

REGULATIONS

OF THE

PUBLIC EMPLOYMENT RELATIONS BOARD



AMENDMENTS AND ADDITIONS

CURRENT AS OF July 1, 2026

**PUBLIC EMPLOYMENT RELATIONS BOARD
REGULATIONS**

(Title 8 – Division 3 [§ 31001 to § 95230])

July 1, 2026

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CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 1. INTERNAL PROCEDURES

Article 1. Public Meetings

31001. Meetings.

Except as permitted by law, the Public Employment Relations Board itself shall deliberate and take all actions only at public meetings. The Board's policy on public meetings shall be available to the public.

Article 2. Conflict of Interest Code

31100. General Provisions.

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the conflict of interest code of the Public Employment Relations Board (PERB), except as provided below.

Designated employees shall file statements of economic interests with PERB who will make the statements available for public inspection and reproduction. (Gov. Code section 81008). Upon receipt of the statements of Board Members, PERB shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be maintained by PERB.

APPENDIX

Designated Positions	Disclosure Category
Board Members	(a) and (b)
Executive Director	(a) and (b)
Administrative Officer	(a) and (b)
General Counsel	(a) and (b)

Chief Administrative Law Judge (a) and (b)

All attorneys employed in the

Office of the General Counsel (a)

All attorneys employed in the Division

of Administrative Law (a)

All persons employed as a Legal

Adviser to a Board Member (a)

Regional Directors (a)

Administrative Assistant to the Chair (a)

Legal Documents Examiner (a)

All Public Employment Relations

Representatives and Specialists (a)

Business Services Officer (b)

Consultant¹

Disclosure Categories

(a) Designated employees assigned to this disclosure category shall disclose: Investments held in, income derived from, including gifts, loans, salary and reimbursements for expenses, travel or per diem, and any business positions held by a designated employee to the extent that they know or have reason to know that the entity or source is an organization of employers, employee organization, individual, law firm, labor negotiations firm or consulting firm, which is subject to the jurisdiction of the Public Employment Relations Board or has appeared within the last 12 months in a dispute before the Board as a party, a representative for a party, or has provided assistance to a party in preparation for an appearance in a dispute before the Board.

¹ Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Executive Director or Administrative Officer may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's or Administrative Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(b) Designated employees assigned to this disclosure category shall disclose: Investments held in, income derived from, including gifts, loans, salary and reimbursements for expenses, travel or per diem, and any business positions held in any entity or source of the type which provides services, supplies, materials, machinery, leased space or equipment to the Public Employment Relations Board.

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

31190. Exclusive Representative

In those laws under the Board's jurisdiction that do not otherwise define the term, "exclusive representative" means an employee organization recognized or certified as the exclusive negotiating representative of a bargaining unit.

32000. EERA.

"EERA" means the Educational Employment Relations Act as contained in Chapter 10.7 of Division 4 of Title 1 of the Government Code (commencing with Section 3540).

32001. Definition of Terms Under EERA.

As applied to matters arising under EERA:

(a) School District. "School District" as used in the EERA means a school district of any kind or class, including any public community college district, within the state.

(b) As used in Chapter 2, Subchapter 2 of these regulations, "academic year" means the period of time including, and limited to, July 1 of any year through June 30 of the succeeding year.

32002. LEERA.

"LEERA" means the Legislature Employer-Employee Relations Act as contained in Chapter 12.5 of Division 4 of Title 1 of the Government Code (commencing with Section 3599.50).

32005. Ralph C. Dills Act.

“Ralph C. Dills Act” or “Dills Act” means the State Employer-Employee Relations Act as contained in Chapter 10.3 of Division 4 of Title 1 of the Government Code (commencing with Section 3512).

32007. JCEERA.

“JCEERA” means the Judicial Council Employer-Employee Relations Act as contained in Chapter 10.4 of Division 4 of Title 1 of the Government Code (commencing with Section 3524.50).

32010. HEERA.

“HEERA” means the Higher Education Employer-Employee Relations Act as contained in Chapter 12 of Division 4 of Title 1 of the Government Code (commencing with Section 3560).

32011. Definition of Terms Under HEERA.

As used in Chapter 4, Subchapter 2 of these regulations, “academic year” means the period of time including, and limited to, July 1 of any year through June 30 of the succeeding year.

32015. MMBA.

“MMBA” means the Meyers-Milias-Brown Act as contained in Chapter 10 of Division 4 of Title 1 of the Government Code (commencing with Section 3500).

32016. Definition of Terms Under MMBA.

As applied to matters arising under MMBA:

(a) Public agency. “Public agency” means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation, every town, city, county, city and county and municipal corporation, whether incorporated and whether chartered or not. For purposes of these regulations, the term “public agency” shall exclude the City of Los Angeles, County of Los Angeles, and superior and municipal courts, and does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California. The term “public agency,” as used herein, also excludes any transit agency not subject to the MMBA.

(b) Local rules. “Local rules” means the rules and regulations of a public agency adopted pursuant to the MMBA.

32017. TEERA.

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

32018. Definition of Terms Under TEERA.

As applied to matters arising under TEERA:

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

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

32019.1. Orange County Transit District Act.

“OCTDA” means the Orange County Transit District Act of 1965 as contained in Chapter 1 of Part 4 of Division 10 of the Public Utilities Code (commencing with Section 40000).

32019.2. Definition of Terms under the OCTDA

As applied to matters arising under the OCTDA, “employer,” “PUC transit employer,” or “Authority” means the Orange County Transportation Authority (as contained in Chapter 3 of Part 4 of Division 10 of the Public Utilities Code (commencing with Section 40060).

32019.5. San Francisco Bay Area Rapid Transit District Act.

“SFBART Act” means the San Francisco Bay Area Rapid Transit District Act as contained in Chapter 1 of Part 2 of Division 10 of the Public Utilities Code (commencing with Section 28848).

32019.6. Definitions of Terms under the SFBART Act.

As applied to matters arising under the SFBART Act, “employer,” “PUC transit employer,” or “District” includes the San Francisco Bay Area Rapid Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type other than temporary bus lines as defined in Chapter 1 of Part 2 of Division 10 (commencing with Section 28848).

32019.7 Sacramento Regional Transit District Act.

“Sacramento RTD Act” means the Sacramento Regional Transit District Act as contained in Chapter 1 of Part 14 of Division 10 of the Public Utilities Code (commencing with Section 102000).

32019.8. Definition of Terms under the Sacramento RTD Act.

As applied to matters under the Sacramento RTD Act:

(a) “Employer,” “PUC transit employer,” or “District” includes the Sacramento Regional Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type, and excluding all temporary bus lines as defined in Chapter 1 of Part 14 of Division 10 (commencing with Section 102000).

(b) “Opt in unit” means a bargaining unit which the exclusive representative elects to be subject to PERB’s jurisdiction for unfair practice charges. An exclusive representative may elect to move one or more of its bargaining units to PERB’s jurisdiction for unfair practice charges. Notification by the exclusive representative of such election shall be filed through e-PERB with the General Counsel or the General Counsel’s designee. The exclusive representative shall serve the District pursuant to Section 32140. An election by an exclusive representative for one or more of its bargaining units to be subject to PERB’s jurisdiction shall be irrevocable for that unit.

32019.81. Santa Cruz Metropolitan Transit District Act.

“Santa Cruz Metro Act” means the Santa Cruz Metropolitan Transit District Act of 1967 as contained in Chapter 1 of Part 10 of Division 10 of the Public Utilities Code (commencing with Section 98000).

32019.82. Definition of Terms under the Santa Cruz Metro Act.

As applied to matters arising under the Santa Cruz Metro Act, “Employer,” “PUC transit employer,” or “District” means the Santa Cruz Metropolitan Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type, as defined in section 98160(a), Chapter 1 of Part 2 of Division 10 of the Public Utilities Code (commencing with Section 98000).

32019.83. Santa Clara Valley Transportation Authority Act.

“VTA Act” means the Santa Clara Valley Transportation Authority Act as contained in Chapter 1 of Part 12 of Division 10 of the Public Utilities Code (commencing with Section 100000).

32019.84. Definition of Terms under the VTA Act.

As applied to matters under the VTA Act:

(a) “Employer,” “PUC transit employer,” or “District” means the Santa Clara Valley Transportation Authority, including all operations and extensions of its transportation system, regardless of modality or vehicle type, as described in Part 12 of Division 10 of the Public Utilities Code (commencing with Section 100000).

(b) “Opt in unit” means a bargaining unit which the exclusive representative elects to be subject to PERB’s jurisdiction for unfair practice charges. An exclusive representative may elect to move one or more of its bargaining units to PERB’s jurisdiction for unfair practice charges. Notification by the exclusive representative of such election shall be filed through e-PERB with the General Counsel or the General Counsel’s designee. The exclusive representative shall serve the District pursuant to Section 32140. An election by an exclusive representative for one or more of its bargaining units to be subject to PERB’s jurisdiction shall be irrevocable for that unit.

32020. Board.

“Board” means the five-member Public Employment Relations Board, any individual Board member or any Board agent.

32030. Board Itself.

“Board itself” means only the five-member Public Employment Relations Board, or members thereof authorized by law to act on behalf of the Board.

32032. Trial Court Act.

“Trial Court Act” means the Trial Court Employment Protection and Governance Act as contained in Chapter 7 of Title 8 of the Government Code (commencing with Section 71600).

32033. Definition of Terms Under Trial Court Act.

As applied to matters arising under the Trial Court Act:

(a) Trial court. “Trial court” means a superior court.

(b) Local rules. “Local rules” means the rules and regulations of a trial court adopted pursuant to Section 71636 of the Trial Court Act.

32034. Court Interpreter Act.

“Court Interpreter Act” means the Trial Court Interpreter Employment and Labor Relations Act as contained in Chapter 7.5 of Title 8 of the Government Code (commencing with Section 71800).

32035. Definition of Terms Under Court Interpreter Act.

As applied to matters arising under the Court Interpreter Act:

(a) “Regional committee” means a regional court interpreter employment relations committee established under Government Code section 71807.

(b) Trial court. “Trial court” means a superior court.

(c) Local rules. “Local rules” means the rules and regulations of a regional committee adopted pursuant to Section 71823 of the Court Interpreter Act.

(d) Employer. As used in these regulations, the term “employer” includes a regional court interpreter employment relations committee established under Government Code section 71807.

32036. PECC.

“PECC” means the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555).

32038. PEDD.

“PEDD” means the Chapter titled Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550).

32040. Executive Director.

“Executive Director” means the officer of that title appointed by the Board pursuant to Government Code Section 3541(f).

32050. General Counsel.

“General Counsel” means the officer of that title appointed pursuant to Government Code Section 3541(f).

32055. Chief Administrative Law Judge.

“Chief Administrative Law Judge” means the officer of that title designated by the Board.

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) “Director” means the officer of that title within the Division of Mediation designated by the Board.

32060. Headquarters Office.

“The headquarters office” means the main office of the Board itself, the General Counsel, the Chief Administrative Law Judge, the Director of State Mediation and Conciliation Services, and the Executive Director. The headquarters office shall be located in Sacramento, CA.

32075. Regional Office.

“The regional office” means the office established by the Board which serves the county in which the principal office of an employer is located according to the following schedule:

Counties included in the Sacramento Regional Office jurisdiction: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba.

Counties included in San Francisco Regional Office jurisdiction: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma.

Counties included in Los Angeles Regional Office jurisdiction: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura.

32080. Day.

“Day” means calendar day unless otherwise specified.

32085. Workday.

(a) EERA - “Workday,” as utilized in matters arising under EERA, means a day when schools in a district are in session, excluding Saturdays and Sundays, except that a day(s) may be included or excluded as a workday when the Board determines that a substantial number of affected employees would or would not be at work on that day(s).

(b) HEERA - “Workday,” as utilized in matters arising under HEERA, means Monday through Friday, from September 20 through May 20, excluding Thanksgiving Day, and the Friday following Thanksgiving Day, and also excluding December 20 through January 2, except that a day(s) may be included or excluded as a workday when the Board determines that a substantial number of affected employees would or would not be at work on that day(s).

(c) Ralph C. Dills Act - “Workday,” as utilized in matters arising under Ralph C. Dills Act, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

(d) MMBA - “Workday,” as utilized in matters arising under MMBA, means Monday through Friday, excluding any holiday defined under the applicable local rules or collective bargaining agreement.

(e) TEERA – “Workday,” as utilized in matters arising under TEERA, means Monday through Friday, excluding the following holidays: New Year’s Day, Martin Luther King Jr. Day, President’s Day, Memorial Day, Fourth of July (Independence Day), Labor Day, Thanksgiving and Christmas.

(f) Trial Court Act - “Workday,” as utilized in matters arising under the Trial Court Act, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

(g) Court Interpreter Act - “Workday,” as utilized in matters arising under the Court Interpreter Act, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

(h) JCEERA - “Workday,” as utilized in matters arising under JCEERA, means Monday through Friday, excluding a holiday as defined under Government Code Section 6700 or 6701.

(i) LEERA - “Workday,” as utilized in matters arising under LEERA, means Monday through Friday, excluding a holiday as determined by the Assembly Committee on Rules or the Senate Committee on Rules, unless superseded by an applicable memorandum of understanding.

32090. e-PERB.

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

32091. Electronic Filing.

“Electronic filing” means the transmission of a document to PERB via e-PERB.

32092. Electronic Signature.

(a) “Electronic signature” means an electronic sound, symbol, or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the electronic record. Electronic signatures are permitted only where expressly authorized by statute or these PERB regulations.

(b) When a document to be filed electronically requires a signature of any person, whether under penalty of perjury or otherwise, the document is deemed to have been signed by that person when electronically filed. The filing party, when electronically filing a document, certifies that the document has been properly signed or electronically signed. This subsection (b) shall not apply to proof of support under section 32700.

32093. Electronic Service.

“Electronic service” means the service of documents under Section 32140 through e-PERB or e-mail.

32094. Filed.

“Filed” means a document is received and accepted by PERB after the filing party has complied with applicable statutory and regulatory filing requirements whether filing electronically, in person, or through a mail delivery service.

32095. Special Remedies.

“Special remedies” means any of the following:

(a) attorney's fees and costs sought by a prevailing employee organization pursuant to Government Code Section 3551.5, subdivision (b)(1);

(b) attorney's fees and costs sought by a prevailing party pursuant to Government Code Section 3558, subdivision (d)(4); or

(c) civil penalties assessed pursuant to Government Code Section 3551.5, subdivision (a), or Section 3558, subdivision (d)(2).

32096. Bargain

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

Article 2. General Provisions

32100. Application of Regulations.

(a) All rules and regulations within this Chapter shall apply to proceedings conducted under EERA, Ralph C. Dills Act, HEERA, LEERA, JCEERA, and to Chapters 2, 3, 4, 9 and 10 within this Division.

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

(c) All rules and regulations within this Chapter, except for Article 6 of Subchapter 6, shall apply to proceedings conducted under TEERA and to Chapter 6, Subchapter 2, within this Division.

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

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

(f) Except as expressly provided otherwise, the rules and regulations within this Chapter, and Chapters 2 through 10, do not apply to mediation, election or other services provided by mediators or conciliators pursuant to Government Code sections 3600 and 3601.

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

(h) As set forth in Section 72001, the following regulations in Chapter 1, Subchapter 2, apply to transit district representation documents filed with SMCS: 32020, 32030, 32040, 32050, 32055, 32056, 32060, 32075, 32080, 32085, 32090, 32091, 32092, 32093, 32094, 32105, 32110, 32111, 32115, 32121, 32125, 32130, 32132, 32135, 32136, 32140, 32143, 32145, 32147, 32149, 32150, 32155, 32162, 32164.

(i) All rules and regulations within this Chapter, except for Subchapter 6, shall apply to unfair practice proceedings conducted under the OCTDA, SFBART Act, Sacramento RTD Act (for opt in units), Santa Cruz Metro Act, and VTA Act (for opt in units). Representation proceedings under the OCTDA, SFBART Act, Sacramento RTD Act, Santa Cruz Metro Act, and VTA Act are governed by Chapter 6, Subchapter 3, of these regulations.

32105. Severability.

If any section, subsection, clause or provision of these regulations is found to be invalid, the same shall not affect the remaining portion of the regulations.

32110. Electronic Filing Requirements.

(a) Except as otherwise provided by this Chapter, electronic filing is mandatory when filing documents with PERB. For the initial filing of a case, the filing party shall serve all parties pursuant to Section 32140, subsection (a), and electronically file with PERB the initial filing and a proof of service. After the initial filing of a case, service of documents shall occur automatically through e-PERB, except for unrepresented individuals not utilizing e-PERB, in which case the filing party must serve the documents by personal delivery, mail, or with another delivery service properly addressed. Electronic filing is not required when submitting documents at formal hearing.

(b) Electronic filing is available but not mandatory for an unrepresented individual. For purposes of this subsection, the term “unrepresented individual” shall mean an individual natural person not represented by an attorney or a union representative. However, an unrepresented individual that files electronically shall be required to electronically file all subsequent documents, and to accept electronic service, unless they provide written notice to all parties that future filings shall occur through a different authorized means.

(c) A party filing a document through e-PERB may use an electronic signature as defined in section 32092. However, a party submitting proof of support under section 32700 of these regulations, either through e-PERB or otherwise, may rely on electronic signatures only to the extent permitted under section 32700.

(d) Documents electronically filed shall be in PDF format and text searchable. However, a party lacking the capacity to make a PDF file text searchable shall file the document in a non-text searchable PDF format, and shall telephonically notify the Board that it has done so. Unless documents are compressed (in a zip file format), the maximum size of any single document that can be electronically filed is 25 MB. For documents larger than 25 MB, the filer shall separate them into multiple parts so that each part is no larger than 25 MB.

(e) Each document shall be filed individually. Attachments and exhibits are part of the document to which they are associated. Where a document exceeds the size limit specified under subsection (d), the document must be split into parts and each filed individually. When a document is filed in multiple parts, each part must be identified as part of the document, e.g., unfair practice charge part 1, unfair practice charge part 2, etc.

(f) Filers may electronically file a document through e-PERB at any time. However, all documents electronically filed after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed filed the next regular PERB business day. This section shall not apply to requests for injunctive relief whose filing requirements are governed by sections 32450 and 32455.

32111. Notices to Employees Assigned Remote Work.

(a) Notwithstanding any regulation under Chapters 1 through 10 of this Division, the Board may direct a public employer to provide notice of filing of a representation petition to its employees by electronic message, intranet, internet site, or other electronic means when the Board determines that a physical posting at the worksite is not practicable or effective because of remote work.

(b) For purposes of this section, the term “remote work” shall mean an arrangement where public employees perform their duties at a location other than a workplace provided by the public employer.

(c) Nothing herein shall prevent the Board from directing a public employer to provide notice by both physical and electronic means.

(d) This section does not limit or otherwise change the authority of the Board itself to order the posting of any notice.

32115. Location to File Representation Matters.

(a) This regulation applies to documents that are not electronically filed. Except as provided for in subsections (b), (c), (d), (e) and (f), the appropriate location for filing

documents in representation matters shall be the regional office which serves the county in which the principal office of an employer is located, as described in Section 32075 of these regulations.

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

(c) The Sacramento Regional Office shall be the appropriate location for filing all documents in representation matters relating to the State of California, the Assembly Committee on Rules, or the Senate Committee on Rules.

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

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

(f) The Sacramento Regional Office shall be the appropriate location for filing all documents with SMCS in PUC transit representation matters.

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

32120. Filing Contracts with Board.

Each employer entering into a written agreement or memorandum of understanding with an exclusive representative pursuant to the PEDD, PECC, Trial Court Act, Court Interpreter Act, TEERA, MMBA, EERA, Ralph C. Dills Act, JCEERA, HEERA, LEERA, OCTDA, SFBART Act, or Sacramento RTD Act, if requested by the Board, shall file one copy of the agreement and any amendments thereto with the Board within 15 days of the request.

32121. Place to File Matters with the SMCS.

The Sacramento Regional Office shall be the appropriate location for filing documents in all matters relating to functions of the Division of Mediation.

32125. Filing Confidential Documents

(a) Unless the Board orders otherwise, in an electronic or paper filing that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of a social-security number or taxpayer-identification number, or, alternatively, a non-sensitive placeholder number in place of a social-security number or taxpayer-identification number;

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

(3) the minor's initial, or, alternatively, a non-sensitive, de-identified, and non-identifiable placeholder in place of the minor's name; and

(4) the last four digits of a financial-account number, or, alternatively, a non-sensitive placeholder number in place of a financial-account number.

(b) Prior to filing any document with PERB, a party shall redact the document as necessary to comply with subsection (a) and shall endeavor to redact other sensitive information that is not relevant to resolution of any matter before PERB. When redacting a document, a party shall endeavor to substitute non-sensitive and de-identified placeholders if needed to make a document or set of documents understandable.

(c) The Board may take any or all of the following measures to protect sensitive information:

(1) direct a party to refile or resubmit a document with redactions or modifications as requested by the Board, and in such cases the filing shall be deemed to be retroactive to the original filing date unless otherwise ordered by the Board; and

(2) protect sensitive information by redacting or modifying a document, placing all or part of a document under seal, or otherwise limiting public access to a document in a manner that complies with the Board's legal obligations and authority.

32130. Computation of Time.

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

(b) Whenever the last date to file a document falls on Saturday, Sunday, or a holiday, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law. Holidays are those defined in Government Code Sections 6700 and 6701, except that for documents filed in a case arising under LEERA, holidays are as determined by the Assembly Committee on Rules or the Senate Committee on Rules, unless superseded by an applicable memorandum of understanding.

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

(d) A two day extension of time shall apply to any filing made in response to documents served by overnight delivery.

32132. Extension of Time.

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

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

(c) A request for an extension of time within which to file any document with a Board agent shall be in writing and shall be filed with the Board agent at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party. Extensions of time may be granted by the Board agent for good cause only. A Board agent may accept and approve a late filed request for an extension of time as provided for in Section 32136.

32135. Non-Electronic Filing.

The following rules shall apply to parties authorized to file documents by a mail delivery service or in person:

(a) All documents not filed through e-PERB shall be considered "filed" when the originals are actually received by the appropriate PERB office, as stated in section 32115 of these regulations, during a regular PERB business day. All documents, except for proof of support as described in sections 32700, must also be accompanied by proof of service pursuant to Section 32140.

(b) Documents must be scan-ready, which means that documents must not be stapled or otherwise bound. Parties may submit two-sided documents.

32136. Late Filing.

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations. An error or malfunction of e-PERB shall be deemed good cause for late filing.

32140. Service; Proper Recipient for Filing or Service.

(a) All documents referred to in these regulations requiring “service,” except subpoenas, shall be considered “served” by the Board or a party when personally delivered, when deposited in the mail or with a delivery service properly addressed, or when sent by electronic service, as defined by Section 32093, and authorized in subdivision (b) of this section. All documents required to be served shall include a “proof of service” declaration signed under penalty of perjury which contains the following information: (1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, electronic mail address(es) used for service on the party(ies); and (8) the date of service.

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

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

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

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

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

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

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

(3) An employer

(A) in the case of a public school employer: the superintendent, deputy superintendent, or a designated representative of a school district; or other public school employer under the Board's jurisdiction; or to the school board at a regular or extraordinary meeting;

(B) in case of a state employer: The Governor or the Governor's designated representative on behalf of the State of California;

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

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

(ii) If the employer is the Directors of the University of California College of the Law, San Francisco (formerly known as Hastings College of the Law), the Office of the General Counsel of the University of California College of the Law, San Francisco;

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

(D) in the case of a public agency employer as defined in Government Code section 3501(c): the chief executive officer, chief legal counsel, or individual whose job responsibilities includes receiving official documents on behalf of the chief executive officer, governing board, or chief legal counsel.

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

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

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

(H) in the case of the Judicial Council: the Administrative Director of the Courts or the Administrative Director's designated representative.

(I) in the case of a PUC transit district employer as defined in Public Utilities Code sections 28848(a), 40122.1(a), 98160(a), 100011 and 102011, any person authorized to act on behalf of the employer.

(J) in the case of the Assembly Committee on Rules: the Chief Administrative Officer of the Assembly or their designated representative.

(K) in the case of the Senate Committee on Rules: the Secretary of the Senate or their designated representative.

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

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

(e) Documents filed electronically with PERB will be deemed to have been served with the appropriate recipient, except: (1) all initial filings with PERB must be served by personal delivery, mail or through another delivery service properly addressed, and (2) electronic service shall not qualify as sufficient for service on an unrepresented individual party who has declined to use e-PERB as permitted by section 32110 of PERB's regulations.

32143. Abeyances.

(a) Upon request, the Board may place any matter in abeyance for a period that does not exceed six months. The Board may extend the abeyance for additional periods of six or less months if all parties agree. No case, however, shall remain in abeyance for more than two years without approval by the Board itself.

(b) Nothing herein shall preclude the Board from placing a matter in abeyance on its own accord.

(c) This section shall not apply to matters pending before the Board itself that are subject to the 180-day adjudication rule under section 32305 of these regulations.

32145. Waiver of Time Periods.

The Board itself may waive or all parties to a proceeding, subject to the approval of the Board, may jointly waive any time period allowed for action by a party or the Board in order to expedite any pending matter.

32147. Expediting Matters Before the Board.

(a) Motions to Expedite

(1) A motion to expedite proceedings within a single division of the Board shall be filed with the General Counsel, Chief Administrative Law Judge, Director of State

Mediation and Conciliation Services, or the Board itself, as appropriate. A motion to expedite proceedings at all divisions shall be filed with the Board itself.

(2) A motion to expedite a case must be clearly labeled as a motion to expedite. The motion may not be part of or combined with any other document other than a brief or declarations supporting the motion. The motion shall state with specificity why one or more of the criteria in subparagraph (b)(2) of this Section are satisfied.

(3) Any other party to the proceeding may file a response to a motion to expedite within 5 business days of service of the motion. No reply briefs shall be filed unless otherwise ordered.

(4) Denial of any motion to expedite, in whole or in part, shall be without prejudice to a party's ability to renew its motion, unless otherwise ordered.

(5) The General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself may expedite any case on its own motion.

(b) Applicable Criteria

(1) All divisions must expedite the following types of cases from initial filing to conclusion, without any motion or order:

(A) All cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61215, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, 91450, 93020, 93100, 95030, or 95100.

(B) All cases in which a representation election or other certification or recognition process or procedure has been stayed pending resolution of the case.

(2) In all cases not subject to mandatory expedited processing under subparagraph (b)(1) of this Section, the following criteria shall be considered in determining whether a case should be expedited:

(A) whether expedited processing is necessary to preserve the Board's ability to issue an effective remedy;

(B) whether the case involves alleged conduct that would irreparably harm the exercise of employee or employee organization rights;

(C) whether the case involves an important and unresolved question of law, the prompt resolution of which would significantly benefit one or more segments of the public sector labor-management community;

(D) whether the case arises from or relates to a representation or recognition dispute;

(E) whether a court injunction is in place pending resolution of the case;

(F) the number of employees affected, the size of any potential monetary remedy, or the nature, scope, or importance of any potential non-monetary remedy; and

(G) any compelling circumstances showing that expedited processing is warranted.

(c) Required Procedures for Expedited Cases

(1) In all cases falling under subparagraph (b)(1) of this Section, and in other cases after an order expediting the matter has issued, the case shall be given priority and decided on an expedited basis in the manner determined to be appropriate by, as applicable, the General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself.

(2) Any document filed in a case falling under subparagraph (b)(1) of this Section, or in any other case if the document is filed in a division in which the case has been expedited, shall prominently display the words "EXPEDITED CASE" on the document's first page.

