PROPOSED TEXT:

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

SUBCHAPTER 6. REPRESENTATION PROCEEDINGS

Article 2. Elections

32721. Election Methods.

(a) As set forth in the Directed Election Order or in an approved Consent Election Agreement, an election may be conducted by any of the following means, unless otherwise required by statute:

(1) On-site election;

(2) Mailed ballot;

(3) Electronic ballot; or

(4) Any combination of these methods.

(b) PERB shall not charge for services related to on-site and mailed ballots. With respect to electronic ballots, PERB shall not charge for an election subject to a Directed Election Order, nor for an election subject to an approved Consent Election Agreement in which PERB has determined that on-site and/or mail ballots would be unreasonable based on the nature of the employee group. In other consent elections involving electronic ballots, PERB will charge no more than the amount billed by a vendor for assisting with such services. The parties shall split equally any such charge, unless the parties agree otherwise.

Authority cited: Sections 3513(h), 3524.52(a), 3541.3(g), 3563(f), and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3541.3(c), 3541.3(e), 3541.3(m), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, 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.

32722. Ballot.

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

(b) If the Board engages a vendor to assist with an election, the Board shall supervise the vendor and ensure compliance with all applicable legal requirements.

(cb) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.

(dc) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 32736, or an election conducted pursuant to either Article 3 of this Chapter or section 32781(c), the ballot entry of "No Representation" shall appear on each ballot in a representation election.

(ed) At any time prior to issuance of the notice of election (pursuant to section 32724(b)), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3513(h), 3524.52(a), 3541.3(g), 3563(f) and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3541.3(c), 3541.3(e), 3541.3(m), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, 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.

32724. Directed Election Order/Consent Election Agreement; Notice of Election.

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

(b) Thereafter, the Board shall serve a notice of election on the parties and instructions for posting and circulating the notice. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process.

~~(1) Unless otherwise directed by the Board, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed.~~

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

Authority cited: Sections 3513, 3524.52(a), 3541.3, 3563, and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3544.1(a), 3544.3, 3544.7(a), 3546, 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, 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.

32726. List of Voters.

(a) At a date established by the Board or agreed in an approved Consent Election Agreement, the employer shall file ~~with the regional office~~ a list of names of all employees included in the voting unit based upon the Directed Election Order or approved Consent Election Agreement, as supplemented by any further eligibility determinations or agreements ~~as of the cutoff date for voter eligibility~~. Unless otherwise directed by the Board, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by the Board, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and home address of each eligible voter~~, and shall be accompanied by two sets of name and home address labels for each eligible voter~~. Unless otherwise directed by the Board, the voter list for an electronic election shall be in alphabetical order and include the job title, home address and e-mail address of each eligible voter, and employee identification number of each eligible voter (if available).

(b) A list of eligible voters which meets the requirements of subsection (a) above but which contains in lieu of the home address a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. Proof of service shall be filed with the regional office. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if the Board shall determine that the release of home addresses is likely to be harmful to the employees.

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

Authority cited: Sections 3513, 3524.52(a), 3541.3, 3563, and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3544.1(a), 3544.3, 3544.7(a), 3546, 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, 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.

32728. Voter Eligibility.

~~Unless otherwise directed by the Board, to be eligible to vote in an election, employees must be employed in the voting unit as of the cutoff date for voter eligibility,~~

~~and still employed on the date they cast their ballots in the election.~~Voting eligibility shall be subject to the Directed Election Order or approved Consent Election Agreement. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots.

Authority cited: Sections 3513(h), 3524.52(a), 3541.3(g), 3563(f), and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, 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.

32732. Challenges.

(a) ~~In an on-site election, a~~A Board agent or an authorized ~~observer~~agent of any party may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In addition to any challenged ballots received under subsection (a) of this section, the Directed Election Order or approved Consent Election Agreement shall set forth procedures for employees who are not on the voter list to vote by challenged ballot based on a colorable claim of eligibility~~In a mailed ballot election, a Board agent or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the tally of the ballots~~.

