposed unit 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 and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the Board agent.

**91270. 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.

**Article 4. Petition for Amendment of Certification**

**91300. Petition.**

(a) An employee organization may file with the regional office a petition 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 petition 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 title 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 petition pursuant to Section 32140 are required.

**91310. Employer Response.**

The employer may file a responding statement to the petition filed pursuant to Section 91300. The statement shall be filed with the regional office within 15 days following the date of service of the petition. Service and proof of service pursuant to Section 32140 are required.

**91320. Board Investigation.**

(a) Upon receipt of a petition filed pursuant to Section 91300, 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 petition.

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

(c) Upon approval of a petition, 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 91200 of these regulations.

**Article 5. Decertification Petition**

**91350. 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 and include the following information:

(1) The name, address and telephone number of the petitioning employee organization, if any, and/or the name, address and telephone number of the agent to be contacted on behalf of a petitioning employee organization or 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 and the title 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;

(6) The date on which the exclusive representative was recognized or certified;

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

(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.

**91360. Posting Notice of Decertification Petition.**

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

(b) 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.

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

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

**91370. 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.

**91380. 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) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed

during the window period defined in Section 91010 of these regulations, 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, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the unit.

## **Article 6. Severance Petition**

### **91400. Severance Petition.**

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Chapter. Such a petition shall include the following information:

- (1) The name, address and telephone number of the petitioning 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 brief description and the title 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) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;
- (6) The approximate number of employees in the proposed appropriate unit;
- (7) The date on which the exclusive representative was recognized or certified;
- (8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.

(b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the "window period" defined by Section 91010.

(c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or

amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

**91410. Response to Severance Petition.**

(a) The public agency and the exclusive representative of the established unit may file responding statements supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

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

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit; and,

(4) A concise statement setting forth the basis for support of or opposition to the unit proposed by the petition.

**91420. Board Investigation.**

(a) Whenever a severance petition 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.

(b) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of any employees covered by a petition, unless the petition is filed during the window period defined in Section 91010 of these regulations, 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, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.





## **Article 7. Petition for Unit Modification**

### **91450. Petition.**

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit;
- (2) To make technical changes to clarify or update the unit description;
- (3) To resolve a dispute as to unit placement or designation of a new classification or position;
- (4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 91010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(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 and the title(s) of the established unit(s);

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

(5) The approximate number of employees covered by the petition;

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

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

#### **91460. Response to Petition.**

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date

of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

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

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

**91470. Board Determination Regarding Proof of Support.**

(a) If proof of support has been filed pursuant to section 91450(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) 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 of the proof of support.

**91480. Disposition of Petitions.**

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition if (1) it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

(c) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 91200.

## **CHAPTER 9. PROCEDURES UNDER SPECIFIED TRANSIT DISTRICT ACTS AND LAWS**

### **93000. Definitions.**

(a) "District" means the Alameda-Contra Costa Transit District, the Fresno Metropolitan Transit District, the Golden Empire Transit District, the Marin County Transit District, the North County Transit District, the Orange County Transit District, the Sacramento Regional Transit District, the San Diego County Transit District, the San Diego Metropolitan Transit Development Board, the San Francisco Bay Area Rapid Transit District, the San Mateo County Transit District, the Santa Barbara Metropolitan Transit District, the Santa Clara Valley Transportation Authority, the Santa Cruz Metropolitan Transit District, the Southern California Rapid Transit District, the San Joaquin Regional Transit District, and the West Bay Rapid Transit Authority, as the case may be.

