

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 2. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

~~32090.~~ ~~———— Fax Filing.~~ e-PERB

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

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

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

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

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

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

32091. Electronic Filing.

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

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

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

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

32092. Electronic Signature.

“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 PERB’s regulations.

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

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

Article 2. General Provisions

32101. Electronic Filing Requirements.

(a) Except as otherwise provided by subsection (b), electronic filing is mandatory when filing documents with PERB.

(b) Electronic filing is available but not mandatory for an unrepresented party. For purposes of this subsection, the term “unrepresented party” shall mean an individual not represented by an attorney or a union representative. Furthermore, electronic filing is not required when submitting documents at formal hearing.

(c) Documents electronically filed shall be in PDF format and text searchable. Unless documents are compressed (in a zip file format), the maximum size of any single document

that can be electronically filed is _____ MB. For documents larger than _____ MB, the filer shall separate them into multiple parts so that each part is no larger than _____ MB.

(d) 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.

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

32103. Time Document is Filed.

Filers may electronically file a document through e-PERB at any time. However, all documents electronically filed during non-business hours, as defined by section 11020(a) of the Government Code, will be deemed filed the next regular PERB business day.

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

32122. Place to File Representation Matters.

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

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

(c) The Sacramento Regional Office shall be the appropriate location for filing all documents in representation matters relating to the State of California.

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

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

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

Authority cited: Sections 3509, 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, 3524, 3541.3(n), 3563(m), 71639.1, 71807 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

~~32123. Place to File HEERA Representation Matters.~~

~~(a) 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.~~

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

~~Authority cited: Section 3563(f), Government Code. Reference: Section 3563(m), Government Code.~~

~~32124. Place to File Ralph C. Dills Act Representation Matters.~~

~~The Sacramento Regional Office shall be the appropriate location for filing all documents in representation matters relating to the State of California.~~

~~Note: Authority cited: Sections 3513(h) and 3541.3(g), Government Code. Reference: Sections 3524 and 3541.3(n), Government Code.~~

32130. Computation of Time.

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

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

(c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. No extension of time applies in the case of documents served in person, or by ~~facsimile transmission~~ electronic service as permitted by section 32140 defined in Section 32090.

(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), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3555.5(c),_3563, 3577(b), 71639.1, and 71825, Government Code, and Sections 99561 and 99564.4(b), Public Utilities Code.

32132. Extension of Time.

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

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

(c) A request for an extension of time within which to file any document with a Board agent shall be in writing and shall be filed with the Board agent at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party. Extensions of time may be granted by the Board agent for good cause only. 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), 3555.5(c),_3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(n), 3541.35, 3563(m), 3555.5(c),_3563.5, 71639.1, 71639.15, 71825, and 71825.05, Government Code; and Sections 99561(m) and 99561.4, Public Utilities Code.

32135. Filing.

(a) “Filed” means a document is received and accepted by PERB after the filing party has complied with applicable statutory and regulatory filing requirements. ~~All documents shall be considered “filed” when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office during a regular PERB business day.~~ All documents, except for proof of support as described in sections 32700, 61020, 81020 and 91020, must also be accompanied by proof of service pursuant to Section 32140.

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

~~Cover Sheet, or when received by electronic mail in accordance with Sections 32091 and 32101. 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 the social-security number and taxpayer-identification number;~~

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

~~(3) the minor's initials; and~~

~~(4) the last four digits of the financial-account number.~~

~~(c) A party electronically filing documents by facsimile transmission or by electronic mail must also deposit the original, together with the required proof of service and the required number of copies, in the U.S. mail or with a delivery service for delivery to the appropriate PERB office. Documents not filed electronically must be unbound.~~

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

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

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

~~(3) The date and time of the transmission;~~

~~(4) The PERB case number, if any.~~

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c),_3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

32136. Late Filing.

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations. 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), 3555.5(c),_3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c),_3563(m), 71639.1 and 71825, Government Code; and Sections 12, 12(a) and 1013, Code of Civil Procedure; and Section 99561(m), Public Utilities Code.

32140. Service.

(a) All documents referred to in these regulations requiring “service,” except subpoenas, shall be considered “served” by the Board or a party when personally delivered, when deposited in the mail or with a delivery service properly addressed, ~~when sent by facsimile transmission in accordance with the requirements of Sections 32090 and 32135(d), or when sent by electronic service, as defined by Section 32094, and authorized in subdivision (b) of this section~~ ~~mail in accordance with the requirements of Section 32091, 32135(d) and 32140(b).~~ All documents required to be served shall include a “proof of service” declaration signed under penalty of perjury which contains the following information: (1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, fax number(s) or electronic mail address(es) used for service on the party(ies); and (8) the date of service.

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

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c),_3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c),_3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

32142. Proper Recipient for Filing or Service.

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

(a) The Board: the appropriate or designated regional office (see, e.g. Sections 32075, 32122, or 32612) unless the headquarters office is specified or the document is filed through e-PERB;

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

(c) An employer

(1) in the case of a public school employer: the superintendent, deputy superintendent, or a designated representative of a school district; or to the school board at a regular or extraordinary meeting;

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

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

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

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

(C) If the employer is the Trustees of the California State University for unfair practice proceedings, service shall be on the Office of the General Counsel of the California State University; for representation proceedings, filing or service shall be on the Office of the Director of Employee Relations.

(4) in the case of a public agency employer as defined in Government Code section 3501(c): the individual designated to receive service or the chief executive officer.

(5) in the case of a transit district employer as defined in Public Utilities Code section 99560.1(g), any person authorized to act on behalf of the employer.

(6) in the case of a trial court employer as defined in Government Code section 71601(k) or 71801(k): the individual designated to receive service or the executive officer.

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

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

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

(f) Documents filed electronically with PERB will be deemed to have been filed with the appropriate recipient.

Note: 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 3501(c), 3513(j), 3541.3(n), 3563(m), 71601(k), 71639.1, 71801(h), 71807 and 71825, Government Code; and Sections 99560.1(g) and 99560.1(h), Public Utilities Code.

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32605. Copies of Unfair Practice Charges Required to be Filed.

Any party filing an unfair practice charge or amended charge must file the original ~~and one copy~~ with the appropriate regional office. This section does not apply where a party electronically files a charge.

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

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 to the Board itself. ~~The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent.~~ Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

The Appeal shall:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

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

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

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

SUBCHAPTER 6: REPRESENTATION PROCEEDINGS

Article 1: General Provisions

32700. Proof of Support.

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

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

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

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

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

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

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

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

(1) Current dues deduction authorization forms;

(2) Membership applications;

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

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

(5) A notarized list of employees who are not exclusively represented by an employee organization and who have electronically signed authorization cards indicating the employees' desire to be represented by an employee organization, provided that the list is accompanied by the date of each employee's electronic signature, a printout of a sample of the electronically signed forms, and a sworn declaration demonstrating that the employee organization has obtained electronic signatures using generally accepted security protocols or their equivalent.

(6) Other evidence as determined by the Board.

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

(g) Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall conduct further investigations. If, as a result of such investigation, the Board determines that the showing of support is inadequate because of such misconduct, the petition shall be dismissed.

Note: Authority cited: Sections 3513, 3513(h), 3541.3, 3541.3(g) and 3563(f), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3515.7(d), 3520.5, 3544, 3544.1, 3544.3, 3544.5, 3544.7, 3546, 3573, 3574, 3575, 3576, 3577 and 3585.5, 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.