

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

32056. State Mediation and Conciliation Service.

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

(b) ~~[begin deleted text]"Supervisor"~~ ~~[end deleted text]~~ [begin added text]Director" ~~[end added text]~~ means the officer of that title within the Division of Mediation designated by the Board.

Note: Authority cited: Sections 3541.3(g) and 3603, Government Code. Reference: Section 3600, Government Code.

32060. Headquarters Office

"The headquarters office" means the main office of the Board itself, the General Counsel, the Chief Administrative Law Judge, [begin added text]the Director of State Mediation and Conciliation Services, ~~[end added text]~~ and the Executive Director. The headquarters office shall be located in Sacramento, CA.

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

Article 2. General Provisions

32121. Place to File Matters with the SMCS.

The ~~[begin deleted text]San Francisco~~ ~~[end deleted text]~~ [begin added text] ~~[end added text]~~ Sacramento ~~[end added text]~~ Regional Office shall be the appropriate location for filing documents in all matters relating to functions of the Division of Mediation.

Authority cited: Sections 3541.3(g) and 3603, Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 100301, 101344, 102403, 103401 and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3600, 3601, 3603 and 3611, Government Code; and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 100301, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4, and Appendix 2, Sections 13.90, 13.91 and 13.96, Public Utilities Code.

SUBCHAPTER 6. REPRESENTATION PROCEEDINGS

Article 2. Elections

32720. Authority to Conduct Elections.

[begin added text](a)[end added text] 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 Chapter 6 of these regulations. [begin added text]This Section does not apply to:

(1) elections involving transit districts, as defined by Chapter 9, Section 93000, where SMCS conducts elections pursuant to Chapter 9, section 93020, or

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

(b)[end added text] The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

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

32792. Request that Board Determine Impasse and Appoint Mediator.

(a) After declaring impasse orally or in writing to the other party or after jointly declaring impasse, either or both parties may request the Board to determine that an impasse

exists and appoint a mediator. [begin added text]This Section, however, applies only to the Dills Act, EERA and HEERA.[end added text] This request may initially be made by telephone, but a request in writing shall follow. The request shall be signed under penalty of perjury that the information alleged therein is true and complete to the best of the requesting party's/parties' knowledge and belief, and contain the following information:

- (1) The name, address and telephone number of the employer and the exclusive representative;
 - (2) The name, title, address and telephone number of the agent to be contacted for each party;
 - (3) A description of the established unit, the approximate number of employees in the unit and the date the exclusive representative was recognized or certified;
 - (4) The type of dispute;
 - (5) The date(s) the parties' initial proposals were presented to the public;
 - (6) The date negotiations commenced, the number of negotiating sessions and the approximate total number of hours spent in negotiations to date;
 - (7) The status of negotiations, including the date impasse was declared by the party/parties pursuant to this section, the number and subject matter of issues on which the parties have reached tentative agreement, and the total number and subject matter of issues which remain in dispute;
 - (8) A clear and concise description of the negotiations which have occurred, including the extent to which the parties have made counter-proposals and have discussed the issues which remain in dispute, and any facts which indicate that future meetings without the assistance of a mediator would be futile.
- (b) Unless the request is made jointly, the filing party shall concurrently serve a copy of the written request on the other party. Proof of service pursuant to Section 32140 shall be filed with the regional office.

Note: Authority cited: Sections 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections 3518, 3548 and 3590, Government Code.

SUBCHAPTER 9. STATE MEDIATION AND CONCILIATION SERVICE

Article 1. Services

32998. Reimbursement for Services.

(a) ~~Beginning July 1, 2010, training and f~~ ~~facilitation services provided by the SMCS pursuant to Section 3602 of the Government Code and representation services, other than election services,~~ as defined herein ~~relating to public transit labor relations pursuant to the Public Utilities Code~~ shall be reimbursed at the rate of one hundred and ~~fifteen~~ thirty five dollars (\$ ~~445~~ 135.00) per hour, prorated for each quarter hour of work that is less than a full hour. The actual time charged shall begin when a mediator commences providing such services, and shall include travel time not to exceed two hours in one direction or a total of four hours per day, and time spent with the parties ~~to determine the content of the training and goals for the facilitation,~~ and shall continue until the services are completed.