(b) "Law" means the Transit District Law, Public Utilities Code, Section 24501 et seq.; Fresno Metropolitan Transit District Act of 1961, Public Utilities Code, Appendix 1, Section 1.1 et seq.; Golden Empire Transit District Act, Public Utilities Code, Section 101000 et seq.; Marin County Transit District Act of 1964, Public Utilities Code, Section 70000 et seq.; North County Transit District Act, Public Utilities Code, Section 125000 et seq.; Orange County Transit District Act of 1965, Public Utilities Code, Section 40000 et seq.; Sacramento Regional Transit District Act, Public Utilities Code, Section 102000 et seq.; San Diego County Transit District Act of 1965, Public Utilities Code, Section 90000 et seq.; Mills-Deddeh Transit Development Act, Public Utilities Code, Section 120000 et seq.; San Francisco Bay Area Rapid Transit District Act, Public Utilities Code, Section 28500 et seq.; San Mateo County Transit District Act, Public Utilities Code, Section 103000 et seq.; Santa Barbara Metropolitan Transit District Act of 1965, Public Utilities Code, Section 95000 et seq.; Santa Clara Valley Transportation Authority Public Utilities Code, Section 100000 et seq.; Santa Cruz Metropolitan Transit District Act of 1967, Public Utilities Code, Section 98000 et seq.; Southern California Rapid Transit District Law, Public Utilities Code, Section 30000 et seq.; San Joaquin Regional Transit District Act Public Utilities Code, Section 50000 et seq.; and West Bay Rapid Transit Authority Act, Public Utilities Code, Appendix 2, Section 1.1 et seq.

(c) "Hearing officer" as used in this Chapter means a hearing officer appointed by the Supervisor.

### **93005. Petition for Certification.**

(a) The investigation of a question concerning representation of employees shall be initiated by the filing of a petition with SMCS. Such petition shall be called a petition for certification and is a petition which would arise under paragraph (1)(A)(i) and (1)(B) of Section 9C of the Labor-Management Relations Act. It may be filed by any employee or group of employees or any individual or labor organization acting on their

behalf and claiming to represent a majority of the employees in an appropriate unit or by a district.

In the event any petition seeks to include employees covered in whole or in part by an existing collective bargaining agreement between the district and any labor organization, such petition in order to be considered timely must be filed within the period 120 to 90 days, inclusive, prior to the date such collective bargaining agreement is subject to termination, amendment or modification.

(b) Petition for Decertification. The investigation of a question concerning representation, alleging an individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative shall be called a petition for decertification and is one of the type which would arise under paragraph (1)(A)(ii) of Section 9(c) of the Labor-Management Relations Act. It may be filed by any employee or group of employees or any individual or labor organization acting on their behalf and shall be filed as set forth in (a).

(c) Petition for clarification of an existing bargaining unit or petition for amendment of certification. A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, is a petition which would arise under Section 9(b) of the Labor-Management Relations Act. It may be filed by a labor organization or by a district and shall be filed as set forth in (a).

**93010. Form of Petition.**

(a) Petitions shall be in writing and signed, and shall be sworn to before a notary public or other person duly authorized by law to administer oaths and take acknowledgements. An original shall be filed.

(b) A petition shall contain the following:

- (1) The name and address of the district, of responsible members, and of the establishments involved.
- (2) The general nature of the district's business.
- (3) A description of the bargaining unit which the petitioner claims to be appropriate.
- (4) The names and addresses of any other labor organization which claims to represent any employees in the alleged or the certified appropriate unit, and brief descriptions of the contract or contracts, if any, covering the employees in such unit and the expiration date of such contract(s).
- (5) The number of employees in the alleged appropriate unit.

(6) The name, affiliation (if any), and address of the petitioner (state if petitioner is the district).

(7) Any other relevant facts.

(c) In addition, a petition for certification, when filed by an employee or group of employees or an individual or labor organization acting in their behalf, shall also contain:

(1) A statement that the district declines to recognize the petitioner as the representative within the meaning of Section 9(a) of the Labor-Management Relations Act or that the labor organization is currently recognized but desires certification.

(2) Whether a strike or picketing is in progress at the establishment involved, and if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(d) In addition, a petition for certification, when filed by a district, shall also contain:

(1) A brief statement setting forth that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate; a description of such unit; and the number of employees in the unit (if different from (b)(3) or (b)(4)).

(2) The name or names, affiliation if any, and addresses of the individuals or labor organizations making such claim for recognition (if different from (b)(4)).

(3) A statement whether the petitioner has contracts with any labor organization or other representatives of employees and if so, their expiration date.

(4) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(e) In addition, a petition for decertification shall also contain:

(1) Name or names of the individuals or labor organizations who have been certified or are being currently recognized by the district and who claim to represent any employees in the unit involved, and the expiration date of any contracts covering such employees (if different from (b)(4)).

