

**PUBLIC NOTICE**  
**Regular Business Meeting Agenda**  
**Public Employment Relations Board**  
**October 14, 2021 ~ 10:00 a.m.**

**LOCATION:** Pursuant to Government Code section 11133, there will not be a physical meeting location. Board members will participate via videoconference. Please follow the instructions below to attend the meeting remotely.

Attend the meeting via video-conference:

1. In your web browser, go to <https://zoomgov.com/>
2. Select "Join a Meeting"
3. Enter the Meeting ID: **161 236 8410**
4. Enter your name
5. Enter the Passcode: **3446250355**, then click "continue"

OR

To attend the meeting via teleconference:

1. Dial (669) 254-5252
2. When prompted, enter the meeting id: **161 236 8410#**
3. Press # to skip the participant id
4. When prompted, enter the meeting password: **3446250355#**

A note on public comment:

In advance of the meeting, those who wish to comment during the public comment portion of the agenda or on specific agenda items may request to be added to the queue by emailing [Cheryl.Shelly@perb.ca.gov](mailto:Cheryl.Shelly@perb.ca.gov) . Please be sure to include your name, affiliation if any, and topic in the email.

During the meeting, you can make a request to speak via video or the teleconference line when prompted by the Chair at each appropriate agenda item.

1. Roll Call.
2. Adoption of Minutes. August 12, 2021 Meeting
3. Public Comment. This is an opportunity for the public to address the Board on issues not scheduled on today's agenda. The Board cannot act on those items but may refer matters to staff for review and possible Board action at a future, publicly noticed meeting.

*\*This meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Board by contacting Cheryl Shelly at (916) 322-8231 or sending a written request to Ms. Shelly at PERB, 1031 18th Street, Sacramento, California 95811. Requests for further information should also be directed via telephone or writing to Ms. Shelly. Additional information is also available on the internet at [www.perb.ca.gov](http://www.perb.ca.gov).*

4. Staff Reports. The following Reports will be received. Any matter requiring Board action, and not included on this agenda, will be calendared for a subsequent public Board meeting.
  - A. Executive Director
  - B. Division of Administration
  - C. Office of General Counsel
  - D. Division of Administrative Law
  - E. State Mediation and Conciliation Service
  
5. Old Business:
  - A. PERB Case Processing Efficiency Initiative (Update)
  
  - B. Update to Approved Proposed Transit Regulations: Consideration of updates to a previously approved rulemaking package to amend regulations that govern transit districts.
  
6. New Business:
  - A. Expedited Decision Processing Regulation: Consideration of approval for submitting a rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process to amend PERB regulation section 32147 that governs expedited cases. The proposed regulation is attached following this agenda.
  
  - B. Request for Accommodation Regulations: The Office of General Counsel and Administrative Law Division will ask the Board to authorize the preparation of a rulemaking package to add new PERB regulations governing requests for accommodation.
  
7. Recess to Closed Session. The Board will meet in a continuous closed session each business day beginning immediately upon recess of the open portion of this meeting through December 9, 2021.

The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Attachment – Agenda Item 5. B.

**PROPOSED TEXT:**

Please note: all underlined text indicates additions to the regulatory text and all ~~strikethrough~~ text indicates deleted material.

**CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD**

**SUBCHAPTER 1. INTERNAL PROCEDURES**

**Article 1. Public Meetings**

**31001. Meetings.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561, Public Utilities Code.

**SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS**

**Article 1. Definitions**

**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.~~

Authority cited: Section 99561(f), Public Utilities Code. Reference: Section 99560 et seq., Public Utilities Code.

### **32019. Orange County Transit District Act.**

(a) “OCTDA” means the Orange County Transit District Act of 1965 as contained in Chapter 1 of Part 4 of Division 10 of the Public Utilities Code (commencing with Section 40000).

(b) “Employer,” “PUC transit employer,” or “Authority” means the Orange County Transportation Authority (as contained in Chapter 3 of Part 4 of Division 10 of the Public Utilities Code (commencing with Section 40060).

Authority cited: Section 40122.1(a), Public Utilities Code. Reference: Section 40000 et seq., Public Utilities Code.

### **32019.5. San Francisco Bay Area Rapid Transit District Act.**

(a) “SFBART Act” means the San Francisco Bay Area Rapid Transit District Act as contained in Chapter 1 of Part 2 of Division 10 of the Public Utilities Code (commencing with Section 28848).

(b) “Employer,” “PUC transit employer,” or “District” includes the San Francisco Bay Area Rapid Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type other than temporary bus lines as defined in Chapter 1 of Part 2 of Division 10 (commencing with Section 28848).

Authority cited: Section 28849(b), Public Utilities Code. Reference: Section 28848 et seq., Public Utilities Code.

### **32019.6 Sacramento Regional Transit District Act.**

(a) “Sacramento RTD Act” means the Sacramento Regional Transit District Act as contained in Chapter 1 of Part 14 of Division 10 of the Public Utilities Code (commencing with Section 102000).

(b) “Employer,” “PUC transit employer,” or “District” includes the Sacramento Regional Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type, and excluding all temporary bus lines as defined in Chapter 1 of Part 14 of Division 10 (commencing with Section 102000).

(c) “Exclusive representative” means an accredited employee organization recognized or certified as the exclusive negotiating representative of employees in an appropriate unit within the district.

(d) An exclusive representative may elect to move one or more of its bargaining units to PERB’s jurisdiction for unfair practice charges. Notification by the exclusive representative of such election shall be filed through e-PERB with the General Counsel or the General Counsel’s designee. The exclusive representative shall serve the District pursuant to section 32140. An election by an exclusive representative for one or more of its bargaining units to be subject to PERB’s jurisdiction shall be irrevocable for that unit.

(e) “Opt in unit” means a bargaining unit which the exclusive representative elects to be subject to PERB’s jurisdiction for unfair practice charges.

### **32020. Board.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3551(a), 3555.5(c), 3562(b), 71639.1(a) and 71825(a), Government Code; and Sections 28849(b), 40122.1(a) and 99560.1(b), Public Utilities Code.

### **32030. Board Itself.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3551(a), 3555.5(c), 3562(b), 71639.1(a) and 71825(a), Government Code; and Sections 28849(b), 40122.1(a) and 99560.1(b), Public Utilities Code.

### **32040. Executive Director.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Section 3541(f), Government Code.

**32050. General Counsel.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Section 3541(f), Government Code.

**32055. Chief Administrative Law Judge.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3551(a), 3555.5(c), 3563(j), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(j), Public Utilities Code.

**32060. Headquarters Office.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(m), Public Utilities Code.

**32075. Regional Office.**

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(m), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

**32080. Day.**

“Day” means calendar day unless otherwise specified.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

**32090. e-PERB.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98162.5, 99561, and 99561.2, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

**32091. Electronic Filing.**

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



Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98162.5, 99561, and 99561.2, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **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.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98162.5, 99561, and 99561.2, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code; and California Rule of Court 2.257.

### **32093. Electronic Service.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98162.5, 99561, and 99561.2, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **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.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28860(b), 28851, 37051, 40122, 40122.1, 50121, 70122, 90300, 95651, 98162.5, 99561, and 99561.2, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32095. Bargain**

The term “bargain” is equivalent to “meet and confer,” as well as “meet and negotiate.”

Authority cited: Sections 3509(a), 3513(h), 3524.52(a), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3524.52(a), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code.

## **Article 2. General Provisions**

### **32100. Application of Regulations.**

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

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

(c) All rules and regulations within this Chapter, except for Article 6 of Subchapter 6, shall apply to proceedings conducted under TEERA and to Chapter 6, Subchapter 2, 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).

(h) As set forth in Section 72001, applicable regulations in Chapter 1, Subchapter 2, apply to filings with SMCS.