(c) In an election that does not include electronic ballots, challenges must be filed before the tally of ballots. In an election that includes electronic ballots, the Directed Election Order or approved Consent Election Agreement shall specify the date by which challenges must be filed.

(d~~c~~) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

Authority cited: Sections 3513(h), 3524.52(a), 3541.3(g), 3563(f), and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), 3583.5, and 3599.52(a), and 3599.72, 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.

32734. Tally of Ballots.

(a) In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to

verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

(b) At the conclusion of the counting of ballots, the Board shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

Authority cited: Sections 3513(h), 3524.52(a), 3541.3(g), 3563(f), and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), 3583.5, and 3599.52(a), and 3599.72, 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.

32738. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file ~~with the regional office~~ objections to the conduct of the election. Any objections must be filed within the 10-day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

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

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

(e) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a PERB election objections hearing. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly

objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by them to be true under penalty of perjury.

(g) The Board agent shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: Sections 3513(h), 3524.52(a), 3541.3(g), 3563(f), and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, 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.

32746. Revised Tally of Ballots.

Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, the Board shall serve a revised tally of ballots on each party at the conclusion of the counting and/or voiding of such ballots. In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

Authority cited: Sections 3513, 3524.52(a), 3541.3, 3563(f), and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3544.1(a), 3544.3, 544.7(a), 3546, 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, 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.

32748. Objections to Revised Tally of Ballots.

(a) Within 10 days following the service of a revised tally of ballots, any party may file ~~with the regional office~~ objections to the revised tally.

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

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

Authority cited: Sections 3513(h), 3524.52(a), 3541.3(g), 3563(f), and 3599.52(a), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3520.5(b), 3524.52(a), 3524.74(a), 3524.74(b), 3524.74(d), 3541.3(c), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e), 3583.5, 3599.52(a), and 3599.72, Government Code; and Sections 99561(c), 99561(e), 99561(k), 99561(l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code.

SUBCHAPTER 9. STATE MEDIATION AND CONCILIATION SERVICE

Article 1. Services

32998. Reimbursement for Services.

(a) Facilitation services, as defined herein shall be reimbursed at the rate of one hundred and fifteen dollars ($115.00) per hour, prorated for each quarter hour of work that is less than a full hour. The actual time charged shall begin when a mediator commences providing such services, 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, and shall continue until the services are completed.

(1) Facilitation services include mediation of workplace disputes 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) SMCS shall bill the parties for facilitation 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) For representation elections pursuant to a Consent Election Agreement, SMCS shall not charge for services related to on-site and mailed ballots. With respect to representation elections involving electronic ballots, SMCS shall not charge for an election subject to a Consent Election Agreement in which SMCS has determined that on-site and/or mail ballots would be unreasonable based on the nature of the employee group. In other consent elections involving electronic ballots, SMCS will charge no more than the amount billed by a vendor for assisting with such services. The parties shall split equally any such charge, unless the parties agree otherwise. For all other ~~E~~election services, including with respect to contract ratification and union officer elections, ~~provided by SMCS shall be reimbursed at a flat rate depending~~ SMCS shall charge the following amounts based 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) 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.

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), 3551(a), 3555.5(c), 3602 and 3603, Government Code. Reference: Sections 3551(a), 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, 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.

Article 2. Elections

32999. Elections.

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

(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 and SMCS 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.

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.

32999.1. Election Methods

As set forth in the Consent Election Agreement, an election may be conducted by:

(1) On-site ballots;

(2) Mailed ballots;

(3) Electronic ballots; or

(4) Any combination of these methods.

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(a), 3507.1(c), 71632.5(c), 71636.3 and 71814(c), Government Code.

33000. Ballots.

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

(b) If SMCS engages a vendor to assist with an election, SMCS shall supervise the vendor and ensure compliance with all applicable legal requirements.

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

(dc) Except in the case of a runoff election, the ballot entry of "No Organization" or "No Representation" shall appear on each ballot in a representation election.

(ed) At any time prior to issuance of the notice of election (pursuant to section 33003), an employee organization may file a request with SMCS to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

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(a), 3507.1(c), 71632.5(c), 71636.3 and 71814(c), Government Code.