(2) An allegation that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative in the appropriate unit as defined in Section 9(a) of the Labor Management Relations Act.

(3) Whether a strike or picketing is in progress at the establishment involved, and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(f) In addition, a petition for clarification shall also contain:

(1) The name of the recognized or certified bargaining representative (if different from (b)(4)).

(2) If the bargaining unit is certified, an identification of the existing certification.

(3) A description of the proposed clarification.

(4) The number of employees in the unit as proposed under the clarification.

(5) The job classifications of employees as to whom the issue is raised, and the number of employees in each classification.

(6) A statement by petitioner setting forth reasons why petitioner desires clarification of unit.

(g) In addition, a petition for amendment of certification shall also contain:

(1) The name of the certified union involved.

(2) Identification and description of the existing certification.

(3) A statement by petitioner setting forth the details of the desired amendment and reasons therefor.

(h) Concurrently upon filing, a copy of said petition shall be served by the petitioner upon the district and upon any known labor organization purporting to act as representative of any employee directly affected by such petition, in accordance with Section 32140.

**93015. Percentage of Valid Authorizations Required to Determine Existence of a Representation Dispute.**

(a) No question concerning representation shall be deemed to exist unless the labor organization raising such question by petition shall make a showing of proved authorizations or membership of at least 30 percent of the employees in the proposed unit. Authorization must be signed and dated by the individual employee. No authorizations will be accepted which bear a date more than six months before the date of the petition.

(b) In lieu of the submission of signed authorization or membership applications, an adequate showing of interest may be demonstrated by submission of proof satisfactory to SMCS that

(1) The petitioner held a contract covering employees in a utility or facility at the time of its acquisition by the district;



(2) And the district assumed such collective bargaining agreement pursuant to the provisions of any contract of acquisition or the terms of the act;

(3) And the proposed unit is identical with the unit established in such collective bargaining agreement.

(c) In the event a petition seeks to add a group of employees not covered by an existing SMCS-certification, it shall be necessary to submit authorization or membership applications only for that portion of the proposed unit attributable to such accretion.

**93020. Consent Election Agreements.**

Where a petition has been duly filed, the district and any individuals or labor organization may, with the approval of SMCS, enter into a consent election agreement. Such agreement shall include a description of the appropriate unit, the time and place of the election, and the payroll period to be used in determining what employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of SMCS and in accordance with Sections 93070 and 93075 below. SMCS shall issue to the parties a certification of the results of the election, including a certification of representative where appropriate.

**93025. Investigation of Petition by Service.**

(a) After a petition has been filed under Section 93005(a) or (b), if no agreement for a consent election is entered into and if it appears to SMCS that there is reasonable cause to believe that a question of representation exists, that the policies of the act will be effectuated, and that an election will reflect the free choice of the employees in the appropriate unit, the Supervisor shall serve upon the petitioner, the district, any known individuals or labor organizations purporting to act as the representative of any employees directly affected by such investigation and any other parties a notice of hearing before a hearing officer at a time and place fixed therein, which notice shall be given at least 10 days in advance of the date specified for the hearing. Any such notice of hearing may be amended or withdrawn by the When more than one petition has been filed involving all or part of the same group of employees, or otherwise raising common issues, SMCS may, on the motion of any of the parties, or on its own motion, order that said petitions be consolidated for the purpose of hearing and decision.

(b) After a petition has been filed under Section 93005(c), the Supervisor shall conduct an investigation and, as appropriate, may issue a decision without a hearing; or prepare and serve on the petitioner, the district, any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such an investigation and any other parties, a notice of hearing before a hearing officer at a time and place fixed or take other appropriate action. Any such notice of hearing may be amended or withdrawn by the Supervisor at any time prior to the

commencement of the hearing and by the hearing officer after commencement and prior to the close of the hearing.

(c) If after investigation of the petition it appears to the Supervisor that there is no reasonable cause to believe that there exists a question whether a labor organization represents a majority of employees of the district in an appropriate unit, or if the Supervisor determines that the petition has not been filed in accordance with these regulations, the Supervisor shall have the power to dismiss the petition without a hearing or approve the withdrawal of the petition.