(i) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to proceedings conducted under OCTDA, and SFBART Act, and Sacramento RTD (for opt in units). Representation proceedings under OCTDA, and SFBART, and Sacramento RTD Act are governed by Chapter 6, Subchapter 3, of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), ~~3603~~, 71639.1(b) and 71825(b), Government Code; and Sections ~~28849(b)~~, 40122.1(a), and 99561(f), Public Utilities Code. Reference: Section 19604, Business and Professions Code; Section 57031, Food and Agricultural Code; Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3557, 3563, 3600, 3601, 3602, 3603, 3611, 71632.5, 71636, 71636.1, 71636.3, 71637, 71637.1, 71639.1, 71823 and 71825, Government Code; Section 2686, Labor Code; and Sections 25051, 25052, ~~28849(b)~~, 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, ~~40122.1(a)~~, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 99561, 100301, 100305, ~~100306~~, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4 and Appendix 2, Sections 13.90, 13.91 and 13.96, Public Utilities Code.

### **32105. Severability.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections ~~28849(b)~~, 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1 and 71825, Government Code; and Sections ~~28849(b)~~, 40122.1(a) and 99561, Public Utilities Code.

### **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.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 2502, 28849(b), 28851, 28860 (b), 30751, 40122, 40122.1, 50121, 70122, 90300, 95651, 98162.5, 99561, ~~and~~ 99561.2, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **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.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 2502, 28849(b), 28851, 28860 (b), 30751, 40122, 40122.1, 50121, 70122, 90300, 95651, 98162.5, 99561, and 99561.2, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **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)~~, and (f), 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) The Sacramento Regional Office shall be the appropriate location for filing all documents with SMCS in PUC transit representation matters. Notwithstanding this regulation, PUC transit representation documents filed through e-PERB shall be deemed filed at the appropriate location.

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

Authority cited: Sections 3509, 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 99561(f), 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3524, 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1, 71807 and 71825, Government Code; and Sections 25052, 28851, 30751, 30756, 40122, 50121, 70122, 90300, 95651, 99561(m), 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Sections 13.91, Public Utilities Code.

### **32120. Filing Contracts with Board.**

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

Authority cited: Sections 3509(a), 3524, 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3513(h), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3524, 3541.3(n), 3551(a), 3555.5(c), 3563(m), 3541.3(f), 3541.3(g), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), and 99561(m), Public Utilities Code.

### **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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 99561(f), 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3551(a), 3555.5(c), 3563, 3577(b), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561, and 99564.4(b), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 99561(f), 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3551(a), 3555.5(c), 3563, 3577(b), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561, and 99564.4(b), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32132. Extension of Time.**

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

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

(c) A request for an extension of time within which to file any document with a Board agent shall be in writing and shall be filed with the Board agent at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party. Extensions of time may be granted by the Board agent for good cause only. A Board agent may accept and approve a late filed request for an extension of time as provided for in Section 32136.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 99561(f), 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(n), 3541.35, 3563(m), 3551(a), 3555.5(c), 3563.5, 71639.1, 71639.15, 71825 and 71825.05, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(m), and 99561.4, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(m), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32136. Late Filing.**

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations. An error or malfunction of e-PERB shall be deemed good cause for late filing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; Sections 12, 12(a) and 1013, Code of Civil Procedure; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(m), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **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.

(I) in the case of a PUC transit district employer as defined in Public Utilities Code sections 28848(a), 40122.1(a), and 102011, any person authorized to act on behalf of the employer.

(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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(m), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; Sections 12, 12(a) and 1013, Code of Civil Procedure; and Sections 28849(b), 40122.1(a) and 99561(m), Public Utilities Code.

### **32145. Waiver of Time Periods.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(m), Public Utilities Code.

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

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

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

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(m), Public Utilities Code.

### **32149. Investigative Subpoenas.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32150. Subpoenas.**

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

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

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 3601, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

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

(2) When he or she is related to any party or to an agent or officer of any party, or to an attorney or counsel of any party by consanguinity or affinity within the third degree

computed according to the rules of law, or when he or she is indebted, through money borrowed as a loan, to any party or to an attorney or counsel of any party.

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

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

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

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

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

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

(d) If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

(e) Whenever a Board member shall have knowledge of any facts which, under the provisions of this rule, disqualify him or her to consider any case before the Board, it shall be his or her duty to declare the disqualification to the Board immediately upon learning of such facts. This declaration shall be made part of the official record of the Board. The Board member shall then

refrain from participating and shall attempt in no way to influence any other person with respect to the matter.

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3551(a), 3555.5(c), 3557, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561, 99562, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

### **32162. Confidentiality of Board Investigations.**

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

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



Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(g), Public Utilities Code.

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

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

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

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

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

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(g), Public Utilities Code.

## **SUBCHAPTER 3. HEARINGS.**

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

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

- (a) The person, employer, or employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the proceeding; and
- (b) The Board agent determines that the person, employee organization or employer has an interest in the case and will not unduly impede the proceeding.
- (c) The Board agent may grant participation in the hearing which shall be limited to the right to make an oral statement on the record and to file a written brief subject to such conditions as may be prescribed.

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

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

- (a) An employee organization shall be allowed to participate fully in a representation hearing provided it has filed a written application with the regional office not less than 10 days prior to the commencement of the hearing, accompanied by either 10 percent support of any unit in dispute at the hearing, or 10 percent support of a proposed unit which overlaps another unit in dispute at the hearing. Proof of support is defined in Chapter 1, Section 32700. A copy of the written application, excluding the proof of support, shall be served on the parties. Proof of service pursuant to Section 32140 is required.
- (b) The Board agent may waive the deadline for filing an application pursuant to this Section for good cause.

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

102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3 (k), 3551(a), 3555.5(c), 3563(g), 3563(j), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), and 99561(j), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32169. Depositions.**

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

(a) The witness is unable to attend the hearing because of illness, infirmity or imprisonment; or

(b) The witness cannot be compelled to attend the hearing by subpoena. The application shall state the case number, name and address of the witness, show the materiality of the testimony, and shall request an order requiring the witness to appear and testify before a named officer authorized by law to take depositions. Where the witness resides outside the State and the Board has authorized a deposition of the witness, the Board shall obtain an order of the Superior Court in Sacramento County for that purpose pursuant to Section 11189 of the Government Code.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825,

Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(k), 3551(a), 3555.5(c), 3563(g), 3563(j), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), and 99561(j), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32175. Rules of Evidence: Representation Cases.**

(a) Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. However, immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(h), 3541.3(l), 3541.3(m), 3563(a), 3563(c), 3563(g), 3563(k), 3563(l), 71639.1 and 71825, Government Code; and Sections 25052, 28851, 37051, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(a), 99561(c), 99561(g), 99561(k), and 99561(l), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3551(a), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 99561(g) and 99561(h), Public Utilities Code.

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3551(a), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 99561(g) and 99561(h), Public Utilities Code.

### **32180. Rights of Parties.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32185. Ex Parte Communications.**

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

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

Authority cited: Sections 3509(a), 3541.3, 3513(h), 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3541.3(n), 3551(a), 3555.5(c), 3563(g), 3563(h) 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 99561(h), and 99561(m), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32190. Motions.**

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

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

- (c) During the hearing, a motion or the response thereto may be made orally on the record.
- (d) The Board may hear oral argument or take evidence on any motion.
- (e) No hearing shall be delayed because a motion is filed unless the Board so directs.
- (f) Rulings on motions shall not be appealable except as specified in Sections 32200 and 32360.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32205. Continuances.**

A party may file a request for a continuance of the formal hearing no later than five days prior to such hearing. Such request shall be in writing, signed by the party or its agent, state the grounds

for the request, and state the position of each party regarding the request. An oral request or a request for continuance submitted less than five days prior to the hearing may be made only under unusual circumstances. A request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32207. Hearings.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a),



70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32209. Correction of Transcript.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32210. Informational Briefs and Arguments.**

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

(b) The petition shall include the following information:

- (1) The case number;
- (2) The title of the case;
- (3) The name, address, telephone number and any affiliation of the petitioner;
- (4) The name, address and telephone number of any agent to be contacted;
- (5) A statement setting forth the nature of the petitioner's interest or involvement in the case;
- (6) A statement setting forth the specific issues of procedure, fact, law or policy which the petitioner wishes to address.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3541.3(n), 3551(a), 3555.5(c), 3563(f), 3563(m), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(a), 3541.3(b), 3541.3(e), 3541.3(g), 3541.3(h), 3541.3(i), 3541.3(l), 3541.3(m), 3541.3(n), 3551(a), 3555.5(c), 3563(a), 3563(b), 3563(e), 3563(f), 3563(g), 3563(h), 3563(k), 3563(l), 3563(m), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32212. Briefs and Oral Argument.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32215. Proposed Decision.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32220. Contemptuous Conduct.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32230. Refusal to Witness to Testify.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 37051, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(g), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 99561 and 99561.2, Public Utilities Code.