33003. Notice of Election.

SMCS shall provide a notice of election to the parties and instructions for posting and circulating the notice. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. ~~Unless otherwise agreed by the parties, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed. The posting shall be accomplished by the date specified in the Consent Election Agreement. The notice shall remain posted through the final day for casting ballots.~~

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.

33004. List of Voters.

(a) At a date established by the Consent Election Agreement, the employer shall submit to the election supervisor assigned by SMCS a list of names of all employees included in the voting unit based upon the approved Consent Election Agreement, as supplemented by any further eligibility determinations or agreements~~as of the cutoff date for voter eligibility~~. Unless otherwise directed by SMCS, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by SMCS, the voter list for a mailed ballot election shall be in alphabetical order and include the job title or classification and home address of each eligible voter~~, and shall be accompanied by two sets of name and home address labels for each eligible voter~~. Unless otherwise directed by SMCS, the voter list for an electronic election shall be in alphabetical order and include the job title, home address and e-mail address of each eligible voter, and employee identification number of each eligible voter (if available). The election supervisor may require that the voter list be submitted in an electronic format.

(b) The list of eligible voters which contains a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law.

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

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.

33005. Voter Eligibility.

~~Unless otherwise agreed by the parties, to be eligible to vote in an election, employees must be employed in the voting unit as of the cutoff date for voter eligibility, and still employed on the date they cast their ballots in the election.~~ Voting eligibility shall be subject to an approved Consent Election Agreement. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots.

Authority cited: Sections 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.

33006. Challenges.

(a) ~~In an on-site election, a~~An authorized agent~~observer~~ of any party to the election may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In addition to any challenged ballots received under subsection (a) of this section, the Consent Election Agreement shall set forth procedures for employees who are not on the voter list to vote by challenged ballot based on a colorable claim of eligibility~~In a mailed ballot election, an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the opening of ballot envelopes~~.

(c) In an election that does not include electronic ballots, challenges must be filed before the tally of ballots. In an election that includes electronic ballots, the Consent Election Agreement shall specify the date by which challenges must be filed.

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

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.

33007. Tally of Ballots.

(a) In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party

shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

(b) At the conclusion of the counting of ballots, SMCS shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

Authority cited: Sections 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(a), 3507.1(c), 71632.5(c), 71636.3 and 71814(c), Government Code.

33008. Resolution of Challenges.

When the tally of ballots discloses that challenged ballots are sufficient in number to affect the outcome of the election, unless the Consent Election Agreement provides for an alternative procedure, ~~the Board~~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 Board agent~~SMCS pursuant to this Section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: Sections 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.

33009. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file with SMCS ~~with the Board, at the appropriate regional office,~~ objections to the conduct of the election. Any objections must be filed within the 10-day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

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

(c) Objections shall be entertained by ~~the Board~~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 as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of ~~the Board~~SMCS, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a representation hearing pursuant to Section 32175. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by them to be true under penalty of perjury.

(g) ~~The Board~~SMCS shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

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.

CHAPTER 5. MEYERS-MILIAS-BROWN ACT

Article 2. Elections

61101. Election Methods.

(a) As set forth in the Directed Election Order or in an approved Consent Election Agreement, an election may be conducted by:

(1) On-site election;

(2) Mailed ballot;

(3) Electronic ballot; or

(4) Any combination of these methods.

(b) PERB shall not charge for services related to on-site and mailed ballots. With respect to electronic ballots, PERB shall not charge for an election subject to a Directed

Election Order, nor for an election subject to a Consent Election Agreement in which PERB has determined that on-site and/or mail balloting would be unreasonable based on the nature of the employee group. In other consent elections involving electronic ballots, PERB will charge no more than the amount billed by a vendor for assisting with such services. The parties shall split equally any such charge, unless the parties agree otherwise.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61105. Ballot.

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

(b) If the Board engages a vendor to assist with an election, the Board shall supervise the vendor and ensure compliance with all applicable legal requirements.

(c~~b~~) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.

(d~~c~~) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 61145, or an election conducted pursuant to either Article 4 or 7 of this Chapter, the ballot entry of “No Representation” shall appear on each ballot in a representation election.