(3) When exceptions are pending in a case falling under subparagraph (b) of Section 32305, no abeyance or extension of time may be granted.

(4) In any expedited case not falling under subparagraph (b) of Section 32305, an abeyance may only be granted if all parties agree. An extension of time to file any document, or a request to continue a formal hearing, may be granted only when:

(A) the parties mutually agree to the extension of time or continuance;

(B) the continuance is necessary to mitigate prejudice caused by an amended pleading; or

(C) the party requesting the extension of time or continuance demonstrates extraordinary circumstances that outweigh any prejudice to other parties.

32149. Investigative Subpoenas.

The Board may issue investigative subpoenas and subpoenas duces tecum compelling the attendance of witnesses and production of records at investigative proceedings. The provisions in Section 32150 governing issuance of subpoenas and motions to quash subpoenas shall be applicable to investigative subpoenas issued by the Board.

32150. Subpoenas.

(a) Definitions

(1) “Testimonial subpoena” means a subpoena that solely requires a witness to appear at a Board hearing.

(2) “Records subpoena” means a subpoena that requires production of documents, electronically stored information, video records, audio records, or other records or things, either at a Board hearing or at a time and location in advance of such a hearing. A records subpoena may also require a witness to appear at a Board hearing to testify.

(3) “Declaration of materiality” means a declaration signed under penalty of perjury, submitted by the requesting party or that party’s representative, which:

(A) Describes the requested items; and

(B) Explains why the requested items are relevant to the issues involved in the case.

(4) “Consumer or employee notice” means a notice provided to a non-party consumer or employee as set forth in Code of Civil Procedure sections 1985.3 and 1985.6.

(b) Geographic Coverage of Subpoenas: Testimonial and records subpoenas issued shall extend to all parts of the State of California.

(c) Requests to Shorten or Lengthen Timelines: A Board agent has discretion to alter the timelines under subsections (d), (e), (f), (g) and (i).

(d) Procedures for Obtaining Subpoenas: After the Board notifies the parties that an evidentiary hearing has been scheduled, and before the hearing is complete, any party may obtain signed testimonial and records subpoenas from the assigned Board agent (typically an Administrative Law Judge or hearing officer) or designee by using the following procedures:

(1) Blank subpoena forms may be obtained at each of the Board’s offices as well as on the Board’s website. A party or party representative shall fill out the blank form and provide it to the Board agent for review and signature.

(2) When filling out a blank records subpoena, a requesting party shall specify the records requested, and shall specify a production date that complies with subsection (f) below.

(3) When submitting a records subpoena to a Board agent for signature, a party or party representative must include a declaration of materiality.

(4) The Board agent has discretion to require a requesting party to serve a consumer or employee notice if a records subpoena seeks confidential personal records of a natural person who is not a party, an agent of a party, or an employee exclusively represented by a party.

(e) Procedures for Serving Subpoenas: After obtaining a signed subpoena from a Board agent or designee, a party or party representative shall serve the subpoena by using the following procedures.

(1) Method of service: For a subpoena to be effective, it must be (a) personally served on the witness; or (b) if a subpoena is being served on a party or an agent of a party, it is permissible to serve a representative who is designated in a notice of appearance or who has signed a filing in the matter on behalf of the party, unless that representative no longer represents the party.

(2) Time of service: If a testimonial subpoena is served fewer than ten (10) days before the date on which the witness must testify, or if a records subpoena is served fewer than twenty (20) days before the records must be produced, then the person or entity subject to the subpoena may request that the subpoena be revoked or limited for insufficient notice. The Board agent shall have discretion to find that the amount of notice was sufficient under the circumstances and the subpoena is therefore effective, to declare the subpoena ineffective, or to adjust, as may be appropriate under the circumstances, the scope, timing, methods, or other details regarding the testimony or records requested.

(3) Service of the declaration of materiality: The declaration of materiality must be served together with the corresponding records subpoena.

(4) Witness fee and mileage reimbursement: A witness who is neither a party nor an agent of a party may demand, at the time of service, a witness fee of \$35.00 and a mileage reimbursement of \$0.20 per mile, round-trip, for travel required to testify. If such a demand is made, the requesting party must provide the requested fee and reimbursement at the time of service.

(5) Service of the consumer or employee notice: If the Board agent has required a consumer or employee notice, such notice must be served, together with a copy of the records subpoena and the declaration of materiality, on the non-party consumer or employee. Such service must be made at least ten (10) days prior to the production date.

(f) Production Schedule for Records Subpoenas

(1) The requesting party shall specify in the records subpoena the date, time, and location for production of requested items. The requested production date may be a hearing date. If the responding witness, entity, or party has at least twenty (20) days to respond following service of the records subpoena, then the requested production date may be a non-hearing date. The requested production date may not be later

than the last scheduled day of hearing, unless otherwise ordered by the Board agent.

(2) The responding person or entity shall produce the requested items as specified in the records subpoena unless agreed otherwise or the Board orders otherwise. The responding person or entity need not produce items covered by a motion to revoke or limit a subpoena filed pursuant to subsection (i), pending resolution of the motion.

(3) If a records subpoena specifies a requested production date that is not a hearing date, and requires both records production and witness testimony, then the subpoena shall be deemed to require such testimony at the next scheduled hearing date, unless agreed otherwise or the Board orders otherwise.

(g) Motion to Extend Records Production Date: If a scheduled records production date is prior to the next scheduled hearing date, the responding person or entity with good cause may file a written motion to extend the requested production date by up to an additional ten (10) days or to the date of the scheduled formal hearing, if less than ten (10) days. The motion must be filed and served at least seven (7) days before the scheduled records production date.

(h) Motion to Revoke or Limit a Testimonial Subpoena: A motion to revoke a testimonial subpoena may be filed and served on the requesting party in writing or made orally at the scheduled formal hearing. The Board agent may grant or deny the motion, limit a witness's testimony, or grant a protective order in light of the arguments presented by the parties.

(i) Motion to Revoke or Limit a Records Subpoena: A responding person or entity may file a written motion to revoke or limit a records subpoena pursuant to the following procedures:

(1) The motion must be filed and served no later than twelve (12) days following service of the subpoena. The requesting party must submit any opposition no later than six (6) days after the responding person or entity serves such a motion. There shall be no reply briefs unless the Board agent directs otherwise.

(2) In resolving any dispute regarding a records subpoena, the Board agent may exercise discretion to set prehearing conferences, other formal hearings, or otherwise order other production dates. The Board agent may revoke or limit a records subpoena to the extent items requested to be produced are not relevant to any matter under consideration in the proceeding or are protected by an applicable privilege, or the subpoena is otherwise invalid. When the Board agent resolves such a dispute at a prehearing conference and orders production of certain items covered by the motion, the Board agent shall direct the date, format, and means of producing such items. When the Board agent resolves such a dispute on or after the first day of hearing and orders production of certain items covered by the motion, all such items shall be produced within 24 hours of the Board agent's ruling. The Board

agent is also empowered to resolve any objections filed by a consumer or employee resulting from a consumer or employee notice regarding subpoenaed records.

(j) Motion to Enforce Testimonial or Records Subpoena in Superior Court: The Board itself may direct the General Counsel to apply to an appropriate superior court for an order requiring compliance with a subpoena. The following procedures shall apply.

(1) A party may make a request to initiate enforcement proceedings to the Board agent assigned.

(2) At any stage in the proceeding, a Board agent may request, through the General Counsel, that the Board itself authorize the General Counsel to apply for an order of enforcement.

(3) The Board itself shall authorize the General Counsel to seek enforcement on the recommendation of the Board agent or General Counsel, unless, in the judgment of the Board itself, the enforcement of such testimonial or records subpoena would be inconsistent with the law or policies of the applicable Act.

(4) If the Board itself directs the General Counsel to seek enforcement, the evidentiary record will remain open until the Board agent determines that the court order will not be forthcoming or that further delay would frustrate the policies of the applicable Act, or until the responding party produces the testimony or records sought.

(5) At any time, the Board itself may direct the General Counsel to withdraw an enforcement action based upon voluntary compliance or otherwise as the interests of fairness may require.

(k) Inferences and Sanctions for Failure to Comply with Subpoenas: As an alternative to seeking Superior Court enforcement as set forth in subsection (j), the Board agent may draw adverse inferences from a party's failure to comply with a valid subpoena, and may prohibit such a party from presenting evidence or arguments, as the interests of fairness may require. The Board agent may not, however, draw an adverse inference against a party unless that party has been given advance notice and an opportunity to respond regarding such a potential adverse inference.

(l) Board Agent as Witness at a Hearing: The Board itself may order that a subpoenaed Board agent be produced at a formal hearing, only if that Board agent is deemed essential to the resolution of the case and no rational decision can be reached without such agent being produced.

32155. Recusals.

(a)(1) "Recusal" means refraining from participation in a case or proceeding, including but not limited to refraining from an attempt to influence any other person with respect to the matter.

(2) "Party representative," as used in this Section, means any person who has advised a party regarding the specific events giving rise to the case or proceeding at issue, entered an appearance in the case or proceeding, or otherwise been designated by a party as that party's representative in the case or proceeding.

(b) A Board member, Board agent, conciliator, mediator, or other PERB officer, employee, or contractor shall recuse themselves from a case or proceeding if any one of the following circumstances exists:

(1) They have a financial interest in the outcome of the case or proceeding, or is indebted, through money borrowed as a loan, to a party, party representative, or witness in the case or proceeding.

(2) They are related, by consanguinity or affinity within the third degree computed according to the rules of law, to a party, party representative, or witness in the case or proceeding.

(3) They at any time participated in the specific events giving rise to the case or proceeding, or served as a party representative in the case or proceeding.

(4) (A) For personnel covered by this Section other than Board members and Legal Advisors, within one year prior to the initial filing date of the case or proceeding, or at any time thereafter, they:

1. were an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;
2. personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or
3. held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(B) For Board members and Legal Advisors, if, within one year prior to the date that any appeal, exceptions, motion, or request in the case or proceeding was first placed on the Board's docket, or at any time thereafter, they:

1. were an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;
2. personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or

3. held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(5) As a result of other circumstances, they cannot fairly consider the case or proceeding, or the interests of justice require recusal.

(c) If a Board member learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding before the Board itself, they shall recuse and notify the Board of such recusal. If the General Counsel, Chief Administrative Law Judge, or Division Chief of the State Mediation and Conciliation Service learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which they would otherwise be directly or indirectly involved, they shall recuse, notify the Board of such recusal, and designate a replacement to act in their place regarding such case or proceeding. If any other Board agent, conciliator, mediator, or PERB official, employee, or contractor learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which they might otherwise be directly or indirectly involved, they shall notify their supervisor, who shall take appropriate action.

(d) Any party to a case or proceeding before the Board itself may file directly with a Board member a written motion for recusal. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed and served on all parties no later than twenty (20) days after the party seeking recusal first knew or should have known that the Board member was eligible to be assigned to a panel in the case or proceeding and should be recused from the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board. The Board member subject to the recusal motion shall decide the motion. If the motion is denied, then the party seeking recusal can seek review from the Board itself within ten (10) days from such denial. Any response by another party to such a request for review must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs regarding such a request for review, unless requested by the Board.

(e) Any party to a case or proceeding that is not before the Board itself may file a motion for recusal directly with any Board agent, conciliator, or mediator to whom the matter is assigned. Such motion shall be written, or if oral, reduced to writing within 24 hours of the motion. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed no later than twenty (20) days after the party first knew or should have known that the Board agent, conciliator, or mediator has been assigned a formal role in the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board agent. The Board agent, conciliator, or mediator subject to the recusal motion shall decide the motion, unless otherwise ordered. If the motion is granted, a new Board agent, conciliator, or

mediator shall be assigned. If the motion is denied, the party seeking recusal may, within ten (10) days after its motion for recusal is denied, file with the Board itself a request for special permission to appeal such denial. If the Board does not grant special permission to appeal the denial, the party seeking recusal may file an appeal after hearing or investigation and issuance of any decision, and may choose to combine such an appeal with an appeal or exceptions as to the merits.

(f) Any party aggrieved by the Board's determination regarding a motion for recusal may include the matter in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3524.73, 3542, 3564, 3599.71, 71639.4 or 71825.1 or Public Utilities Code sections 28861, 40122.2, 98172, 99562, and 100312 seeking judicial review of the Board's decision on the merits, or, in cases reviewed by the Board itself pursuant to Section 32635, in a writ proceeding in superior court challenging the Board's refusal to issue a complaint.

(g) Nothing herein shall preclude any person subject to recusal from invoking the rule of necessity as provided for under section 87101 of the Government Code.

32161. Participation in PERB Proceedings; Recording, Photographing, and Broadcasting of PERB Proceedings.

(a) The following definitions shall apply only in this section.

(1) "PERB proceedings" includes any meeting held pursuant to any chapter of these regulations, whether held in-person, via a virtual platform, or in a hybrid format, other than a public meeting of the Board itself held pursuant to section 31001.

(2) A "participant" in a PERB proceeding is a party, party representative, witness, potential witness, or person who intends to speak, or does speak, regarding a substantive topic at issue in the proceeding. Board agents are not participants.

(3) An "observer" in a PERB proceeding is any person who attends in-person or via a virtual platform but is not a participant. Board agents are not observers.

(b) Participants in PERB proceedings shall identify their full names upon inquiry from a Board agent. A Board agent shall not require observers of PERB proceedings to identify their names if they do not intend to become participants, except that a Board agent shall require observers of PERB proceedings to identify their full names if necessary to:

(1) issue or enforce an order pertaining to sequestration;

(2) address safety or disruption issues;

(3) issue or enforce an order to limit public access to sensitive information pursuant to section 32125(c)(2); or

(4) protect the confidentiality of an informal conference under section 32650(a) or any proceeding that constitutes a “mediation” or “mediation consultation” within the definitions set forth in Evidence Code section 1115.

(c) Participants and observers shall not make any photograph, screenshot, video recording, or audio recording, nor use any other similar means of capture, of any formal or informal PERB proceeding, whether conducted in-person or over an audio or video platform, absent written permission of a Board agent. If written permission is granted, the Board agent shall issue a protective order limiting the use of the record to the intended purpose. Written permission shall not be granted if the proceeding in question is an informal conference under section 32650(a) or any proceeding that constitutes a “mediation” or “mediation consultation” within the definitions set forth in Evidence Code section 1115.

(d) A photograph, screenshot, video recording, audio recording, or other similar capture of a PERB proceeding made by a participant or observer shall not be part of the official record of the proceeding, and no party shall cite it as evidence in PERB proceedings.

(e) Participants and observers in PERB proceedings shall not live broadcast to others any video or audio of such proceedings.

32162. Confidentiality of Board Investigations.

The Board shall not disclose any confidential statement submitted by a party, or the identity of any person who submits such a statement, unless the person submitting the statement agrees to disclosure or disclosure is required:

(a) Pursuant to Section 32206, concerning production of statements of witnesses after direct testimony;

(b) In a court proceeding upon a complaint for injunctive relief;

(c) By order of the Board itself;

(d) By final order of a court of competent jurisdiction.

32164. Joinder of Parties.

(a) Any employee, employee organization or employer may file with the Board agent an application for joinder as a party in a case. Service and proof of service of the application pursuant to Section 32140 are required.

(b) The application for joinder shall be in writing, signed by the applicant or representative filing it and contain a statement of the extent to which joinder is sought

and a statement of all the facts upon which the application is based. The Board shall allow each party an opportunity to oppose the application.

(c) The Board may allow joinder if it determines that the applicant has a substantial interest in the case or will contribute substantially to a just resolution of the case and will not unduly impede the proceeding.

(d) The Board may order joinder of an employer, employee organization or individual, subject to its jurisdiction, on application of any party or its own motion if it determines that:

(1) In the absence of the employer, employee organization or individual, as a party, complete relief cannot be accorded; or

(2) The employer, employee organization or individual has an interest relating to the subject of the action and is so situated that the disposition of the action in their absence may:

(A) As a practical matter impair or impede their ability to protect that interest; or

(B) Leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of said interest.

(e) In a representation case, the Board shall grant an employee organization's application for joinder if it satisfies the criteria set forth in subdivision (c) of this section; provided, however, that status as a joined party allows participation only as to whether the unit configuration sought is appropriate. If an employee organization seeks an order certifying it as the exclusive representative of any employees it does not already exclusively represent, then the Board agent shall treat the application for joinder as an application for intervention and shall apply any proof of support requirements attendant to such an application pursuant to statute or regulation.

SUBCHAPTER 3. HEARINGS

32168. Conduct of Hearing.

(a) Hearings shall be conducted by a Board agent designated by the Board, except that the Board itself or a Board member may act as a hearing officer.

(b) A Board agent may be substituted for another Board agent at any time during the proceeding at the discretion of the Chief Administrative Law Judge in unfair practice cases or the General Counsel in representation matters. Prior to ordering a substitution the parties shall be notified and provided an opportunity to state objections to the proposed substitution. Substitutions of Board agents shall be appealable only in accordance with Sections 32200 or 32300.

(c) Hearings shall be open to the public, except as provided in Section 32170.

32169. Depositions.

The Board may order the taking of testimony of a material witness within or outside the State by deposition in the manner prescribed for civil actions only upon the filing of an application by a party showing that:

- (a) The witness is unable to attend the hearing because of illness, infirmity or imprisonment; or
- (b) The witness cannot be compelled to attend the hearing by subpoena.

The application shall state the case number, name and address of the witness, show the materiality of the testimony, and shall request an order requiring the witness to appear and testify before a named officer authorized by law to take depositions. Where the witness resides outside the State and the Board has authorized a deposition of the witness, the Board shall obtain an order of the Superior Court in Sacramento County for that purpose pursuant to Section 11189 of the Government Code.

32170. Authority of Board Agent Conducting a Hearing.

(a) Definitions:

(1) "Prehearing conference" means a proceeding conducted by the Board agent with the parties, either before a formal hearing or between scheduled formal hearing days in order to resolve procedural issues; coordinate and organize the hearing; rule on preliminary and jurisdictional matters; take limited sworn witness testimony, admit documentary or other evidence, take official notice of facts, and approve stipulated facts; and consider any other matters.

(2) "Formal Hearing" means an adjudicative proceeding conducted by the Board agent with the parties, which may include taking sworn witness testimony, admitting documentary or other evidence, taking official notice of facts, and approving stipulated facts.

(3) "Hearing" means those prehearing conference(s) and/or formal hearing day(s) conducted for an individual case or consolidated cases.

(b) The Board agent conducting a hearing shall have authority to:

- (1) Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;
- (2) Authorize the taking of depositions;
- (3) Issue appropriate subpoenas and rule upon motions related to petitions to revoke subpoenas, set dates, formats, and means for production in response to a records subpoena, and limit the parties' use of produced records;

(4) Regulate the course and conduct of the hearing, including, but not limited to, the power to exclude a witness from the hearing room;

(5) Order the parties to participate in (A) in-person, video, or telephonic settlement conferences with a designated Board agent; and/or (B) in-person, video, or telephonic prehearing conferences to clarify and resolve issues raised by the parties or by the Board agent, including but not limited to scheduling issues, subpoena disputes, motions, requests to consolidate proceedings, requests to bifurcate proceedings, requests to stay, abate, or continue proceedings, and other substantive or procedural matters;

(6) Rule on objections, motions and questions of procedure;

(7) Administer oaths and affirmations;

(8) Take evidence and rule on the admissibility of evidence, and rule on offers of proof;

(9) Examine witnesses for the purpose of clarifying the facts and issues;

(10) Approve or reject proposed stipulations, including stipulations of fact, or requests for administrative notice;

(11) Issue any needed protective orders limiting use of, or access to, records produced pursuant to a subpoena, exhibits, transcripts, and any other parts of the hearing file;

(12) Conduct an in camera review of records;

(13) Authorize the submission of briefs and set the time for the filing thereof;

(14) Hear oral argument;

(15) Render and serve the proposed decision on each party;

(16) Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

32175. Rules of Evidence: Representation Cases.

(a) Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. However, immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply.

(b) A party seeking to offer a written document into evidence shall provide a copy of the document for each party to the hearing.

32176. Rules of Evidence: Unfair Practice Cases.

Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply. Evidence of any discussion of the case that occurs in an informal settlement conference shall be inadmissible in accordance with Evidence Code Section 1152.

32178. Burden of Proof: Unfair Practice Cases.

The charging party shall prove the complaint by a preponderance of the evidence in order to prevail.

32180. Rights of Parties.

- (a) Each party to a hearing has the right to self-representation, or representation by counsel or by non-attorney representative.
- (b) Each party to a hearing may, subject to appropriate rulings by the Board agent conducting the hearing pursuant to section 32170 of these regulations, introduce non-testimonial evidence and to call, examine, and cross-examine witnesses and introduce documentary and other evidence on the issues.
- (c) The Board agent conducting a hearing shall determine the location of the hearing and whether parties, representatives, and witnesses shall participate in a hearing in person, telephonically, by video, or a combination thereof.

32185. Ex Parte Communications.

- (a) No party to a formal hearing before the Board on an unfair practice complaint shall, outside the hearing of the other parties, orally communicate about the merits of the matter at issue with the Board agent presiding. Nor shall any party to a formal hearing communicate in writing with the Board agent presiding without providing a copy of the writing to the other parties.
- (b) A Board agent who receives such an ex parte communication shall state on the record that the communication was made, identify the person who made it and either summarize the contents of the communication, or provide all parties with a copy of such communication. The Board agent shall then afford the other parties to the hearing the opportunity to rebut the communication on the record.

32190. Motions.

- (a) After a complaint has been issued, written motions made before, during or after a formal hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(1) Motions to strike an allegation, to defer a case to arbitration, or to dismiss or partially dismiss a complaint, including motions styled as motions for summary judgment or for judgment on the pleadings, must be filed with the Board agent assigned to the proceeding no later than forty-five (45) days prior to the first day of the scheduled formal hearing, unless otherwise ordered by the Board. Service and proof of service pursuant to Section 32140 are required.

(2) A response to a motion filed pursuant to subsection (a)(1) shall be filed with the Board agent within twenty (20) days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required. There shall be no reply briefs unless requested by the Board agent.

(3) The above filing deadlines shall not apply in any proceeding designated for expedited treatment pursuant to Section 32147. In expedited hearings, the Board agent shall have the authority and discretion to set timelines for the filing of motions and responses.

(4) Once the scheduled formal hearing has commenced, no motion specified in subsection (a)(1) above may be filed or orally presented until the charging party has fully presented evidence in its case, exclusive of rebuttal evidence.

(b) Except as specified in subsection (a)(2) above, responses to all other motions shall be filed with the Board agent within fourteen (14) days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required. There shall be no reply briefs unless requested by the Board agent.

(c) Except as specified in subsections (a)(1) and (a)(4), during the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board agent may hear oral argument or take evidence on any motion.

(e) No hearing shall be delayed because a motion is filed unless the Board so directs.

(f) Rulings on motions shall not be appealable except as specified in Sections 32200 and 32360.

(g) This Section shall not apply to motions pertaining to subpoenas under Section 32150, nor to motions to amend a complaint.

32200. Appeal of Rulings on Motions and Interlocutory Matters.

A party may object to a Board agent's interlocutory order or ruling on a motion and request a ruling by the Board itself. The request shall be in writing to the Board agent and a copy shall be sent to the Board itself. Service and proof of service pursuant to Section 32140 are required. The Board agent may refuse the request, or may join in the request and certify the matter to the Board. The Board itself will not accept the

request unless the Board agent joins in the request. The Board agent may join in the request only where all of the following apply:

- (a) The issue involved is one of law;
- (b) The issue involved is controlling in the case;
- (c) An immediate appeal will materially advance the resolution of the case.

32205. Request to Continue a Formal Hearing.

(a) Request Filed At Least Seven Days Prior to the Hearing. Prior to filing a request for continuance, the requesting party must attempt to contact representatives from all other parties to ascertain their positions on the request. The request for continuance must explain in writing the grounds for the request and, to the extent the requesting party has been able to ascertain, the other parties' positions regarding the request. The request shall be granted only if the requesting party demonstrates good cause for the continuance that outweighs any prejudice to other parties.

(b) Request Filed Fewer Than Seven Days Prior to the Hearing. A request for continuance filed fewer than seven days prior to the hearing may only be considered if it demonstrates extraordinary circumstances. Prior to filing such a request, the requesting party must attempt to contact representatives from all other parties to ascertain their positions on the request. The request must be in writing or, if made orally, explain why it cannot be reduced to writing. It must explain the grounds for the request, any reasons the request was not made earlier, and, to the extent the requesting party has been able to ascertain, the other parties' positions regarding the request. The request shall be granted only if the requesting party demonstrates extraordinary circumstances justifying the continuance that outweigh any prejudice to other parties.

32206. Production of Statements of Witnesses After Direct Testimony.

(a) After direct examination of a witness, and upon motion of any party, the hearing officer shall order the production of any statement made by the witness to a Board agent that relates to the subject matter of the testimony.

(b) A statement includes a written declaration by the witness, signed or otherwise approved by the witness, or a recording or a transcription of a recording which is a verbatim recital of something said by the witness.

(c) If the party sponsoring the testimony claims that a statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony, the party shall deliver the statement to the hearing officer for their private inspection. The hearing officer may excise those portions of the statements which do not relate to the subject matter of the testimony. The remainder of the statement shall be delivered to the moving party.

32207. Hearings.

The parties may submit stipulated facts where appropriate to the Board agent. No hearing shall be required unless the parties dispute the facts in the case.

32209. Correction of Transcript.

A motion to correct alleged errors in the transcript of a proceeding before a Board agent must be filed with the Board agent presiding at the proceeding within 20 days of the date of service of the transcript. The motion shall specify the alleged errors and provide a proposed corrected version. Within 10 days following the date of service of such a motion, any party may file with the Board agent a response to the motion. Service and proof of service of the motion and of any response to a motion pursuant to Section 32140 are required. Failure to file a timely motion to correct will be deemed a waiver of any objection to the accuracy of the transcript.

32210. Informational Briefs and Arguments.

(a) Any person may file a petition to submit an informational brief or to argue orally in any case at a hearing or before the Board itself.

(b) The petition shall include the following information:

(1) The case number;

(2) The title of the case;

(3) The name, address, telephone number and any affiliation of the petitioner;

(4) The name, address and telephone number of any agent to be contacted;

(5) A statement setting forth the nature of the petitioner's interest or involvement in the case;

(6) A statement setting forth the specific issues of procedure, fact, law or policy which the petitioner wishes to address.

(c) The petition may be granted or denied at the discretion of the Board.

32212. Briefs and Oral Argument.

Prior to the close of the hearing, the board agent shall rule on any request to make oral argument or to file a written brief. The Board agent shall set the time required for the filing of briefs. Any party filing a brief shall file the brief with the Board agent. Service and proof of service of the brief pursuant to Section 32140 are required.

32215. Proposed Decision.

A Board agent shall issue a written proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself. The Board shall serve the proposed decision on each party. Unless expressly adopted by the Board itself, a proposed or final Board agent decision, including supporting rationale, shall be without precedent for future cases.

32220. Contemptuous Conduct.

Contemptuous conduct of a party or its agent shall be grounds for the exclusion of the party or agent from any proceeding related to the case.

32230. Refusal of Witness to Testify.

The refusal of a witness at a hearing to answer any question which has been ruled proper by the Board agent conducting the hearing may be grounds for striking the full testimony of such witness on the same matter and or such other action as deemed appropriate by the Board.

SUBCHAPTER 4. DECISIONS OF THE BOARD ITSELF

Article 1. Ex Parte Communications

32295. Ex Parte Communications.

No party shall communicate with the Board itself, any member of the Board itself or any legal adviser to a member of the Board, orally or in writing, about any matter pending before the Board except as provided for in these regulations.