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

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

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

(4) ~~SMCS shall bill the parties for training,~~ ~~facilitation~~ ~~and representation services~~ after completion of the work. The matter of which party or parties will be

responsible for reimbursement of SMCS will be determined between or among the parties and will be recorded in a memorandum of agreement signed by all parties. The cost of representation services shall be split equally between or among the parties unless otherwise agreed to by the parties as permitted by law.

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

(1) Election services shall be reimbursed as follows:

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

The cost of election services shall be split equally between or among the parties unless otherwise specified in local rules or agreed to by the parties. Which party or parties shall be responsible for reimbursement of SMCS, and in what amount, shall be determined at the initial set up meeting and will be recorded in the memorandum of election agreement.

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

~~(4)~~ A party requesting a list of arbitrators shall pay fifty dollars (\$50.00) for each list of arbitrators requested. Payment for a list of arbitrators must be made at the time each list is requested. There will be no charge for substitute lists for the same case.

Authority cited: Sections 3541.3(g), 3555.5(c), 3602 and 3603, Government Code.
Reference: Sections 3555.5(c), 3557, 3600, 3601, 3602, 3603 and 3611, Government Code; Sections 25051, 25052, 28850, 28852, 30750, 30751, 30756, 40120, 40122,

50120, 50121, 70120, 70121, 95650, 95651, 98162.5, 100301, 100304, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 120502, 120503, 120505, 125521, 125524, 125525 and 125526; Appendix 1, Section 4.1 and Appendix 2, Section 13.90, Public Utilities Code; Section 11010, Government Code; and Sections 8740 and 8752, State Administrative Manual.

32999. Elections.

(a) The provisions of this Article are applicable whenever SMCS conducts representation and agency shop elections pursuant to the local rules of an MMBA, Trial Court Act or Court Interpreter Act employer. [begin added text]These provisions, however, do not apply to elections conducted by the Office of the General Counsel pursuant to Section 32720.[end added text]

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

Note: Authority cited: Sections 3509(a), 3541.3(g), 3541.3(n), 3600, 3603(a), 71639.1(b) and 71825(b), Government Code. Reference: Sections 3502.5(b), 3502.5(d), 3507.1(c), 71632.5(c), 71636.3 and 71814(c), Government Code.

93000. Definitions.

(a) “District” means the Alameda-Contra Costa Transit District, the Fresno Metropolitan Transit District, the Golden Empire Transit District, the Marin County Transit District, the North County Transit District, the Orange County Transit District, the Sacramento Regional Transit District, the San Diego County Transit District, the San Diego Metropolitan Transit Development Board, the San Francisco Bay Area Rapid Transit District, the San Mateo County Transit District, the Santa Barbara Metropolitan Transit District, the Santa Clara Valley Transportation Authority, the Santa Cruz Metropolitan Transit District, the Southern California Rapid Transit District, the San Joaquin Regional Transit District, and the West Bay Rapid Transit Authority, as the case may be.

(b) “Law” means the Transit District Law, Public Utilities Code, Section 24501 et seq.; Fresno Metropolitan Transit District Act of 1961, Public Utilities Code, Appendix 1, Section 1.1 et seq.; Golden Empire Transit District Act, Public Utilities Code, Section 10100 et seq.; Marin County Transit District Act of 1964, Public Utilities Code, Section 70000 et seq.; North County Transit District Act, Public Utilities Code, Section 125000 et seq.; Orange County Transit District Act of 1965, Public Utilities Code, Section 40000 et

seq.; Sacramento Regional Transit District Act, Public Utilities Code, Section 102000 et seq.; San Diego County Transit District Act of 1965, Public Utilities Code, Section 90000 et seq.; Mills-Deddeh Transit Development Act, Public Utilities Code, Section 120000 et seq.; San Francisco Bay Area Rapid Transit District Act, Public Utilities Code, Section 28500 et seq.; San Mateo County Transit District Act, Public Utilities Code, Section 103000 et seq.; Santa Barbara Metropolitan Transit District Act of 1965, Public Utilities Code, Section 95000 et seq.; Santa Clara Valley Transportation Authority Act, Public Utilities Code, Section 100000 et seq.; Santa Cruz Metropolitan Transit District Act of 1967, Public Utilities Code, Section 98000 et seq.; Southern California Rapid Transit District Law, Public Utilities Code, Section 30000 et seq.; San Joaquin Regional Transit District Act, Public Utilities Code, Section 50000 et seq.; and West Bay Rapid Transit Authority Act, Public Utilities Code, Appendix 2, Section 1.1 et seq.

