

**[updated 11.19.2020] 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**

**32017. TEERA.**

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

32018. Definition of Terms Under TEERA.

As applied to matters arising under TEERA:

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

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

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

~~(d) In Chapter 6 of these regulations:~~

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

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

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

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

**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).

**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).

**32095. Bargain**

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

**Article 2. General Provisions**

**32100. Application of Regulations.**

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

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

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

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

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

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

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

(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. Representation OCTDA and SFBART proceedings are governed by Chapter 6, Subchapter 3, of these regulations.

### **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), (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.

### **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, 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.

## **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 ~~or Chapter 10~~ of these Regulations, may file a request to seek judicial review within 20 days following the date of service of the decision. ~~An original and five copies of t~~The request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. Service and proof of service of the request pursuant to Section 32140 are required.

(b) Any party shall have 20 days following the date of service of the request to file a response. ~~An original and five copies of t~~The response shall be filed with the Board itself in the headquarters office. Service and proof of service of the request pursuant to Section 32140 are required.

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

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

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

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, the Orange County Transit District Act, the San Francisco Bay Area Rapid Transit District 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 shall be processed as unfair practice charges.

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

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

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

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

**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 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.

**32614. 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) 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.

(de) Fail to exercise good faith while participating in any impasse procedure mutually agreed to 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).

(ef) 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.

(fg) 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.

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

### **32615. 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 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.

### **32616. 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 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.

### **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 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, or San Francisco Bay Area Rapid Transit District 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 Act, as provided in section 32661.

**32661. Repugnancy Claims.**

- (a) An unfair practice charge concerning conduct subject to Government Code Section 3508.8, 3514.5(a)(2), ~~or~~ 3541.5(a)(2), or 3524.55(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 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.

**SUBCHAPTER 6. REPRESENTATION PROCEEDINGS**  
**Article 2. Elections**

**32720. Authority to Conduct Elections.**

(a) An election shall be conducted when the Board issues a decision directing an election or approves an agreement for a consent election, pursuant to the provisions of Articles 3, 4 or 5 of this Subchapter; Chapter 2, Subchapters 1 and 2; Chapter 3, Subchapter 1; Chapter 4, Subchapter 1 or 2; or Subchapter 2 [TEERA] of Chapter 6 of these regulations. This Section does not apply to:

- (1) Elections involving transit districts, as defined by ~~Chapter 9~~ Subchapter 3 of Chapter 6 of these regulations, Section ~~72000 93000~~, where SMCS conducts elections pursuant to Subchapter 3 of Chapter 96, section ~~72135 93020~~, or
- (2) 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.

**CHAPTER 6. REPRESENTATION PROCEEDINGS UNDER PUBLIC UTILITIES**  
**CODE TRANSIT DISTRICT ACTS**

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

~~TRANSIT EMPLOYER-EMPLOYEE RELATIONS ACT~~

**SUBCHAPTER 1. GENERAL PROVISIONS ~~REPRESENTATION PROCEDURES~~**

**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.

**SUBCHAPTER 2: REPRESENTATION PROCEDURES UNDER THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

**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.

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

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

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

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

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

#### **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.

### **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.~~

#### **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.

#### **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.~~

**~~71050. Board Determination Regarding Proof of Support – Request for Recognition, Intervention.~~**

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

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

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

**~~71055. Determination Regarding Proof of Support by Third Party – Request for Recognition, Intervention.~~**

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

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

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

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

#### **71060. Withdrawal of Request or Intervention.**

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

#### **71070. Amendment of Request or Intervention.**

~~(a) A request for recognition or intervention may be amended to correct technical errors or to delete job classifications from the proposed unit at any time prior to the issuance of the notice of representation hearing, or, where no hearing has been held, issuance of the notice of intent to conduct an election. The amendment shall be filed with the employer and shall include the information described in Sections 71030(a) and 71040(a). A copy shall be concurrently served on each party and the regional office. Proof of service pursuant to Section 32140 is required. No posting shall be required.~~

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

~~(1) Except as provided in Section 71680(c), a request for recognition or intervention may be amended to add new job classifications to a proposed unit at any time prior to the issuance of a notice of representation hearing, or if no hearing is held, the issuance of a notice of intent to conduct election.~~

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

~~(3) The employer shall post a notice of any amended request for recognition as soon as possible but in no event later than 10 days following receipt of the amendment. The notice shall conform to the requirements for posting an original request for recognition as set forth in Section 71035, and shall remain posted for 15 workdays, during which time interventions may be filed.~~

~~(4) An employer response to the amended request or intervention shall be filed with the regional office within 15 days following service of the Board's determination regarding the adequacy of~~

proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 71080.