Article 2. Appeal of Board Agent Decision to the Board Itself

32300. Exceptions to Board Agent Decision.

(a) A party may file with the Board itself a statement of exceptions to a Board agent's proposed decision issued pursuant to Section 32215, within 20 days following the date of service of the decision or as provided in Section 32310. The statement of exceptions shall be filed with the Board itself in the headquarters office. Service and proof of service of the statement pursuant to Section 32140 are required. The statement of exceptions shall:

- (1) clearly and concisely state why the proposed decision is in error;
- (2) cite to the relevant exhibit or transcript page in the case record to support factual arguments; and
- (3) cite to relevant legal authority to support legal arguments.

(b) A statement of exceptions shall be a single integrated document that must not exceed 14,000 words, including footnotes. A statement of exceptions may be in the form of a brief and may contain tables of contents and authorities. Tables of contents and tables of authorities do not count toward the word limit.

(c) Exceptions shall cite only to evidence: (1) in the record of the case, and (2) of which administrative notice may properly be taken.

(d) Absent good cause, a statement of exceptions that does not comply with this Section will not be considered by the Board itself.

(e) Absent good cause, the Board itself will not consider: (1) issues and arguments not raised in the statement of exceptions, or (2) arguments raised in the statement of exceptions that do not impact the outcome of a case. This subsection shall not preclude the Board itself from applying the unalleged violations doctrine or making *sua sponte* findings of fact or conclusion of law.

(f) A request for permission to file a statement of exceptions exceeding 14,000 words must be filed with the Board itself and served on all parties pursuant to Section 32140 no later than five days before the exceptions are due. The request must establish good cause to permit a longer statement of exceptions. The party requesting to exceed the word limit may not file its exceptions until the Board rules on the request.

32305. Finality of Board Agent Decisions.

(a) Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.

(b) In cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61215, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, 91450, 93020, 93100, 95030, or 95100, and where exceptions are filed pursuant to Section 32300, the Board agent's decision shall become final unless the Board itself issues a decision not later than 180 days from the date the exceptions were filed with the Board.

(c) The Board shall not grant abeyances or extensions of time in cases before the Board itself that are subject to subparagraph (b), above.

32310. Response to Exceptions.

(a) Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself a response to the statement of exceptions. The response shall be filed with the Board itself in the headquarters office pursuant to Section 32135.

(b) The response shall clearly and concisely state why the exceptions should not be granted. The response shall cite to relevant legal authority to support legal arguments and shall cite to the relevant exhibit or transcript page in the case record to support

factual arguments. Subsections (b) through (f) of Section 32300 shall apply to a response to exceptions. Absent good cause, a response to exceptions that does not comply with these requirements will not be considered by the Board itself.

(c) The response may contain a statement of any cross-exceptions the responding party wishes to take to the proposed decision. Any such statement of cross-exceptions shall comply with the requirements of Section 32300, except that a party that is both responding to exceptions and filing cross-exceptions shall be permitted to submit up to 28,000 words total, including footnotes, without requesting permission.

(d) A response to cross-exceptions may be filed within 20 days. Such response shall comply with the provisions of this Section.

(e) Service and proof of service of these documents pursuant to Section 32140 are required.

32312. Reply Briefs.

(a) Within 10 days following the date of service of the response to its exceptions or cross-exceptions, a party may file with the Board itself a reply brief of no more than 5,000 words. A reply brief may contain a table of contents and table of authorities, but such tables, if any, shall not count toward the word limit. A request for permission to file a reply brief exceeding 5,000 words must be filed with the Board itself and served on all parties pursuant to Section 32140 no later than five days before the brief is due. The request must establish good cause to permit a longer reply brief. The party requesting to exceed the word limit may not file its reply brief until the Board rules on the request.

(b) Subsections (c) through (e) of Section 32300 shall apply to a reply brief. The reply brief shall be filed with the Board itself in the headquarters office pursuant to Section 32135. Service and proof of service of the reply brief pursuant to Section 32140 are required.

(c) The Board itself may exercise its discretion to consider a reply brief in support of exceptions or cross-exceptions if (1) the response has raised new issues, discussed new case law, or formulated a new defense, or (2) the Board otherwise determines that consideration of the reply would assist the Board in deciding the case. The Board itself has discretion to disregard a reply brief if neither of these criteria is satisfied.

32315. Oral Argument on Exceptions.

A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument.

32320. Decision of the Board Itself.

(a) The Board itself may:

(1) Issue a decision based upon the record of hearing, or

(2) Affirm, modify or reverse the proposed decision, order the record re-opened for the taking of further evidence, or take such other action as it considers proper.

(b) The Board shall serve a copy of the decision on each party.

(c) Unless expressly designated otherwise, all decisions and orders issued by the Board itself are precedential and may be cited in any matter pending before a Board agent or the Board itself.

(d) A majority of the Board members issuing a decision or order shall determine whether the decision or order, or any part thereof, shall be designated as non-precedential. In determining whether all or part of a decision or order shall be designated as non-precedential, the Board may consider whether the decision or order:

(1) Establishes new law or policy;

(2) Applies existing law to a set of facts significantly different from those stated in prior precedential decisions;

(3) Modifies, clarifies or explains existing law or policy;

(4) Resolves a conflict in law;

(5) Addresses a legal or factual issue of continuing interest;

(6) Provides an overview of existing law or policy; or

(7) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and designation of the majority and separate opinions as precedential would make a significant contribution to the development of public sector labor law.

(e) The Board itself may reverse, in whole or in part, the prior designation of a decision or order as precedential or non-precedential. A request to reverse the precedential or non-precedential designation of a decision or order shall be made within 20 days following the date of service of the decision or order. An original and five copies of the request shall be filed with the Board itself in the headquarters office. A request seeking designation of a decision as precedential shall state with specificity why one or more of the criteria in subparagraph (d) of this Section are satisfied. A request seeking designation of a decision as non-precedential shall state with specificity why none of the criteria in subparagraph (d) are satisfied. Service and proof of service of the request pursuant to Section 32140 are required.

(f) Any response to a request to change the precedential or non-precedential designation of a decision or order must be filed within 20 days from service of the request. An original and five copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(g) A request to change the precedential or non-precedential designation of a decision or order shall not stay the effectiveness of the decision or order.

(h) A ruling on a request to change the precedential or non-precedential designation of a decision or order is not subject to reconsideration under Section 32410.

32325. Remedial Power of the Board.

The Board shall have the power to issue a decision and order in an unfair practice case directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of the applicable statute.

Article 3. Administrative Appeals

32350. Definition of Administrative Decision.

(a) An administrative decision is any determination made by a Board agent other than:

(1) a refusal to issue a complaint in an unfair practice case pursuant to Section 32630,

(2) a dismissal of an unfair practice charge,

(3) a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215, or

(4) a decision issued following interest arbitration conducted pursuant to Government Code Section 3557(b)(4).

(b) An administrative decision shall contain a statement of the issues, fact, law and rationale used in reaching the determination.

32360. Appeal Requirements.

(a) An appeal may be filed with the Board itself from any administrative decision, except as noted in Section 32380.

(b) The appeal shall be filed with the Board itself in the headquarters office within 10 days following the date of service of the decision or letter of determination.

(c) The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

(d) Service and proof of service of the appeal pursuant to Section 32140 are required.

32370. Request for Stay of Activity.

An appeal will not automatically prevent the Board from proceeding in a case. Parties seeking a stay of any activity may file a request for a stay with the administrative appeal which shall include all pertinent facts and justification for the request. The Board may stay the matter, except as is otherwise provided in these regulations.

32375. Response to the Administrative Appeal.

Within 10 days following the date of service of the appeal, any party may file a response to the appeal. The response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

32380. Limitation of Appeals.

The following administrative decisions shall not be appealable:

(a) A decision by a Board agent regarding the mechanics of an election provided the decision does not affect standing of a party to appear on a ballot;

(b) Except as provided in Section 32200, any interlocutory order or ruling on a motion.

(c) A decision by a Board agent pursuant to Section 32793 regarding the existence of an impasse.

Article 4. Reconsideration

32400. Administrative Remedies.

A motion for reconsideration need not be filed to exhaust administrative remedies.

32410. Request for Reconsideration.

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. The request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the

exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

(b) Any party shall have 20 days from service to file a response to the request for reconsideration with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(c) Unless otherwise ordered by the Board, the filing of a Request for Reconsideration shall not stay the effectiveness of a decision of the Board itself except that the Board's order in an unfair practice case shall automatically be stayed upon filing of a Request for Reconsideration.

Article 5. Request for Injunctive Relief

32450. Request.

(a) A request from a party that the Board seek injunctive relief shall be filed with the General Counsel at the headquarters office. Requests filed after PERB's regular business hours shall be deemed filed on the next regular business day. The request shall include:

(1) The written request, accompanied by reasons stating why injunctive relief is appropriate;

(2) A copy of the unfair practice charge or complaint on which the request is based; and

(3) Declarations, on personal knowledge, setting forth in detail all pertinent facts underlying the request for injunctive relief.

(b) Service and proof of service on the respondent is required of all documents filed with the General Counsel. Under this section, service and proof of service shall be conducted pursuant to section 32140 except that service must be by personal delivery, facsimile transmission, or electronic mail.

(c) Notice that such a request is being made shall be provided no less than 24 hours prior to the filing to the General Counsel and the party against whom the relief is sought. Such notice may be by telephone or in person, or by any other means reasonably calculated to provide notice.

(d) An affidavit of notice shall be filed with the request. Such affidavit shall indicate to whom, at what time, and in what manner the notice required by subparagraph (c) above was accomplished.

32455. Investigation.

Upon filing of a request for the Board to seek injunctive relief, the General Counsel shall initiate an investigation. The General Counsel shall give notice reasonably calculated to inform the parties an investigation is proceeding. The respondent shall be apprised of the allegations against it, and may state its position in the course of the inquiries. The respondent's position statements or other documents filed with the General Counsel must be filed at the headquarters office, and service and proof of service on the opposite party. For purposes of this section, a Board agent shall establish and inform the parties of all filing deadlines, which shall include the date and time that a party must file a document. The Board agent may contact and question such persons as necessary to effectuate the investigation.

32460. Recommendation.

After investigation, the General Counsel shall make a recommendation to the Board within 120 hours after the receipt of a request, unless the request is made during a work stoppage or lockout, in which case the General Counsel shall make a recommendation to the Board within 24 hours after the request is received.

32465. Decision of the Board Itself.

Upon receipt of the General Counsel's report, the Board itself shall determine whether to seek injunctive relief.

32470. Lack of Board Quorum.

In the event that a quorum of the Board itself is unavailable to act upon the request for injunctive relief within 24 hours after the time the General Counsel's recommendation is filed, the Board authorizes the General Counsel to seek injunctive relief in every case in which the General Counsel has reasonable cause to believe that such action is in accordance with Board policy and that legal grounds for injunctive relief are present.

Article 6. Request for Judicial Review

32500. Review of Representation Case.

(a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, Subchapter 3 of Chapter 6, Chapter 7 or Chapter 8 of these Regulations, may file a request to seek judicial review within 20 days following the date of service of the decision. The request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. Service and proof of service of the request pursuant to Section 32140 are required.

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

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

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32602. Processing Violations.

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, JCEERA, LEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, the PECC, the PEDD, the OCTDA, the SFBART Act, the Sacramento RTD Act, the Santa Cruz Metro Act, the VTA Act, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act, Court Interpreter Act, or the OCTDA, shall be processed as unfair practice charges.

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

(c) A charge alleging that an employer or an exclusive representative has failed to comply with Government Code section 3523, 3547, 3547.5, 3595, or 3599.76, or Public Utilities Code section 99569, may be filed by any affected member of the public.

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

32603. Employer Unfair Practices under MMBA.

It shall be an unfair practice for a public agency to do any of the following:

(a) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.

(b) Deny to employee organizations rights guaranteed to them by Government Code section 3503, 3504.5, 3505.1, 3505.3, 3507.1, 3508(d) or 3508.5 or by any local rule adopted pursuant to Government Code section 3507.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 3505 or any local rule adopted pursuant to Government Code section 3507.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another in violation of rights guaranteed by Government Code section 3502 or 3508(d) or any local rule adopted pursuant to Government Code section 3507.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 3505 or 3505.2, or required by the MMBA or any local rule adopted pursuant to Government Code section 3507.

(f) Adopt or enforce a local rule that is not in conformance with MMBA.

(g) In any other way violate MMBA or any local rule adopted pursuant to Government Code section 3507.

32604. Employee Organization Unfair Practices under MMBA.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause a public agency to engage in conduct prohibited by the MMBA or by any local rule adopted pursuant to Government Code section 3507.

(b) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 3505 or by any local rule adopted pursuant to Government Code section 3507.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 3505 or 3505.2, or required by the MMBA or any local rule adopted pursuant to Government Code section 3507.

(e) In any other way violate MMBA or any local rule adopted pursuant to Government Code section 3507.

32606. Employer Unfair Practices under Trial Court Act.

It shall be an unfair practice for a trial court to do any of the following:

(a) Interfere with, intimidate, restrain, coerce or discriminate against trial court employees because of their exercise of rights guaranteed by Government Code section 71631 or by any local rule adopted pursuant to Government Code section 71636.

(b) Deny to employee organizations rights guaranteed to them by the Trial Court Act or by any local rule adopted pursuant to Government Code section 71636.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 71634.2 or any local rule adopted pursuant to Government Code section 71636.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another in violation of rights

guaranteed by Government Code section 71631 or any local rule adopted pursuant to Government Code section 71636.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71634.4 or required by any local rule adopted pursuant to Government Code section 71636.

(f) Adopt or enforce a local rule that is not in conformance with the Trial Court Act.

(g) In any other way violate the Trial Court Act or any local rule adopted pursuant to Government Code section 71636.

32607. Employee Organization Unfair Practices under Trial Court Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause a trial court to engage in conduct prohibited by the Trial Court Act or by any local rule adopted pursuant to Government Code section 71636.

(b) Interfere with, intimidate, restrain, coerce or discriminate against trial court employees because of their exercise of rights guaranteed by Government Code section 71631 or by any local rule adopted pursuant to Government Code section 71636.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 71634.2 or by any local rule adopted pursuant to Government Code section 71636.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71634.4 or required by any local rule adopted pursuant to Government Code section 71636.

(e) In any other way violate the Trial Court Act or any local rule adopted pursuant to Government Code section 71636.

32608. Employer Unfair Practices under Court Interpreter Act.

It shall be an unfair practice for a trial court or regional committee to do any of the following:

(a) Interfere with, intimidate, restrain, coerce or discriminate against court interpreters because of their exercise of rights guaranteed by Government Code section 71813 or by any local rule adopted pursuant to Government Code section 71823.

(b) Deny to employee organizations rights guaranteed to them by the Court Interpreter Act or by any local rule adopted pursuant to Government Code section 71823.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 71818 or any local rule adopted pursuant to Government Code section 71823.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another in violation of rights guaranteed by Government Code section 71813 or any local rule adopted pursuant to Government Code section 71823.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71820 or required by any local rule adopted pursuant to Government Code section 71823.

(f) Adopt or enforce a local rule that is not in conformance with the Court Interpreter Act.

(g) In any other way violate the Court Interpreter Act or any local rule adopted pursuant to Government Code section 71823.

32609. Employee Organization Unfair Practices under Court Interpreter Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause a trial court or regional committee to engage in conduct prohibited by the Court Interpreter Act or by any local rule adopted pursuant to Government Code section 71823.

(b) Interfere with, intimidate, restrain, coerce or discriminate against court interpreters because of their exercise of rights guaranteed by Government Code section 71813 or by any local rule adopted pursuant to Government Code section 71823.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 71818 or by any local rule adopted pursuant to Government Code section 71823.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71820 or required by any local rule adopted pursuant to Government Code section 71823.

(e) In any other way violate the Court Interpreter Act or any local rule adopted pursuant to Government Code section 71823.

32610. Employer Unfair Practices under the PECC.

It shall be an unfair practice for a public employer to do any of the following:

(a) Provide the exclusive representative with less than 10 days' notice in advance of a new employee orientation as required by Government Code Section 3556.

(b) Refuse or fail to provide the exclusive representative with access to a new employee orientation as required by Government Code Section 3556.

(c) Refuse or fail to negotiate with the exclusive representative, upon request, over the structure, time, and manner of the exclusive representative's access to new employee orientations as required by Government Code Sections 3556 and 3557.

(d) Disclose the date, time, and place of a new employee orientation to any party other than the employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation in violation of rights guaranteed by Government Code Section 3556.

(e) Refuse or fail to provide the exclusive representative information required by Government Code Section 3558.

(f) Refuse or fail to grant a reasonable leave of absence to a public employee upon request of the exclusive representative as required by Government Code Section 3558.8.

(g) Refuse or fail to negotiate with the exclusive representative, upon request, over the procedures for requesting and granting leave as required by Government Code Section 3558.8.

(h) In any other way violate the PECC.

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 alleged violations of Government Code Section 3558, subdivision (a). Each cured violation within the preceding 12-month period shall count toward the three-cure limit regardless of the exclusive representative or bargaining unit involved.

32610.5. Exclusive Representative Unfair Practices under the PECC.

It shall be an unfair practice for an exclusive representative to do any of the following:

(a) Refuse or fail to negotiate with the public employer, upon request, over the structure, time, and manner of the exclusive representative's access to new employee orientations as required by Government Code Sections 3556 and 3557.

(b) Refuse or fail to negotiate with the public employer, upon request, over the procedures for requesting and granting leave as required by Government Code Section 3558.8(b).

(c) In any other way violate the PECC.

32611. Employer Unfair Practices under the PEDD.

It shall be an unfair practice for a public employer to do any of the following:

(a) Deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization, in violation of Government Code Section 3550.

(b) Disseminate a mass communication to public employees or applicants, without first meeting and conferring with the exclusive representative over the contents of the communication, as required by Government Code Section 3553.

(c) Refuse or fail to distribute the exclusive representative's message in addition to and at the same time as the employer's message, in the event that the public employer and exclusive representative do not agree to the contents of the employer's mass communication, as required by Section 3553.

(d) In any other way violate the PEDD.

32611.5. Exclusive Representative Unfair Practices under the PEDD.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Fail to meet and confer with the public employer over the contents of a mass communication as required by Government Code Section 3553.

(b) In any other way violate the PEDD.

32611.8. Special Remedies for Certain PECC and PEDD Charges.

(a) An administrative law judge or the Board itself may resolve special remedies issues in conjunction with resolving liability issues. If any special remedies issues remain unresolved after a final decision involving a claim under Government Code Section 3550, or Government Code Section 3558, subdivision (a), the following procedures shall apply unless otherwise ordered:

(1) A party seeking to resolve outstanding special remedies issues must file a motion with the Office of the General Counsel no later than twenty (20) days after the decision is final. All unresolved special remedies issues must be presented in the same motion. Service and proof of service of the motion pursuant to Section 32140 are required.

(2) A motion regarding special remedies 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 under the applicable Government Code Section. If attorney's 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 must be filed with the Office of the General Counsel 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. Service and proof of service of the response pursuant to Section 32140 are required.

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

(5) The Office of the General Counsel shall work with the parties to resolve special remedies issues efficiently in conjunction with any other outstanding compliance issues and shall have discretion whether to request further written submissions, convene an evidentiary hearing, or transfer the matter to the Division of Administrative Law.

(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.

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

32613. Employer Unfair Practices under OCTDA.

It shall be an unfair practice for the Authority to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the OCTDA or by any rules or regulations adopted by the Authority pursuant to the OCTDA.

(b) Deny to employee organizations rights guaranteed to them by the OCTDA or by any rules or regulations adopted by the Authority.

(c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Public Utilities Code Section 40126 or any rules and regulations adopted by the Authority.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 40120, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Adopt or enforce a rule or regulation not in conformance with Public Utilities Code Sections 40000, et seq.

(g) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610 of these regulations.

(h) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

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

32613.5. Employee Organization Unfair Practices under OCTDA.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause the Authority to engage in conduct prohibited by the OCTDA or by any rules or regulations adopted by the Authority.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the OCTDA or by any rules or regulations adopted by the Authority pursuant to the OCTDA.

(c) Refuse or fail to meet and confer in good faith as required by Public Utilities Code Section 40126 or any rules and regulations adopted by the Authority.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 40120, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

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

32614. Employer Unfair Practices under SFBART Act.

It shall be an unfair practice for the District to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the SFBART Act. As used in this provision, "employee" includes an applicant for employment or reemployment with the District.

(b) Deny to employee organizations rights guaranteed to them by the SFBART Act.

(c) Knowingly provide an exclusive representative with inaccurate information or otherwise fail or refuse to bargain in good faith with an exclusive representative as required by the SFBART Act.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 28858, subdivision (e), or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate SFBART Act.

32614.1. Employee Organization Unfair Practices under SFBART Act.

It shall be an unfair practice for an employee organization to do any of the following:

- (a) Cause or attempt to cause the District to engage in conduct prohibited by the SFBART Act.
- (b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the SFBART Act.
- (c) Refuse or fail to bargain in good faith as required by Public Utilities Code Section 28850.
- (d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 28858, subdivision (e), or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).
- (e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.
- (f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.
- (g) In any other way violate the SFBART Act.

32614.2 Employer Unfair Practices under Sacramento RTD Act.

It shall be an unfair practice for the District to do any of the following:

- (a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Sacramento RTD Act. As used in this provision, "employee" includes an applicant for employment or reemployment with the District.
- (b) Deny to employee organizations rights guaranteed to them by the Sacramento RTD Act.
- (c) Knowingly provide an exclusive representative with inaccurate information or otherwise fail or refuse to bargain in good faith with an exclusive representative as required by the Sacramento RTD Act.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 102401, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate Sacramento RTD Act.

32614.3 Employee Organization Unfair Practices under Sacramento RTD Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause the District to engage in conduct prohibited by the Sacramento RTD Act.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Sacramento RTD Act.

(c) Refuse or fail to bargain in good faith as required by Public Utilities Code Sections 102400 and 102414.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 102401, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate the Sacramento RTD Act.

32614.4. Employer Unfair Practices under Santa Cruz Metro Act.

It shall be an unfair practice for the District to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Santa Cruz Metro Act.

(b) Deny to employee organizations rights guaranteed to them by the Santa Cruz Metro Act.

(c) Knowingly provide an exclusive representative with inaccurate information or otherwise fail or refuse to bargain in good faith with an exclusive representative as required by the Santa Cruz Metro Act.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 98169, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate the Santa Cruz Metro Act

32614.5. Employee Organization Unfair Practices under Santa Cruz Metro Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause the District to engage in conduct prohibited by the Santa Cruz Metro Act.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Santa Cruz Metro Act.

(c) Refuse or fail to bargain in good faith as required by Public Utilities Code Section 98170.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Section 98167, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate the Santa Cruz Metro Act.

32614.6. Employer Unfair Practices under VTA Act.

It shall be an unfair practice for the District to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the VTA Act. As used in this provision, "employee" includes an applicant for employment or reemployment with the District.

(b) Deny to employee organizations rights guaranteed to them by the VTA Act.

(c) Fail or refuse to bargain in good faith with an exclusive representative as required by the VTA Act.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Sections 100302 and 100305, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code section 3611) (Public Transit Labor Disputes Act).

(f) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555), or Section 32610 of these regulations.

(g) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611 of these regulations.

(h) In any other way violate the VTA Act.

32614.7. Employee Organization Unfair Practices under the VTA Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause the District to engage in conduct prohibited by the VTA Act.

(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the VTA Act.

(c) Refuse or fail to bargain in good faith as required by Public Utilities Code Section 100302.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to, including pursuant to Public Utilities Code Sections 100302 and 100305, or contained in Chapter 3, Division 4.5, Title 1 of the Government Code (commencing with Government Code Section 3611) (Public Transit Labor Disputes Act).

(e) Violate in any way the Public Employees Communication Chapter as contained in Title 1 of the Government Code (commencing with Section 3555) or Section 32610.5 of these regulations.

(f) Violate in any way the Prohibition on Public Employers Deterring or Discouraging Union Membership as contained in Title 1 of the Government Code (commencing with Section 3550), or Section 32611.5 of these regulations.

(g) In any other way violate the VTA Act.

32615. Contents of Charge.

(a) A charge may be filed alleging that an unfair practice or practices have been committed. The charge shall be in writing, signed under penalty of perjury by the party or its agent with the declaration that the charge is true, and complete to the best of the charging party's knowledge and belief, and contain the following information:

(1) The name and address of the party alleged to have engaged in an unfair practice;

(2) The name, address, and telephone number of the charging party;

(3) The name, address, and telephone number of an authorized agent of the charging party to be contacted;

(4) The sections of the Government Code, the applicable local rules, the sections of the Public Utilities Code, or the Welfare and Institutions Code, alleged to have been violated;

(5) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice; and

(6) A statement of the remedy sought by the charging party.

(b) A charge filed under MMBA, Article 3 of the Trial Court Act, ~~or~~ the Court Interpreter Act, or OCTDA alleging a violation of local rules must also contain a copy of the applicable rule(s).

(c) Service and proof of service on the respondent pursuant to Section 32140 are required.

32616. Venue of Charge.

(a) Except as otherwise provided in this section, a charge may be filed in any regional office described in Section 32075 which serves any county in which the conduct or act constituting the alleged unfair practice occurred or is occurring, the county in which any employee affected by the alleged unfair practice works or the county in which the principal office of the employer is located.

(b) Any charge involving a worksite located outside the State of California shall be filed with the regional office serving the county in which the principal office of the employer is located.

(c) Any charge involving a regional committee established pursuant to Government Code section 71807 shall be filed with the Los Angeles Regional Office in the cases of Regions 1 and 4; with the San Francisco Regional Office in the case of Region 2; and with the Sacramento Regional Office in the case of Region 3.

(d) The Board may transfer any case to a different regional office. The Board may consolidate charges as it deems appropriate.

32620. Processing of Case.

(a) When a charge is filed, it shall be assigned to a Board agent for processing.

(b) The powers and duties of such Board agent shall be to:

(1) Assist the charging party to state in proper form the information required by Section 32615;

(2) Answer procedural questions of each party regarding the processing of the case;

(3) Facilitate communication and the exchange of information between the parties;

(4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.

(5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of the statute of limitations; or if the dispute is subject to deferral to final and binding arbitration under a collective bargaining agreement and the case arises under the Dills Act, EERA, JCEERA, LEERA, or Welfare and Institutions Code Section 10420 et seq.

(6) If the dispute is subject to deferral to final and binding arbitration pursuant to a collective bargaining agreement and the case does not arise under the Dills Act, EERA, JCEERA, LEERA, or Welfare and Institutions Code Section 10420 et seq., then place the charge in abeyance and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the applicable Act as provided in Section 32661.

(7) Issue a complaint pursuant to Section 32640.

(c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries. Any response must be in writing, and signed under penalty of perjury by the party or its agent with the declaration that the response is true and complete to the best of the respondent's knowledge and belief. Service and proof of service pursuant to Section 32140 are required.

(d) The Board agent shall advise the charging party in writing of any deficiencies in the charge in a warning letter, unless otherwise agreed by the Board agent and the charging party, prior to dismissal of any allegations contained in the charge. The warning letter shall identify the facts obtained from the charge or any response to the charge which reveal a deficiency in the charge. The dismissal of a charge shall also be in writing and must identify the deficiencies in the charging party's allegations.

32621. Amendment of Charge.

Before the Board agent issues or refuses to issue a complaint, the charging party may file an amended charge. The amended charge must contain all allegations on which the

charging party relies and must meet all of the requirements of Section 32615. The amended charge shall be processed pursuant to Section 32620.