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

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

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(k), 3541.3(n), 3541.35, 3551(a), 3555.5(c), 3563(j), 3563(m), 3563.5, 71639.1, 71639.15, 71825 and 71825.05, Government Code; and Sections 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), ~~and~~ 99561.4, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

### **32310. Response to Exceptions.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

### **32315. Oral Argument on Exceptions.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825,

Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

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

(a) The Board itself may:

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

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

(c) Unless expressly designated otherwise, 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 3563.2, 11425.60, 71639.1 and 71825, Government Code; and Sections 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), ~~and~~ 99561.2, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

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

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

Authority cited: Sections 3509(a), 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3551(a), 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

## **Article 3. Administrative Appeals.**

### **32350. Definition of Administrative Decision.**

(a) An administrative decision is any determination made by a Board agent other than:

(1) a refusal to issue a complaint in an unfair practice case pursuant to Section 32630,

(2) a dismissal of an unfair practice charge,

(3) a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215, or

(4) a decision issued following interest arbitration conducted pursuant to Government Code Section 3557(b)(4).

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3557, 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

### **32360. Appeal Requirements.**

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

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



An appeal will not automatically prevent the Board from proceeding in a case. Parties seeking a stay of any activity may file a request for a stay with the administrative appeal which shall include all pertinent facts and justification for the request. The Board may stay the matter, except as is otherwise provided in these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

### **32375. Response to 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

### **32380. Limitation of Appeals.**

The following administrative decisions shall not be appealable:

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3505.4, 3509, 3513(h), 3541.3(k), 3541.3(n), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651,

98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

#### **Article 4. Reconsideration.**

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3551(a), 3555.5(c), 3564, 71639.4 and 71825.1, Government Code; and Sections 2502, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99562, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

##### **32410. Request for Reconsideration.**

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 30751, 40122, 40122.1(a), 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix

1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28849(b), 28851, 30751, 40122, 40122.1(a), 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

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

#### **32450. Request.**

(a) 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3551(a), 3555.5(c), 3541.3(j), 3541.3(n), 3563(i), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(i), Public Utilities Code.

#### **32455. Investigation.**

Upon filing of a request for the Board to seek injunctive relief, the General Counsel shall initiate an investigation. The General Counsel shall give notice reasonably calculated to inform the parties an investigation is proceeding. The respondent shall be apprised of the allegations

against it, and may state its position in the course of the inquiries. The 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3551(a), 3555.5(c), 3563(i), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a) and 99561(i), Public Utilities Code.

### **32460. Recommendation.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3541.3(n), 3551(a), 3555.5(c), 3563(i), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 99561(i) and 99561(m), Public Utilities Code.

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3541.3(n), 3551(a), 3555.5(c), 3563(i), 3563(m), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 99561(i) and 99561(m), Public Utilities Code.

### **32470. Lack of Board Quorum.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541(f), 3541(g), 3541.3(j), 3541.3(k), 3551(a), 3555.5(c), 3563(i), 3563(j), 71639.1 and 71825, Government Code; and Sections 28849(b), 40122.1(a), 99561(i) and 99561(j), Public Utilities Code.

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

### **32500. Review of Representation Case.**

(a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, Subchapter 3 of Chapter 6, 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.

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

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

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

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, the PECC, the PEDD, the Orange County Transit District Act OCTDA, the San Francisco Bay Area Rapid Transit District-SFBART Act, the Sacramento RTD Act, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act, ~~or Court Interpreter Act, or the Orange County Transit District Act OCTDA,~~ 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), and (d) and (e), unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer.

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

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

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

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections ~~3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825~~, Government Code; and Sections 28849(b), 28860(b), 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32612. Venue of Charge.**

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(i), 3541.5, 3551(a), 3555.5(c), 3563(h), 3563.2, 71639.1, 71807 and 71825, Government Code; and Sections 28849(b), 28860(b), 40122.1, 99561(h) and 99561.2, Public Utilities Code.

### **32613. Employer Unfair Practices under OCTDA.**

It shall be an unfair practice for the Orange County Transportation Authority (Authority) to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the OCTDA or by any rules or regulations adopted by the Authority pursuant to the OCTDA.

(b) Deny to employee organizations rights guaranteed to them by the OCTDA or by any rules or regulations adopted by the Authority.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Public Utilities Code Section 40126 or any rules and regulations adopted by the Authority.

(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.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 40120, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Adopt or enforce a rule or regulation not in conformance with Public Utilities Code Sections 40000, et seq.

(g) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610 of these regulations.

(h) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(i) In any other way violate OCTDA or any local rule or regulation adopted by the Authority.

Authority cited: Section 3541.3(g), Government Code; and Section 40122.1(a), Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Section 40000 et seq., Public Utilities Code.

### **32613.5. Employee Organization Unfair Practices under OCTDA.**

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

(a) Cause or attempt to cause the Authority to engage in conduct prohibited by the OCTDA or by any rules or regulations adopted by the Authority.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the OCTDA or by any rules or regulations adopted by the Authority pursuant to the OCTDA.

(c) Refuse or fail to meet and confer in good faith as required by Public Utilities Code Section 40126 or any rules and regulations adopted by the Authority.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 40120, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate OCTDA or any local rule or regulation adopted by the Authority pursuant to the OCTDA.

Authority cited: Section 3541.3(g), Government Code; and Section 40122.1(a), Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Sections 40120 and 40122.1, Public Utilities Code.

### **32614. Employer Unfair Practices under SFBART Act.**

It shall be an unfair practice for the San Francisco Bay Area Rapid Transit District (SFBART) to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the SFBART Act. As used in this provision, “employee” includes an applicant for employment or reemployment with the District.

(b) Deny to employee organizations rights guaranteed to them by the SFBART Act.

(c) Knowingly provide an exclusive representative with inaccurate information or otherwise fail or refuse to bargain in good faith with an exclusive representative as required by the SFBART Act.



(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.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 28858, subdivision (e), or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate SFBART Act.

Authority cited: Section 3541.3(g), Government Code; and Section 28849(b), Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Sections 28849(b), 28850, 28856, 28857 and 28858, Public Utilities Code.

### **32614.15. Employee Organization Unfair Practices under SFBART Act.**

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

(a) Cause or attempt to cause the District to engage in conduct prohibited by the SFBART Act.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the SFBART Act.

(c) Refuse or fail to bargain in good faith as required by Public Utilities Code Section 28850.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 28858, subdivision (e), or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate the SFBART Act.

Authority cited: Section 3541.3(g), Government Code; and Section 28849(b), Public Utilities Code. Reference: Sections 3550 et seq., 3555 et seq. and 3611 et seq., Government Code; Sections 28849(a), 28850, 28858 and 28859, Public Utilities Code.

**32614.2 Employer Unfair Practices under Sacramento RTD Act.**

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

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Sacramento RTD Act. As used in this provision, “employee” includes an applicant for employment or reemployment with the District.

(b) Deny to employee organizations rights guaranteed to them by the Sacramento RTD Act.

(c) Knowingly provide an exclusive representative with inaccurate information or otherwise fail or refuse to bargain in good faith with an exclusive representative as required by the Sacramento RTD Act.

(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.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 102401, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate Sacramento RTD Act.

**32614.3 Employee Organization Unfair Practices under Sacramento RTD Act.**

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

(a) Cause or attempt to cause the District to engage in conduct prohibited by the Sacramento RTD Act.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Sacramento RTD Act.