~~(c) Amendments to correct technical errors, add or delete job classifications from a party's proposed unit which are requested after the issuance of the notice of hearing are subject to approval by the hearing officer. The hearing officer may grant the requested amendment so long as it will not serve to unduly impede the hearing and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the hearing officer.~~

**71080. Employer Response.**

~~(a) Within 15 days following the service of the determination of adequacy of proof submitted in support of the request for recognition and any interventions, the employer shall file a written response with the regional office.~~

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

~~(c) The employer, if it has granted voluntary recognition pursuant to Public Utilities Code sections 99564 and 99564.1, shall include the following information in its response:~~

~~(1) A statement that the employer has voluntarily recognized (organization) as the exclusive representative for an appropriate unit of employees described below for purposes of meeting and conferring with the employer;~~

~~(2) Name, address and telephone number of the employer;~~

~~(3) Name, address and telephone number of the employee organization;~~

~~(4) A description of the grouping of employment classes to be included in the claimed unit.~~

~~(5) The number of employees in the unit recognized;~~

~~(6) The date of recognition.~~

~~(d) The employer, if it has not granted voluntary recognition, shall provide the following information:~~

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

~~(2) Reasons for Denial of Recognition:~~

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



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

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

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

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

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

~~(E) If no interventions have been filed and no unit dispute exists, but the employer reasonably doubts that the employee organization has majority support, the employer shall set forth the reasons for its doubt of the majority support and request PERB to conduct a representation election.~~

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

(a) Not later than 30 days following the date 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 is 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.

### **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).

### **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.

## **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.

#### **71110. Determination of Proof of Support.**

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

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

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

#### **~~71115. Withdrawal of Petition for Certification.~~**

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

#### **71120. Amendment of Petition for Certification.**

(a) A petition for certification may be amended to correct technical errors or to add (subject to the limitations set forth in Section 71680(c)) or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct election. The amendment shall ~~be filed with the regional office and~~ include the information described in Section 71100(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 71130.

(c) Amendments to correct technical errors, add or delete job classifications from a party's proposed unit which are requested after the issuance of the notice of hearing are subject to approval by the hearing officer. The hearing officer may grant the requested amendment, so long as it will not serve to unduly impede the hearing and provided that sufficient proof of support is evidenced to support any request for addition of job classifications.

#### **71130. Employer Response Regarding Petition for Certification.**

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

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

(c) The employer shall include the following information in its response regarding a petition for certification:

(1) Name, address and telephone number of the employer and name, address, 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.

### **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 ~~71025~~71010(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.

## **Article 5. Representation Hearings**

### **71200. Informal Conference.**

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

### **71210. Notice of Representation Hearing.**

Upon determining that a hearing is necessary, the Board shall serve a notice on all interested parties ~~pursuant to Section 71020~~. The notice shall state the date, time and place of the hearing. The notice shall also include information regarding how an employee organization may become a party to the hearing.

### **71225. Conduct of Hearing.**

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

### **71230. Withdrawal 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.

### **71235. Notice of Decision.**

The Board shall serve on all interested parties pursuant to ~~Section 71020~~ a notice of decision with either the decision of the Board itself or a final hearing officer decision.

## **Article 6. Representation Elections**

### **71300. Notice of Intent to Conduct Election.**

Upon determination to conduct a representation election, other than an election directed by a Board decision, the Board shall issue a notice of intent to conduct election to all interested parties ~~pursuant to Section 71020~~. A notice of decision pursuant to Section 71235 which orders a representation election shall serve as a notice of intent to conduct election.

### **71310. Intervention to Appear on Ballot.**

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

(1) The name, address and telephone number of the employee organization and the name, address, 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.

### **71320. Board Determination Regarding Proof of Support.**

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

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

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

### **71330. Voluntary Recognition.**

If only one organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the employer may grant voluntary recognition and notify the Board to cancel the election.

### **71340. Conduct of Elections.**

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

## **Article 7. Severance Petition**

### **71680. Severance Petition.**

(a) An employee organization may file a petition to become the exclusive representative of a group of employees (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).

### **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.

### **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.

### **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.

### **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.

## **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.

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

(a) 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.

(1) 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.

(2) 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.

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

(4) 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.

## **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.

#### **72010. Determination of 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.

(d) A proof of support determination may be appealed to the Board itself in accordance with Sections 32350 through 32380 of these regulations.

#### **72015. Withdrawal of Petition for Certification.**

Any petition for certification may be withdrawn by an authorized representative of the petitioner at any time prior to a final decision by the Director. Such withdrawal shall be filed with SMCS in the Sacramento regional office. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

#### **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.

### **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.

## **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.

#### **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.

#### **72040. Board 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.

### **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.

### **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.

#### **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.

#### **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.

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

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

(a) 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 or 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:

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

(4) 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.

#### **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.

#### **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.

### **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 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.

## **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.

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

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

### **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.

### **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.

### **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.

### **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.

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 approved by the Director pursuant to a voluntary agreement between or among the parties.

### **72115. Subpoenas.**

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

### **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.

### **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.

## **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.

### **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 Sections 72100 and 72105. SMCS shall issue to the parties a certification of the results of the election, including a certification of representative where appropriate.

**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.

**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 32115.

(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.

**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 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.

#### **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.

#### **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.

#### **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.

**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.

**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.

**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.

**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.

### **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.

### **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.

### **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.

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

Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, the 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.

**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 objection to the revised tally.

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

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

**72215. Certification of Exclusive Representative.**

The SMCS shall certify an exclusive representative if warranted.

**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.

**Article 11. Relevant Federal Law.**

**72225. Relevant Federal Law**

(a) In resolving questions of representation, as consistent with to the extent required by the PUC transit employer's enabling act, SMCS and the Board shall apply, as appropriate, 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.