32625. Withdrawal of Charge.

Any request for withdrawal of the charge shall be in writing, signed by the charging party or its agent, and state whether the party desires the withdrawal to be with or without prejudice. Request for withdrawal of the charge before complaint has issued shall be granted. Repeated withdrawal and refile of charges alleging substantially identical conduct may result in refusal to issue a complaint. If the complaint has issued, the Board agent shall determine whether the withdrawal shall be with or without prejudice. If, during hearing, the respondent objects to withdrawal, the hearing officer may refuse to allow it. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

32630. Dismissal/Refusal to Issue a Complaint.

If the Board agent concludes that the charge or the evidence is insufficient to establish a prima facie case, the Board agent shall refuse to issue a complaint, in whole or in part. The refusal shall constitute a dismissal of the charge. The refusal, including a statement of the grounds for refusal, shall be in writing and shall be served on the charging party and respondent.

32635. Appeal of Dismissals.

(a) Within 20 days of the date of service of a dismissal, the charging party may file an appeal of the dismissal with the Board itself. Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

The appeal shall:

(1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;

(2) Identify the page or part of the dismissal to which each appeal is taken; and

(3) State the grounds for each issue stated.

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

(c) If a charging party files a timely appeal of the dismissal, any other party may respond to the appeal within 20 days following the date of service of the appeal. Service and proof of service of the response pursuant to Section 32140 are required. The response shall explain why the appeal should not be granted.

(d) An appeal of a dismissal or a response to an appeal of a dismissal shall be a single integrated document that must not exceed 7,000 words, including footnotes,

absent advance permission to file a longer appeal or response. Such an appeal or response may be in the form of a brief and may contain tables of contents and tables of authorities. Tables of contents and tables of authorities do not count toward the word limit.

(e) A request for permission to file an appeal of a dismissal exceeding 7,000 words or a response to an appeal of a dismissal exceeding 7,000 words must be filed with the Board itself and served on all parties pursuant to Section 32140 no later than five days before the appeal or response is due. The request must establish good cause to permit a longer appeal or response. The party requesting to exceed the word limit may not file its appeal or response until the Board itself rules on the request.

(f)(1) The Board itself will not accept a charging party's reply to a respondent's response to an appeal of a dismissal, unless the charging party receives advance permission from the Board itself.

(2) A request for permission to reply to a response must be in writing and made within 10 days after service of the response and served on all parties pursuant to Section 32140. The responding party shall have five days to object to such a request. The five-day response period begins when the request for permission to file the reply is served. Any objection must be in writing, and include service on all parties pursuant to Section 32140.

(3) If the charging party has filed a request for permission to file a reply, the Board will issue a written determination to the parties stating whether it grants the request and, if granted, the deadline and word limit for the charging party's reply. Permission to file a reply will be granted if the Board determines that a reply would assist in deciding the case. The deadline and word limit for a reply will be based on the number and complexity of the issues for which the Board seeks additional information.

32640. Issuance of Complaint.

(a) The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case. The complaint shall contain a statement of the specific facts upon which Board jurisdiction is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair practice. The complaint shall include, when known, when and where the conduct alleged to constitute an unfair practice occurred or is occurring, and the name(s) of the person(s) who allegedly committed the acts in question. The Board may disregard any error or defect in the complaint that does not substantially affect the rights of the parties.

(b) The Board shall serve the complaint on the charging party and respondent.

(c) The decision of a Board agent to issue a complaint is not appealable to the Board itself except in accordance with Section 32200.

32644. Answer.

(a) The respondent shall file with the Board an answer to the complaint within 20 days or at a time set by the Board agent following the date of service of the complaint. Service and proof of service of the answer pursuant to Section 32140 are required. If a formal hearing is set less than 20 days after the complaint is served, the answer shall be filed no later than the date of hearing stated in the notice of hearing or as otherwise directed by the Board agent. Amended complaints served after the answer is filed shall be deemed denied, except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

(b) The answer shall be in writing, signed by the party or its agent and contain the following information:

(1) The case number appearing on the complaint;

(2) The name of the charging party;

(3) The name, address, telephone number and any affiliation of the respondent;

(4) The name, address, telephone number and capacity of any agent of the respondent to be contacted;

(5) A specific admission or denial of each allegation contained in the complaint. If the respondent does not have knowledge of information sufficient to form a belief as to the truth of a particular allegation, the respondent shall so state and such statement shall operate as a denial of the allegation;

(6) A statement of any affirmative defense;

(7) Notwithstanding the Code of Civil Procedure Section 446, a declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief.

(c) If the respondent fails to file an answer as provided in this section, the Board may find such failure constitutes an admission of the truth of the material facts alleged in the charge and a waiver of respondent's right to a hearing.

32645. Non-prejudicial Error.

The Board may disregard any error or defect in the original or amended charge, complaint, answer or other pleading which does not affect the substantial rights of the parties.

32647. Amendment of Complaint Before Hearing.

After issuance of a complaint, the charging party may move to amend the complaint by filing with the Board agent:

- (a) a request to amend the complaint, and
- (b) an amended charge meeting the requirements of Section 32615.

32648. Amendment of Complaint During Hearing.

During hearing, the charging party may move to amend the complaint by amending the charge in writing, or by oral motion on the record. If the Board agent determines that amendment of the charge and complaint is appropriate, the Board agent shall permit an amendment. In determining the appropriateness of the amendment, the Board agent shall consider, among other factors, the possibility of prejudice to the respondent.

32649. Answer to Amendment.

Within 20 days or a time set by the Board agent after service of an amendment to the complaint, the Board agent may require the respondent to file an amendment to its answer, which shall respond only to the new allegations in the amended complaint. The respondent shall file with the Board proof of service of its amended answer.

32650. Informal Conference.

(a) A Board agent may conduct an informal conference or conferences to clarify the issues and explore the possibility of voluntary settlement. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

32661. Repugnancy Claims.

(a) An unfair practice charge may be filed based on a claim that the settlement or arbitration award is repugnant to the applicable Act.

(b) The charge shall comply with the requirements of Section 32615. It shall allege with specificity the facts underlying the charging party's claim that the arbitrator's award is repugnant to the purposes of the applicable Act.

(c) In reviewing the charge to determine whether a complaint shall issue, the Board agent shall have all of the powers and duties specified in Sections 32620, 32630, and 32640. A Board agent's issuance of a complaint under this section shall not be appealable to the Board itself except as provided in Section 32360.

(d) The Board itself may, at any time, direct that the record be submitted to the Board itself for decision.

32680. Formal Hearing.

If the informal conference procedure fails to result in voluntary settlement, the Board may order a hearing. The hearing shall be conducted by the Board according to the provisions of Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

32690. Notice of Formal Hearing and Prehearing Memorandum.

(a) The Board shall serve on each party a notice of the formal hearing which shall state the date, time and place of the hearing.

(b) The Board may also serve on each party a pre-hearing memorandum which shall set forth the following information:

(1) A summary of the proceedings to date, including but not limited to a statement of the charge, a summary of any negotiations excluding offers of settlement and a statement of the issues settled;

(2) A statement of the issues to be decided at the formal hearing.

SUBCHAPTER 6. REPRESENTATION PROCEEDINGS

Article 1. General Provisions

32700. Proof of Support.

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

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

(3) This section governs proof of employee support under all statutes that the Board enforces, except to the extent that an MMBA, Trial Court Act, or Court Interpreter Act employer has promulgated differing reasonable rules regarding proof of employee support. It also governs proof of support under section 8434 of the Education Code and related provisions. When applying this section with respect to providers as defined under section 8431 of the Education Code, the term "employee" used in this section shall include such providers.

(b) Proof of support shall indicate each employee's name. An employee's proof of support shall remain valid provided it is used to support a petition or request that is first submitted within one (1) year from the date the proof of support was obtained, except

that proof of support pertaining to childcare providers, pursuant to Education Code Section 8434, shall remain valid provided it is used to support a petition or request that is first submitted within two (2) years from the date the proof of support was obtained. If the proof of support does not show the date on which it was obtained, the party claiming support shall have the burden of establishing by other means that the proof of support remained valid as of the time the relevant petition or request was first submitted. Any proof of support meeting the requirements of this section shall be considered valid even though the employee demonstrated support for more than one employee organization.

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

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

(1) Original dues deduction authorization forms signed by employees, or proof of dues payments by the employees;

(2) Original membership applications signed by employees;

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

(4) A list of employees who are not exclusively represented by an employee organization and who have signed or electronically signed proofs of support clearly demonstrating a desire to be represented by the petitioning employee organization for the purpose of meeting and negotiating or meeting and conferring on wages, hours and other terms and conditions of employment, or provided a pdf, screenshot, or image demonstrating their signatures on proofs of support clearly demonstrating such a desire. In order to validate such a list, the employee organization must submit to the Board a sample of such proofs of support, and must establish by sworn declaration that for each employee listed, the employee organization maintains for inspection by the Board, if the Board finds it necessary to request such inspection, one of the following:

(A) An original signed proof of support pursuant to subsection (d)(1), (d)(2), or (d)(3);

(B) Records showing that the employee organization obtained an electronic signature on a proof of support in compliance with the California Civil Code provisions collectively known as the Uniform Electronic Transactions Act, codified at Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the California Civil Code; or

(C) Records showing that an employee organization obtained a proof of support via a process that qualifies as an electronic signature by virtue of including each of the following elements: (i) The proof of support contains the employee's name

and a cellular phone number, email address, or home address; (ii) the employee organization sent a confirmation transmission to the cellular phone number, email address, or home address provided, indicating the language to which the employee agreed, and such language clearly demonstrates the employee's desire to be represented by the petitioning employee organization for the purpose of meeting and negotiating or meeting and conferring on wages, hours and other terms and conditions of employment; and (iii) the employee organization has submitted to the Board any responses to such confirmation transmissions that the employee organization received by the time of submission.

(5) Other evidence as determined by the Board, provided that such evidence is consistent with the principles underlying this subsection (d).

(e) Documents submitted to the Board as proof of employee support, including all documents submitted to the Board under section (d)(4)(C), shall remain confidential and not be disclosed by the Board to any party other than the petitioner, and used only to indicate whether the proof of support is sufficient.

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

32705. Definitions Applicable in Representation Matters

As applied to representation matters:

(a) "Employee organization" includes any two or more employee organizations who join together to become "joint requesters," "joint intervenors," or "joint petitioners."

(b) "Requester" means an employee organization that has filed a request for recognition under a law allowing for such a request.

(c) "Petitioner" means an employee organization or group of employees that has filed a representation petition other than a request for recognition.

(d) "Intervenor" means an employee organization that, after filing a competing claim to become the exclusive representative of some or all of the employees at issue in a request or petition, has been granted such status by the Board.

(e) "Parties" means the employer, the requestor or petitioner, any intervenor, any employee organization that is the exclusive representative of any employees covered by

the request or petition, and any employee organization that has been granted joinder pursuant to Section 32164(e).

Article 2. Elections

32720. Authority to Conduct Elections.

(a) An election shall be conducted when the Board issues a decision directing an election or approves an agreement for a consent election, pursuant to the provisions of Articles 3, 4 or 5 of this Subchapter; Chapter 2, Subchapters 1 and 2; Chapter 3, Subchapter I; Chapter 4, Subchapter 1 or 2; Chapter 6, Subchapter 2; or Chapter 9, Subchapter I; or Chapter 10, Subchapter 1 of these regulations. This Section does not apply to:

(1) elections involving transit districts, as defined by Section 72000, where SMCS conducts elections pursuant to Section 72135, or

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

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

32722. Ballot.

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

(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.

(c) 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.

(d) 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.

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. 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 Consent Election Agreement or the Directed Election Order. The notice shall remain posted through the final day for casting ballots.

32726. List of Voters.

(a) At a date established by the Board, the employer shall file with the regional office a list of names of all employees included in the voting unit 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.

(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.

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. 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.

32730. Observers.

Each party shall be allowed to station an authorized observer selected from the nonmanagement, nonsupervisory employees of the employer at each polling place during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters. If the unit consists of supervisory employees the parties may designate supervisors as observers.

32732. Challenges.

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

(b) In a mailed ballot election, 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) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

32734. Tally of Ballots.

(a) Each party shall be allowed to station an authorized agent at the ballot count to verify 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.

32735. Resolution of Challenges.

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, the Board agent 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 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.

32736. Runoff Elections.

In a representation election, the Board shall direct a runoff election when a valid election results in none of the choices receiving a majority of the valid votes cast. The ballot for the runoff election shall provide for a selection between the two ballot entries receiving the largest and second largest number of valid votes cast in the election.

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.

32739. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, the Board agent has the power to:

(a) Direct any party to submit evidence through declarations or documents;

(b) Order the inspection of documents by Board agents or the parties;

- (c) Direct any party to submit an offer of proof;
- (d) Obtain declarations from witnesses based on personal knowledge;
- (e) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;
- (f) Dismiss any objections which, after investigation, do not warrant setting aside the election. Any such dismissal is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (g) Issue a written determination setting aside the election when, after investigation, it appears that such action is warranted, and that no material factual disputes exist. Such determination shall be in writing and served on the parties. Any such determination is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (h) Schedule a hearing when substantial and material factual disputes exist. Any hearing shall be limited to the issues set forth in the notice of hearing.

32740. Withdrawal of Objections.

Any party may withdraw its objections to an election prior to a final decision by the Board.

32742. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 32739(f), or unresolved challenged ballots sufficient in number to affect the outcome of the election may be resolved through the hearing procedures described in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

32744. Exception to Decision on Objections or Challenges.

Exceptions to a Board agent's proposed decision on objections to the conduct of the election or challenged ballots may be taken in accordance with the procedures set forth in Chapter 1, Subchapter 4, Article 2 (commencing with Section 32300) of these regulations.

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. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

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 objection to the revised tally.

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

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

32750. Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to section 32763 or section 32786(a), the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

32752. Stay of Election.

The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. Any determination to stay an election made by the Board pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 3 of these regulations.

32754. Bar to Conducting Election.

The Board shall dismiss a petition requiring a representation election if it determines:

(a) Under the EERA, either that the conditions of Government Code Section 3544.7(b)(1) or (2) exist or that a representation election result has been certified affecting the described unit or a portion thereof within the 12 months immediately preceding the date of filing of the petition; or

(b) Under the Dills Act or LEERA, (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 242 days but more than 212 days prior to the expiration date of such memorandum or the end of the third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition; or

(c) Under the HEERA, either of the conditions of Government Code Section 3577(b)(1) or (2) exist; or

(d) Under the TEERA, either of the conditions of Public Utilities Code Section 99564.4(b)(1) or (2) exist; or.

(e) Under the JCEERA, (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration date of such memorandum or the end of the third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of the filing of the petition.

Article 3. Request for Amendment of Certification

32761. Request.

(a) An employee organization may file with the regional office a request to amend its certification or recognition in the event of a merger, amalgamation, affiliation or transfer of jurisdiction, or in the event of a change in the name or jurisdiction of the employer.

(b) The request shall be in writing, signed by an authorized agent of the employee organization and shall contain the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer;

(3) A brief description and the PERB case number of the established unit;

(4) A clear and concise statement of the nature of the merger, amalgamation, affiliation or other change in jurisdiction and the new name of the employee organization and/or employer.

(c) Service and proof of service of the request pursuant to Section 32140 are required.

32762. Employer Response.

The employer may file a responding statement to the request filed pursuant to Section 32761. The statement shall be filed with the regional office within 15 days following the date of service of the request. Service and proof of service pursuant to Section 32140 are required.

32763. Board Investigation.

(a) Upon receipt of a request filed pursuant to Section 32761, the Board shall conduct such inquiries and investigations or hold such hearings as deemed necessary, and/or conduct a representation election, in order to decide the questions raised by the request.

(b) The Board may dismiss the request if the requester has no standing to petition for the action requested or if the request is improperly filed. The Board may deny a request based on the investigation conducted pursuant to subsection (a) above.

(c) Upon approval of a request, the Board shall issue a certification reflecting the new identity of the exclusive representative and/or employer. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 32754 of these regulations.

(d) Any determination made by the Board 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.

Article 4. Decertification Petition

32770. Petition.

(a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office utilizing forms provided by the Board.

(b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

(1) No longer desire to be represented by the incumbent exclusive representative; or

(2) Wish to be represented by another employee organization.

Proof of support is defined in Chapter 1, section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

32772. Posting Notice of Decertification Petition.

(a) The employer shall post a notice of the decertification petition as soon as possible but in no event later than 15 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the established unit are employed.

(c) For Ralph C. Dills Act, JCEERA, LEERA, and TEERA petitions, the notice shall remain posted for a minimum of 20 days. For EERA and HEERA petitions, the notice shall remain posted for at least 15 workdays.

(d) The notice shall consist of a copy of the decertification petition with the appropriate portion of the form completed by the employer prior to posting.

(e) The employer shall serve a copy of the notice on the regional office and the parties when the notice is posted.

32774. Board Determination Regarding Proof of Support.

(a) Within 20 days of the date the decertification petition is filed with the regional office, the employer shall file with the regional office a description of the established unit and an alphabetical list, including job titles or classifications, of employees in the established unit as of the last date of the payroll period immediately preceding the date the decertification petition was filed, unless otherwise directed by the Board.

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

32776. Board Investigation/Election.

(a) Upon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary.

(b) The petition shall be dismissed if the existing exclusive representative files a valid disclaimer of interest in representing employees in the unit within 20 days of the date the petition is filed with the regional office.

(c) Under EERA, the petition shall be dismissed whenever either of the conditions of Government Code Section 3544.7(b)(1) or (2) exist or a representation election result has been certified affecting the described unit or a portion thereof within the 12 months immediately preceding the date of filing of the petition.

(d) Under Ralph C. Dills Act, the petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed during the window period defined in Section 40130 of these regulations, or the end of the third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

(e) Under HEERA, the petition shall be dismissed whenever either of the conditions of Government Code Sections 3577(b)(1) or (2) exist.

(f) Under TEERA, the petition shall be dismissed whenever either of the conditions of Public Utilities Code Section 99564.4(b)(1) or (2) exist.

(g) Under JCEERA, the petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed during the window period defined in Section 95000 of these regulations, or the end of the third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of the filing of the petition.

(h) Under LEERA, the petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed during the window period defined in Section 93000 of these regulations, or the end of the third year of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of the filing of the petition.

(i) The “window period” in the term of an existing memorandum of understanding for filing a decertification petition is defined for Ralph C. Dills Act in Section 40130, for HEERA in Section 51026, for TEERA in Section 71010(j), for LEERA in Section 93000, and for JCEERA in Section 95000 of these regulations. The “window period” in the term of an existing lawful written agreement for filing a decertification petition is defined for EERA in Section 33020 of these regulations.

Article 5. Petition for Unit Modification

32781. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:

(1) To add to the unit unrepresented classifications or positions;

(2) To divide an existing unit into two or more appropriate units;

(3) To consolidate two or more established units into one appropriate unit.

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

(1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA, JCEERA, LEERA, or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit;

(2) To make technical changes to clarify or update the unit description.

(3) To resolve a dispute as to unit placement or designation of a new classification or position.

(4) To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or positions(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA, JCEERA, LEERA, or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the recognized or certified employee organization, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful written agreement or memorandum of understanding as defined in these regulations in Section 33020 for EERA, Section 40130 for Ralph C. Dills Act, Section 51026 for HEERA, Section 71010(j) for TEERA, or Section 95000 for JCEERA, or Section 93000 for LEERA.

(c) All affected recognized or certified employee organizations may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and shall include the following information:

(1) The name, address, e-mail address, and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address, e-mail address, and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

- (3) A brief description and the title(s) of the established unit(s);
 - (4) The approximate number of employees in the established unit;
 - (5) The approximate number of employees covered by the petition;
 - (6) The effective and expiration dates of the current written agreement or memorandum of understanding, if any, covering employees in the established unit;
 - (7) A description of the modification(s) sought by the petition;
 - (8) The name, address, and e-mail address of any other employee organization known to have an interest in representing employees covered by the petition;
 - (9) A statement of the reasons for the modification(s).
- (e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.
- (2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.
- (3) Proof of support is defined in Section 32700 of these regulations.
- (f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

32783. Response to Petition.

- (a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.
- (b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:
- (1) The name, address and telephone number of the petitioner(s);

(2) The name, address and telephone number of the respondent and the name, address and telephone number of the agent to be contacted;

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

(5) The PERB unit modification case number.

32784. Board Determination Regarding Proof of Support.

(a) If proof of support has been filed pursuant to section 32781(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

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

32786. Disposition of Petitions.

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition (1) if it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) if, within the previous 12 months, the employer has lawfully recognized, or the Board has certified, the exclusive representative in the described unit or a subdivision thereof.

(c) The Board may request proof of support or order an election among unrepresented employees to be added to a unit, if classifications found appropriate to be added to the unit do not include all classifications originally petitioned for.

(d) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 32754.

Article 6. Impasse Procedures

32791. Parties' Selection of Mediator.

At any time after a party declares impasse, the parties may mutually agree upon their own mediation procedures, including the right to arrange for a mediator of their choice, in lieu of the mediation procedure set forth in these regulations.

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. This Section, however, applies only to the Dills Act, JCEERA, EERA, LEERA, and HEERA. 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, e-mail address, and telephone number of the employer and the exclusive representative;

(2) The name, title, address, e-mail 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.

32793. Board Determination of Impasse.

(a) The Board shall, within five working days following the receipt of the written request for appointment of a mediator, orally notify the parties that the Board has determined that:

(1) An impasse exists and a mediator has been appointed, or

(2) Impasse has not been reached.

(b) Thereafter, the Board shall serve the parties with written notice of the determination.

(c) In determining whether an impasse exists, the Board shall investigate and may consider the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made and discussed counter-proposals to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data.

(d) "Working days," for purposes of this Section only, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

(e) The determination as to whether an impasse exists shall not be appealable to the Board itself.

32795. Subsequent Requests That Board Determine Impasse and Appoint Mediator.

Following the Board's determination that an impasse does not exist, a party may subsequently request that the Board determine that an impasse exists and appoint a mediator whenever there is a change in the facts upon which the initial determination was based. Subsequent requests shall follow the procedures set forth in Section 32792.

32797. Appointment of a Factfinder Under EERA and HEERA.

Not sooner than 15 days after the appointment of a mediator by the Board, or not sooner than 15 days after the parties have attempted to resolve their dispute through a mediation procedure on which they have mutually agreed, the Board shall appoint a person to chair a factfinding panel, if:

(a) The mediator has filed a written declaration that factfinding is appropriate to the resolution of the dispute with the regional office, and

(b) Either party has requested by written notification to the other, that their differences be submitted to a factfinding panel. A copy of the written request shall be filed with the regional office.

32798. Appointment of Person to Chair Factfinding Panel Under EERA and HEERA.

(a) Under EERA, the Board shall select and appoint the chairperson unless notified by the parties that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by the Board.

(b) Under HEERA, the Board shall select and appoint the chairperson unless notified by the parties that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by the Board, and that the parties have agreed to waive any requirement that the Board bear the costs of the panel chairperson.

32799. Parties' Statement for Factfinder Under EERA and HEERA.

In cases where the Board has appointed a person to chair the factfinding panel, the parties shall prepare a statement of the issues to be placed before the panel. The statement should be jointly filed, if possible, although the parties may file separate statements if they disagree about the issues to be placed before the panel.

32800. Publication of Factfinder's Report Under EERA and HEERA.

(a) Under EERA, the employer shall make public the entire, verbatim final report signed by the chairperson of the factfinding panel within 10 days of its receipt by the parties.

(b) Under HEERA, should the factfinding panel decide to publish the report pursuant to Government Code Section 3593, such publication shall be made by the employer in the manner described in subsection (c) below.

(c) Publication shall be made by posting a notice that the factfinder report has been issued and is available to the public. The notice shall be posted in the locations normally used for posting public notices regarding regular meetings of the employer and shall indicate the times and places where the public may inspect a copy of the report. The employer shall insure that a reasonable number of copies shall be made available to the public.

32802. Request for Factfinding Under the MMBA.

(a) An exclusive representative may request that the parties' differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

- (1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules; or
- (2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.
- (b) A request for factfinding must be filed with the appropriate regional office; service and proof of service pursuant to Section 32140 are required.
- (c) Within five working days from the date the request is filed, the Board shall notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a)(1) or (2), above, no further action shall be taken by the Board. If the request is determined to be sufficient, the Board shall request that each party provide notification of the name and contact information of its panel member within five working days.
- (d) "Working days," for purposes of this Section and Section 32804, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

32804. Appointment of Person to Chair Factfinding Panel Under the MMBA.

If a request is determined to be sufficient under Section 32802, the Board shall, within five working days following this determination, submit to the parties the names of seven persons, drawn from the list of neutral factfinders established pursuant to Government Code section 3541.3(d). The Board will thereafter designate one of the seven persons to serve as the chairperson unless notified by the parties within five working days that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by the Board. In no case will the Board be responsible for the costs of the chairperson.

SUBCHAPTER 7. COMPLIANCE

Article 1. Compliance

32980. Compliance.

- (a) The General Counsel is responsible for determining that parties have complied with final Board orders. The General Counsel or his/her designate may conduct an inquiry, informal conference, investigation, or hearing, as appropriate, concerning any compliance matter. The Board itself may, based on a recommendation of the General Counsel, authorize the General Counsel to seek court enforcement of a final Board order.
- (b) If an administrative decision based on an investigation is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(c) If a proposed decision based on a hearing is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.

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) 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) 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.

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 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.

33000. Ballots.

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

(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 in the absence of an agreement by the parties.

(c) 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.

(d) 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.

33002. Stay of Election.

(a) Any party to an SMCS-conducted election may request that the Board stay the election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice.

(b) A request for a stay of an election shall be filed with the appropriate regional office, in accordance with Sections 32075 and 32115. Service and proof of service pursuant to Section 32140 are required.

(c) Any determination to stay an election made by the Board pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 3 of these regulations.

33003. Notice of Election.

SMCS shall provide a notice of election to the parties. 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.

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 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. 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.

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. 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.

33006. Challenges.

(a) In an on-site election, an authorized 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 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) 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.

33007. Tally of Ballots.

(a) Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

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

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

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 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 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.

33009. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file 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 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 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 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.

33010. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, a Board agent has the power to:

(a) Direct any party to submit evidence through declarations or documents;

(b) Order the inspection of documents by Board agents or the parties;

- (c) Direct any party to submit an offer of proof;
- (d) Obtain declarations from witnesses based on personal knowledge;
- (e) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;
- (f) Dismiss any objections which, after investigation, do not warrant setting aside the election. Any such dismissal is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (g) Issue a written determination setting aside the election when, after investigation, it appears that such action is warranted, and that no material factual disputes exist. Such determination shall be in writing and served on the parties. Any such determination is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (h) Schedule a hearing when substantial and material factual disputes exist. Any hearing shall be limited to the issues set forth in the notice of hearing.

33011. Withdrawal of Objections.

Any party may withdraw its objections to an election prior to a final decision by the Board.

33012. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 33009(g) or 33010(f), or unresolved challenged ballots sufficient in number to affect the outcome of the election, may be resolved through the hearing procedures described in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

33013. Exception to Decision on Objections or Challenges.

Exceptions to a Board agent's proposed decision on objections to the conduct of the election or challenged ballots may be taken in accordance with the procedures set forth in Chapter 1, Subchapter 4, Article 2 (commencing with Section 32300) of these regulations.

33014. Definition of Arbitration Decision.

(a) An arbitration decision is a decision issued by an Administrative Law Judge or other Board agent following interest arbitration conducted pursuant to Government Code Section 3557(b)(4).