(d) Any determination made by the Supervisor pursuant to this Section may be appealed to the Board itself in accordance with Sections 32350 through 32380 or, if applicable, in accordance with and subject to the limitations provided in Section 32200.

### **93030. Conduct of Hearings.**

(a) Hearings shall be conducted by a hearing officer appointed by the Supervisor and shall be open to the public unless otherwise ordered by the hearing officer. It shall be the duty of the hearing officer to inquire fully into all matters in issue and necessary to obtain a full and complete record upon which SMCS, the Supervisor, the hearing officer, or the Board may discharge their duties under the Laws described in Section 93000. A hearing officer may be substituted by the Supervisor at any time.

(b) The hearing officer may, in his or her discretion, continue the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at a hearing or by other appropriate notice.

(c) All motions, including motions for intervention pursuant to Section 93035 below, shall be in writing, or if made at the hearing may be stated orally on the record, and shall briefly state the action or relief sought and the grounds for such motion. Motions shall be filed with the hearing officer, and a copy thereof shall immediately be served by the moving party upon each of the other parties to the proceeding. The hearing officer shall rule either orally on the record or in writing upon all motions, including all motions to dismiss a petition.

### **93035. Intervention.**

Any labor organization or other person desiring to intervene in any hearing shall make a motion for intervention stating the grounds upon which such labor organization or other person claims to have an interest in the proceeding. The hearing officer may by order in writing or on the record permit intervention to such extent and upon such terms as may be deemed proper, and such intervener shall thereupon become a party to the proceeding; provided, however, that (1) no labor organization which is a party to a contract covering employees in the alleged appropriate unit shall be denied the right to intervene as a party in such proceeding, and (2) no labor organization which makes a showing of proved authorizations or membership of at least 10 percent of the employees in the unit claimed to be appropriate by the petitioner shall be denied the

right to intervene as a party in such proceedings. Any labor organization desiring to intervene for the purpose of seeking an election in a unit different from that claimed to be appropriate by the petitioner shall be required to make a showing of proved authorizations or membership of a least 30 percent of the employees in the unit claimed to be appropriate by the organization seeking intervention. The district shall be deemed a party to each proceeding hereunder without the necessity of intervening therein.

**93040. Rights and Duties of Parties at Hearing.**

(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the hearing officer shall have power to call, examine and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection and included in the record. No such objection shall be deemed waived by further participation in the hearing.

(c) All motions, rulings and orders shall become a part of the record. Interlocutory rulings by the hearing officer shall not be directly appealable.

(d) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the transcript of the hearing.

(e) Misconduct at any hearing shall be grounds for summary exclusion by the hearing officer from further participation in such hearing.

(f) The refusal of a witness at a hearing to answer any question which has been ruled to be proper shall in the discretion of the hearing officer be grounds for striking all testimony previously given by such witness on related matters.

**93045. Subpoenas.**

(a) Application for subpoenas may be filed in writing by any party with the Supervisor if made prior to the hearing, and with the hearing officer if made at the hearing. The Supervisor or the hearing officer shall forthwith cause the subpoenas to be issued. Applications for subpoenas may be made ex parte. Any person served with a subpoena, whether ad testificandum or duces tecum, who does not intend to comply therewith shall within five days after the date of service file with the hearing officer a petition to revoke the subpoena. Notice of the filing of a petition to revoke shall be promptly given by the hearing officer to the party at whose request the subpoena was issued. The hearing officer shall revoke a subpoena if in his or her opinion the evidence sought does not relate to any matter under investigation or in question in the proceedings, is not relevant, or the subpoena does not describe with sufficient

particularity the evidence requested, or if for any other reason the subpoena is otherwise invalid. The hearing officer shall make a statement in writing or on the record of the procedural or other grounds for this ruling. Filing with reference to the revocation of a subpoena shall not become part of the record except upon the request of the party aggrieved by the ruling on the petition. Persons compelled to produce written evidence are entitled to retain the same, but the party compelling its production may pay the cost of procuring a copy thereof to be submitted in evidence in lieu of the original.