(e~~d~~) At any time prior to issuance of the notice of election (pursuant to Section 61110), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61110. Directed Election Order/Consent Election Agreement; Notice of Election.

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

(b) Thereafter, the Board shall serve a notice of election on the parties and instructions for posting and circulating the notice. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. ~~Unless otherwise directed by the Board, the employer shall post such notice conspicuously on~~

~~all employee bulletin boards in each facility of the employer in which members of the described unit are employed~~.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61115. List of Voters.

(a) At a date established by the Board or agreed in an approved Consent Election Agreement, the employer shall file with ~~the regional office~~ a list of names of all employees included in the voting unit based upon the Directed Election Order or approved Consent Election Agreement, as supplemented by any further eligibility determinations or agreements~~as of the cutoff date for voter eligibility~~. Unless otherwise directed by the Board, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by the Board, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and home address of each eligible voter~~, and shall be accompanied by two sets of name and home address labels for each eligible voter~~. Unless otherwise directed by the Board, the voter list for an electronic election shall be in alphabetical order and include the job title, home address and e-mail address of each eligible voter, and employee identification number of each eligible voter (if available).

(b) A list of eligible voters which meets the requirements of subsection (a) above but which contains in lieu of the home address a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. Proof of service shall be filed with the regional office. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if the Board shall determine that the release of home addresses is likely to be harmful to the employees.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1 and 3509, Government Code.

61120. Voter Eligibility.

~~Unless otherwise directed by the Board, to be eligible to vote in an election employees must be employed in the voting unit as of the cutoff date for voter eligibility and still employed on the date they cast their ballots in the election~~Voting eligibility shall be

subject to the Directed Election Order or approved Consent Election Agreement. Employees who are ill, on vacation, on leave of absence or sabbatical, or temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61130. Challenges.

(a) ~~In an on-site election, a~~A Board agent or an authorized ~~observer~~agent of any party may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In addition to any challenged ballots received under subsection (a) of this section, the Directed Election Order or approved Consent Election Agreement shall set forth procedures for employees who are not on the voter list to vote by challenged ballot based on a colorable claim of eligibility~~In a mailed ballot election, a Board agent or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the tally of the ballots~~.

(c) In an election that does not include electronic ballots, challenges must be filed before the tally of ballots. In an election that includes electronic ballots, the Directed Election Order or approved Consent Election Agreement shall specify the date by which challenges must be filed.

(d~~c~~) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61135. Tally of Ballots.

(a) In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

(b) At the conclusion of the counting of ballots, the Board shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61150. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file ~~with the regional office~~ objections to the conduct of the election. Any objections must be filed within the 10-day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

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

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

(e) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a PERB election objections hearing. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by them to be true under penalty of perjury.

(g) The Board agent shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61175. Revised Tally of Ballots.

Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, the Board shall serve a revised tally of ballots on each party at the

conclusion of the counting and/or voiding of such ballots. In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61180. Objections to Revised Tally of Ballots.

(a) Within 10 days following the service of a revised tally of ballots, any party may file ~~with the regional office~~ objections to the revised tally.

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

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

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

Article 9. Representation Elections

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, and method(s) of the election, and the payroll period to be used in determining employee eligibility to vote. Unless otherwise directed by the Director, the applicable payroll period is the payroll period immediately preceding the date the petition was filed. Such consent election shall be conducted under the direction and supervision of SMCS and in accordance with this Article. SMCS shall issue to the parties a certification of the results of the election, including a certification of representative where appropriate.

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

72136. Election Methods.

(a) As set forth in the Directed Election Order or approved Consent Election Agreement, an election may be conducted by:

(1) On-site election;

(2) Mailed ballot;

(3) Electronic ballot; or

(4) Any combination of these methods.

(b) SMCS shall not charge for services related to on-site and mailed ballots. With respect to electronic ballots, SMCS shall not charge for an election subject to a Directed Election Order, nor for an election subject to an approved Consent Election Agreement in which SMCS has determined that on-site and/or mail ballots would be unreasonable based on the nature of the employee group. In other consent elections involving electronic ballots, SMCS will charge no more than the amount billed by a vendor for assisting with such services. The parties shall split equally any such charge, unless the parties agree otherwise.