(b) An arbitration decision is not:

- (1) a proposed decision as set forth in Section 32215, or
- (2) an administrative decision as set forth in Section 32350.

33014.5. Reimbursement for Arbitration Services.

Arbitration services provided by a PERB Administrative Law Judge or other PERB employee pursuant to Government Code Section 3557(b)(4) shall be reimbursed at the rate of two hundred and eighty dollars (\$280.00) per hour, prorated for each quarter hour of work that is less than a full hour. The actual time charged shall begin when a Board agent commences providing such services, shall include travel time and time spent preparing for the arbitration, and shall continue until the services are completed.

CHAPTER 2. EDUCATIONAL EMPLOYMENT RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEEDINGS

Article 1. General Provisions

33020. Window Period.

“Window period” means the 29-day period established pursuant to Government Code Sections 3544.1(c) and 3544.7(b)(1) which is less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the exclusive representative. The written agreement expiration date means the last effective date of the agreement. Notwithstanding the provisions of Section 32130, the date on which the written agreement expires shall not be counted for the purpose of computing the window period.

Article 2. Request for Recognition and Intervention

33050. Request for Recognition.

(a) A request for recognition by an employee organization seeking to become the exclusive representative of an appropriate unit shall be filed with the employer. A copy of the request shall be filed concurrently with the regional office. The request shall be signed by an authorized agent of the employee organization and shall be on a form provided by the Board.

(b) A copy of the request and proof of majority support in the unit claimed to be appropriate shall be filed with the regional office concurrently with the filing of the request upon the employer. Proof of support is defined in Chapter 1, Section 32700 of these Regulations.

(c) Concurrent with the filing of the request, the employee organization shall concurrently serve a copy of the request, excluding the proof of majority support, on the parties and the regional office. Proof of service pursuant to Section 32140 is required.

(d) A request to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative shall be filed pursuant to this Article and in accordance with the provisions of Article 6 (commencing with Section 33700). A petition to become the exclusive representative of all of the employees in an established unit represented by an exclusive representative shall be filed pursuant to Chapter 1, Subchapter 6, Article 4 (commencing with Section 32770) of these regulations.

33060. Posting Notice of Request for Recognition.

(a) The employer shall post a notice of the request for recognition as soon as possible but in no event later than 10 days following receipt of the request.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 15 workdays.

(d) The notice shall consist of a copy of the request for recognition with the appropriate portion of the form completed by the employer prior to posting.

(e) The employer shall serve a copy of the notice on the regional office and on the parties concurrent with the posting of the notice.

33070. Intervention.

(a) Except as provided in Section 33700, an intervention by an employee organization shall be filed with the employer within 15 workdays following posting of the request for recognition. A copy of the intervention shall be filed concurrently with the regional office. The intervention shall be signed by an authorized agent of the employee organization and be on a form provided by the Board.

(b) Proof of at least 30 percent support in the unit claimed to be appropriate shall be filed with the regional office concurrently with the filing of the intervention. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Concurrent with the filing of the intervention, the employee organization shall serve a copy of the intervention, excluding the proof of support, on the parties and the regional office. Proof of service pursuant to Section 32140 is required.

33075. Determination of Showing of Support.

(a) Within 20 calendar days of the date of receipt of the request, unless otherwise directed by the Regional Director, the employer shall file with the regional office an alphabetical list, including job titles or classifications, of employees employed in the claimed unit on the date the request for recognition was filed with the employer.

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

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

33080. Posting of Notice of Intervention.

(a) The employer shall post a notice of the intervention as soon as possible but in no event later than 10 days following receipt of the intervention.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 15 workdays.

(d) The notice shall consist of a copy of the intervention with the appropriate portion of the form completed by the employer prior to posting.

(e) The employer shall serve a copy of the notice of intervention on the regional office and on the parties concurrent with the posting of the notice.

33085. Board Determination Regarding Proof of Support - Request for Recognition, Intervention.

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

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

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

33090. Withdrawal of Request or Intervention.

Any request for recognition or intervention may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal shall be filed with the employer and a copy served on the parties and the regional office. Proof of service pursuant to Section 32140 is required. A copy of the withdrawal shall be posted for 15 workdays on all employee bulletin boards in each facility of the employer in which members of the unit claimed to have been appropriate are employed.

33100. Amendment of Request or Intervention; Posting Amendments.

(a) A request for recognition or intervention may be amended to correct technical errors or to delete job classifications or positions from the proposed unit at any time prior to the issuance of a PERB notice of representation hearing or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement. The amendment shall be filed with the employer and copies concurrently served on the parties and the regional office. Proof of service pursuant to Section 32140 is required. No posting shall be required.

(b) A request for recognition or intervention may be amended to add job classifications or positions to a proposed unit, subject to the following:

(1) Except as provided in Section 33700(c), an amendment to add job classifications or positions to a proposed unit may be filed at any time prior to the issuance of a PERB notice of representation hearing, or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement.

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

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

(4) An employer response to the amended request or intervention shall be filed with the regional office within 15 days following the service of the Board's determination of adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for employer decisions as set forth in Section 33190.

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

Article 3. Employer Decision; Request for Board Investigation

33190. Employer Decision Regarding Request for Recognition and Intervention.

- (a) Unless otherwise directed by the Board, within 15 days following service of the Board's determination regarding the adequacy of proof of support, the employer shall file a decision with the regional office.
- (b) Service and proof of service of the employer decision pursuant to section 32140 are required.
- (c) The employer shall use "Format A" if it has granted recognition pursuant to Government Code sections 3544 and 3544.1. As soon as possible, but in no event later than 10 days from its issuance, the employer shall post a copy of the employer decision conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit affected are employed. The decision shall remain posted for at least 15 workdays.

Format A: RECOGNITION

- (1) The (name) School District has recognized (organization) as the exclusive representative for an appropriate unit of employees described below for purposes of meeting and negotiating with the district;
- (2) No intervention has been filed during the posting period;
- (3) The name, address, county and telephone number of the employer;
- (4) The name, address and telephone number of the employee organization;
- (5) A description of the grouping of jobs or positions which constitute the appropriate unit;
- (6) The number of employees in the unit recognized;
- (7) The date of recognition.
- (d) The employer shall use "Format B" if it has not granted recognition.

Format B: DENIAL OF RECOGNITION

- (1) The name, address, county and telephone number of the employer; and the name, address and telephone number of the employer agent to be contacted;
- (2) Attach a copy of the request for recognition;
- (3) Reasons for Denial of Recognition:

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

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

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

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

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

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

(4) If a unit dispute exists, does the employer request the Board to resolve the dispute pursuant to Government Code section 3544.5(a)?

33230. Employee Organization Petition for Board Investigation.

(a) Not later than 90 days following the date an employer decision is filed or required to be filed with the regional office, whichever occurs first, an employee organization may file a petition pursuant to Government Code Section 3544.5(b) or (c) requesting the Board to investigate and decide whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit. The petition shall allege one of the following grounds:

(1) The employer has filed a decision not to recognize the employee organization, but did not request a Board investigation; or

(2) The employer has failed to file an employer decision in response to a request for recognition or an intervention pursuant to Section 33190; or

(3) The employer has wrongfully denied a request for recognition or intervention.

(b) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.

(c) The petition shall contain the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the employee organization agent to be contacted;

- (2) The name, address, county and telephone number of the employer;
- (3) A copy of the request for recognition or intervention filed with the employer;
- (4) A statement of the issues in dispute;
- (5) A statement indicating what specific action(s) is requested of the Board.

33235. Failure to File Petition for Board Investigation.

If no petition for Board investigation is timely filed pursuant to section 33190 or 33230, the request for recognition shall be deemed invalid and shall not bar a subsequent request for recognition.

33237. Board Investigation.

(a) Whenever a petition regarding a representation matter is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

- (1) The petitioner has no standing to petition for the action requested; or
- (2) The conditions of Government Code Sections 3544.1(c) or (d) or 3544.7(b) exist. A petition filed less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and another employee organization must actually be received in the manner set out in Section 32135 during the "window period" as defined by Section 33020; or
- (3) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

Article 4. Representation Hearings

33280. Withdrawal of a Petition.

Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement among the parties.

33290. Informal Conference.

(a) A Board agent may conduct an informal conference to clarify the issues and explore settlement of the case. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

33300. Notice of Hearing.

If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

33310. Posting Notice of Hearing.

As soon as possible but in no event later than 10 days following issuance of the notice of hearing, the employer shall post a copy of the notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit described in the notice are employed. The notice shall remain posted through the date set for the hearing.

33330. Conduct of Hearing.

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

33430. Withdrawal of a Petition.

Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement among the parties. Service and proof of service of the withdrawal pursuant to Section 32140 are required. The employer shall post a copy of the withdrawal on all employee bulletin boards in each facility of the employer in which members of the unit described are employed.

33440. Notice of Decision.

When the Board itself issues a decision or when a hearing officer decision becomes final, the Board shall serve the decision and a notice of decision on the parties.

33450. Posting Notice of Decision.

As soon as possible but in no event later than 10 days following issuance of the notice of decision, the employer shall post a copy of the notice of decision conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit described in the decision are employed. The notice of decision shall remain posted for a minimum of 15 workdays.

Article 5. Representation Elections

33460. Elections in Consent Units.

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of any election in a consent unit should not be

interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

33470. Eligibility to Appear on Ballot.

(a) Any employee organization which filed a valid request for recognition or intervention or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the unit found to be appropriate by the Board.

(b) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Section 33085 of these regulations.

33480. Recognition.

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the Board shall cancel the election, and certify the organization as the exclusive representative unless the employer has granted recognition.

33485. Certification of Exclusive Representative.

If the Board determines (1) the employee organization requesting recognition has demonstrated proof of support of more than 50 percent of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the employer has not granted recognition, the Board shall certify the petitioner as the exclusive representative.

33490. Conduct of Elections.

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

Article 6. Severance Request

33700. Severance Request.

(a) An employee organization may file a request to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provisions of Article 2 (commencing with Section 33050). All provisions of Articles 2 and 3 of this Subchapter shall be applicable to a severance request except as provided in this Article 6.

(b) Whenever the conditions of Government Code Section 3544.1(c) exist, a severance request for recognition or intervention must be filed in accordance with Section 32135 with the employer during the “window period” as defined by Section 33020.

(c) Any amendment to a request for recognition or intervention to add classifications or positions which are included in an established unit must be filed in the manner set out in Section 32135 during the “window period” defined by Section 33020.

33710. Response to Severance Request.

(a) The employer and the exclusive representative of the established unit may file a responding statement supporting or opposing the severance request. Such response shall be filed with the regional office within 20 days following the date of service of the severance request. Service and proof of service of the response pursuant to section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance request;

(2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;

(3) A statement confirming or refuting the information contained in the severance request regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current agreement covering employees in the established unit:

(4) A concise statement setting forth support of or opposition to the unit proposed by the request.

CHAPTER 3. STATE EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES

Article 1. General Provisions

40130. Window Period.

“Window period” means the 29-day period which is less than 242 days, but more than 212 days prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum of understanding. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

40145. Statement of Interest.

Any employee organization which is not the exclusive representative of certain employees but which desires notice of filing of any certification, severance, decertification or unit modification petition or issuance of notice of hearing, decision or intent to conduct election affecting such employees may file a statement of interest with the regional office. Such statement shall be in writing and shall include a list of the employment classes which the employee organization has an interest in representing, including schematic codes and class codes as defined in "Pay Scales in California State Civil Service." The filing shall remain valid for 12 months and may be renewed in writing thereafter.

40165. List of State Employee Mailing Addresses.

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

(b) Except as prohibited by law, the state employer shall not be precluded from releasing a mailing list of home addresses of state employees as defined in Government Code Section 3513(c) or Section 3513(g) who are not in units represented by an exclusive representative to an employee organization as defined in Government Code Section 3513(a). The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of names or the mailing list, and (3) cost of production shall be determined by the state employer.

(c) As provided by Government Code Section 6254.3, and upon written request of a state employee, the state employer shall remove the state employee's home address from the mailing lists referenced in subsections (a) and (b) prior to the release of such lists.

40170. Petition for Certification.

(a) An employee organization may file a petition pursuant to Government Code Section 3520.5 to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit which is represented by an exclusive representative. The petition shall be filed with the Sacramento regional office; be signed by an authorized agent of the employee organization; provide the full name, address and telephone number of the employee organization; provide the name, title, address and phone number of the authorized representative of the employee organization; and identify the job titles or classifications of employees in the unit claimed to be appropriate.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

40172. Posting Notice of Petition for Certification.

(a) The employer shall post a notice of the petition, using a form provided by the Board, as soon as possible but in no event later than 15 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 20 days.

(d) The notice shall include a copy of the petition with the appropriate portion of the form completed by the employer prior to posting.

40174. Determination of Proof of Support.

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

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

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. The petition shall be dismissed if the Board determines that the petition lacks sufficient proof of support.

40176. Withdrawal of Petition for Certification.

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

40178. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct election. The amendment shall be filed with the regional office and provide the information required in Section 40170(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 40180.

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

40180. Employer Response Regarding Petition for Certification.

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

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

(c) The employer shall use the following format for its response regarding a petition for certification:

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

(2) Attach a copy of the petition for certification;

(3) Employer position regarding the petition for certification:

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

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

40182. Board Investigation.

(a) Whenever a petition for certification is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) Any of the employees in the claimed unit are currently included in any established bargaining unit and are represented by an exclusive representative; or

(3) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition; or

(4) The petition for certification was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

Article 2. Severance Petition

40200. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative. The petition shall be filed with the regional office on forms provided by the Board.

(b) The petition shall be accompanied by proof of majority support in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of majority support, and proof of service pursuant to Section 32140 are required.

40210. Posting Notice of Severance Petition.

(a) The employer shall post a notice of the severance petition as soon as possible but in no event later than 15 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 20 days.

(d) The notice shall consist of a copy of the severance petition with the appropriate portion of the form completed by the employer prior to posting.

40220. Board Determination Regarding Proof of Support - Severance Petition.

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

(b) If, after initial determination, the proof of support is insufficient, the Board may allow up to 10 days or until the last day of the "window period" as defined by Section 40130, whichever occurs first, to perfect the proof of support.

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

40230. Response to Severance Petition.

(a) The employer or the exclusive representative of the established unit may file a responding statement supporting or opposing the severance petition. Unless otherwise notified by the Board, such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

(2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current agreement covering employees in the established unit;

(4) A concise statement setting forth support of or opposition to the unit proposed by the petition.

40240. Amendment of Severance Petition; Posting Amendments.

(a) A severance petition may be amended to correct technical errors or to delete job classifications or positions from the proposed unit at any time prior to the issuance of a PERB notice of representation hearing or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement. The amendment shall be filed with the regional office on forms provided by the Board. Service and proof of service pursuant to Section 32140 are required.

(b) A severance petition may be amended to add job classifications or positions to the proposed unit, subject to the following:

(1) An amendment to add job classifications or positions to a proposed unit may be filed within the time frames listed in subsection (a) above, except that if there exists a memorandum of understanding between the employer and the exclusive representative covering any of the employees to be added to the proposed unit, the amendment must be filed in the manner set out in Section 32135 during the "window period" as defined by Section 40130.

(2) The amendment shall be filed with the regional office on forms provided by the Board. Service and proof of service pursuant to Section 32140 are required. Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office with the amendment.

(3) The employer shall post a notice of the amendment as soon as possible but in no event later than 15 days following service of the amendment. The notice shall conform to the requirements for posting an original petition and shall remain posted for 20 days.

(4) A response from any party to the amended petition may be filed with the regional office within 15 days following the service of the Board's determination of adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for responses as set forth in Section 40230.

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

40250. Withdrawal of Severance Petition.

Any severance petition may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal shall be filed with the regional office. Service and proof of service pursuant to Section 32140 are required.

40260. Board Investigation.

(a) Whenever a severance petition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by the severance petition, unless the petition is filed less than 242 days but more than 212 days prior to the expiration date of such memorandum or the end of the third year of such memorandum; provided that, if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or

(3) A valid representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

Article 3. Representation Election

40300. Notice of Intent to Conduct Election.

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

40310. Intervention to Appear on Ballot.

(a) Within 20 days following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization may file an intervention to appear on ballot. The intervention shall be filed with the regional office on forms provided by the Board. The intervention shall be accompanied by proof of support of at least 30 percent of the employees in the appropriate unit. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(b) Service of the intervention, exclusive of the proof of support, and proof of service pursuant to Section 32140 are required.

40320. Board Determination Regarding Proof of Support.

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

immediately preceding the date of issuance of the notice of intent to conduct election, unless otherwise directed by the Board.

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

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

40330. Conduct of Elections.

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

CHAPTER 4. HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES

Article 1. General Provisions

51020. Statement of Interest.

(a) Any employee organization may receive copies of requests for recognition, interventions or petitions, for certification, amendments to requests, interventions or petitions, any notice of informal conference, notice of representation hearing, notice of decision, notice of intent to conduct election, election intervention, unit modification petition, decertification petition or severance petition by filing a statement of interest with the Regional Office.

(b) A statement of interest shall be in writing on a form provided by the Board.

(c) A statement of interest shall remain valid for 12 months, and may be renewed thereafter.

51026. Window Period.

“Window period” means the 31-day period established pursuant to Government Code Sections 3574(c) and 3577(b)(1), which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the higher education employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

51027. List of Higher Education Employee Mailing Addresses.

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

(b) Except as prohibited by law, the higher education employer shall not be precluded from releasing a mailing list of home addresses of higher education employees as defined in Government Code Section 3562(e) or Section 3580.3 who are not in units represented by an exclusive representative to an employee organization as defined in Government Code Section 3562(f). The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of names or the mailing list, and (3) cost of production shall be determined by the higher education employer.

(c) As provided by Government Code Section 6254.3, and upon written request of a higher education employee, the higher education employer shall remove the higher education employee's home address from the mailing lists referenced in subsections (a) and (b) prior to the release of such lists.

Article 2. Request for Recognition and Intervention

51030. Request for Recognition.

(a) A request for recognition by an employee organization seeking to become the exclusive representative of an appropriate unit shall be filed with the employer. A copy of the request shall be filed concurrently with the regional office. The request shall be signed by an authorized agent of the employee organization and be on a form provided by the Board.

(b) Proof of majority support in the unit claimed to be appropriate shall be filed with the regional office or with a mutually agreed upon third party concurrent with the filing of the request for recognition. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Concurrent with the filing of the request, the employee organization shall serve a copy of the request, excluding the proof of majority support, on the parties. Proof of service pursuant to Section 32140 is required.

(d) A petition to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative shall be filed pursuant to either Article 2 or Article 3 and in accordance with the provisions of Article 7 (commencing with Section 51680). A petition to become the exclusive representative of all of the employees in an established unit represented

by an incumbent exclusive representative shall be filed pursuant to Chapter 1, Subchapter 6, Article 4 (commencing with Section 32770) of these regulations.

51035. Posting Notice of Request for Recognition.

- (a) The employer shall post a notice of the request for recognition as soon as possible but in no event later than 10 days following receipt of the request.
- (b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 15 workdays.
- (d) The notice shall consist of a copy of the request for recognition with the appropriate portion of the form completed by the employer prior to posting.
- (e) The employer shall serve a copy of the notice on the regional office and the parties concurrent with the posting of the notice. Proof of service pursuant to Section 32140 is required.

51040. Intervention.

- (a) Except as provided in Section 51680(c), an intervention by an employee organization shall be filed with the employer within 15 workdays following the posting of a notice of a request for recognition. A copy of the intervention shall be filed concurrently with the regional office. The intervention shall be signed by an authorized agent of the employee organization, and be on a form provided by the Board.
- (b) Proof of at least 30 percent support of the employees in the unit claimed to be appropriate by the intervenor shall be filed with the regional office or with a mutually agreed upon third party concurrent with the filing of the intervention. Proof of support is defined in Chapter 1, Section 32700 of these regulations.
- (c) Concurrent with the filing of the intervention, the employee organization shall serve a copy of the intervention, excluding the proof of support, on the parties. Proof of service pursuant to Section 32140 is required.

51050. Board Determination Regarding Proof of Support - Request for Recognition, Intervention.

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

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

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

51055. Determination Regarding Proof of Support by Third Party - Request for Recognition, Intervention.

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

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

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

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

51060. Withdrawal of Request or Intervention.

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

51070. Amendment of Request or Intervention.

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

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

(1) Except as provided in Section 51680(c), a request for recognition or intervention may be amended to add new job classifications to a proposed unit at any time prior to the issuance of a notice of representation hearing, or if no hearing is held, the issuance of a notice of intent to conduct election.

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

(3) The employer shall post a notice of any amended request for recognition as soon as possible but in no event later than 10 days following receipt of the amendment. The notice shall conform to the requirements for posting an original request for recognition as set forth in Section 51035, and shall remain posted for 15 workdays, during which time interventions may be filed.

(4) An employer response to the amended request or intervention shall be filed with the regional office within 15 days following service of the Board's determination regarding the adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 51080.

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

51080. Employer Response.

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

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

(c) The employer shall use "Format A" if it has granted recognition pursuant to Government Code sections 3573 and 3574. As soon as possible, but in no event later than 10 days from its issuance, the employer shall post a copy of the employer response conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit affected are employed. The response shall remain posted for at least 15 workdays.

Format A: RECOGNITION

- (1) "The (employer) has recognized (organization) as the exclusive representative for an appropriate unit of employees described below for purposes of meeting and conferring with the employer;
- (2) No intervention has been filed during the posting period;
- (3) Name, address and telephone number of the employer;
- (4) Name, address and telephone number of the employee organization;
- (5) A description of the grouping of employment classes to be included in the claimed unit including class codes. Each employment class shall include the geographic locations if other than a statewide class is proposed.
- (6) The number of employees in the unit recognized;
- (7) The date of recognition.
- (d) The employer shall use "Format B" if it has not granted recognition.

Format B: DENIAL OF RECOGNITION

- (1) Name, address and telephone number of the employer, and name, address and telephone number of the employer agent to be contacted;
- (2) Attach a copy of the request for recognition;
- (3) Reasons for Denial of Recognition:
 - (A) Does the employer reasonably doubt the appropriateness of the proposed unit? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?
 - (B) Was the request timely and appropriately filed? If not, fully explain any deficiencies.
 - (C) Is the employer unable to grant recognition because some or all of the employees in question are part of a negotiating unit that is already represented by an exclusive representative?
 - (D) Were any interventions filed within the 15 workday posting period? Attach a copy of each intervention. For each intervention, state:
 1. Does the employer doubt the appropriateness of the unit proposed by the intervenor? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

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

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

51090. Employee Organization Petition for Board Investigation.

(a) Not later than 90 days following the date an employer response is filed or is due, whichever occurs first, a petition for Board investigation may be filed by:

(1) An employee organization alleging that it has filed a request for recognition, pursuant to Section 51030 which has been denied or not acted upon by the employer within 30 days after the filing of the request; or

(2) An employee organization alleging that it has filed an intervention pursuant to Section 51040.

(b) A petition for Board investigation may request the Board to decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit.

(c) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.

(d) The petition shall contain the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the employee organization agent to be contacted;

(2) The name, address and telephone number of the employer;

(3) A copy of the request for recognition or intervention filed with the employer;

(4) A statement of the issues in dispute;

(5) A statement indicating what specific action(s) is requested of the Board.

51095. Failure to File Petition for Board Investigation.

If no petition for Board investigation is timely filed pursuant to Section 51090, the request for recognition and any interventions shall be deemed invalid and shall not bar a subsequent request for recognition.

51096. Certification of Exclusive Representative.

If the Board determines (1) the employee organization requesting recognition has demonstrated proof of support of more than 50 percent of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the employer has not granted recognition, the Board shall certify the petitioner as the exclusive representative.

Article 3. Petition for Certification

51100. Petition for Certification.

(a) Subject to the limitations expressed in Section 51140(b), a petition for certification pursuant to Government Code Section 3575(c) by an employee organization wishing to be certified by the Board as the exclusive representative in an appropriate unit shall be filed with the regional office, utilizing forms provided by the Board. The petition shall be signed by an authorized agent of the employee organization.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

51110. Determination of Proof of Support.

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

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

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

51115. Withdrawal of Petition for Certification.

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

51120. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors or to add (subject to the limitations set forth in Section 51680(c)) or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct election. The amendment shall be filed with the regional office utilizing forms provided by the Board. Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 51130.

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

51130. Employer Response Regarding Petition for Certification.

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

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

(c) The employer shall use the following format for its response regarding a petition for certification:

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

(2) Attach a copy of the petition for certification;

(3) Employer position regarding the petition for certification:

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

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

Article 4. Board Investigation

51140. Board Investigation.

(a) Whenever a petition filed pursuant to Government Code Section 3575 regarding a representation matter is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the request for recognition, unless the request for recognition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum of understanding, provided that if such memorandum of understanding has been in effect for three years or more, there shall be no such restriction as to the time of filing the request. A petition filed not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding must actually be received in the manner set out in Section 32135 during the "window period" as defined by Section 51025; or

(3) The employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition; or

(4) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

(5) The petition for Board investigation pursuant to this section or the petition for certification pursuant to Section 51100 was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

Article 5. Representation Hearings

51200. Informal Conference.

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

51210. Notice of Representation Hearing.

Upon determining that a hearing is necessary, the Board shall serve a notice of Representation Hearing on all interested parties pursuant to Section 51020. The notice shall state the date, time and place of the hearing. The notice shall also include information regarding how an employee organization may become a party to the hearing.

51225. Conduct of Hearing.

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

51230. Withdrawal of a Petition.

Any petition requesting action to resolve a representation dispute may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board pursuant to a voluntary agreement between or among the parties regarding an appropriate unit.

51235. Notice of Decision.

The Board shall serve on all interested parties pursuant to Section 51020 a notice of decision with either the decision of the Board itself or a final hearing officer decision.

Article 6. Representation Elections

51300. Notice of Intent to Conduct Election.

Upon determination to conduct a representation election, other than an election directed by a Board decision, the Board shall issue a notice of intent to conduct election to all interested parties pursuant to Section 51020. A notice of decision pursuant to Section 51235 which orders a representation election shall serve as a notice of intent to conduct election.

51310. Intervention to Appear on Ballot.

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

by proof of support of at least 10 percent of the employees in the appropriate unit. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(b) Service of the intervention, exclusive of the proof of support, and proof of service pursuant to Section 32140 are required.

51320. Board Determination Regarding Proof of Support.

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

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

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

51330. Recognition.

If only one organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the Board shall certify the organization as the exclusive representative and cancel the election.

51340. Conduct of Elections.

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

Article 7. Severance Petition

51680. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a request for recognition in accordance with the provision of Article 2 (commencing with Section 51030) or by filing a petition for certification in accordance with the provisions of Article 3 (commencing with Section 51100). In the case of a request for recognition or intervention, all provisions of Article 2 and Article 4 of this Subchapter shall be applicable to a severance request except as provided in this Article 7. In the case of a petition for certification, all provisions of Article 3 and Article 4 of this Subchapter shall be applicable to a severance petition except as provided in this Article 7.

(b) Whenever the conditions of Government Code Sections 3574(c) or 3577(b)(1) exist, a severance request for recognition, an intervention or a petition for certification must be filed in the manner set out in Section 32135 during the “window period” as defined by Section 51026.

(c) Any amendment to add to a request for recognition, intervention or petition for certification classifications or positions which are included in an established unit must be filed in the manner set out in Section 32135 during the window period as defined by Section 51026.

51685. Response to Severance Petition.

(a) The employer and the exclusive representative of the established unit may file a responding statement supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance request. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(l) A copy of the severance petition;

(2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit:

(4) A concise statement setting forth support of or opposition to the unit proposed by the petition.