(c) Refuse or fail to bargain in good faith as required by Public Utilities Code Sections 102400 and 102414.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 102401, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate the Sacramento RTD Act.

### **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, or OCTDA alleging a violation of local rules must also contain a copy of the applicable rule(s).

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

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a) and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32620. Processing of Case.**

(a) When a charge is filed, it shall be assigned to a Board agent for processing.

(b) The powers and duties of such Board agent shall be to:

(1) Assist the charging party to state in proper form the information required by section 32615;

(2) Answer procedural questions of each party regarding the processing of the case;

(3) Facilitate communication and the exchange of information between the parties;

(4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.

(5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), or Public Utilities Code Section 99561.2; or if it is determined that a charge filed pursuant to Government Code section 3509(b) or Public Utilities Code Sections 28860(b), ~~or~~ 40122.1, or 102408(b)(2) 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, Orange County Transit District Act ~~OCTDA, or San Francisco Bay Area Rapid Transit District SFBART 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, Orange County Transit District Act, or San Francisco Bay Area Rapid Transit District OCTDA, SFBART Act, or Sacramento RTD Act as provided in section 32661.

(7) Issue a complaint pursuant to Section 32640.

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1 and 71825, Government Code; Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code; *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608; and *Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.

### **32621. Amendment of Charge.**

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

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32625. Withdrawal of Charge.**

Any request for withdrawal of the charge shall be in writing, signed by the charging party or its agent, and state whether the party desires the withdrawal to be with or without prejudice. Request for withdrawal of the charge before complaint has issued shall be granted. Repeated

withdrawal and refiling of charges alleging substantially identical conduct may result in refusal to issue a complaint. If the complaint has issued, the Board agent shall determine whether the withdrawal shall be with or without prejudice. If, during hearing, the respondent objects to withdrawal, the hearing officer may refuse to allow it. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513, 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32635. Review of Dismissals.**

(a) Within 20 days of the date of service of a dismissal, the charging party may 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32640. Issuance of a Complaint.**

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32644. Answer.**

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

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

- (1) The case number appearing on the complaint;
- (2) The name of the charging party;
- (3) The name, address, telephone number and any affiliation of the respondent;
- (4) The name, address, telephone number and capacity of any agent of the respondent to be contacted;
- (5) A specific admission or denial of each allegation contained in the complaint. If the respondent does not have knowledge of information sufficient to form a belief as to the truth of a particular allegation, the respondent shall so state and such statement shall operate as a denial of the allegation;
- (6) A statement of any affirmative defense;
- (7) Notwithstanding the Code of Civil Procedure Section 446, a declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief.

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

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32645. Non-Prejudicial Error.**

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

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3509, 3514.5(a), 3541.5(a), 3551(a), 3555.5(c), 3563.2, 71639.1 and 71825, Government Code; and Sections 28849(b), 28860(b), 40122.1, 99561(h), 99561.2, 99563.7 and 99563.8, Public Utilities Code.



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

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

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

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

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

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

Authority cited: Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32649. Answer to Amendment.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1,

71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32650. Informal Conference.**

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

### **32661. Repugnancy Claims.**

(a) An unfair practice charge concerning conduct subject to Government Code Section 3505.8, 3514.5(a)(2), ~~or 3541.5(a)(2)~~, or Education Code Section 8439.5(b)(1)(B), 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~~, Orange County Transit District Act, ~~or San Francisco Bay Area Rapid Transit District Act~~ OCTDA, SFBART Act, or Sacramento RTD Act may be filed based on a claim that the settlement or arbitration award is repugnant to the applicable Act.

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

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

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

Authority cited: Sections 8431(e), 8432(m), and 8439.5(a), Education Code; Sections 3509, 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Section 8439.5(b)(1)(B), Education Code; Sections 3506.5, 3505.8, 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3551(a), 3555.5(c), 3558.8, 3563.2, 3571, 3571.1, 3571.3, 3589, 71639.1 and

71825, Government Code; and Sections 28849(b), 28858, 28859, 28860(b), 40122.1, 99561(h), 99561.2, 99563.7, 99563.8 and 99567, Public Utilities Code.

### **32680. Formal Hearing.**

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

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

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3551(a), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3551(a), 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814 and 71825, Government Code; and Sections 28849(b), 28850, 28858, 28859, 28860(b), 40120, 40122.1, 99561(g), 99561(h), 99561.2, 99563.7, 99563.8, 99566.3 and 99569, Public Utilities Code.

## **SUBCHAPTER 6. REPRESENTATION PROCEEDINGS**

### **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, Subchapter 1; Chapter 3, Subchapter 1; Chapter 4, Subchapter 1; or Chapter 6, Subchapter 2, of these regulations. This Section does not apply to:

(a) Elections involving transit districts, as defined by Subchapter 3 of Chapter 6 of these regulations, Section 72000, where SMCS conducts elections pursuant to Subchapter 3 of Chapter 6, section 72135, or

(b) Consent elections conducted by SMCS under the MMBA, Trial Court Act, or Court Interpreter Act, pursuant to Section 32999.

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

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

## **SUBCHAPTER 7. COMPLIANCE**

### **Article 1. Compliance**

#### **32980. Compliance.**

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

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

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

Authority cited: Sections 3509(a), 3513, 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Sections 28849(b), 40122.1(a), and 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3551(a), 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; Sections 28849(b), 28860(b), 40122.1, 99561.3 and 99562, Public Utilities Code; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

**CHAPTER 6. REPRESENTATION PROCEEDINGS UNDER PUBLIC UTILITIES  
CODE TRANSIT DISTRICT ACTS ~~TRANSIT EMPLOYER-EMPLOYEE RELATIONS~~  
ACT**

[The amendments to Chapter 6 will replace the entirety of Chapter 9]

**SUBCHAPTER 1. GENERAL PROVISIONS ~~REPRESENTATION PROCEDURES~~  
[Articles previously in Subchapter 1 are moved to Subchapter 2]**

**70050. Coverage of Subchapter 2 (TEERA) and Subchapter 3 (Other PUC Transit Labor Relations Acts)**

Subchapter 2 pertains to TEERA, which covers only supervisory employees at the Los Angeles County Metropolitan Transportation Authority. Subchapter 3 pertains to all other representation proceedings involving Transit Labor Relations Acts under the Public Utilities Code, including proceedings involving non-supervisory employees at the Los Angeles County Metropolitan Transportation Authority.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 24501 et seq., 28500 et seq., 30000 et seq., 40000 et seq., 50000 et seq., 70000 et seq., 90000 et seq., 95000 et seq., 98000 et seq., 99560 et seq., 100000 et seq., 101000 et seq., 102000 et seq., 103000 et seq., 105000 et seq., 120000 et seq., 125000 et seq., Appendix 1, Section 1.1 et seq., Appendix 2, Section 1.1 et seq., Public Utilities Code.

**SUBCHAPTER 2: REPRESENTATION PROCEDURES UNDER THE LOS ANGELES  
COUNTY METROPOLITAN TRANSPORTATION AUTHORITY TRANSIT  
EMPLOYER-EMPLOYEE RELATIONS ACT**

**Article 1. General Provisions**

**71010. Parties Definitions.**

“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.

(a) “TEERA” means the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act, codified at Public Utilities Code Section 99560, et seq.

(b) “Employer” or “transit district employer” is defined at Public Utilities Code Section 99560.1(g). The Los Angeles County Metropolitan Transportation Authority (“Authority”) is the only employer covered by TEERA as of the promulgation of this regulation.

(c) “Employee” or “transit district employee” is defined at Public Utilities Code Section 99560.1(e). Non-confidential, supervisory employees of the Los Angeles County Metropolitan Transportation Authority are the only employees covered by TEERA as of the promulgation of this regulation.

(d) “Employee organization,” as defined in Public Utilities Code Section 99560.1(f), means any organization of any kind in which non-confidential, supervisory employees of the Authority participate and that exists for the purpose, in whole or in part, of dealing with transit district employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of such employees.

(e) “Supervisory employee” is defined at Public Utilities Code Section 99560.1(o), and as of the promulgation of this regulation means any non-confidential, supervisory employee of the Authority.

