

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32610.2 Pre-Filing Procedures for Certain PECC Charges.

(a) An unfair practice charge alleging that a public employer violated Government Code Section 3558, subdivision (a) must allege that the exclusive representative notified the public employer in writing of the facts and theories of the alleged violation(s).

(b) The following subsections apply only to claims that a public employer violated Government Code Section 3558, subdivision (a) by supplying an inaccurate or incomplete list of employees to the exclusive representative.

(1) Except as provided in subsection (b)(2), a public employer shall not be liable for violation(s) that it cures within twenty (20) days from the date it receives written notice of the alleged violation(s) from the exclusive representative.

(2) A public employer shall not avoid liability by curing an alleged violation if, in the twelve (12) months immediately preceding its curative action, the employer has cured three or more alleged violations of Government Code Section 3558, subdivision (a). Each cured violation within the preceding twelve months shall count toward the three-cure limit regardless of the exclusive representative or bargaining unit involved.

32610.3 Special Remedies for Certain PECC Charges.

(a) (1) For purposes of this Section, "special remedies" means attorney fees and costs incurred during certain stages of PERB proceedings regarding certain PECC charges, as defined in Government Code Section 3558, subdivision (d)(2), as well as civil penalties for certain PECC violations, as defined in Government Code Section 3558, subdivision (d)(2).

(2) For purposes of this Section, a "final decision" is a decision that is no longer subject to appeal.

(b) After a final decision involving a claim under Government Code Section 3558, subdivision (a), the Office of the General Counsel shall resolve any remaining matters, including compliance and special remedies. The following procedures apply unless otherwise ordered by the Board:

(1) A prevailing party seeking an award of attorney fees and costs under this Section must file with the Office of the General Counsel and serve on all parties

a motion regarding special remedies no later than twenty (20) days after the decision is final. If the prevailing party wishes to file evidence or argument regarding a civil penalty under this Section, the prevailing party must address that issue in the same motion.

(2) A motion regarding special remedies under this Section must be accompanied by a brief and sworn declarations containing competent evidence as needed to support the motion. If civil penalties are at issue, the sworn declarations shall contain evidence relevant to the criteria in Government Code Section 3558, subdivision (d)(2). If attorney fees and costs are at issue, the sworn declarations shall address: the amount of time spent; reasonable market rates for attorneys with similar experience; and, if compensable legal work was integrated with non-compensable legal work, information necessary to determine the portion of time that should be compensated.

(3) Any response to a motion regarding special remedies under this subsection must be filed with the Office of the General Counsel and served on all parties no later than twenty (20) days after the motion was filed. Any evidence relied on in the response must be supported by sworn declarations containing competent evidence.

(4) There shall be no reply briefs unless requested by the Board agent.

(5) Prior to ruling on a motion regarding special remedies under this Section, the Board agent shall have discretion whether to request further written submissions and whether to convene an evidentiary hearing. If the Board agent determines that an evidentiary hearing is necessary, the Office of the General Counsel may transfer the matter to the Division of Administrative Law to conduct a hearing and issue a written proposed decision.

(6) If a Board agent issues an administrative decision without a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations. If the Board agent issues a written proposed decision based on a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.