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

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 Consent Election Agreement.

(b) If SMCS engages a vendor to assist with an election, SMCS shall supervise the vendor and ensure compliance with all applicable legal requirements.

(c~~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 Consent Election Agreement.

(d~~c~~) Except in the case of a runoff election, the ballot entry of “No Representation” shall appear on each ballot in a representation election.

(e~~d~~) At any time prior to issuance of the notice of election (pursuant to Section 72145), an employee organization may file a request with the SMCS to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in

the described unit and shall be served on all parties and on SMCS. Service and proof of service of the request pursuant to Section 32140 are required.

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

72147. Notice of Election.

Pursuant to an approved Consent Election Agreement or Directed Election Order, SMCS shall serve a notice of election on the parties and instructions for posting and circulating the notice. The notice of election shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. ~~SMCS shall instruct the employer to electronically provide the notice of election to eligible voters and to post the notice of election conspicuously on all employee bulletin boards in each facility of the employer in which eligible voters are employed.~~

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

72150. List of Voters.

(a) At a date established by SMCS or agreed in an approved Consent Election Agreement, the employer shall file with SMCS a list of names of all employees included in the voting unit based upon the Directed Election Order or approved Consent Election Agreement, as supplemented by any further eligibility determinations or agreements~~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~~. Unless otherwise directed by SMCS, the voter list for an electronic election shall be in alphabetical order and include the job title, home address and e-mail address of each eligible voter, and employee identification number of each eligible voter (if available). 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 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 the employee unless case where the release of the home address of the employee is prohibited by law, or SMCS determines that the release of the home address is likely to be harmful to the employee.

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

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

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.~~Voting eligibility shall be subject to the Directed Election Order or approved Consent Election Agreement. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots.

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

72165. Challenges.

(a) ~~In an on-site election,~~SMCS or an authorized ~~observer~~agent of any party may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In addition to any challenged ballots received under subsection (a) of this section, the Directed Election Order or approved Consent Election Agreement shall set forth procedures for employees who are not on the voter list to vote by challenged ballot

based on a colorable claim of eligibility~~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) In an election that does not include electronic ballots, challenges must be filed before the tally of ballots. In an election that includes electronic ballots, the Directed Election Order or approved Consent Election Agreement shall specify the date by which challenges must be filed.

(d~~c~~) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by SMCS pursuant to Section 72175.

(e~~d~~) For purposes of this section, "good cause" means failure to comply with voter eligibility criteria established pursuant to Section 72155.

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

72170. Tally of Ballots.

(a) In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station one or more authorized agents, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

(b) At the conclusion of the counting of ballots, SMCS shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

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

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 an approved 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 of these regulations.

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

72205. Revised Tally of Ballots.

(a) Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, SMCS shall serve a revised tally of ballots on each party at the conclusion of the counting and/or voiding of such ballots. In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

(b) Any party shall have 10 days following the revised tally to file a written notice of an alleged outcome-determinative error in the revised tally, with service and proof of service pursuant to Section 32140. Upon receipt of such written notice of alleged error, SMCS shall solicit and consider the position of all parties before finalizing the revised tally.

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

CHAPTER 7. TRIAL COURT EMPLOYMENT PROTECTION AND GOVERNANCE ACT

Article 2. Elections

81101. Election Methods.

(a) As set forth in the Directed Election Order or in an approved Consent Election Agreement, an election may be conducted by any of the following means:

(1) On-site election;

(2) Mailed ballot;

(3) Electronic ballot; or

(4) Any combination of these methods.

(b) PERB shall not charge for services related to on-site and mailed ballots. With respect to electronic ballots, PERB shall not charge for an election subject to a Directed Election Order, nor for an election subject to an approved Consent Election Agreement in which PERB has determined that on-site and/or mail ballots would be unreasonable based on the nature of the employee group. In other consent elections involving electronic ballots, PERB will charge no more than the amount billed by a vendor for assisting with such services. The parties shall split equally any such charge, unless the parties agree otherwise.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81105. Ballot.