CHAPTER 5. MEYERS-MILIAS-BROWN ACT

Article 1. General Provisions

61000. Application of Regulations.

Except as otherwise ordered pursuant to Chapter 1, or as provided for by Public Utilities Code, Division 10, Part 16, Chapter 5 (section 105140 et seq.), the Board will conduct representation proceedings under MMBA in accordance with the applicable provisions of this Chapter only where a public agency has not adopted local rules in accordance with MMBA section 3507.

61010. Window Period.

“Window period” means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

61030. Withdrawal of a Petition.

Any petition may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

61040. Informal Conference.

(a) A Board agent may conduct an informal conference to clarify the issues and explore settlement of the case. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

61050. Notice of Hearing.

If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

61055. Conduct of Hearing; Issuance of Proposed Decision.

Hearings shall be conducted and proposed decisions shall be issued pursuant to procedures set forth in Chapter 1, Subchapter 3 of these Regulations.

61060. Administrative Decision.

Any determination rendered without a hearing shall be issued in accordance with Section 32350 and may be appealed pursuant to Section 32360 of these Regulations.

61065. Elections in Consent Units.

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of an election in a consent unit should not be interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

61070. Decisions of the Board Itself.

Procedures before the Board itself shall be in accordance with Chapter 1, Subchapter 4, Articles 1 through 4 of these Regulations.

61072. Judicial Review.

A request for judicial review of a decision by the Board itself may be filed pursuant to Section 32500 and shall be allowed: (1) when the board, in response to a petition from the employer or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

61075. Notice of Decision.

When the Board itself issues a decision or when a hearing officer decision becomes final, the Board shall serve the decision and a notice of decision on the parties.

61080. Conduct of Elections; Eligibility to Appear on Ballot.

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this Chapter.

(b) Any employee organization which filed a valid petition or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Chapter 1, Section 32700 of these Regulations.

61090. Recognition.

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the Board shall

cancel the election, and certify the organization as the exclusive representative unless the public agency has granted recognition.

Article 2. Elections

61100. Authority to Conduct Elections.

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 this Chapter. The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

61105. Ballot.

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

(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.

(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.

(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.

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. 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 Consent Election

Agreement or the Directed Election Order. The notice shall remain posted through the final day for casting ballots.

61115. List of Voters.

(a) At a date established by the Board, the employer shall file with the regional office a list of names of all employees included in the voting unit 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.

(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.

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. 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.

61125. Observers.

Each party shall be allowed to station an authorized observer selected from the employees of the employer at each polling site during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters.

61130. Challenges.

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

(b) In a mailed ballot election, 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) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

61135. Tally of Ballots.

(a) Each party shall be allowed to station an authorized agent at the ballot count to verify 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.

61140. Resolution of Challenges.

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, the Board agent 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 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.

61145. Runoff Elections.

In a representation election, the Board shall direct a runoff election when a valid election results in none of the choices receiving a majority of the valid votes cast. The ballot for the runoff election shall provide for a selection between the two ballot entries receiving the largest and second largest number of valid votes cast in the election.

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.

61155. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, the Board agent has the power to:

(a) Direct any party to submit evidence through declarations or documents;

(b) Order the inspection of documents by Board agents or the parties;

(c) Direct any party to submit an offer of proof;

(d) Obtain declarations from witnesses based on personal knowledge;

(e) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;

(f) Dismiss any objections which, after investigation, do not warrant setting aside the election. Any such dismissal is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(g) Issue a written determination setting aside the election when, after investigation, it appears that such action is warranted, and that no material factual disputes exist. Such determination shall be in writing and served on the parties. Any such determination is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(h) Schedule a hearing when substantial and material factual disputes exist. Any hearing shall be limited to the issues set forth in the notice of hearing.

61160. Withdrawal of Objections.

Any party may withdraw its objections to an election prior to a final decision by the Board.

61165. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 61155(f) or unresolved challenged ballots sufficient in number to affect the outcome of the election may be resolved through the hearing procedures described in Chapter 1, Subchapter 3.

61170. Exception to Decision on Objections or Challenges.

Exceptions to a Board agent's proposed decision on objections to the conduct of the election or challenged ballots may be taken in accordance with the procedures set forth in Chapter 1, Subchapter 4, Article 2 of these regulations.

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. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

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.

61185. Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to either Article 4 or 7 of this Chapter, the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

61190. Stay of Election.

The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. Any determination to stay an election made by the Board pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 3 of these regulations.

61200. Bar to Conducting Election.

The Board shall dismiss a petition requiring a representation election if it determines (1) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration of such memorandum, provided that if a memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

Article 3. Petition for Certification or Recognition

61210. Petition for Certification.

(a) An employee organization may file a petition for certification, by means of an election, to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit represented by an exclusive representative. The petition shall be filed with the appropriate regional office; be signed by an authorized agent of the employee organization; and include the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

- (4) The approximate number of employees in the proposed appropriate unit;
- (5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.
- (b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.
- (c) Service of the petition, excluding the proof of support, and proof of service pursuant to Section 32140 are required.

61215. Petition for Recognition.

(a) An employee organization may file a petition for recognition as the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit represented by an exclusive representative. The petition shall be filed with the appropriate regional office; be signed by an authorized agent of the employee organization; and include the following information:

- (1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;
- (2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;
- (3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;
- (4) The approximate number of employees in the proposed appropriate unit;
- (5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.
- (b) The petition shall be accompanied by proof of at least majority support of the employees in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.
- (c) Service of the petition, excluding the proof of support, and proof of service pursuant to Section 32140 are required.

61220. Posting Notice of Petition for Certification or Recognition.

(a) The employer shall post a notice of a petition filed pursuant to either section 61210 or 61215, as provided by the Board, as soon as possible but in no event later than 10 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 15 workdays.

(d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

61240. Determination of Proof of Support.

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

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

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

(d) A petition for certification shall be dismissed if the Board determines that the petition lacks at least 30 percent proof of support.

(e) A petition for recognition shall be dismissed if the Board determines that the petition lacks proof of majority support.

61250. Employer Response Regarding Petition for Certification.

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of a petition for certification, the employer shall file a written response with the regional office.

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

(c) The employer shall use the following format for its response regarding a petition for certification:

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

(2) Attach a copy of the petition for certification;

(3) Employer position regarding the petition for certification:

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

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

61255. Employer Response Regarding Petition for Recognition.

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of a petition for recognition, the employer shall file a written response with the regional office.

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

(c) The employer shall use the following format for its response regarding a petition for recognition:

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

(2) Attach a copy of the petition for recognition;

(3) Employer position regarding the petition for recognition:

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

(B) Does the employer believe that there are other reasons why recognition should not be granted in the proposed unit? If so, please fully explain.

61260. Amendment of Petition for Certification or Recognition.

(a) A petition may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing. The amendment shall be filed with the regional office and provide the information required in Section 61210(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof

submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses set forth in Section 61250.

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

61270. Board Investigation.

Whenever a petition for certification or recognition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

61275. Certification of Exclusive Representative.

If the Board determines (1) an employee organization requesting recognition has demonstrated at least majority proof of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the public agency has not granted recognition, the Board shall certify the petitioner as the exclusive representative.

Article 4. Petition for Amendment of Certification

61300. Petition.

(a) An employee organization may file with the regional office a petition to amend its certification or recognition in the event of a merger, amalgamation, affiliation or transfer of jurisdiction, or in the event of a change in the name or jurisdiction of the employer.

(b) The petition shall be in writing, signed by an authorized agent of the employee organization and shall contain the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer;

(3) A brief description and the title of the established unit;

(4) A clear and concise statement of the nature of the merger, amalgamation, affiliation or other change in jurisdiction and the new name of the employee organization and/or employer.

(c) Service and proof of service of the petition pursuant to Section 32140 are required.

61310. Employer Response.

The employer may file a responding statement to the petition filed pursuant to Section 61300. The statement shall be filed with the regional office within 15 days following the date of service of the petition. Service and proof of service pursuant to Section 32140 are required.

61320. Board Investigation.

(a) Upon receipt of a petition filed pursuant to Section 61300, the Board shall conduct such inquiries and investigations or hold such hearings as deemed necessary and/or conduct a representation election in order to decide the questions raised by the petition.

(b) The Board may dismiss the petition if the petitioner has no standing to petition for the action requested or if the petition is improperly filed. The Board may deny a petition based on the investigation conducted pursuant to subsection (a) above.

(c) Upon approval of a petition, the Board shall issue a certification reflecting the new identity of the exclusive representative and/or employer. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 61200 of these regulations.

Article 5. Decertification Petition

61350. Petition.

(a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office and include the following information:

(1) The name, address and telephone number of the petitioning employee organization, if any, and/or the name, address and telephone number of the agent to be contacted on behalf of a petitioning employee organization or group of employees;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) The approximate number of employees in the established unit;

(6) The date on which the exclusive representative was recognized or certified;

(7) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the unit.

(b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

(1) No longer desire to be represented by the incumbent exclusive representative; or

(2) Wish to be represented by another employee organization.

Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

61360. Posting Notice of Decertification Petition.

(a) The employer shall post a notice of the decertification petition, as provided by the Board as soon as possible but in no event later than 15 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the established unit are employed.

(c) The notice shall remain posted for a minimum of 15 workdays.

(d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

61370. Board Determination Regarding Proof of Support.

(a) Within 20 days of the date the decertification petition is filed with the regional office, the employer shall file with the regional office a description of the established unit and an alphabetical list, including job titles or classifications, of employees in the established unit as of the last date of the payroll period immediately preceding the date the decertification petition was filed, unless otherwise directed by the Board.

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

61380. Board Investigation/Election.

(a) Upon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary.

(b) The petition shall be dismissed if the existing exclusive representative files a valid disclaimer of interest in representing employees in the unit within 20 days of the date the petition is filed with the regional office.

(c) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed during the window period defined in Section 61010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the unit.

Article 6. Severance Petition

61400. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Chapter. Such a petition shall include the following information:

(1) The name, address and telephone number of the petitioning employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(6) The approximate number of employees in the proposed appropriate unit;

(7) The date on which the exclusive representative was recognized or certified;

(8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.

(b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the "window period" defined by Section 61010.

(c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

61410. Response to Severance Petition.

(a) The public agency and the exclusive representative of the established unit may file responding statements supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

(2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit; and,

(4) A concise statement setting forth the basis for support of or opposition to the unit proposed by the petition.

61420. Board Investigation.

(a) Whenever a severance petition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of any employees covered by a petition, unless the petition is filed during the window period defined in Section 61010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition, or, (3) whenever the employer

has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

Article 7. Petition for Unit Modification

61450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

(1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit;

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position;

(4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the “window period” of a lawful memorandum of understanding as defined in these regulations in Section 61010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

61460. Response to Petition.

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

(2) The name, address and telephone number of the respondent and the name, address and telephone number of the agent to be contacted;

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

61470. Board Determination Regarding Proof of Support.

(a) If proof of support has been filed pursuant to section 61450(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

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

61480. Disposition of Petitions.

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition if (1) it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a

representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

(c) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 61200.

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

SUBCHAPTER 1. GENERAL PROVISIONS

70050. Scope of Subchapter 2 (TEERA) and Subchapter 3 (Other PUC Transit Labor Relations Acts).

Subchapter 2 pertains to TEERA, which governs only supervisory employees at the Los Angeles County Metropolitan Transportation Authority. Subchapter 3 pertains to all other representation proceedings involving Transit Labor Relations Acts under the Public Utilities Code, including proceedings involving non-supervisory employees at the Los Angeles County Metropolitan Transportation Authority.

SUBCHAPTER 2: REPRESENTATION PROCEDURES UNDER THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY TRANSIT EMPLOYER-EMPLOYEE RELATIONS ACT

Article 1. General Provisions

71010. Definitions.

For the purposes of this subchapter, the following definitions apply:

(a) "Employee" or "transit district employee" is defined at Public Utilities Code Section 99560.1(e). Non-confidential, supervisory employees of the Los Angeles County Metropolitan Transportation Authority are the only employees covered by TEERA.

(b) "Employee organization," as defined in Public Utilities Code Section 99560.1(f), means any organization of any kind (or two or more employee organizations who join together pursuant to Section 32705(a)) in which non-confidential, supervisory employees of the Authority participate and that exists for the purpose, in whole or in

part, of dealing with transit district employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of such employees.

(c) "Employer" or "transit district employer" is defined at Public Utilities Code Section 99560.1(g). The Los Angeles County Metropolitan Transportation Authority ("Authority") is the only employer covered by TEERA.

(d) "TEERA" means the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act, codified at Public Utilities Code Section 99560, et seq.

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

Article 2. Request for Recognition and Intervention

71030. Request for Recognition.

(a) A request for recognition by an employee organization seeking to become the exclusive representative of an appropriate unit shall be filed with the employer.

(b) The parties may agree that PERB or a third party shall determine the outcome of a request for recognition based upon proof of support as defined in Section 32700 of these regulations, or the employer may decline to enter into such an agreement if it has a good faith, reasonable basis to doubt majority support, and in such instance the employer instead may request that an investigation be conducted or an election be held upon a showing of support from at least 30 percent of the unit in accordance with Section 71090.

(c) If the parties agree that PERB or a third party shall determine majority support, proof of majority support in the unit claimed to be appropriate shall be filed with the regional office or with a mutually agreed upon third party. Determination of proof of majority support, if performed by PERB, shall be in accordance with Sections 71110 and 71120 of these regulations.

71035. Posting Notice of Request for Recognition.

(a) The employer shall prepare and post a notice of the request for recognition as soon as possible but in no event later than 10 days following receipt of the request.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 15 workdays.

(d) The notice shall include a copy of the request for recognition, the date the request was received, the date the notice is posted, the final date for posting, the final date for intervention on the request, and the signature of the employer's authorized agent.

(e) The employer shall serve a copy of the notice on the requesting employee organization concurrent with the posting of the notice. Proof of service pursuant to Section 32140 is required.

71040. Intervention.

(a) Within 15 workdays of the posting of notice of a written request for recognition, another employee organization may file with the employer an intervention to challenge to the appropriateness of the unit or to submit a competing claim of representation. The filing of such a competing claim provides a trigger for one of the competing employee organizations or the employer to file a Petition for Board Investigation.

(b) Proof of at least 30 percent or at least 10 percent support of the employees in the unit claimed to be appropriate by the intervenor shall be filed with the regional office or with a mutually agreed upon third party concurrent with the filing of the intervention. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(1) If the intervention is evidenced by at least 30 percent support, a question of representation shall be deemed to exist.

(2) If the intervention is evidenced by at least 10 percent support, the Board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the intervention. The Board shall notify all parties in writing of any determination made regarding such an intervention.

(c) Determination of proof of support in the unit claimed to be appropriate shall be in accordance with Sections 71110 and 71120 of these regulations.

71090. Petition for Board Investigation.

(a) Not later than 30 days following the date of the posting of written notice of request for recognition, a petition for Board investigation pursuant to Public Utilities Code Sections 99564.1 and 99564.2, and Section 71140 of these regulations may be filed by:

- (1) An employee organization alleging that it has filed a request for recognition, pursuant to Section 71030 which has been denied or not acted upon by the employer within 30 days after the filing of the request;
 - (2) An employee organization alleging that it has filed an intervention pursuant to Section 71040;
 - (3) An employer alleging that an employee organization has filed a request for recognition with it, and that it reasonably doubts that the employee organization has majority support or reasonably doubts the appropriateness of the requested unit; or
 - (4) An employer alleging that an intervening employee organization has filed with it a challenge to the appropriateness of the unit or a competing claim of representation.
- (b) A petition for Board investigation may request the Board to decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit.
- (c) The petition shall be filed pursuant to Section 32110 of these regulations. Service and proof of service of the petition pursuant to Section 32140 are required.
- (d) A petition filed by a requesting employee organization or an intervening employee organization shall contain the following information:
- (1) The name, address and telephone number of the employee organization and the name, address, e-mail address and telephone number of the employee organization agent to be contacted;
 - (2) The name, address, e-mail address and telephone number of the employer;
 - (3) A statement of the issues in dispute;
 - (4) A statement indicating what specific action(s) is requested of the Board.
- (e) The employer, if it has granted voluntary recognition pursuant to Public Utilities Code Sections 99564 and 99564.1, shall include the following information in its response to an employee organization petition or in its own petition for Board investigation:
- (1) A statement that the employer has voluntarily recognized an employee organization as the exclusive representative for an appropriate unit of employees described below for purposes of meeting and conferring with the employer;
 - (2) Name, address, e-mail address and telephone number of the employer;

(3) Name, address, e-mail address and telephone number of the requesting employee organization;

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

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

(6) The date of recognition.

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

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

(2) Reasons for Denial of Recognition:

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

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

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

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

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

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

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

71091. Board Investigations of Requests for Recognition.

Board investigations shall be conducted in accordance with the provisions set forth in Article 4 of this Chapter (commencing with Section 71140 of these regulations).

71095. Failure to File Petition for Board Investigation.

If the employer has not granted voluntary recognition and no petition for Board investigation is timely filed pursuant to Section 71090 of these regulations, the request for recognition and any interventions shall be deemed invalid and shall not bar a subsequent request for recognition.

Article 3. Petition for Certification

71100. Petition for Certification.

(a) Subject to the limitations expressed in Section 71140(b), a petition for certification pursuant to Public Utilities Code Section 99564.2(c) by an employee organization wishing to be certified by the Board as the exclusive representative in an appropriate unit shall be filed pursuant to Section 32110 of these regulations. The petition shall be signed or electronically signed by an authorized agent of the employee organization, and include the following information:

(1) The name, address, e-mail address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate unit;

(5) The name, address and e-mail address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

71110. Determination of Proof of Support.

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

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

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

71120. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors or to add (subject to the limitations set forth in Section 71680(c)) or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct election. The amendment shall be filed pursuant to Section 32110 of these regulations and include the information described in Section 71100(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

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

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

71130. Employer Response Regarding Petition for Certification.

- (a) Within 15 days following service of the Board's determination regarding the adequacy of proof submitted in support of the petition, the employer shall file a written response.
- (b) Service and proof of service of the response pursuant to Section 32140 are required.
- (c) The employer shall include the following information in its response regarding a petition for certification:
 - (1) Name, address and telephone number of the employer and name, address, e-mail address and telephone number of the employer's agent to be contacted;
 - (2) Employer position regarding the petition for certification:
 - (A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?
 - (B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

Article 4. Board Investigation

71140. Board Investigation.

- (a) Whenever a petition regarding a representation matter is filed with the Board pursuant to Public Utilities Code section 99564.1 or 99564.2, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.
- (b) A petition shall be dismissed in part or in whole whenever the Board determines that:
 - (1) The petitioner has no standing to petition for the action requested; or
 - (2) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the petition regarding a representation matter, unless such petition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum of understanding, provided that if such memorandum of understanding has been in effect for three years or more, there shall be no such restriction as to the time of filing the request. A petition filed not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of

understanding must actually be received in the manner set out in Section 32115 during the “window period” as defined by Section 7102571010(h); or

(3) The employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition; or

(4) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition; or

(5) The petition for Board investigation was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

Article 5. Representation Hearings

71210. Notice of Representation Hearing.

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

71230. Withdrawal or Settlement of a Petition.

At any time before the Board agent has issued a decision, a petitioner may withdraw, in writing, any petition filed under this subchapter, with service and proof of service as required pursuant to Section 32140, or the parties may reach a settlement agreement as to some or all disputed issues. However, if exceptions or an appeal are pending before the Board itself, a party or parties seeking to effect a withdrawal or settlement must request leave from the Board itself. The Board itself may deny withdrawal requests in order to avoid infringing on statutory rights or when a matter involves continuing public interest and a precedential ruling on the matter will be instructive to all parties in a similar situation.

71235. Notice of Decision.

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

Article 6. Representation Elections

71300. Notice of Intent to Conduct Election.

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

71310. Intervention to Appear on Ballot.

(a) Within 15 workdays following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization, whether or not a party to the unit hearing, may file an intervention to appear on ballot. The intervention shall be filed pursuant to Section 32110 of these regulations and include the following information:

(1) The name, address and telephone number of the employee organization and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) A description of the unit for which the intervention is filed.

(b) The intervention shall be accompanied by proof of support of at least 10 percent of the employees in the appropriate unit. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the intervention, exclusive of the proof of support, and proof of service pursuant to Section 32140 are required.

71320. Board Determination Regarding Proof of Support.

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

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

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

Article 7. Severance Petition

71680. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of a group of employees (but less than all of the employees) who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Subchapter, except as provided in subsection (b).

(b) Whenever the conditions of Public Utilities Code Section 99564.1(c) or 99564.4(b)(1) exist, a severance petition, or any amendment to add classifications or positions to a severance petition, must be filed in the manner set out in Section 32135 during the “window period” as defined by Section 71010(h).

71685. Response to Severance Petition.

(a) The employer and the exclusive representative of the established unit shall file a responding statement supporting or opposing the severance petition within 20 days following the date of service of the severance request. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed or electronically signed by an authorized agent of the responding party and contain the following information:

(l) The name, address and telephone number of the respondent, and the name, address, e-mail address and telephone number of the respondent agent to be contacted;

(2) A statement regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit:

(3) A concise statement setting forth support of or opposition to the unit proposed by the petition.

Article 8. Request for Amendment of Certification

71690. Request for Amendment of Certification.

Requests for amendment of certification under TEERA are governed by Chapter 1, Subchapter 6, Article 3 (commencing with Section 32761) of these regulations.

Article 9. Decertification Petition

71695. Decertification Petition.

Petitions for decertification under TEERA are governed by Chapter 1, Subchapter 6, Article 4 (commencing with Section 32770) of these regulations.

Article 10. Unit Modification Petition

71698. Unit Modification Petition.

Petitions for unit modification under TEERA are governed by Chapter 1, Subchapter 6, Article 5 (commencing with Section 32781) of these regulations.

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

Article 1. General Provisions

72000. Definitions.

As used in this subchapter, the following words have the following meanings:

(a) "Certified organization" means an employee organization that has been certified by SMCS as the exclusive representative of employees in an appropriate unit after a proceeding under these regulations.

(b) "Employee" or "PUC transit employee" means any employee of any PUC transit employer, except for supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

(c) "Employee organization" means any organization of any kind in which PUC transit employees participate and that exists for the purpose, in whole or in part, of dealing with public transit employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment.

(d) "Employer" or "PUC transit employer" means the governing board of a PUC transit employer, including 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 Transportation Authority, the Sacramento Regional Transit District, San Diego County Transit District, the San Diego Metropolitan Transit System, the San Francisco Bay Area Rapid Transit District, the San Mateo County Transit District, the Santa Barbara Metropolitan Transit District, the Santa Clara Valley Transportation Authority, the Santa Cruz Metropolitan Transit District, the Los Angeles County Metropolitan Transportation Authority, the San Joaquin

Regional Transit District, or the West Bay Rapid Transit Authority, including any person acting as an agent of the employer.

(e) "Window period" means the 31-day period which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the PUC transit employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

72000.5. Sonoma-Marín Area Rail Transit District.

Representation proceedings concerning the Sonoma-Marín Area Rail Transit District (SMART), established under Public Utilities Code, Section 105000 et seq., are not covered by these regulations, but rather are subject to the MMBA and any local rules adopted by SMART. (PUC section 105140.)

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

(a) Chapter 1, Subchapter 2, Sections 32020, 32030, 32040, 32050, 32055, 32056, 32060, 32075, 32080, 32085, 32090, 32091, 32092, 32093, 32094, 32105, 32110, 32111, 32115, 32121, 32125, 32130, 32132, 32135, 32136, 32140, 32143, 32145, 32147, 32149, 32150, 32155, 32162, and 32164 of these Regulations, including the filing and service of documents, equally govern representation proceedings involving Transit Labor Relations Acts under the Public Utilities Code, including proceedings involving non-supervisory employees at the Los Angeles County Metropolitan Transportation Authority.

(b) Whenever a PUC transit representation document is required to be served on a PUC transit employer as defined in Section 72000, subdivision (d), any person authorized to act on behalf of the PUC transit employer may be served. Authorized persons include the PUC transit employer's chief executive officer, chief legal counsel, any person authorized or designated to accept service of legal documents on behalf of the chief executive officer or chief legal counsel, the PUC transit employer's labor relations director or equivalent, or any individual designated by the PUC transit employer as its agent for purposes of labor representation matters.

Article 2. Petition for Certification

72005. Petition for Certification.

(a) A petition for certification, requesting that SMCS investigate and decide the question of whether employees wish to be represented by an exclusive representative in an appropriate unit for collective bargaining purposes may be filed in accordance with this

section. A certification petition filed by an employee organization may take one of the following forms:

(1) An initial petition for certification by an employee organization wishing to be certified by SMCS as the exclusive representative where there is no incumbent exclusive representative;

(2) A petition by an employee organization to decertify and replace the incumbent exclusive representative; or

(3) A severance petition by an employee organization to sever a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative.

(b) A petition for certification shall be filed with SMCS, pursuant to Sections 32110 and 32115 of these regulations. The petition shall be signed or electronically signed by an authorized agent of the employee organization, and include the following information:

(1) The name, address, and telephone number of the employee organization and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address, and telephone number of the PUC transit employer and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate unit; and

(5) The name, address, e-mail address and telephone number of any other employee organization, if any, known to have an interest in representing the employees covered by the unit. If applicable, a description of the contract(s), if any, covering the employees in such unit and the expiration date of such contract(s).

(c) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate.

(1) Proof of support may be demonstrated as set forth in Chapter 1, Section 32700 of these regulations.

(2) For purposes of this section, adequate proof of support may alternatively be demonstrated by proof that:

- (i) The petitioner held a collective bargaining agreement covering employees in a utility or facility at the time of its acquisition by the PUC transit employer;
- (ii) The PUC transit employer assumed such collective bargaining agreement pursuant to the provisions of the acquisition agreement or the terms of the relevant law; and
- (iii) The proposed unit is identical with the previously established unit.

(3) Proof of support, if required, shall be filed only with SMCS at the Sacramento Regional Office.

(d) A copy of a petition for certification, excluding proof of at least 30 percent support, shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required.

72010. SMCS Determination Regarding Proof of Support.

(a) Unless otherwise directed by the Director, within 20 days of the date of service of a copy of an employee organization's petition for certification, the PUC transit employer shall file with the Director an alphabetical list, including job titles or classifications, of the employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed.

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

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

72020. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing or notice of intent to conduct election. The amendment shall be filed with SMCS and include the information described in Section 72005. Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with SMCS within 15 days following the service of SMCS's determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Director. The response shall conform to the requirements for employer responses as set forth in Section 72025.

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

72025. Employer Response Regarding Petition for Certification.

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

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

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

(1) Name, address and telephone number of the employer and name, address, e-mail address and telephone number of the employer's agent to be contacted;

(2) Employer position regarding the petition for certification:

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

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, fully explain the basis of this belief.

Article 3. Employer Representation Petition

72030. Employer Representation Petition.

(a) A PUC transit employer may file a petition alleging that one or more employee organizations has presented it with a request to be recognized as the exclusive representative of an appropriate unit under the following circumstances:

(1) The employer reasonably doubts that the employee organization has majority support.

(2) The PUC transit employer reasonably doubts the appropriateness of the requested unit.

(3) The PUC transit employer has been presented with competing claims for representation or another employee organization challenges the appropriateness of the requested unit.

(4) Where there is an incumbent exclusive representative, a PUC transit employer may file a petition alleging that it has a good faith uncertainty as to the exclusive representative's continuing majority status.