(f) “Parties” means the Authority and any employee organization that is the exclusive representative of any supervisory employees under TEERA, or any employee organization known to have an interest in representing any such employees as demonstrated by an appropriate filing with PERB. “Parties” shall also refer to any other parties that the Legislature places under TEERA after the promulgation of this regulation.

(g) For purposes of these regulations:

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

(2) “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” means an employee organization which has filed a TEERA representation petition.

(4) “Election Intervenor” means an 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 unit pursuant to TEERA.

(h) “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 PUC transit 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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99560, et seq. 99560.1, 99564, 99564.1, 99564.2, 99564.3 and 99566.1, Public Utilities Code.

### **71015. Filing with PERB.**

To file all documents other than proof of support, parties shall use e-PERB except to the extent that Chapter 1 of these Regulations allows non-electronic filing by an unrepresented individual natural person.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Section 99561(m), Public Utilities Code.

### **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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99564.1(c) and 99564.4(b)(1), Public Utilities Code.~~

### **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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99563, 99563.2, 99563.4 and 99566.1(f), Public Utilities Code.~~

## **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. The parties may agree that PERB or a third party shall determine the outcome of a request for recognition based upon proof of support as defined in Chapter 1, Section 32700 of these regulations, or the employer may decline to enter into such an agreement if it has a good faith, reasonable basis to doubt majority support, and in such instance the employer instead may request that an investigation be conducted or an election be held upon a showing of support from at least 30 percent of the unit in accordance with section 71090.~~

~~(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. If the parties agree that PERB or a third party shall determine majority support, 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. Proof of support is defined in Chapter 1, Section 32700 of these regulations. Determination of proof of majority support, if performed by PERB, shall be in accordance with Sections 71110 and 71120 of these regulations.~~

~~(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.~~



Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, 99564.1, 99564.2 and 99564.3, Public Utilities Code.

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

- (a) The employer shall prepare and 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 requesting employee organization regional office and the parties concurrent with the posting of the notice. Proof of service pursuant to Section 32140 is required.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k) and 99564, Public Utilities Code.

**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.~~

(a) Within 15 workdays of the posting of notice of a written request for recognition, another employee organization may file with the employer an intervention to challenge to the appropriateness of the unit or to submit a competing claim of representation. The filing of such a competing claim provides a trigger for one of the competing employee organizations or the employer to file a Petition for Board Investigation.

(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) Determination of proof of support in the unit claimed to be appropriate shall be in accordance with Sections 71110 and 71120 of these regulations.

~~(e) 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.~~

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564 and 99564.2, Public Utilities Code.

**~~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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, 99564.1, 99564.2 and 99564.4, Public Utilities Code.~~

**~~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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, and 99564.1, Public Utilities Code.~~

**~~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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, 99564.1 and 99564.2, Public Utilities Code.~~

**~~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.~~

~~(e) 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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, 99564.1 and 99564.2, Public Utilities Code.~~

### **~~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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, 99564.1, 99564.2 and 99564.4, Public Utilities Code.~~

**71090. ~~Employee Organization~~ Petition for Board Investigation.**

(a) Not later than 30 days following the date of the posting of written notice of request for recognition, an employer response is filed or is due, whichever occurs first, a petition for Board investigation pursuant to Public Utilities Code sections 99564.1 and 99564.2, and Section 71140 of these regulations 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; or-

(3) An employer alleging that an employee organization has filed a request for recognition with it, and that it reasonably doubts that the employee organization has majority support or reasonably doubts the appropriateness of the requested unit; or

(4) An employer alleging that an intervening employee organization has filed with it a challenge to the appropriateness of the unit or a competing claim of representation.

(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) A The petition filed by a requesting employee organization or an intervening employee organization shall contain the following information:

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

(2) The name, address, e-mail 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.

(e) 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 to an employee organization petition or in its own petition for Board Investigation:

(1) A statement that the employer has voluntarily recognized an employee 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, e-mail address and telephone number of the employer;

(3) Name, address, e-mail address and telephone number of the requesting 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.

(f) 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, e-mail 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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, 99564.1, 99564.2 and 99564.4, Public Utilities Code.

### **71091. Board Investigations**

Board investigations shall be conducted in accordance with the provisions set forth in Article 4 of this Chapter (commencing with Section 71140 of these regulations).

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (g), (k), 99564, 99564.1, 99564.2 and 99564.4, Public Utilities Code.

### **71095. Failure to File Petition for Board Investigation.**

If the employer has not granted voluntary recognition and if no petition for Board investigation is timely filed pursuant to Section 71080 or 71090 of these regulations, the request for recognition and any interventions shall be deemed invalid and shall not bar a subsequent request for recognition.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564, 99564.1, 99564.2 and 99564.4, Public Utilities Code.

## **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~~ or electronically signed by an authorized agent of the employee organization, and include the following information:

(1) The name, address, e-mail 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, e-mail 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~~ and e-mail 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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k) and 99564.2, Public Utilities Code.

#### **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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564.2 and 99564.4, Public Utilities Code.

#### **~~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.~~

~~Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564.2 and 99564.4, Public Utilities Code.~~

#### **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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(g), (k), 99564.2 and 99564.4, Public Utilities Code.

### **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, e-mail 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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k), 99564.2 and 99564.4, Public Utilities Code.

#### **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 petition regarding a representation matter request for recognition, unless such petition 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 7102571010(h); 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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (g), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

## **Article 5. Representation Hearings**

### **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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (g), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

### **71230. Withdrawal or Settlement of a Petition.**

A petitioner may withdraw any petition filed under this subchapter, with service and proof of service as required pursuant to Section 32140, or the parties may reach a voluntary agreement as to some or all disputed issues. After a Board agent has issued a decision, a party or parties seeking to effect a withdrawal or settlement must request leave from the Board agent, or from the Board itself if the matter is before the Board itself on exceptions or appeal.  
~~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.~~

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (g), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

### **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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (g), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

## **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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(c), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

**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, e-mail address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address, e-mail 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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(c), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

**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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(c), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

## 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 (but less than all of the 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~~ 71010(h).

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

### 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 or electronically 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, e-mail 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.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (k), 99564.1, 99564.2 and 99564.4, Public Utilities Code.

## **Article 8. Request for Amendment of Certification**

### **71690. Request for Amendment of Certification.**

Requests for amendment of certification under TEERA are governed by Chapter 1, Subchapter 6, Article 3 (commencing with Section 32761) of these regulations.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(a), (c), (e), (g), (k), (l), 99564, 99564.2 and 99564.4, Public Utilities Code.

## **Article 9. Decertification Petition**

### **71695. Decertification Petition.**

Petitions for decertification under TEERA are governed by Chapter 1, Subchapter 6, Article 4 (commencing with Section 32770) of these regulations.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99561(k) and 99564.3, Public Utilities Code.

## **Article 10. Unit Modification Petition**

### **71698. Unit Modification Petition.**

Petitions for unit modification under TEERA are governed by Chapter 1, Subchapter 6, Article 5 (commencing with Section 32781) of these regulations.

Authority cited: Section 99561(f), Public Utilities Code. Reference: Section 99561(a), (e), (g), Public Utilities Code.

## **SUBCHAPTER 3. REPRESENTATION PROCEEDINGS UNDER PUBLIC UTILITIES CODE TRANSIT LABOR RELATIONS ACTS OTHER THAN TEERA**

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

#### **72000. Definitions.**

(a) "PUC Transit Employer" 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, San Diego County Transit District, the San Diego Metropolitan Transit System, 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 Los Angeles County Metropolitan Transportation Authority, 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) As used in this chapter, the following words have the following meanings:

(1) “Employer” or “PUC transit employer” means the governing board of a PUC transit employer, including any person acting as an agent of the employer.

(2) “Employee” or “PUC transit employee” means any employee of any PUC transit employer.

(3) “Employee organization” means any organization of any kind in which PUC transit employees participate and that exists for the purpose, in whole or in part, of dealing with public transit employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment.

(4) “Certified organization” means an employee organization that has been certified by SMCS as the exclusive representative of employees in an appropriate unit after a proceeding under these regulations.