(c) "Hearing officer" as used in this Chapter means a hearing officer appointed by the ~~Supervisor~~ Director.

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

93025. Investigation of Petition by Service.

(a) After a petition has been filed under Section 93005(a) or (b), if no agreement for a consent election is entered into and if it appears to SMCS that there is reasonable cause to believe that a question of representation exists, that the policies of the act will be effectuated, and that an election will reflect the free choice of the employees in the appropriate unit, the ~~Supervisor~~ Director shall serve upon the petitioner, the district, any known individuals or labor organizations purporting to act as the representative of any employees directly affected by such investigation and any other parties a notice of hearing before a hearing officer at a time and place fixed therein, which notice shall be given at least 10 days in advance of the date specified for the hearing. Any such notice of hearing may be amended or withdrawn by the ~~Supervisor~~ 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. When more than one petition has been filed involving all or

part of the same group of employees, or otherwise raising common issues, SMCS may, on the motion of any of the parties, or on its own motion, order that said petitions be consolidated for the purpose of hearing and decision.

(b) After a petition has been filed under Section 93005(c), the ~~Supervisor~~ Director shall conduct an investigation and, as appropriate, may issue a decision without a hearing; or prepare and serve on the petitioner, the district, any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such an investigation and any other parties, a notice of hearing before a hearing officer at a time and place fixed or take other appropriate action. Any such notice of hearing may be amended or withdrawn by the ~~Supervisor~~ 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.

(c) If after investigation of the petition it appears to the ~~Supervisor~~ Director that there is no reasonable cause to believe that there exists a question whether a labor organization represents a majority of employees of the district in an appropriate unit, or if the ~~Supervisor~~ Director determines that the petition has not been filed in accordance with these regulations, the ~~Supervisor~~ Director shall have the power to dismiss the petition without a hearing or approve the withdrawal of the petition.

(d) Any determination made by the ~~Supervisor~~ Director pursuant to this Section may be appealed to the Board itself in accordance with Sections 32350 through 32380 or, if applicable, in accordance with and subject to the limitations provided in Section 32200.

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

93030. Conduct of Hearings.

(a) Hearings shall be conducted by a hearing officer appointed by the [begin deleted text]Supervisor[end deleted text] [begin added text]Director[end added text] and shall be open to the public unless otherwise ordered by the hearing officer. It shall be the duty of the hearing officer to inquire fully into all matters in issue and necessary to obtain a full and complete record upon which SMCS, the [begin deleted text]Supervisor[end deleted text] [begin added text]Director,[end added text] the hearing officer, or the Board may discharge their duties under the Laws described in Section 93000. A hearing officer may be substituted by the [begin deleted text]Supervisor[end deleted text] [begin added text]Director[end added text] at any time.

(b) The hearing officer may, in his or her discretion, continue the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at a hearing or by other appropriate notice.

(c) All motions, including motions for intervention pursuant to Section 93035 below, shall be in writing, or if made at the hearing may be stated orally on the record, and shall briefly state the action or relief sought and the grounds for such motion. An original and one copy of written motions shall be filed with the hearing officer, and a copy thereof shall immediately be served by the moving party upon each of the other parties to the proceeding. The hearing officer shall rule either orally on the record or in writing upon all motions, including all motions to dismiss a petition.

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

93045. Subpoenas.

(a) Application for subpoenas may be filed in writing by any party with the [begin deleted text]Supervisor[end deleted text] [begin added text]Director[end added text] if made prior to the hearing, and with the hearing officer if made at the hearing. The [begin deleted text]Supervisor[end deleted text] [begin added text]Director[end added text] or the hearing officer shall forthwith cause the subpoenas to be issued. Applications for

subpoenas may be made ex parte. Any person served with a subpoena, whether ad testificandum or duces tecum, who does not intend to comply therewith shall within five days after the date of service file with the hearing officer a petition to revoke the subpoena. Notice of the filing of a petition to revoke shall be promptly given by the hearing officer to the party at whose request the subpoena was issued. The hearing officer shall revoke a subpoena if in his or her opinion the evidence sought does not relate to any matter under investigation or in question in the proceedings, is not relevant, or the subpoena does not describe with sufficient particularity the evidence requested, or if for any other reason the subpoena is otherwise invalid. The hearing officer shall make a statement in writing or on the record of the procedural or other grounds for this ruling. Filing with reference to the revocation of a subpoena shall not become part of the record except upon the request of the party aggrieved by the ruling on the petition. Persons compelled to produce written evidence are entitled to retain the same, but the party compelling its production may pay the cost of procuring a copy thereof to be submitted in evidence in lieu of the original.