(b) The petition shall be filed pursuant to Section 32110 and 32115 of these regulations. The petition shall be signed or electronically signed by an authorized agent of the employer, and include the following information:

(1) The name, address and telephone number of the employer and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the interested employee organization(s) and the name, address, e-mail address and telephone number of the interested employee organization(s) agent(s).

(3) A basis for the employer's position supporting its petition, which may include a description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded.

Article 4. Petition for Decertification.

72035. Petition for Decertification Without Replacement.

(a) A petition to decertify an existing exclusive representative in an established unit may be filed by an employee or group of employees within the bargaining unit or by an employee organization acting on their behalf asserting that the incumbent exclusive representative no longer represents the employees in the bargaining unit. The petition shall be filed, pursuant to Sections 32110 and 32115 of these regulations. A petition by an employee organization to decertify and replace the incumbent exclusive representative is considered a petition for certification and is properly filed pursuant to the regulations governing petitions for certification.

(b) The petition shall be signed or electronically signed by an authorized agent of the petitioner, and include the following information:

(1) The name, address and telephone number of the petitioner and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employee organization which has been certified or is currently being recognized by the district as the exclusive representative and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) A description of the existing unit, including the classifications and positions included and excluded;

(4) The approximate number of employees in the existing unit;

(5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit; and

(6) If applicable, a description of the contract(s), if any, covering the employees in such unit and the expiration date of such contract(s).

(c) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit no longer desire to be represented by the incumbent exclusive representative. Proof of support is defined in Section 32700 of these regulations.

(d) Service of the employee organization's petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

72040. SMCS Determination Regarding Proof of Support.

(a) Unless otherwise directed by the Director, within 20 days of the date the decertification petition is filed with SMCS, the employer shall file with SMCS a description of the established unit and an alphabetical list, including job titles or classifications, of employees in the established unit as of the last date of the payroll period immediately preceding the date the decertification petition was filed.

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

Article 5. Petition for Clarification of Bargaining Unit.

72045. Petition for Unit Clarification.

(a) A petition for clarification of an existing bargaining unit may be initiated by an exclusive representative or a PUC transit employer when there is a certified or currently recognized bargaining unit representative for the following reasons:

(1) To add to the unit unrepresented classifications or positions;

(2) To delete classifications or positions which by virtue of a change in circumstances or are otherwise prohibited by statute from inclusion in the unit;

(3) To make technical changes to clarify or update the unit description; or

(4) To resolve a dispute as to unit placement or designation of a new classification or position.

(b) A petition for unit clarification shall be filed pursuant to Section 32110 of these regulations. The petition shall be signed or electronically signed by an authorized agent of the petitioner, and include the following information:

(1) The name, address, and telephone number of the PUC transit employer and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address, and telephone number of the employee organization which has been certified or is currently being recognized by the PUC transit employer as the exclusive representative and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) If applicable, a description of the contract(s), if any, covering the employees in such unit and the expiration date of such contract(s);

(4) A description of the existing unit, including the classifications and positions included and excluded and the approximate number of employees in the existing unit;

(5) A description of the proposed unit;

(6) The number of employees in the unit as proposed under the clarification;

(7) The job classifications of employees as to whom the issue is raised, and the number of employees in each classification; and

(8) A statement by petitioner setting forth reasons why petitioner desires clarification of the unit.

(c) If the petition requests the addition of classifications or positions to an established unit, SMCS shall base its decision on the criteria set forth in Article 10 of this Subchapter. Normally, no proof of support shall be required. However, if SMCS finds the criteria set forth in Article 10 of this Subchapter favor adding classifications or positions to an existing unit, and the number of employees to be added is so numerous that it would likely disrupt the incumbent's majority support within the bargaining unit, then SMCS shall determine whether to require proof of support of a majority of the

employees to be added or hold an election upon a showing of proof of support of at least 30 percent of the persons to be added.

72050. Response to Petition.

(a) A party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the SMCS within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, be signed or electronically signed by an authorized agent of the responding party, and contain the following information:

(1) The name, address, e-mail address and telephone number of the petitioner(s);

(2) The name, address and telephone number of the respondent and the name, address, e-mail address and telephone number of the agent to be contacted;

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the clarification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit clarification proposed by the petitioner(s).

72055. SMCS Determination Regarding Proof of Support.

(a) Unless otherwise directed by the Director, if proof of support is required, and filed with SMCS, the employer shall, within 20 days of the date the support was filed, file with the Director an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with SMCS.

(b) The Director shall allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Director shall inform the parties in writing of the determination as to sufficiency of the proof of support.

72060. Resolution of Petition.

Upon approval of a unit clarification petition, SMCS shall issue a new certification. Such certification shall not be considered to be a new certification for the purpose of computing time limits for establishing a certification bar to the filing of representation petitions. Any determination made by the Director pursuant to this article may be

appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4 of these regulations.

Article 6. Petition for Amendment of Certification.

72065. Petition for Amendment of Certification.

(a) A petition for amendment of certification of an existing bargaining unit may be initiated by an exclusive representative or a PUC transit employer where the certified exclusive representative has undergone a change, such as merger, affiliation, amalgamation or transfer of jurisdiction that changes the identity of the organization, or in the event of a change in the name or jurisdiction of the employer. A petition for amendment of certification shall be filed pursuant to the procedure governing petitions for certification, and the petition will include the following additional information:

(1) The name, address and telephone number of the employee organization and the name, address, e-mail address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address, e-mail address and telephone number of the agent to be contacted;

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

(4) A clear and concise statement of the desired amendment and reasons for the amendment, including the nature of the merger, amalgamation, affiliation or other change in jurisdiction and the new name of the employee organization and/or the employer.

72070. Response to Petition.

A party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the SMCS within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

72075. Resolution of petition.

Upon approval of a petition for amendment of certification, SMCS shall issue a certification reflecting the new identity of the exclusive representative and/or employer. Such certification shall not be considered to be a new certification for the purpose of computing time limits for establishing a certification bar to the filing of representation petitions. Any determination made by the Director pursuant to this article may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4 of these regulations.

Article 7. Investigation of Certification, Decertification, Unit Clarification and Amendment Petitions by SMCS

72080. Investigation of Petitions by SMCS.

(a) Upon receipt of a petition for certification or decertification or for unit clarification or amendment, SMCS shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) SMCS shall dismiss a certification or decertification petition, or an employer representation petition, if:

- (1) the petition is found to be improperly or not timely filed;
- (2) if the petitioner has no standing to petition for the action requested;
- (3) proof of support submitted falls short of the required level of support, if any;
- (4) there is no reasonable cause to believe that there exists a question whether an employee organization or exclusive representative represents a majority of employees of the PUC transit employer in an appropriate unit;
- (5) a memorandum of understanding between the employer and an employee organization covering any of the employees subject to the petition is currently in effect, unless it is filed during the "window period" as defined by Section 72000, subsection (c)(7), provided that if such memorandum of understanding has been in effect for three years or more, unless otherwise provided by the authorizing statute, there shall be no restriction as to the time of filing the request; or
- (6) within the 12 months immediately preceding the date of filing of the petition, the employer has lawfully recognized an employee organization as the exclusive representative of any employees included in the unit described in the petition, or a valid election result which covers any employees described in the petition is certified.

(d) Any determination made by the Director pursuant to this article may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4 of these regulations.

Article 8. Procedures for Resolving Petitions.

72085. Resolution of Petitions.

In resolving a petition filed pursuant to this Subchapter, SMCS shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

72090. Pre-Hearing Conference.

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

72095. Notice of Hearing.

Upon determining that a hearing is necessary, SMCS shall serve a notice on all interested parties pursuant to Section 32140 of these regulations. The notice shall state the date, time and place of hearing. The notice shall also include information regarding how an employee organization may become a party to the hearing. The Director may, on their own motion or the motion of any of the parties, order that petitions involving all or part of the same group of employees, or otherwise raising common issues, be consolidated for the purpose of hearing and decision.

72100. Conduct of Hearing.

(a) Hearings shall be conducted by a hearing officer designated by the Director, or the Director may act as a hearing officer. A hearing officer may be substituted for another hearing officer at any time during the proceeding at the discretion of the Director.

(b) Hearings shall be conducted pursuant to procedures set forth in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations, except for Section 32168.

72105. Intervention.

Any labor organization or other person desiring to intervene in any hearing shall make a motion for intervention stating the grounds upon which such labor organization or other person claims to have an interest in the proceeding. The hearing officer may by order in writing or on the record permit intervention to such extent and upon such terms as may be deemed proper, and such intervener shall thereupon become a party to the proceeding; provided, however, that (1) no labor organization which is a party to a collective bargaining agreement covering employees in the alleged appropriate unit shall be denied the right to intervene as a party in such proceeding, and (2) no labor organization which makes a showing of proved authorizations or membership of at least 10 percent of the employees in the unit claimed to be appropriate by the petitioner shall be denied the right to intervene as a party in such proceedings. Any labor organization desiring to intervene for the purpose of seeking an election in a unit different from that

claimed to be appropriate by the petitioner shall be required to make a showing of proved authorizations or membership of a least 30 percent of the employees in the unit claimed to be appropriate by the organization seeking intervention. The district shall be deemed a party to each proceeding hereunder without the necessity of intervening therein.

72110. Withdrawal or Settlement of a Petition.

At any time before the Board agent has issued a decision, a petitioner may withdraw, in writing, any petition filed under this subchapter, with service and proof of service as required pursuant to Section 32140, or the parties may reach a settlement agreement as to some or all disputed issues. However, if exceptions or an appeal are pending before the Board itself, a party or parties seeking to effect a withdrawal or settlement must request leave from the Board itself. The Board itself may deny withdrawal requests in order to avoid infringing on statutory rights or when a matter involves continuing public interest and a precedential ruling on the matter will be instructive to all parties in a similar situation.

72115. Subpoenas.

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

72120. Duties of Hearing Officer Following Hearing.

Upon the close of a hearing, the hearing officer shall as expeditiously as possible prepare a proposed decision and order, which shall be forwarded to the Director for approval. If the hearing officer determines that an election is to be held, the hearing officer shall set forth the appropriate unit or units within which such election(s) shall be held and the categories of employees who shall be eligible to vote in such unit or units. The decision of the hearing officer, as approved by the Director, shall be final if not appealed as set forth in Chapter 1, Subchapter 4 of these regulations. A copy of the proposed decision and order shall concurrently be served upon each of the parties by the Director.

72125. Exceptions to Hearing Officer Proposed Decision.

(a) Within 20 days from the date of service of the proposed decision and order, any party may file with the Board itself exceptions to the proposed decision in accordance with Section 32300.

(b) The provisions of Sections 32300 through 32320, and Sections 32400 and 32410, shall be applicable to disputes arising under this Chapter. If the Board determines that an election is to be held, the Board shall order such election within such unit or units as have been found to be appropriate and shall determine the categories of employees who shall be eligible to vote in such unit or units. A copy of the decision and order of the Board shall be served upon each of the parties.

Article 9. Representation Elections

72130. Voluntary Recognition.

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

72135. Consent Election Agreements.

SMCS may approve a Consent Election Agreement of the parties regarding the conduct of an election. Such agreement shall include a description of the appropriate unit, the time and place of the election, and the payroll period to be used in determining employee eligibility to vote. Unless otherwise directed by the Director, the applicable payroll period is the payroll period immediately preceding the date the petition was filed. Such consent election shall be conducted under the direction and supervision of SMCS and in accordance with this Article. SMCS shall issue to the parties a certification of the results of the election, including a certification of representative where appropriate.

72140. Ballots.

(a) All elections shall be conducted by secret ballot under the supervision of SMCS. SMCS shall determine the date, time, place and manner of the election absent an approved Consent Election Agreement.

(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.

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

(d) At any time prior to issuance of the notice of election (pursuant to Section 72145), an employee organization may file a request with the SMCS to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit and shall be served on all parties and on SMCS. Service and proof of service of the request pursuant to Section 32140 are required.

72145. Directed Election Order.

When SMCS has determined that an election is required and no Consent Election Agreement is in place, SMCS shall serve on the employer and the parties a Directed Election Order containing specific instructions regarding the conduct of the election.

72147. Notice of Election.

Pursuant to a Consent Election Agreement or Directed Election Order, SMCS shall serve a notice of election on the parties. 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.

72150. List of Voters.

(a) At a date established by SMCS, the employer shall file with SMCS a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility. Unless otherwise ordered by the Director, the cutoff date for voter eligibility is established by the payroll period immediately preceding the date the petition was filed. Unless otherwise directed by SMCS, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by SMCS, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and home address of each eligible voter and shall be accompanied by two sets of name and home address labels for each eligible voter. The election supervisor may require that the voter list be submitted in an electronic format.

(b) A list of eligible voters which meets the requirements of subsection (a) above but 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.

72155. Voter Eligibility.

Unless otherwise directed by SMCS, to be eligible to vote in an election, employees must be employed in the voting unit as of the cutoff date for voter eligibility, and still employed on the date they cast their ballots in the election. Unless otherwise ordered by the Director, the cutoff date for voter eligibility is established by the payroll period immediately preceding the date the petition was filed. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. Mailed ballots may be utilized to maximize the opportunity of such voters to cast their ballots.

72160. Observers.

Each party shall be allowed to station one or more authorized observers selected from the non-management, nonsupervisory employees of the employer at each polling place during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters. If the unit consists of supervisory employees, the parties may designate supervisors as observers.

72165. Challenges.

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

(b) In a mailed ballot election, SMCS or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the tally of the ballots.

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

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

72170. Tally of Ballots.

(a) Each party shall be allowed to station one or more authorized agents at the ballot count to verify the tally of ballots.

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

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

72175. Resolution of Challenges.

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, unless otherwise provided by a consent election agreement, SMCS shall conduct an investigation and, where appropriate, conduct a hearing or take such other action as deemed necessary to determine the eligibility of the challenged voters. Any determination made by a hearing officer pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4 of these regulations.

72180. Runoff Elections.

In a representation election, SMCS shall direct a runoff election when a valid election results in none of the choices receiving a majority of the valid votes cast. The ballot for the runoff election shall provide for a selection between the two ballot entries receiving the largest and second largest number of valid votes cast in the election. The election procedures of this Article shall apply to runoff elections.

72185. Objections.

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

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

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

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

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

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

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

72190. Powers and Duties of SMCS Concerning Objections and Challenges.

SMCS may schedule a hearing when substantial and material factual disputes exist. With or without a hearing, SMCS has the power to:

(a) Direct any party to submit evidence through declarations signed under penalty of perjury or through other documents;

(b) Subpoena records;

(c) Direct any party to submit an offer of proof;

(d) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;

(e) Dismiss any objections or challenges; and

(f) Order a new election. In cases of egregious conduct preventing a fair new election, SMCS may issue a bargaining order, but such an order must be following a hearing.

72195. Hearings on Objections and Challenges.

SMCS shall follow the hearing procedures described in Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

72200. Appeals from, and Exceptions to, Rulings on Objections or Challenges.

An aggrieved party may appeal an administrative determination without a hearing, or take exceptions to a proposed decision after a hearing, in accordance with Chapter 1, Subchapter 4 of these regulations.

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. Each party shall be allowed to station an authorized agent at the ballot count to verify 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.

72215. Certification of Exclusive Representative.

If an employee organization receives a majority of the valid votes cast, then SMCS shall certify that employee organization as the exclusive representative.

Article 10. Unit Determination

72220. Unit Criteria.

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, SMCS shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to

the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) Any other traditional community of interest factors.

(3) The effect of the proposed unit on employees' right to effective representation.

(4) The effect of the proposed unit on the efficient operation of the transit district and on meet and confer relationships, including the impact of unnecessary fragmentation of employee groups or unwarranted proliferation of units, as well as any material effect on the employer's ability to deal effectively with an employee organization representing the unit.

(b) In each case where a petitioner seeks to accrete classifications or positions into an existing bargaining unit, in addition to the criteria set forth in subsection (a), SMCS shall weigh whether the group to be accreted would itself constitute an appropriate unit. If the petitioning party has not provided proof of support from a majority of the employees to be accreted, SMCS shall also take into consideration the size of the group to be accreted relative to the size of the existing unit.

Article 11. Relevant Federal Law.

72225. Relevant Federal Law.

In resolving questions of representation, to the extent required by the PUC transit employer's enabling act, SMCS and the Board shall, as appropriate, apply or be guided by relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended.

CHAPTER 7. TRIAL COURT EMPLOYMENT PROTECTION AND GOVERNANCE ACT

Article 1. General Provisions

81000. Application of Regulations.

Except as otherwise ordered pursuant to Chapter 1, the Board will conduct representation proceedings under the Trial Court Act in accordance with the applicable provisions of this Chapter only where a trial court has not adopted local rules in accordance with Government Code Section 71636, 71636.3 or 71637.1.

81010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated

by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

81030. Withdrawal of a Petition.

Any petition may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

81040. Informal Conference.

(a) A Board agent may conduct an informal conference to clarify the issues and explore settlement of the case. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

81050. Notice of Hearing.

If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

81055. Conduct of Hearing; Issuance of Proposed Decision.

Hearings shall be conducted and proposed decisions shall be issued pursuant to procedures set forth in Chapter 1, Subchapter 3 of these Regulations.

81060. Administrative Decision.

Any determination rendered without a hearing shall be issued in accordance with Section 32350 and may be appealed pursuant to Section 32360 of these Regulations.

81065. Elections in Consent Units.

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of an election in a consent unit should not be interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

81070. Decisions of the Board Itself.

Procedures before the Board itself shall be in accordance with Chapter 1, Subchapter 4, Articles 1 through 4 of these Regulations.

81075. Notice of Decision.

When the Board itself issues a decision or when a hearing officer decision becomes final, the Board shall serve the decision and a notice of decision on the parties.

81080. Conduct of Elections; Eligibility to Appear on Ballot.

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this Chapter.

(b) Any employee organization which filed a valid petition or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Chapter 1, Section 32700 of these Regulations.

81090. Recognition.

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the trial court shall grant recognition.

Article 2. Elections

81100. Authority to Conduct Elections.

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 this Chapter. The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

81105. Ballot.

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

(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.

(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.

(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.

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. 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 Consent Election Agreement or the Directed Election Order. The notice shall remain posted through the final day for casting ballots.

81115. List of Voters.

(a) At a date established by the Board, the employer shall file with the regional office a list of names of all employees included in the voting unit 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.

(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.

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. 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.

81125. Observers.

Each party shall be allowed to station an authorized observer selected from the employees of the employer at each polling site during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters.

81130. Challenges.

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

(b) In a mailed ballot election, 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) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

81135. Tally of Ballots.

(a) Each party shall be allowed to station an authorized agent at the ballot count to verify 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.

81140. Resolution of Challenges.

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, the Board agent 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 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.

81145. Runoff Elections.

In a representation election, the Board shall direct a runoff election when a valid election results in none of the choices receiving a majority of the valid votes cast. The ballot for the runoff election shall provide for a selection between the two ballot entries receiving the largest and second largest number of valid votes cast in the election.

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.

81155. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, the Board agent has the power to:

- (a) Direct any party to submit evidence through declarations or documents;
- (b) Order the inspection of documents by Board agents or the parties;
- (c) Direct any party to submit an offer of proof;
- (d) Obtain declarations from witnesses based on personal knowledge;
- (e) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;
- (f) Dismiss any objections which, after investigation, do not warrant setting aside the election. Any such dismissal is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (g) Issue a written determination setting aside the election when, after investigation, it appears that such action is warranted, and that no material factual disputes exist. Such determination shall be in writing and served on the parties. Any such determination is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.
- (h) Schedule a hearing when substantial and material factual disputes exist. Any hearing shall be limited to the issues set forth in the notice of hearing.

81160. Withdrawal of Objections.

Any party may withdraw its objections to an election prior to a final decision by the Board.

81165. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 81155(f) or unresolved challenged ballots sufficient in number to affect the outcome of the election may be resolved through the hearing procedures described in Chapter 1, Subchapter 3.

81170. Exception to Decision on Objections or Challenges.

Exceptions to a Board agent's proposed decision on objections to the conduct of the election or challenged ballots may be taken in accordance with the procedures set forth in Chapter 1, Subchapter 4, Article 2 of these regulations.

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. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

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.

81185. Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to either Article 4 or 7 of this Chapter, the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

81190. Stay of Election.

The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. Any determination to stay an election made by the Board pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 3 of these regulations.

81200. Bar to Conducting Election.

The Board shall dismiss a petition requiring a representation election if it determines (a) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration of such memorandum, provided that if a memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (b) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

Article 3. Petition for Certification

81210. Petition for Certification.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit represented by an exclusive representative. The petition shall be filed with the appropriate regional office; be signed by an authorized agent of the employee organization; and include the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate unit;

(5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

81220. Posting Notice of Petition for Certification.

(a) The employer shall post a notice of the petition, as provided by the Board, as soon as possible but in no event later than 10 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 15 workdays.

(d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

81240. Determination of Proof of Support.

(a) Within 20 days of the date of service of a copy of the petition for certification, the employer shall file with the regional office an alphabetical list, including job titles or

classifications, of the employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

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

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. The Board's determination shall also indicate whether proof of majority support has been established. The petition shall be dismissed if the Board determines that the petition lacks at least 30 percent proof of support.

81250. Employer Response Regarding Petition for Certification.

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

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

(c) The employer shall use the following format for its response regarding a petition for certification:

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

(2) Attach a copy of the petition for certification;

(3) Employer position regarding the petition for certification:

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

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

81260. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing. The amendment shall be filed with the regional office and provide the information required in Section 81210(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses set forth in Section 81250.

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

81270. Board Investigation.

Whenever a petition for certification is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

Article 4. Petition for Amendment of Certification

81300. Petition.

(a) An employee organization may file with the regional office a petition to amend its certification or recognition in the event of a merger, amalgamation, affiliation or transfer of jurisdiction, or in the event of a change in the name or jurisdiction of the employer.

(b) The petition shall be in writing, signed by an authorized agent of the employee organization and shall contain the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer;

(3) A brief description and the title of the established unit;

(4) A clear and concise statement of the nature of the merger, amalgamation, affiliation or other change in jurisdiction and the new name of the employee organization and/or employer.

(c) Service and proof of service of the petition pursuant to Section 32140 are required.

81310. Employer Response.

The employer may file a responding statement to the petition filed pursuant to Section 81300. The statement shall be filed with the regional office within 15 days following the date of service of the petition. Service and proof of service pursuant to Section 32140 are required.

81320. Board Investigation.

(a) Upon receipt of a petition filed pursuant to Section 81300, the Board shall conduct such inquiries and investigations or hold such hearings as deemed necessary and/or conduct a representation election in order to decide the questions raised by the petition.

(b) The Board may dismiss the petition if the petitioner has no standing to petition for the action requested or if the petition is improperly filed. The Board may deny a petition based on the investigation conducted pursuant to subsection (a) above.

(c) Upon approval of a petition, the Board shall issue a certification reflecting the new identity of the exclusive representative and/or employer. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 81200 of these regulations.

Article 5. Decertification Petition

81350. Petition.

(a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office and include the following information:

(1) The name, address and telephone number of the petitioning employee organization, if any, and/or the name, address and telephone number of the agent to be contacted on behalf of a petitioning employee organization or group of employees;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) The approximate number of employees in the established unit;

(6) The date on which the exclusive representative was recognized or certified;

(7) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the unit.

(b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

(1) No longer desire to be represented by the incumbent exclusive representative; or

(2) Wish to be represented by another employee organization.

Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

81360. Posting Notice of Decertification Petition.

(a) The employer shall post a notice of the decertification petition, as provided by the Board, as soon as possible but in no event later than 15 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the established unit are employed.

(c) The notice shall remain posted for a minimum of 15 workdays.

(d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

81370. Board Determination Regarding Proof of Support.

(a) Within 20 days of the date the decertification petition is filed with the regional office, the employer shall file with the regional office a description of the established unit and an alphabetical list, including job titles or classifications, of employees in the established unit as of the last date of the payroll period immediately preceding the date the decertification petition was filed, unless otherwise directed by the Board.

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

81380. Board Investigation/Election.

(a) Upon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary.

(b) The petition shall be dismissed if the existing exclusive representative files a valid disclaimer of interest in representing employees in the unit within 20 days of the date the petition is filed with the regional office.

(c) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed during the window period defined in Section 81010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the unit.

Article 6. Severance Petition

81400. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Chapter. Such a petition shall include the following information:

(1) The name, address and telephone number of the petitioning employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(6) The approximate number of employees in the proposed appropriate unit;

(7) The date on which the exclusive representative was recognized or certified;

(8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.

(b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the "window period" defined by Section 81010.

(c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

81410. Response to Severance Petition.

(a) The public agency and the exclusive representative of the established unit may file responding statements supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

(2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit; and,

(4) A concise statement setting forth the basis for support of or opposition to the unit proposed by the petition.

81420. Board Investigation.

(a) Whenever a severance petition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of any employees covered by a petition, unless the petition is filed during the window period defined in Section 81010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition, or, (3) whenever the employer

has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

Article 7. Petition for Unit Modification

81450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

(1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit;

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position;

(4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the “window period” of a lawful memorandum of understanding as defined in these regulations in Section 81010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

81460. Response to Petition.

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

(2) The name, address and telephone number of the respondent and the name, address and telephone number of the agent to be contacted;

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

81470. Board Determination Regarding Proof of Support.

(a) If proof of support has been filed pursuant to section 81450(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

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

81480. Disposition of Petitions.

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition if (1) it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a

representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

(c) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 81200.

CHAPTER 8. TRIAL COURT INTERPRETER EMPLOYMENT AND LABOR RELATIONS ACT

Article 1. General Provisions

91000. Application of Regulations.

Except as otherwise ordered pursuant to Chapter 1, the Board will conduct representation proceedings under the Court Interpreter Act in accordance with the applicable provisions of this Chapter only where a regional committee has not adopted local rules in accordance with Government Code Section 71823.

91010. Window Period.

“Window period” means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

91030. Withdrawal of a Petition.

Any petition may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

91040. Informal Conference.

(a) A Board agent may conduct an informal conference to clarify the issues and explore settlement of the case. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

91050. Notice of Hearing.

If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

91055. Conduct of Hearing; Issuance of Proposed Decision.

Hearings shall be conducted and proposed decisions shall be issued pursuant to procedures set forth in Chapter 1, Subchapter 3 of these Regulations.

91060. Administrative Decision.

Any determination rendered without a hearing shall be issued in accordance with Section 32350 and may be appealed pursuant to Section 32360 of these Regulations.

91065. Elections in Consent Units.

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of an election in a consent unit should not be interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

91070. Decisions of the Board Itself.

Procedures before the Board itself shall be in accordance with Chapter 1, Subchapter 4, Articles 1 through 4 of these Regulations.

91075. Notice of Decision.

When the Board itself issues a decision or when a hearing officer decision becomes final, the Board shall serve the decision and a notice of decision on the parties.

91080. Conduct of Elections; Eligibility to Appear on Ballot.

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this Chapter.

(b) Any employee organization which filed a valid petition or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Chapter 1, Section 32700 of these Regulations.

91090. Recognition.

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the regional committee shall grant recognition.

Article 2. Elections

91100. Authority to Conduct Elections.

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 this Chapter. The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

91105. Ballot.

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

(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.

(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.

(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.

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. 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 Consent Election Agreement or the Directed Election Order. The notice shall remain posted through the final day for casting ballots.

91115. List of Voters.

(a) At a date established by the Board, the employer shall file with the regional office a list of names of all employees included in the voting unit 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.

(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.

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. 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.

91125. Observers.

Each party shall be allowed to station an authorized observer selected from the employees of the employer at each polling site during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters.