(5) Representation proceedings concerning the Sonoma-Marina Area Rail Transit District (SMART), established under Public Utilities Code, Section 105000 et seq., are not covered by these regulations, but rather are subject to the MMBA and any local rules adopted by SMART. (PUC section 105140.)

(6) “Hearing officer” means a hearing officer appointed by the Director.

(7) “Window period” means the 31-day period 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 PUC transit 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4. and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor-Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

### **72001. Application of Subchapter 2 of Chapter 1 of these Regulations to PUC Transit Labor Relations Acts.**

All applicable rules and regulations within Chapter 1, Subchapter 2 of these Regulations, including the filing and service of documents, equally govern representation proceedings involving Transit Labor Relations Acts under the Public Utilities Code, including proceedings involving non-supervisory employees at the Los Angeles County Metropolitan Transportation Authority.

(a) Section 32110 of these regulations requiring electronic filing of documents with PERB applies to filing of PUC transit representation documents (other than proof of support) with SMCS. Electronic filing is available but not mandatory for unrepresented individuals. Unrepresented individuals may also file in the manner, as described in Sections 32075, 32110 and 32115 of these regulations.

(b) The Sacramento Regional Office shall be the appropriate location for filing all documents with SMCS in PUC transit representation matters. Notwithstanding this regulation, PUC transit representation documents filed through e-PERB shall be deemed filed at the appropriate location.

(c) Section 32140 of these regulations is applicable to service of PUC transit representation documents.

(d) Whenever a PUC transit representation document is required to be served on a PUC transit employer as defined in Section 72000, subdivision (a), any person authorized to act on behalf of the PUC transit employer may be served. Authorized persons include the PUC transit employer's chief executive officer, chief legal counsel, any person authorized or designated to accept service of legal documents on behalf of the chief executive officer or chief legal counsel, the PUC transit employer's labor relations director or equivalent, or any individual designated by the PUC transit employer as its agent for purposes of labor representation matters.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052,

28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4. and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor-Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

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

### **72005. Petition for Certification**

(a) A petition for certification may be filed with SMCS in accordance with these regulations, requesting it to investigate and decide the question of whether employees wish to be represented by an exclusive representative in an appropriate unit for collective bargaining purposes. A certification petition filed by an employee organization may take one of the following forms, as follows:

- (1) An initial petition for certification by an employee organization wishing to be certified by SMCS as the exclusive representative where there is no incumbent exclusive representative;
- (2) A petition by an employee organization to decertify and replace the incumbent exclusive representative;
- (3) A severance petition by an employee organization to sever a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative.

(b) A petition for certification shall be filed with SMCS at the Sacramento Regional Office, pursuant to Sections 32075, 32110 and 32115 of these regulations. The petition shall be signed or electronically 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, e-mail address and telephone number of the agent to be contacted;
- (2) The name, address, and telephone number of the PUC transit employer and the name, address, e-mail 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 include and those to be excluded;
- (4) The approximate number of employees in the proposed appropriate unit;
- (5) The name, address, e-mail address and telephone number of any other employee organization, if any, known to have an interest in representing the employees covered by the unit. If applicable, a description of the contract(s), if any, covering the employees in such unit and the expiration date of such contract(s).

(c) 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 employee support for certification petitions shall clearly demonstrate that the employee desires to be represented by the petitioning employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment.

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

(2) For purposes of this section, an adequate showing of interest also may be demonstrated by submission of proof satisfactory to the Director that:

- (i) The petitioner held a contract covering employees in a utility or facility at the time of its acquisition by the PUC transit employer;
- (ii) The PUC transit employer assumed such collective bargaining agreement pursuant to the provisions of the acquisition agreement or the terms of the relevant law; and
- (iii) The proposed unit is identical with the previously established unit.

(3) Proof of support, if required, shall be filed only with SMCS at the Sacramento Regional Office.

(d) A copy of a petition for certification, excluding proof of at least 30 percent support, shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

#### **72010. SMCS Determination Regarding Proof of Support.**

(a) Within 20 days of the date of service of a copy of an employee organization's petition for certification, the PUC transit employer shall file with the Director 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 Director.

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

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72020. 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 SMCS and include the information described in Section 72005. 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 SMCS concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with SMCS within 15 days following the service of SMCS's determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Director. The response shall conform to the requirements for employer responses as set forth in Section 72025.

(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 or delay the hearing and provided that sufficient proof of support is evidenced to support any request for addition of job classifications.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72025. Employer Response Regarding Petition for Certification.**

(a) Within 15 days following service of SMCS's determination regarding the adequacy of proof submitted in support of the petition, the employer shall file a written response with SMCS.

(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, e-mail 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, fully explain the basis of this belief.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **Article 3. Employer Representation Petition**

#### **72030. Employer Representation Petition**

(a) A PUC transit employer may file a petition alleging that one or more employee organizations has presented it with a request to be recognized as the exclusive representative of an appropriate unit under the following circumstances:

(1) The employer reasonably doubts that the employee organization has majority support.

(2) The PUC transit employer reasonably doubts the appropriateness of the requested unit.

(3) The PUC transit employer has been presented with competing claims for representation or another employee organization challenges the appropriateness of the requested unit.

(4) Where there is an incumbent exclusive representative, a PUC transit employer may file a petition alleging that it has a good faith uncertainty as to the exclusive representative's continuing majority status.

(b) The petition shall be signed or electronically signed by an authorized agent of the employer, and include the following information:

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

(2) The name, address and telephone number of the interested employee organization(s) and the name, address, e-mail address and telephone number of the interested employee organization(s) agent(s).

(3) A basis for the employer's position supporting its petition, which may include a description of the proposed appropriate unit, including the classifications and positions to be include and those to be excluded.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

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

##### **72035. Petition for Decertification Without Replacement.**

(a) A petition to decertify an existing exclusive representative in an established unit may be filed by an employee or group of employees within the bargaining unit or by an employee organization acting on their behalf asserting that the incumbent exclusive representative no longer represents the employees in the bargaining unit. The petition shall be filed with the SMCS at the Sacramento Regional Office, pursuant to Sections 32075, 32110 and 32115 of these regulations. A petition by an employee organization to decertify and replace the incumbent exclusive representative is considered a petition for certification and is properly filed pursuant to the regulations governing petitions for certification.

(b) The petition shall be signed or electronically signed by an authorized agent of the petitioner, and include the following information:

(1) The name, address and telephone number of the petitioner and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employee organization which has been certified or is currently being recognized by the district as the exclusive representative and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) A description of the existing unit, including the classifications and positions included and excluded;

(4) The approximate number of employees in the existing 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.

(6) If applicable, a description of the contract(s), if any, covering the employees in such unit and the expiration date of such contract(s).

(c) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit no longer desire to be represented by the incumbent exclusive representative. Proof of support is defined in Chapter 1, section 32700 of these regulations.

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

#### **72040. SMCS Determination Regarding Proof of Support.**

(a) Within 20 days of the date the decertification petition is filed with SMCS, the employer shall file with SMCS 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 Director.

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401,

120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

**Article 5. Petition for Clarification of Bargaining Unit.**

**72045. Petition for Unit Clarification.**

(a) A petition for clarification of an existing bargaining unit may be initiated by an exclusive representative or a PUC transit employer when there is a certified or currently recognized bargaining unit representative:

(1) To add to the unit unrepresented classifications or positions;

(2) To delete classifications or positions which by virtue of a change in circumstances or are otherwise prohibited by statute from inclusion in the unit;

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

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

(b) The petition shall be signed or electronically signed by an authorized agent of the petitioner, and include the following information:

(1) The name, address, and telephone number of the PUC transit employer and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address, and telephone number of the employee organization which has been certified or is currently being recognized by the PUC transit employer as the exclusive representative and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) If applicable, a description of the contract(s), if any, covering the employees in such unit and the expiration date of such contract(s);

(4) A description of the existing unit, including the classifications and positions included and excluded and the approximate number of employees in the existing unit;

(5) A description of the proposed unit;

(6) The number of employees in the unit as proposed under the clarification;

(7) The job classifications of employees as to whom the issue is raised, and the number of employees in each classification;



(8) A statement by petitioner setting forth reasons why petitioner desires clarification of the unit.