(b) Witnesses summoned before the hearing officer shall be paid by the party for whom the witness appears.

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

93055. Duties of Hearing Officer Following Hearing.

Upon the close of a hearing, the hearing officer shall as expeditiously as possible prepare a proposed decision and order which shall include a written analysis of the record and of the arguments of the parties, findings of fact and a determination upon the issues submitted to the hearing officer. If the hearing officer determines that an election is to be held, the hearing officer shall set forth the appropriate unit or units within which such election(s) shall be held and the categories of employees who shall be eligible to vote in such unit or units. The original of such proposed decision and order, together with the petition or petitions, notices of hearing, written motions, rulings or orders, the transcript of the hearing, stipulations, exhibits and documentary evidence, affidavits of service, depositions, and briefs or other legal memoranda submitted by the parties - shall constitute the record in the proceedings and shall promptly be forwarded to the [begin deleted text]Supervisor[end deleted text] [begin

~~added text~~Director~~end added text~~ by the hearing officer. The decision of the hearing officer shall be final if not appealed as set forth in Section 93060. A copy of the proposed decision and order shall concurrently be served upon each of the parties by the hearing officer.

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

93070. Election Procedures.

(a) All elections shall be conducted by SMCS and shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, any participant, upon its prompt request to and approval thereof by the ~~begin deleted text~~Supervisor~~end deleted text~~ ~~begin added text~~Director~~end added text~~, whose decision shall be final, may have its name removed from the ballot. Provided, however, that in a proceeding involving a district-filed petition or a petition for decertification, the labor organization certified, currently recognized or found to be seeking recognition may not have its name removed from the ballot without timely notice in writing to all parties and to SMCS disclaiming any representation interest among the employees in the unit.

Any party may be represented by observers of its own selection, subject to such limitations as SMCS may prescribe. Any party and any agent or representative of SMCS may challenge for good cause the eligibility of any person to vote in the election. Each challenged ballot shall be impounded. Upon the conclusion of the election SMCS shall issue a tally of the ballots to each party. Within five days thereafter any party may file with SMCS two copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons for the objections. The objecting party shall immediately serve a copy of such objections upon each other party and file with SMCS proof of service and shall, upon request, promptly furnish evidence to support the objections.

(b) If (1) no objections are filed within the time specified in subsection (a) above, and (2) any challenged ballots are insufficient in number to affect the results of the election, and (3) no runoff election is to be held pursuant to Section 93075 below, SMCS shall forthwith issue to the parties a certification of the results of the election, including certification of representatives where appropriate; and the case will be closed.

(c) If objections are filed to the conduct of the election or conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the results of the election, the ~~Supervisor~~ Director shall investigate such objections or challenges, or both, and shall prepare and serve upon the parties a report on such objections or challenged ballots, or both. Within 10 days from the date of issuance of the report on such objections or challenged ballots, or within such additional period as the ~~Supervisor~~ Director may allow upon written application for extension made within such 10-day period, any party may file with the ~~Supervisor~~ Director an original of exceptions to such report. Concurrently upon the filing of such exceptions, the filing party shall serve a copy upon each of the other parties, and proof thereof shall be promptly filed with the ~~Supervisor~~ Director. If no exceptions are filed to such report within the time permitted, the ~~Supervisor~~ Director may issue a written decision in conformity with such report, as to the validity of such objections or challenges or may make other disposition of the case based on an administrative investigation or in the exercise of reasonable discretion, and SMCS shall thereupon promptly act to close the case in accordance with such decision.