91130. Challenges.

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

(b) In a mailed ballot election, 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) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

91135. Tally of Ballots.

(a) Each party shall be allowed to station an authorized agent at the ballot count to verify 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.

91140. Resolution of Challenges.

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, the Board agent 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 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.

91145. Runoff Elections.

In a representation election, the Board shall direct a runoff election when a valid election results in none of the choices receiving a majority of the valid votes cast. The ballot for the runoff election shall provide for a selection between the two ballot entries receiving the largest and second largest number of valid votes cast in the election.

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.

91155. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, the Board agent has the power to:

(a) Direct any party to submit evidence through declarations or documents;

(b) Order the inspection of documents by Board agents or the parties;

(c) Direct any party to submit an offer of proof;

(d) Obtain declarations from witnesses based on personal knowledge;

(e) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues;

(f) Dismiss any objections which, after investigation, do not warrant setting aside the election. Any such dismissal is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(g) Issue a written determination setting aside the election when, after investigation, it appears that such action is warranted, and that no material factual disputes exist. Such determination shall be in writing and served on the parties. Any such determination is appealable to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(h) Schedule a hearing when substantial and material factual disputes exist. Any hearing shall be limited to the issues set forth in the notice of hearing.

91160. Withdrawal of Objections.

Any party may withdraw its objections to an election prior to a final decision by the Board.

91165. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 91155(f) or unresolved challenged ballots sufficient in number to affect the outcome of the election may be resolved through the hearing procedures described in Chapter 1, Subchapter 3.

91170. Exception to Decision on Objections or Challenges.

Exceptions to a Board agent's proposed decision on objections to the conduct of the election or challenged ballots may be taken in accordance with the procedures set forth in Chapter 1, Subchapter 4, Article 2 of these regulations.

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. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

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.

91185. Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to either Article 4 or 7 of this Chapter, the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

91190. Stay of Election.

The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. Any determination to stay an election made by the Board pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 3 of these regulations.

91200. Bar to Conducting Election.

The Board shall dismiss a petition requiring a representation election if it determines (a) there is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by a petition requiring an election, unless the petition is filed less than 120 days but more than 90 days prior to the expiration of such memorandum, provided that if a memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (b) that a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

Article 3. Petition for Certification

91210. Petition for Certification.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit represented by an exclusive representative. The petition shall be filed with the appropriate regional office; be signed by an authorized agent of the employee organization; and include the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate unit;

(5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

91220. Posting Notice of Petition for Certification.

(a) The employer shall post a notice of the petition, as provided by the Board, as soon as possible but in no event later than 10 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 15 workdays.

(d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

91240. Determination of Proof of Support.

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

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

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. The Board's determination shall also indicate whether proof of majority support has been established. The petition shall be dismissed if the Board determines that the petition lacks at least 30 percent proof of support.

91250. Employer Response Regarding Petition for Certification.

- (a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of the petition, the employer shall file a written response with the regional office.
- (b) Service and proof of service of the response pursuant to Section 32140 are required.
- (c) The employer shall use the following format for its response regarding a petition for certification:
 - (1) Name, address and telephone number of the employer and name, address and telephone number of the employer's agent to be contacted;
 - (2) Attach a copy of the petition for certification;
 - (3) Employer position regarding the petition for certification:
 - (A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?
 - (B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

91260. Amendment of Petition for Certification.

- (a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing. The amendment shall be filed with the regional office and provide the information required in Section 91210(a). Service and proof of service of the amendment pursuant to Section 32140 are required.
- (b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:
 - (1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.
 - (2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses set forth in Section 91250.
 - (c) Amendments to correct technical errors or to add or delete job classifications from a party's proposed unit which are requested after the issuance of the notice of hearing are subject to approval by the hearing officer. The hearing officer may grant the requested

amendment, so long as it will not serve to unduly impede the hearing and provided that sufficient proof of support is evidenced to support any request for addition of job classifications. Posting of any such amendments shall be at the discretion of the Board agent.

91270. Board Investigation.

Whenever a petition for certification is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

Article 4. Petition for Amendment of Certification

91300. Petition.

(a) An employee organization may file with the regional office a petition to amend its certification or recognition in the event of a merger, amalgamation, affiliation or transfer of jurisdiction, or in the event of a change in the name or jurisdiction of the employer.

(b) The petition shall be in writing, signed by an authorized agent of the employee organization and shall contain the following information:

(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer;

(3) A brief description and the title of the established unit;

(4) A clear and concise statement of the nature of the merger, amalgamation, affiliation or other change in jurisdiction and the new name of the employee organization and/or employer.

(c) Service and proof of service of the petition pursuant to Section 32140 are required.

91310. Employer Response.

The employer may file a responding statement to the petition filed pursuant to Section 91300. The statement shall be filed with the regional office within 15 days following the date of service of the petition. Service and proof of service pursuant to Section 32140 are required.

91320. Board Investigation.

(a) Upon receipt of a petition filed pursuant to Section 91300, the Board shall conduct such inquiries and investigations or hold such hearings as deemed necessary and/or conduct a representation election in order to decide the questions raised by the petition.

(b) The Board may dismiss the petition if the petitioner has no standing to petition for the action requested or if the petition is improperly filed. The Board may deny a petition based on the investigation conducted pursuant to subsection (a) above.

(c) Upon approval of a petition, the Board shall issue a certification reflecting the new identity of the exclusive representative and/or employer. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 91200 of these regulations.

Article 5. Decertification Petition

91350. Petition.

(a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office and include the following information:

(1) The name, address and telephone number of the petitioning employee organization, if any, and/or the name, address and telephone number of the agent to be contacted on behalf of a petitioning employee organization or group of employees;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) The approximate number of employees in the established unit;

(6) The date on which the exclusive representative was recognized or certified;

(7) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the unit.

(b) The petition shall be accompanied by proof that at least 30 percent of the employees in the established unit either:

(1) No longer desire to be represented by the incumbent exclusive representative; or

(2) Wish to be represented by another employee organization.

Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(c) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

91360. Posting Notice of Decertification Petition.

(a) The employer shall post a notice of the decertification petition, as provided by the Board, as soon as possible but in no event later than 15 days following service of a copy of the petition.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each facility of the employer in which members of the established unit are employed.

(c) The notice shall remain posted for a minimum of 15 workdays.

(d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

91370. Board Determination Regarding Proof of Support.

(a) Within 20 days of the date the decertification petition is filed with the regional office, the employer shall file with the regional office a description of the established unit and an alphabetical list, including job titles or classifications, of employees in the established unit as of the last date of the payroll period immediately preceding the date the decertification petition was filed, unless otherwise directed by the Board.

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

91380. Board Investigation/Election.

(a) Upon receipt of a petition for decertification, the Board shall investigate and, where appropriate, conduct a hearing and/or an election or take such other action as necessary.

(b) The petition shall be dismissed if the existing exclusive representative files a valid disclaimer of interest in representing employees in the unit within 20 days of the date the petition is filed with the regional office.

(c) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed during the window period defined in Section 91010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the unit.

Article 6. Severance Petition

91400. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Chapter. Such a petition shall include the following information:

(1) The name, address and telephone number of the petitioning employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(6) The approximate number of employees in the proposed appropriate unit;

(7) The date on which the exclusive representative was recognized or certified;

(8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.

(b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the "window period" defined by Section 91010.

(c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

91410. Response to Severance Petition.

(a) The public agency and the exclusive representative of the established unit may file responding statements supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

(2) The name, address and telephone number of the respondent, and the name, address and telephone number of the respondent agent to be contacted;

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit; and,

(4) A concise statement setting forth the basis for support of or opposition to the unit proposed by the petition.

91420. Board Investigation.

(a) Whenever a severance petition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of any employees covered by a petition, unless the petition is filed during the window period defined in Section 91010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition, or, (3) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

Article 7. Petition for Unit Modification

91450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

(1) To add to the unit unrepresented classifications or positions;

(2) To divide the existing unit into two or more appropriate units;

(3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

(1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit;

(2) To make technical changes to clarify or update the unit description;

(3) To resolve a dispute as to unit placement or designation of a new classification or position;

(4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the “window period” of a lawful memorandum of understanding as defined in these regulations in Section 91010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Chapter 1, Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of support, if required, shall be filed only with the regional office.

91460. Response to Petition.

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

(2) The name, address and telephone number of the respondent and the name, address and telephone number of the agent to be contacted;

(3) A statement confirming or refuting information contained in the petition regarding the size and description of the established unit(s), the date(s) of recognition or certification, the approximate number of employees involved in the modification request and the identity of any other employee organization known to claim to represent affected employees;

(4) A concise statement setting forth the reasons for support of or opposition to the unit modification proposed by the petitioner(s).

91470. Board Determination Regarding Proof of Support.

(a) If proof of support has been filed pursuant to section 91450(e)(1) or (2), the employer shall, within 20 days of the date the support was filed, file with the regional office an alphabetical list, including job titles or classifications, of all employees proposed to be added to the unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) The Board may allow up to 10 days to perfect the proof of support.

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

91480. Disposition of Petitions.

(a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.

(b) The Board shall dismiss a petition if (1) it is found to be improperly or not timely filed; or, (2) if proof of support submitted falls short of the required level of support; or, (3) if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit; or, (4) whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.

(c) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 91200.

CHAPTER 9 LEGISLATURE EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES

Article 1. General Provision

93000. Window Period.

"Window period" means the 29-day period which is less than 242 days, but more than 212 days, prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration means the last effective date of the memorandum of understanding. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

93010. Statement of Interest.

Any employee organization which is not the exclusive representative of certain employees but which desires notice of filing of any certification, severance, decertification or unit modification petition or issuance of notice of hearing, decision or intent to conduct election affecting such employees may file a statement of interest with PERB. Such statement shall be in writing and shall include a list of the employment classes which the employee organization has an interest in representing. The statement of interest shall remain valid for 12 months and may be renewed in writing thereafter.

93020. Petition for Certification.

(a) An employee organization may file a petition pursuant to Government Code Section 3599.72 to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit which is represented by an exclusive representative. The petition shall be filed with PERB; be signed by an authorized agent of the employee organization and include the following information:

- (1) The name, address, e-mail address, and telephone number of the employer; and the name, address, e-mail address, and telephone number of the employer's authorized agent;
- (2) A description of the unit claimed to be appropriate, including the classifications and positions to be included and those to be excluded;
- (3) A statement that the petition for certification is accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate;
- (4) The approximate number of employees in the unit claimed to be appropriate;

(5) The name, address, e-mail address, and telephone number of the employee organization; and the name, address, e-mail address, and telephone number of the employee organization's authorized agent; and

(6) The name, address, e-mail address, and telephone number of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 32700 of these regulations.

(c) Service of the petition and proof of service pursuant to Section 32140 are required; provided, however, that a petitioner shall not serve on any other party copies of proof of support.

93030. Posting Notice of Petition for Certification.

(a) The employer shall post a notice of the petition for certification as soon as possible but in no event later than 15 days following service of a copy of the petition. The notice shall only include the following information:

(1) The case number assigned by PERB to the petition for certification;

(2) The date the notice was posted by the employer;

(3) The date the petition for certification was filed with PERB;

(4) The name, address, e-mail address, and telephone number of the employee organization filing the petition for certification;

(5) A statement that the petition for certification is based on the claim that at least 30 percent of the employees in the unit claimed to be appropriate wish to be represented by the petitioning employee organization;

(6) The name, address, e-mail address, and telephone number of the employer;

(7) The final date for posting the notice; and

(8) A signature of an authorized agent of the employer.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each employer facility in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 20 days.

(d) The notice shall be posted with a copy of the petition for certification.

93040. Determination of Proof of Support.

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

(b) If, after initial determination pursuant to Section 32700 that the proof of support is insufficient, the Board shall allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. The petition shall be dismissed if the Board determines that the petition lacks sufficient proof of support.

93050. Withdrawal of Petition for Certification.

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

93060. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct an election. The amendment shall be filed with PERB and include the information required in Section 93020(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with PERB within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 93070(c).

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

93070. Employer Response Regarding Petition for Certification.

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of the petition for certification. the employer shall file a written response with PERB.

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

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

(1) The name, address, e-mail address, and telephone number of the employer; and the name, address, e-mail address, and telephone number of the employer's authorized agent;

(2) Employer position regarding the petition for certification:

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

(B) Does the employer believe there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

(d) The employer shall attach a copy of the petition for certification to the response.

93080. Board Investigation.

(a) Whenever a petition for certification is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A petition for certification shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) Any of the employees in the claimed unit are currently included in any established bargaining unit and are represented by an exclusive representative; or

(3) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition for certification; or

(4) The petition for certification was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct an election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

Article 2. Severance Petition

93100. Severance Petition.

(a) An employee organization may file a severance petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative. The severance petition shall be filed with PERB, be signed by an authorized agent of the employee organization, and include the following information:

(1) The name, address, e-mail address, and telephone number of the employer; and the name, address, e-mail address, and telephone number of the employer's authorized agent;

(2) A description of the unit claimed to be appropriate, including the classifications and positions to be included and those to be excluded;

(3) A statement that the severance petition is accompanied by proof of majority support of the employees in the unit claimed to be appropriate;

(4) The approximate number of employees in the unit claimed to be appropriate;

(5) The effective date and expiration date of the current memorandum of understanding, if any, covering employees in the established unit;

(6) The date on which the exclusive representative was certified:

(7) The name, address, e-mail address, and telephone number of the exclusive representative of the established unit; and the name, address, e-mail address, and telephone number of the exclusive representative's authorized agent;

(8) The name, address, e-mail address, and telephone number of the petitioning employee organization; and the name, address, e-mail address, and telephone number of the petitioning employee organization's authorized agent.

(b) The severance petition shall be accompanied by proof of majority support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 32700.

(c) Service of the severance petition and proof of service pursuant to Section 32140 are required; provided, however, that a petitioner shall not serve on any other party copies of proof of support.

93110. Posting Notice of Severance Petition.

(a) The employer shall post a notice of the severance petition as soon as possible but in no event later than 15 days following service of a copy of the petition. The notice shall only include the following information:

- (1) The case number assigned by PERB to the severance petition;
 - (2) The date the notice was posted by the employer;
 - (3) The date the severance petition was filed with PERB;
 - (4) The name, address, e-mail address, and telephone number of the employee organization filing the severance petition;
 - (5) A statement that the severance petition is based on the claim that a majority of the employees in the unit claimed to be appropriate wish to be represented by the petitioning employee organization;
 - (6) The names, addresses, e-mail addresses, and telephone numbers of the employer and incumbent employee organization;
 - (7) The final date for posting the notice; and
 - (8) A signature of an authorized agent of the employer.
- (b) The notice shall be posted conspicuously on all employee bulletin boards in each employer facility in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 20 days.
- (d) The notice shall be posted with a copy of the severance petition.

93120. Board Determination Regarding Proof of Support - Severance Petition.

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

(b) If, after initial determination, the proof of support is insufficient, the Board shall allow up to 10 days or until the last day of the "window period" as defined by Section 93000, whichever occurs first, to perfect the proof of support.

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

93130. Response to Severance Petition.

(a) The employer or the exclusive representative of the established unit may file a responding statement supporting or opposing the severance petition. Unless otherwise notified by the Board, such response shall be filed with PERB within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party, and include the following information:

(1) The name, address, e-mail address, and telephone number of the responding party; and the name, address, e-mail address, and telephone number of the responding party's authorized agent;

(2) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified. and the effective date and the expiration date of any current agreement covering employees in the established unit;

(3) A concise statement setting forth support of or opposition to the unit proposed by the severance petition.

(c) The responding party shall attach a copy of the severance petition to the response.

93140. Amendment of Severance Petition; Posting Amendments.

(a) A severance petition may be amended to correct technical errors or to delete job classifications or positions from the proposed unit at any time prior to the issuance of a PERB notice of representation hearing or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement. The amendment shall be filed with PERB and include the information required in Section 93100(a). Service and proof of service pursuant to Section 32140 are required.

(b) A severance petition may be amended to add job classifications or positions to the proposed unit, subject to the following:

(1) An amendment to add job classifications or positions to a proposed unit may be filed within the time frames listed in subsection (a), except that if there exists a memorandum of understanding between the employer and the exclusive representative covering any of the employees to be added to the proposed unit, the amendment must be filed in the manner set out in Section 32110 during the "window period" as defined by Section 93000.

(2) The amendment shall be filed with PERB and include the information required in Section 93100(a). Service of the amendment and proof of service pursuant to Section 32140 are required. Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with PERB with the amendment; provided, however, that a petitioner shall not serve on any other party copies of proof of support.

(3) The employer shall post a notice of the amendment as soon as possible but in no event later than 15 days following service of the amendment. The notice shall conform to the requirements for posting a notice of severance petition as set forth in Section 93110, and shall remain posted for 20 days.

(4) A response from any party to the amended petition may be filed with PERB within 15 days following the service of the Board's determination of adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for responses as set forth in Section 93130.

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

93150. Withdrawal of Severance Petition.

Any severance petition may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal shall be filed with PERB. Service and proof of service pursuant to Section 32140 are required.

93160. Board Investigation.

(a) Whenever a severance petition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A severance petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested: or

(2) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by the severance petition, unless the petition is filed less than 242 days but more than 212 days prior to the expiration date of such memorandum or the end of the third year of such memorandum; provided that, if such

memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or

(3) A valid representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the severance petition.

Article 3. Representation Election

93200. Notice of Intent to Conduct Election.

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

93210. Intervention to Appear on Ballot.

(a) Within 20 days following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization may file an intervention to appear on the ballot. The intervention shall be filed with PERB and include the information required in Section 93020(a). The intervention shall be accompanied by proof of support of at least 30 percent of the employees in the appropriate unit. Proof of support is defined in Section 32700.

(b) Service of the intervention and proof of service pursuant to Section 32140 are required; provided, however, that an intervenor shall not serve on any other party copies of proof of support.

93220. Board Determination Regarding Proof of Support.

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

(b) If the Board determines that the proof of support is insufficient the Board shall allow up to 10 days to perfect the proof of support.

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

93230. Conduct of Elections.

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

CHAPTER 10. JUDICIAL COUNCIL EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES

Article 1. General Provisions

95000. Window Period.

“Window period” means the 29-day period which is less than 120 days, but more than 90 days, prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration means the last effective date of the memorandum of understanding. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period.

95010. Statement of Interest.

Any employee organization which is not the exclusive representative of certain employees but which desires notice of filing of any certification, severance, decertification or unit modification petition or issuance of notice of hearing, decision or intent to conduct election affecting such employees may file a statement of interest with PERB. Such statement shall be in writing and shall include a list of the employment classes which the employee organization has an interest in representing. The statement of interest shall remain valid for 12 months and may be renewed in writing thereafter.

95030. Petition for Certification.

(a) An employee organization may file a petition for certification to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit which is represented by an exclusive representative. The petition for certification shall be filed with PERB, be signed by an authorized agent of the employee organization, and include the following information:

(1) The name, address, e-mail address, and telephone number of the employer; and the name, address, e-mail address, and telephone number of the employer’s authorized agent;

(2) A description of the unit claimed to be appropriate, including the classifications and positions to be included and those to be excluded;

(3) A statement that the petition for certification is accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate;

(4) The approximate number of employees in the unit claimed to be appropriate;

(5) The name, address, e-mail address, and telephone number of the employee organization; and the name, address, e-mail address, and telephone number of the employee organization's authorized agent; and

(6) The name, address, e-mail address, and telephone number of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.

(b) The petition for certification shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 32700.

(c) Service of the petition for certification, excluding the proof of support, and proof of service pursuant to Section 32140 are required.

95040. Posting Notice of Petition for Certification.

(a) The employer shall post a notice of the petition for certification as soon as possible but in no event later than 15 days following service of a copy of the petition. The notice shall only include the following information:

(1) The case number assigned by PERB to the petition for certification;

(2) The date the notice was posted by the employer;

(3) The date the petition for certification was filed with PERB;

(4) The name, address, e-mail address, and telephone number of the employee organization filing the petition for certification;

(5) A statement that the petition for certification is based on the claim that at least 30 percent of the employees in the unit claimed to be appropriate wish to be represented by the petitioning employee organization;

(6) The name, address, e-mail address, and telephone number of the employer;

(7) The final date for posting the notice; and

(8) A signature of an authorized agent of the employer.

(b) The notice shall be posted conspicuously on all employee bulletin boards in each employer facility in which members of the unit claimed to be appropriate are employed.

(c) The notice shall remain posted for 20 days.

(d) The notice shall be posted with a copy of the petition for certification.

95050. Determination of Proof of Support.

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

(b) If, after initial determination pursuant to Section 32700 that the proof of support is insufficient, the Board shall allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. The petition shall be dismissed if the Board determines that the petition lacks sufficient proof of support.

95060. Withdrawal of Petition for Certification.

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

95070. Amendment of Petition for Certification.

(a) A petition for certification may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing, or notice of intent to conduct an election. The amendment shall be filed with PERB and include the information required in Section 95030(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

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

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

(2) An employer response to the amended petition shall be filed with PERB within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses as set forth in Section 95080(c).

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

sufficient proof of support is evidenced to support any request for addition of job classifications.

95080. Employer Response Regarding Petition for Certification.

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of the petition for certification, the employer shall file a written response with PERB.

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

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

(1) The name, address, e-mail address, and telephone number of the employer; and the name, address, e-mail address, and telephone number of the employer's authorized agent;

(2) Employer position regarding the petition for certification:

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

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

(d) The employer shall attach a copy of the petition for certification to the response.

95090. Board Investigation.

(a) Whenever a petition for certification is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A petition for certification shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) Any of the employees in the claimed unit are currently included in any established bargaining unit and are represented by an exclusive representative; or

(3) A valid election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition for certification; or

(4) The petition for certification was filed either after a notice of hearing or, where no hearing has been held, notice of intent to conduct an election covering any of the employees in the unit proposed by the petitioner has been issued by the Board.

Article 2. Severance Petition

95100. Severance Petition.

(a) An employee organization may file a severance petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative. The severance petition shall be filed with PERB, be signed by an authorized agent of the employee organization, and include the following information:

(1) The name, address, e-mail address, and telephone number of the employer; and the name, address, e-mail address, and telephone number of the employer's authorized agent;

(2) A description of the unit claimed to be appropriate, including the classifications and positions to be included and those to be excluded;

(3) A statement that the severance petition is accompanied by proof of majority support of the employees in the unit claimed to be appropriate;

(4) The approximate number of employees in the unit claimed to be appropriate;

(5) The effective date and expiration date of the current memorandum of understanding, if any, covering employees in the established unit;

(6) The date on which the exclusive representative was certified;

(7) The name, address, e-mail address, and telephone number of the exclusive representative of the established unit; and the name, address, e-mail address, and telephone number of the exclusive representative's authorized agent;

(8) The name, address, e-mail address, and telephone number of the petitioning employee organization; and the name, address, e-mail address, and telephone number of the petitioning employee organization's authorized agent.

(b) The severance petition shall be accompanied by proof of majority support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 32700.

(c) Service of the severance petition, excluding the proof of support, and proof of service pursuant to Section 32140 are required.

95110. Posting Notice of Severance Petition.

(a) The employer shall post a notice of the severance petition as soon as possible but in no event later than 15 days following service of a copy of the petition. The notice shall only include the following information:

- (1) The case number assigned by PERB to the severance petition;
 - (2) The date the notice was posted by the employer;
 - (3) The date the severance petition was filed with PERB;
 - (4) The name, address, e-mail address, and telephone number of the employee organization filing the severance petition;
 - (5) A statement that the severance petition is based on the claim that a majority of the employees in the unit claimed to be appropriate wish to be represented by the petitioning employee organization;
 - (6) The names, addresses, e-mail addresses, and telephone numbers of the employer and incumbent employee organization;
 - (7) The final date for posting the notice; and
 - (8) A signature of an authorized agent of the employer.
- (b) The notice shall be posted conspicuously on all employee bulletin boards in each employer facility in which members of the unit claimed to be appropriate are employed.
- (c) The notice shall remain posted for 20 days.
- (d) The notice shall be posted with a copy of the severance petition.

95120. Board Determination Regarding Proof of Support - Severance Petition.

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

(b) If, after initial determination pursuant to Section 32700 that the proof of support is insufficient, the Board shall allow up to 10 days or until the last day of the "window period" as defined by Section 95000, whichever occurs first, to perfect the proof of support.

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

95130. Response to Severance Petition.

(a) The employer or the exclusive representative of the established unit may file a responding statement supporting or opposing the severance petition. Unless otherwise notified by the Board, such response shall be filed with PERB within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party, and include the following information:

(1) The name, address, e-mail address, and telephone number of the responding party; and the name, address, e-mail address, and telephone number of the responding party's authorized agent;

(2) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current agreement covering employees in the established unit;

(3) A concise statement setting forth support of or opposition to the unit proposed by the severance petition.

(c) The responding party shall attach a copy of the severance petition to the response.

95140. Amendment of Severance Petition; Posting Amendments.

(a) A severance petition may be amended to correct technical errors or to delete job classifications or positions from the proposed unit at any time prior to the issuance of a PERB notice of representation hearing or, where no hearing has been held, issuance of a Directed Election Order or approval of a Consent Election Agreement. The amendment shall be filed with PERB and include the information required in Section 95100(a). Service and proof of service pursuant to Section 32140 are required.

(b) A severance petition may be amended to add job classifications or positions to the proposed unit, subject to the following:

(1) An amendment to add job classifications or positions to a proposed unit may be filed within the time frames listed in subsection (a), except that if there exists a memorandum of understanding between the employer and the exclusive representative covering any of the employees to be added to the proposed unit, the amendment must be filed in the manner set out in Section 32110 during the "window period" as defined by Section 95000.

(2) The amendment shall be filed with PERB and include the information required in Section 95100(a). Service of the amendment, excluding any proof of support, and proof of service pursuant to Section 32140 are required. Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with PERB with the amendment.

(3) The employer shall post a notice of the amendment as soon as possible but in no event later than 15 days following service of the amendment. The notice shall conform to the requirements for posting a notice of severance petition as set forth in Section 95110, and shall remain posted for 20 days.

(4) A response from any party to the amended petition may be filed with PERB within 15 days following the service of the Board's determination of adequacy of proof of support, unless otherwise directed by the Board. The response shall conform to the requirements for responses as set forth in Section 95130.

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

95150. Withdrawal of Severance Petition.

Any severance petition may be withdrawn by an authorized representative of the employee organization that filed it. Such withdrawal shall be filed with PERB. Service and proof of service pursuant to Section 32140 are required.

95160. Board Investigation.

(a) Whenever a severance petition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election or take such other action as deemed necessary to decide the questions raised by the petition.

(b) A severance petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees covered by the severance petition, unless the petition is filed less than 120 days but more than 90 days prior to the expiration date of such memorandum or the end of the third year of such memorandum; provided that, if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or

(3) A valid representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the severance petition.

Article 3. Representation Election

95200. Notice of Intent to Conduct Election.

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

95210. Intervention to Appear on Ballot.

(a) Within 20 days following issuance of a notice of intent to conduct election in the appropriate unit, any employee organization may file an intervention to appear on the ballot. The intervention shall be filed with PERB and include the information required in Section 95030(a). The intervention shall be accompanied by proof of support of at least 30 percent of the employees in the appropriate unit. Proof of support is defined in Section 32700.

(b) Service of the intervention, excluding the proof of support, and proof of service pursuant to Section 32140 are required.

95220. Board Determination Regarding Proof of Support.

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

(b) If, after initial determination pursuant to Section 32700 that the proof of support is insufficient, the Board shall allow up to 10 days to perfect the proof of support.

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

95230. Conduct of Elections.

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