(c) If the petition requests the addition of classifications or positions to an established unit, SMCS shall base its decision on the criteria set forth in Article 10 of this Subchapter. Normally, no proof of support shall be required. However, if SMCS finds the criteria set forth in Article 10 of this Subchapter favor adding classifications or positions to an existing unit, and the number of employees to be added is so numerous that it would likely disrupt the incumbent's majority support within the bargaining unit, then SMCS shall determine whether to require proof of support of a majority of the employees to be added or hold an election upon a showing of proof of support of at least 30 percent of the persons to be added.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

#### **72050. Response to Petition.**

(a) Unless otherwise notified by SMCS, 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 SMCS 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 or electronically signed by an authorized agent of the responding party and contain the following information:

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

(2) The name, address and telephone number of the respondent and the name, address, e-mail 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 clarification 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 clarification proposed by the petitioner(s).

(5) The SMCS unit clarification case number.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

**72055. SMCS Determination Regarding Proof of Support.**

(a) If proof of support is required, and filed with SMCS, the employer shall, within 20 days of the date the support was filed, file with the Director 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 SMCS, unless otherwise directed by the Director.

(b) The Director may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Director shall inform the parties in writing of the determination as to sufficiency of the proof of support.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

**72060. Resolution of Petition.**

Upon approval of a unit clarification petition, SMCS shall issue a new certification if appropriate. Such certification shall not be considered to be a new certification for the purpose of computing time limits for establishing a certification bar to the filing of representation petitions. Any determination made by the Director pursuant to this article may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

**Article 6. Petition for Amendment of Certification.**

### **72065. Petition for Amendment of Certification.**

A petition for amendment of certification of an existing bargaining unit may be initiated by an exclusive representative or a PUC transit employer where the certified exclusive representative has undergone a change, such as merger, affiliation, amalgamation or transfer of jurisdiction that changes the identity of the organization, or in the event of a change in the name or jurisdiction of the employer. A petition for amendment of certification shall be filed pursuant to the procedure governing petitions for certification, and the petition will include the following additional information:

(a) The name, address and telephone number of the employee organization and the name, address, e-mail address and telephone number of the agent to be contacted;

(b) The name, address and telephone number of the employer and the name, address, e-mail address and telephone number of the agent to be contacted;

(c) Identification and description of the established unit/existing certification.

(d) A clear and concise statement of the desired amendment and reasons for the amendment, including the nature of the merger, amalgamation, affiliation or other change in jurisdiction and the new name of the employee organization and/or the employer.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72070. Response to Petition.**

Unless otherwise notified by SMCS, 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 SMCS 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

## **72075. Resolution of petition**

Upon approval of a petition for amendment of certification, SMCS 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 for establishing a certification bar to the filing of representation petitions. Any determination made by the Director pursuant to this article may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

## **Article 7. Investigation of Certification and Decertification and Unit Clarification and Amendment Petitions by SMCS**

### **72080. Investigation of Petitions by SMCS**

(a) Upon receipt of a petition for certification or decertification or for unit clarification or amendment, SMCS 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) SMCS shall dismiss a certification or decertification petition, or an employer representation petition:

- (1) if it is found to be improperly or not timely filed; or,
- (2) if the petitioner has no standing to petition for the action requested; or,
- (3) if proof of support submitted falls short of the required level of support, if any; or,
- (4) if there is no reasonable cause to believe that there exists a question whether an employee organization or exclusive representative represents a majority of employees of the PUC transit employer in an appropriate unit; or
- (5) if a memorandum of understanding between the employer and an employee organization covering any of the employees subject to the petition is currently in effect, unless it is filed during the "window period" as defined by Section 72000, subdivision (c)(7), provided that if such memorandum of understanding has been in effect for three years or more, unless otherwise provided by the authorizing statute, there shall be no restriction as to the time of filing the request; or

(6) if within the 12 months immediately preceding the date of filing of the petition, the employer has lawfully recognized an employee organization as the exclusive representative of any employees included in the unit described in the petition, or a valid election result which covers any employees described in the petition is certified.

(c) The Director may approve the withdrawal of a petition.

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **Article 8. Procedures in Resolving Petitions.**

#### **72085. No Hearing Required.**

In resolving a petition filed pursuant to this Subchapter, SMCS shall determine the appropriate procedures to follow, which may include, without limitation, any of the following: scheduling a mediation or otherwise attempting to achieve a voluntary settlement; issuing an Order to Show Cause followed by an administrative determination without holding a hearing; assigning the matter to a hearing officer to hold an evidentiary hearing and issue a proposed decision; and issuing an administrative determination in the first instance, without issuing an Order to Show Cause or holding a hearing.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

#### **72090. Pre-Hearing Conference.**

SMCS may conduct a pre-hearing conference for the purposes of clarifying the issues and exploring settlement of the case.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72095. Notice of Hearing.**

Upon determining that a hearing is necessary, SMCS shall serve a notice on all interested parties pursuant to Section 32140 of these regulations. The notice shall state the date, time and place of hearing. The notice shall also include information regarding how an employee organization may become a party to the hearing. Any such notice may be amended or withdrawn by the Director 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. The Director may, on his or her own motion or the motion of any of the parties, order that petitions involving all or part of the same group of employees, or otherwise raising common issues, be consolidated for the purpose of hearing and decision.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72100. Conduct of Hearing.**

(a) Hearings shall be conducted by a hearing officer designated by the Director, except that the Director himself or herself may act as a hearing officer. A hearing officer may be substituted for another hearing officer at any time during the proceeding at the discretion of the Director.

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72105. Intervention.**

An employee organization shall be allowed to participate fully in a representation hearing provided it has filed a written application with the hearing officer not less than 10 days prior to the commencement of the hearing, and further provided that (1) no employee 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 employee organization which makes a showing of interest of at least 10 percent of the employees in the petitioned-for unit shall be denied the right to intervene as a party in such proceedings. Any employee organization desiring to intervene for the purpose of seeking an election in a unit different from the petitioned-for unit shall be required to make a showing of interest of at least 30 percent of the employees in the unit claimed to be appropriate by the employee organization seeking to intervene. The PUC transit employer shall be deemed a party to each proceeding without the necessity of intervening therein.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

#### **72110. Withdrawal or Settlement of a Petition.**

A petitioner may withdraw any petition filed under this subchapter, with service and proof of service as required pursuant to Section 32140, or the parties may reach a voluntary agreement as to some or all disputed issues. After SMCS has issued a decision, a party or parties seeking to effect a withdrawal or settlement must request leave from SMCS, or from the Board itself if the matter is before the Board itself on exceptions or appeal.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

#### **72115. Subpoenas.**

Subpoenas may be issued pursuant to procedures set forth in Sections 32149 and 32150 of these regulations.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052,

28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72120. 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 be forwarded to the Director for approval. 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 decision of the hearing officer, as approved by the Director, shall be final if not appealed as set forth in Chapter 1, Subchapter 4 of these regulations. A copy of the proposed decision and order shall concurrently be served upon each of the parties by the Director.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72125. Exceptions to Hearing Officer Proposed Decision.**

(a) Within 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.

(b) 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

## **Article 9. Representation Elections**



### **72130. 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 SMCS to cancel the election.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72135. Consent Election Agreements.**

SMCS may approve a Consent Election Agreement of the parties regarding the conduct of an election. 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 employee eligibility to vote. Unless otherwise directed by the Director, the applicable payroll period is the payroll period immediately preceding the date the petition was filed. Such consent election shall be conducted under the direction and supervision of SMCS and in accordance with this Article. SMCS shall issue to the parties a certification of the results of the election, including a certification of representative where appropriate.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72140. Ballots.**

(a) All elections shall be conducted by secret ballot under the supervision of SMCS. SMCS shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

(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 absent an approved agreement of the parties.