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

(b) If the Board engages a vendor to assist with an election, the Board shall supervise the vendor and ensure compliance with all applicable legal requirements.

(c~~b~~) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.

(d~~c~~) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 81145, or an election conducted pursuant to either Article 4 or 7 of this Chapter, the ballot entry of “No Representation” shall appear on each ballot in a representation election.

(e~~d~~) At any time prior to issuance of the notice of election (pursuant to Section 81110), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81110. Directed Election Order/Consent Election Agreement; Notice of Election.

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

(b) Thereafter, the Board shall serve a notice of election on the parties and instructions for posting and circulating the notice. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. ~~Unless otherwise directed by the Board, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed.~~

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

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81115. List of Voters.

(a) At a date established by the Board or agreed in an approved Consent Election Agreement, the employer shall file ~~with the regional office~~ a list of names of all employees included in the voting unit based upon the Directed Election Order or approved Consent Election Agreement, as supplemented by any further eligibility determinations or agreements~~as of the cutoff date for voter eligibility~~. Unless otherwise directed by the Board, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by the Board, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and home address of each eligible voter~~, and shall be accompanied by two sets of name and home address labels for each eligible voter~~. Unless otherwise directed by the Board, the voter list for an electronic election shall be in alphabetical order and include the job title, home address and e-mail address of each eligible voter, and employee identification number of each eligible voter (if available).

(b) A list of eligible voters which meets the requirements of subsection (a) above but which contains in lieu of the home address a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. Proof of service shall be filed with the regional office. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if the Board shall determine that the release of home addresses is likely to be harmful to the employees.

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

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81120. Voter Eligibility.

~~Unless otherwise directed by the Board, to be eligible to vote in an election, employees must be employed in the voting unit as of the cutoff date for voter eligibility and still employed on the date they cast their ballots in the election.~~Voting eligibility shall be subject to the Directed Election Order or approved Consent Election Agreement. Employees who are ill, on vacation, on leave of absence or sabbatical, or temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81130. Challenges.

(a) ~~In an on-site election, a~~A Board agent or an authorized ~~observer~~agent of any party may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In addition to any challenged ballots received under subsection (a) of this section, the Directed Election Order or approved Consent Election Agreement shall set forth procedures for employees who are not on the voter list to vote by challenged ballot based on a colorable claim of eligibility~~In a mailed ballot election, a Board agent or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the tally of the ballots~~.

(c) In an election that does not include electronic ballots, challenges must be filed before the tally of ballots. In an election that includes electronic ballots, the Directed Election Order or approved Consent Election Agreement shall specify the date by which challenges must be filed.

(d~~c~~) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81135. Tally of Ballots.

(a) In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

(b) At the conclusion of the counting of ballots, the Board shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code.
Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81150. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file ~~with the regional office~~ objections to the conduct of the election. Any objections must be filed within the 10-day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

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

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

(e) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a PERB election objections hearing. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly

objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by them to be true under penalty of perjury.

(g) The Board agent shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81175. Revised Tally of Ballots.

Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, the Board shall serve a revised tally of ballots on each party at the conclusion of the counting and/or voiding of such ballots. In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81180. Objections to Revised Tally of Ballots.

(a) Within 10 days following the service of a revised tally of ballots, any party may file ~~with the regional office~~ objections to the revised tally.

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

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

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71632.5, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

CHAPTER 8. TRIAL COURT INTERPRETER EMPLOYMENT AND LABOR RELATIONS ACT

Article 2. Elections

91101. Election Methods.

(a) As set forth in the Directed Election Order or in an approved Consent Election Agreement, an election may be conducted by:

(1) On-site election;

(2) Mailed ballot;

(3) Electronic ballot; or

(4) Any combination of these methods.

(b) PERB shall not charge for services related to on-site and mailed ballots. With respect to electronic ballots, PERB shall not charge for an election subject to a Directed Election Order, nor for an election subject to an approved Consent Election Agreement in which PERB has determined that on-site and/or mail ballots would be unreasonable based on the nature of the employee group. In other consent elections involving electronic ballots, PERB will charge no more than the amount billed by a vendor for assisting with such services. The parties shall split equally any such charge, unless the parties agree otherwise.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91105. Ballot.