(d) If exceptions are filed, either to the report on challenged ballots or objections, or both if it is a consolidated report, the ~~Supervisor~~ Director shall appoint a hearing officer to examine the exceptions and make recommendations. If it appears to the hearing officer that such exceptions do not raise substantial and material factual issues with respect to the conduct of the election or conduct affecting the results of the elections, the hearing officer may make written recommendations to the ~~Supervisor~~ Director forthwith, and shall concurrently serve copies of said recommendations upon the parties. Within 10 days from the date of issuance of the aforesaid recommendations, or within such additional period as the ~~Supervisor~~ Director may allow upon written application for extension made within the 10-day period, any party may file with the Board itself an original and five copies of exceptions to the hearing officer's recommendations, in accordance with the provisions of Section 93065. Concurrently upon the filing of such exceptions, the filing party shall serve a copy upon each of the other parties and proof thereof shall be promptly filed with the Board.

(e) If it appears to the hearing officer that any exceptions filed to the report of the ~~Supervisor~~ Director on challenged ballots or objections raise substantial and material factual issues, the

hearing officer shall cause to be served upon the parties a notice of hearing on said exceptions, which notice shall be given at least 10 days in advance of the date specified for the hearing. The hearing shall be conducted by the hearing officer in accordance with the provisions of Sections 93030, 93040, 93045, and 93050 insofar as applicable. Upon the close of the hearing, the hearing officer shall prepare and deliver to the ~~Supervisor~~ Director a proposed decision resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the challenges or objections, or both if it be a consolidated matter. Said decision, - together with (1) the notice of hearing, (2) motions, (3) rulings, (4) orders, (5) transcript of the hearing, (6) stipulations, (7) exceptions, (8) documentary evidence and briefs, (9) objections to the conduct of the election or conduct affecting the results of the election, (10) the report of ~~Supervisor~~ Director on such objections, (11) the report of ~~Supervisor~~ Director on challenged ballots, (12) exceptions to the report of the ~~Supervisor~~ Director on objections or to the report on challenged ballots, and (13) the record previously made, - shall constitute the record in the case. A copy of the hearing officer's proposed decision shall immediately be served upon each of the parties, where-upon any of the parties may file exceptions to said report within the same time limitations and requirements as to service, and proof thereof, as are provided for in the case of exceptions filed under subsection (d) of this section.

(f) After the period for the filing of exceptions under subsection (d) or (e) has expired the Board shall issue a written decision and serve copies upon the parties. If the hearing officer has issued recommendations under subsection (d), finding that the exceptions to the report of the ~~Supervisor~~ Director do not raise substantial and material factual issues, and exceptions to such recommendations have been filed, and after consideration of such exceptions the Board decides that the exceptions to the report of the ~~Supervisor~~ Director do raise substantial and material factual issues, the Board shall direct the hearing officer to issue a notice of hearing, whereupon the procedures for a hearing and the issuance of the hearing officer's report provided for in subsection (e) of this section (including the provision for filing exceptions to the hearing officer's report) shall be followed. The Board may adopt the recommendations of the hearing officer issued under subsection (d) or the proposed decision of the hearing officer issued under subsection (e) as its own. SMCS shall thereafter promptly proceed to take such action as may be called for by the decision of the Board, after which the case will be closed.

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

93075. Runoff Elections.

(a) SMCS shall conduct a runoff election when an election in which a ballot providing for not less than three choices (i.e., at least two representatives and “neither” or “none”) results in no choice receiving a majority of the valid ballots cast. The runoff election shall be held promptly following final disposition of any challenges, objections or exceptions which followed the prior election as provided in Section 93070. Only one runoff election shall be held pursuant to this section.

(b) Employees who were eligible to vote in the original election and who are employed in an eligible category on the date of the runoff election shall be the only employees eligible to vote.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the highest and second highest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and “neither” or “none” is equally divided among the several choices, or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the ~~Supervisor~~ Director shall declare the first election a nullity and shall conduct another election among the three choices which received the greatest number of ballots in the original election; provided that in the event there was a tie in the original election between the third and fourth choices or among the third, fourth and other choices, the ~~Supervisor~~ Director shall in the runoff election include on the ballot all such tied choices. In the event two or more choices receive the same number of ballots, and if either (1) there are no challenged ballots which would affect the results of the election, or (2) after all challenges have been disposed of it is found that all eligible voters have cast valid ballots, there shall be no runoff election and the petition shall be dismissed. Only one such further election pursuant to this subsection (d) may be held.

(e) The provisions of Section 93070 above shall be applicable to a runoff election.

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