(c) Except in the case of a runoff election, 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 72145), an employee organization may file a request with the SMCS to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit and shall be served on all parties and on SMCS. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72145. Directed Election Order/Consent Election Agreement; Notice of Election.**

(a) When SMCS has determined that an election is required, SMCS shall serve on the employer and the parties a Directed Election Order maintaining specific instructions regarding the conduct of the election. SMCS may approve a Consent Election Agreement of the parties regarding the conduct of an election.

(b) Thereafter, SMCS 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 SMCS, 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, or as provided under Section 32111.

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72150. List of Voters.**

(a) At a date established by SMCS, the employer shall file with SMCS a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility. Unless otherwise ordered by the Director, the cutoff date for voter eligibility is established by the payroll period

immediately preceding the date the petition was filed. 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 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) 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 SMCS. 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 SMCS determines that the release of the home address is likely to be harmful to the employee.

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72155. Voter Eligibility.**

Unless otherwise directed by SMCS, 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. Unless otherwise ordered by the Director, the cutoff date for voter eligibility is established by the payroll period immediately preceding the date the petition was filed. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72160. Observers.**

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72165. Challenges.**

(a) In an on-site election, SMCS 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, SMCS 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 SMCS pursuant to Section 72175.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72170. Tally of Ballots.**

(a) Each party shall be allowed to station one or more authorized agents 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72175. Resolution of Challenges.**

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, unless otherwise provided by a consent election agreement, SMCS 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 hearing officer pursuant to this Section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72180. Runoff Elections.**

In a representation election, SMCS 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. The election procedures of this Article shall apply to runoff elections.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72185. Objections.**

(a) Within 10 days following the service of the tally of ballots, any party to the election may file with SMCS 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 SMCS 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 its own conduct or the conduct of its agents as grounds for setting aside an election.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72190. Powers and Duties of SMCS Concerning Objections and Challenges.**

SMCS may schedule a hearing when substantial and material factual disputes exist. With or without a hearing, SMCS has the power to:

(a) Direct any party to submit evidence through declarations signed under penalty of perjury or through other documents;

(b) Subpoena records;

(c) Direct any party to submit an offer of proof;

(d) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;

(e) Dismiss any objections or challenges.

(f) Order a new election. In cases of egregious conduct preventing a fair rerun election, SMCS may issue a bargaining order, but such an order must be following a hearing.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72195. Hearings on Objections and Challenges.**

SMCS shall follow the hearing procedures described in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72200. Appeals from, and Exceptions to, Rulings on Objections or Challenges.**

An aggrieved party may appeal an administrative determination without a hearing, or take exceptions to proposed decision after a hearing, in accordance with Chapter 1, Subchapter 4 of these regulations.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72205. Revised Tally of Ballots.**

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

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72210. Objections to Revised Tally of Ballots.**

(a) Within 10 days following the service of a revised tally of ballots, any party may file with SMCS 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 SMCS only on the grounds of serious irregularity in the conduct of the challenged ballot count or issuance of the revised tally.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

### **72215. Certification of Exclusive Representative.**

The SMCS shall certify an exclusive representative if warranted.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

## **Article 10. Unit Determination**

### **72220. Unit Criteria**

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, SMCS shall take into consideration all of the following criteria:



(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) Any other traditional community of interest factors.

(3) The effect of the proposed unit on employees' right to effective representation.

(4) The effect of the proposed unit on the efficient operation of the transit district and on meet and confer relationships, including the impact of unnecessary fragmentation of employee groups or unwarranted proliferation of units, as well as any material effect on the employer's ability to deal effectively with an employee organization representing the unit.

(b) In each case where a petitioner seeks to accrete classifications or positions into an existing bargaining unit, in addition to the criteria set forth in subdivision (a), SMCS shall weigh whether the group to be accreted would itself constitute an appropriate unit. If the petitioning party has not provided proof of support from a majority of the employees to be accreted, SMCS shall also take into consideration the size of the group to be accreted relative to the size of the existing unit.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

## **Article 11. Relevant Federal Law.**

### **72225. Relevant Federal Law**

(a) In resolving questions of representation, to the extent required by the PUC transit employer's enabling act, SMCS and the Board shall, ~~apply~~, as appropriate, apply or be guided by relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended.

(b) For purposes of this regulation, federal law on the question of representation is relevant unless (1) the question presented is governed by an explicit provision of the applicable transit

district statute or (2) considerations unique to public sector labor relations require a deviation from federal law.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.

## **~~CHAPTER 9. PROCEDURES UNDER SPECIFIED TRANSIT DISTRICT ACTS AND LAWS~~**

### **~~Section 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 10100 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 Act, 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor-Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.~~

### **~~Section 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 with the service as set forth in (a).~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor-Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Section 102.60-102.72.~~

### **~~Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Section 102.60-102.72.~~

**~~Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor~~

~~Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Section 102.60-102.72.~~

### **~~Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.~~

### **~~Section 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 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. 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.

(e) ~~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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.~~

### **Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor~~



Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Sections 102.60-102.72.

### **~~Section 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 at 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.~~

### **~~Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.~~

#### ~~Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor~~

Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

### **Section 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

### **Section 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

### **Section 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

### **Section 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.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

### **Section 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 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 the 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Sections 102.60-102.72.~~

### **Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.~~

#### **~~Section 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.~~

~~Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.~~

Attachment – Agenda Item 6. A.



## **32147. Expedited Cases**

### **(a) Motions to Expedite**

1. A motion to expedite proceedings within a single division of the Board shall be filed with the General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself, as appropriate. A motion to expedite proceedings at all divisions shall be filed with the Board itself.
2. A motion to expedite a case must be clearly labeled as a motion to expedite. The motion may not be part of or combined with any other document other than a brief or declarations supporting the motion. The motion shall state with specificity why one or more of the criteria in subparagraph (b)(2) of this Section are satisfied.
3. Any other party to the proceeding may file a response to a motion to expedite within 5 business days of service of the motion. No reply briefs shall be filed unless otherwise ordered.
4. Denial of any motion to expedite, in whole or in part, shall be without prejudice to a party's ability to renew its motion, unless otherwise ordered.
5. The General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself may expedite any case on its own motion.

### **(b) Applicable Criteria**

1. All divisions must expedite the following types of cases from initial filing to conclusion, without any motion or order:
  - a. All 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.
  - b. All cases in which a representation election or other certification or recognition process or procedure has been stayed pending resolution of the case.
2. In all cases not subject to mandatory expedited processing under subparagraph (b)(1) of this Section, the following criteria shall be considered in determining whether a case should be expedited:

- a. whether expedited processing is necessary to preserve the Board's ability to issue an effective remedy;
- b. whether the case involves alleged conduct that would irreparably harm the exercise of employee or employee organization rights;
- c. whether the case involves an important and unresolved question of law, the prompt resolution of which would significantly benefit one or more segments of the public sector labor-management community;
- d. whether the case arises from or relates to a representation or recognition dispute;
- e. whether a court injunction is in place pending resolution of the case;
- f. the number of employees affected, the size of any potential monetary remedy, or the nature, scope, or importance of any potential non-monetary remedy; and
- g. any compelling circumstances showing that expedited processing is warranted.

(c) Required Procedures for Expedited Cases

1. In all cases falling under subparagraph (b)(1) of this Section, and in other cases after an order expediting the matter has issued, the case shall be given priority and decided on an expedited basis in the manner determined to be appropriate by, as applicable, the General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself.
2. Any document filed in a case falling under subparagraph (b)(1) of this Section, or in any other case if the document is filed in a division in which the case has been expedited, shall prominently display the words "EXPEDITED CASE" on the document's first page.
3. When exceptions are pending in a case falling under subparagraph (b) of Section 32305, no extension of time may be granted.
4. In any expedited case not falling under subparagraph (b) of Section 32305, an extension of time to file any document, or a request to continue a formal hearing, may be granted only when:

- a. the parties mutually agree to the extension of time or continuance;
- b. the continuance is necessary to mitigate prejudice caused by an amended pleading; or
- c. the party requesting the extension of time or continuance demonstrates extraordinary circumstances that outweigh any prejudice to other parties.