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

(b) If the Board engages a vendor to assist with an election, the Board shall supervise the vendor and ensure compliance with all applicable legal requirements.

(c~~b~~) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.

(d~~c~~) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 91145, or an election conducted pursuant to either Article 4 or 7 of this Chapter, the ballot entry of “No Representation” shall appear on each ballot in a representation election.

(e~~d~~) At any time prior to issuance of the notice of election (pursuant to Section 91110), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91110. Directed Election Order/Consent Election Agreement; Notice of Election.

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

(b) Thereafter, the Board shall serve a notice of election on the parties and instructions for posting and circulating the notice. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. ~~Unless otherwise directed by the Board, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed.~~

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

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91115. List of Voters.

(a) At a date established by the Board or agreed in an approved Consent Election Agreement, the employer shall file ~~with the regional office~~ a list of names of all employees included in the voting unit based upon the Directed Election Order or approved Consent Election Agreement, as supplemented by any further eligibility determinations or agreements~~as of the cutoff date for voter eligibility~~. Unless otherwise directed by the Board, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by the Board, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and home address of each eligible voter~~, and shall be accompanied by two sets of name and home address labels for each eligible voter~~. Unless otherwise directed by the Board, the voter list for an electronic election shall be in alphabetical order and include the job title, home address and e-mail address of each eligible voter, and employee identification number of each eligible voter (if available).

(b) A list of eligible voters which meets the requirements of subsection (a) above but which contains in lieu of the home address a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. Proof of service shall be filed with the regional office. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the

release of the home address of the employee is prohibited by law, or if the Board shall determine that the release of home addresses is likely to be harmful to the employees.

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

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91120. Voter Eligibility.

~~Unless otherwise directed by the Board, to be eligible to vote in an election employees must be employed in the voting unit as of the cutoff date for voter eligibility and still employed on the date they cast their ballots in the election~~Voting eligibility shall be subject to the Directed Election Order or approved Consent Election Agreement. Employees who are ill, on vacation, on leave of absence or sabbatical, or temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91130. Challenges.

(a) ~~In an on-site election, a~~A Board agent or an authorized ~~observer~~agent of any party may challenge, for good cause, the eligibility of a voter. A person so challenged shall be permitted to cast a challenged ballot.

(b) In addition to any challenged ballots received under subsection(a) of this section, the Directed Election Order or approved Consent Election Agreement shall set forth procedures for employees who are not on the voter list to vote by challenged ballot based on a colorable claim of eligibility~~In a mailed ballot election, a Board agent or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the tally of the ballots~~.

(c) In an election that does not include electronic ballots, challenges must be filed before the tally of ballots. In an election that includes electronic ballots, the Directed Election Order or approved Consent Election Agreement shall specify the date by which challenges must be filed.

(d~~c~~) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91135. Tally of Ballots.

(a) In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

(b) At the conclusion of the counting of ballots, the Board shall serve a tally of the ballots on each party.

(c) Unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91150. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file ~~with the regional office~~ objections to the conduct of the election. Any objections must be filed within the 10-day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

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

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

(e) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a PERB election objections hearing. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly

objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by them to be true under penalty of perjury.

(g) The Board agent shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91175. Revised Tally of Ballots.

Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, the Board shall serve a revised tally of ballots on each party at the conclusion of the counting and/or voiding of such ballots. In an election that does not include electronic ballots, ~~E~~each party shall be allowed to station an authorized agent, in-person or remotely, at the ballot count to verify the tally of ballots. In an election that includes electronic ballots, each party shall be allowed to station an authorized agent, in-person or remotely, to observe the announcement of the tally of ballots.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.

91180. Objections to Revised Tally of Ballots.

(a) Within 10 days following the service of a revised tally of ballots, any party may file ~~with the regional office~~ objections to the revised tally.

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

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

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71814, 71823 and 71825, Government Code.