(b) Witnesses summoned before the hearing officer shall be paid by the party for whom the witness appears.

**93050. Briefs.**

The hearing officer shall upon request allow parties to file briefs following the completion of the hearing. Copies of such briefs shall be concurrently served upon all parties.

**93055. Duties of Hearing Officer Following Hearing.**

Upon the close of a hearing, the hearing officer shall as expeditiously as possible prepare a proposed decision and order which shall include a written analysis of the record and of the arguments of the parties, findings of fact and a determination upon the issues submitted to the hearing officer. If the hearing officer determines that an election is to be held, the hearing officer shall set forth the appropriate unit or units within which such election(s) shall be held and the categories of employees who shall be eligible to vote in such unit or units. The original of such proposed decision and order, together with the petition or petitions, notices of hearing, written motions, rulings or orders, the transcript of the hearing, stipulations, exhibits and documentary evidence, affidavits of service, depositions, and briefs or other legal memoranda submitted by the parties shall constitute the record in the proceedings and shall promptly be forwarded to the Supervisor by the hearing officer. The decision of the hearing officer shall be final if not appealed as set forth in Section 93060. A copy of the proposed decision and order shall concurrently be served upon each of the parties by the hearing officer.

**93060. Exceptions.**

Within twenty (20) days from the date of service of the proposed decision and order, any party may file with the Board itself exceptions to the proposed decision in accordance with Section 32300.

**93065. Determination.**

The provisions of Sections 32300 through 32320, and Sections 32400 and 32410, shall be applicable to disputes arising under this Chapter. If the Board determines that an election is to be held, the Board shall order such election within such unit or units as have been found to be appropriate, and shall determine the categories of

employees who shall be eligible to vote in such unit or units. A copy of the decision and order of the Board shall be served upon each of the parties.

**93070. Election Procedures.**

(a) All elections shall be conducted by SMCS and shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, any participant, upon its prompt request to and approval thereof by the Supervisor, whose decision shall be final, may have its name removed from the ballot. Provided, however, that in a proceeding involving a district-filed petition or a petition for decertification, the labor organization certified, currently recognized or found to be seeking recognition may not have its name removed from the ballot without timely notice in writing to all parties and to SMCS disclaiming any representation interest among the employees in the unit.

Any party may be represented by observers of its own selection, subject to such limitations as SMCS may prescribe. Any party and any agent or representative of SMCS may challenge for good cause the eligibility of any person to vote in the election. Each challenged ballot shall be impounded. Upon the conclusion of the election SMCS shall issue a tally of the ballots to each party. Within five days thereafter any party may file with SMCS two copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons for the objections. The objecting party shall immediately serve a copy of such objections upon each other party and file with the SMCS proof of service and shall, upon request, promptly furnish evidence to support the objections.

(b) If (1) no objections are filed within the time specified in subsection (a) above, and (2) any challenged ballots are insufficient in number to affect the results of the election, and (3) no runoff election is to be held pursuant to Section 93075 below, SMCS shall forthwith issue to the parties a certification of the results of the election, including certification of representatives where appropriate; and the case will be closed.

(c) If objections are filed to the conduct of the election or conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the results of the election, the Supervisor shall investigate such objections or challenges, or both, and shall prepare and serve upon the parties a report on such objections or challenged ballots, or both. Within 10 days from the date of issuance of the report on such objections or challenged ballots, or within such additional period as the Supervisor may allow upon written application for extension made within such 10-day period, any party may file with the Supervisor an original of exceptions to such report. Concurrently upon the filing of such exceptions, the filing party shall serve a copy upon each of the other parties, and proof thereof shall be promptly filed with Supervisor. If no exceptions are filed to such report within the time permitted, the Supervisor may issue a written decision in conformity with such report, as to the validity of such objections or challenges or may make other disposition of the case based on an administrative investigation or in the exercise of reasonable discretion,

and SMCS shall thereupon promptly act to close the case in accordance with such decision.

(d) If exceptions are filed, either to the report on challenged ballots or objections, or both if it is a consolidated report, the Supervisor shall appoint a hearing officer to examine the exceptions and make recommendations. If it appears to the hearing officer that such exceptions do not raise substantial and material factual issues with respect to the conduct of the election or conduct affecting the results of the elections, the hearing officer may make written recommendations to the Supervisor forthwith, and shall concurrently serve copies of said recommendations upon the parties. Within 10 days from the date of issuance of the aforesaid recommendations, or within such additional period as the Supervisor may allow upon written application for extension made within the 10-day period, any party may file with the Board itself exceptions to the hearing officer's recommendations, in accordance with the provisions of Section 93065. Concurrently upon the filing of such exceptions, the filing party shall serve a copy upon each of the other parties and proof thereof shall be promptly filed with the Board.

(e) If it appears to the hearing officer that any exceptions filed to the report of the Supervisor on challenged ballots or objections raise substantial and material factual issues, the hearing officer shall cause to be served upon the parties a notice of hearing on said exceptions, which notice shall be given at least 10 days in advance of the date specified for the hearing. The hearing shall be conducted by the hearing officer in accordance with the provisions of Sections 93030, 93040, 93045, and 93050 insofar as applicable. Upon the close of the hearing, the hearing officer shall prepare and deliver to the Supervisor a proposed decision resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the challenges or objections, or both if it be a consolidated matter. Said decision, together with (1) the notice of hearing, (2) motions, (3) rulings, (4) orders, (5) transcript of the hearing, (6) stipulations, (7) exceptions, (8) documentary evidence and briefs, (9) objections to the conduct of the election or conduct affecting the results of the election, (10) the report of Supervisor on such objections, (11) the report of Supervisor on challenged ballots, (12) exceptions to the report of the Supervisor on objections or to the report on challenged ballots, and (13) the record previously made, shall constitute the record in the case. A copy of the hearing officer's proposed decision shall immediately be served upon each of the parties, where-upon any of the parties may file exceptions to said report within the same time limitations and requirements as to service, and proof thereof, as are provided for in the case of exceptions filed under subsection (d) of this section.

(f) After the period for the filing of exceptions under subsection (d) or (e) has expired the Board shall issue a written decision and serve copies upon the parties. If the hearing officer has issued recommendations under subsection (d), finding that the exceptions to the report of the Supervisor do not raise substantial and material factual issues, and exceptions to such recommendations have been filed, and after consideration of such exceptions the Board decides that the exceptions to the report

of the Supervisor do raise substantial and material factual issues, the Board shall direct the hearing officer to issue a notice of hearing, whereupon the procedures for a hearing and the issuance of the hearing officer's report provided for in subsection (e) of this section (including the provision for filing exceptions to the hearing officer's report) shall be followed. The Board may adopt the recommendations of the hearing officer issued under subsection (d) or the proposed decision of the hearing officer issued under subsection (e) as its own. SMCS shall thereafter promptly proceed to take such action as may be called for by the decision of the Board, after which the case will be closed.

**93075. Runoff Elections.**

(a) SMCS shall conduct a runoff election when an election in which a ballot providing for not less than three choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast. The runoff election shall be held promptly following final disposition of any challenges, objections or exceptions which followed the prior election as provided in Section 93070. Only one runoff election shall be held pursuant to this section.

(b) Employees who were eligible to vote in the original election and who are employed in an eligible category on the date of the runoff election shall be the only employees eligible to vote.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the highest and second highest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and "neither" or "none" is equally divided among the several choices, or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the Supervisor shall declare the first election a nullity and shall conduct another election among the three choices which received the greatest number of ballots in the original election; provided that in the event there was a tie in the original election between the third and fourth choices or among the third, fourth and other choices, the Supervisor shall in the runoff election include on the ballot all such tied choices. In the event two or more choices receive the same number of ballots, and if either (1) there are no challenged ballots which would affect the results of the election, or (2) after all challenges have been disposed of it is found that all eligible voters have cast valid ballots, there shall be no runoff election and the petition shall be dismissed. Only one such further election pursuant to this subsection (d) may be held.

(e) The provisions of Section 93070 above shall be applicable to a runoff election.

**93080. Relevant Federal Law.**

In resolving questions of representation, the Board shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended.



