

PUBLIC NOTICE
Regular Business Meeting Agenda
Public Employment Relations Board
June 14, 2018 ~ 10:00 a.m.

LOCATION: Public Employment Relations Board *
1031 18th Street, First Floor, Room 103, Sacramento, CA

1. Roll Call.
2. Adoption of Minutes. April 12, 2018 Meeting
3. Public Comment. This is an opportunity for the public to address the Board on issues not scheduled on today's agenda. The Board cannot act on those items but may refer matters to staff for review and possible Board action at a future, publicly noticed meeting.
4. Staff Reports. The following Reports will be received. Any matter requiring Board action, and not included on this agenda, will be calendared for a subsequent public Board meeting.
 - A. Division of Administration
 - B. Office of General Counsel
 - C. Legislative/Rulemaking
 - D. Division of Administrative Law
 - E. State Mediation and Conciliation Service
5. Old Business. PERB Case Processing Efficiency Initiative. Discussion and possible action by the Board regarding the report from the Administrative Committee regarding Case Processing Efficiency Initiative recommendations.

[Memo-Recommendations re Process Improvement Suggestions 05-21-18.pdf](#)
6. New Business
 - A. Regulation Update. The Office of the General Counsel will ask the Board to authorize the commencement of preparation of other rulemaking packages, including regulations for Assembly Bill 83 (Chapter 835, Statutes of 2017) the Judicial Council Employer-Employee Relations Act, and for the full implementation of PERB's new e-file system.
 - B. Regulations. Consideration of approval for submitting a proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process regarding implementation of

**This meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Board by contacting Ms. Cheryl Shelly at (916) 322-8231 or sending a written request to Ms. Shelly at PERB, 1031 18th Street, Sacramento, California 95811. Requests for further information should also be directed via telephone or writing to Ms. Shelly. Additional information is also available on the internet at www.perb.ca.gov.*

Assembly Bill 119 (Chapter 21, Statutes of 2017), which established the Public Employee Communication Chapter (PECC). If authorized by the Board, the rulemaking package, including Notice of Proposed Rulemaking, Proposed Text, and Initial Statement of Reasons, will be forwarded to the Office of Administrative Law for review and publication pursuant to the Administrative Procedures Act. In addition, the Notice of Proposed Rulemaking would be distributed by PERB to interested parties and posted on the PERB website.

[PECC Draft Regulations](#)

- C. The Educational Employment Relations Act and the Higher Education Employer-Employee Relations Act require that PERB select and bear the costs of the services of the factfinding panel chairperson, including per diem fees and actual and necessary travel and subsistence. Prior Board action set the rate for factfinding services at \$1,100 per day with a four-day contract maximum. The Board will review the current factfinding policy for compensating factfinding panel chairpersons annually for potential modification.
4. Recess to Closed Session. The Board will meet in a continuous closed session each business day beginning immediately upon recess of the open portion of this meeting through August 9, 2018.

The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

MEMO:

**Recommendations
Regarding Process
Improvement
Suggestions**

MEMORANDUM

1031 18th Street, Board Suite 204
Sacramento, CA 95811-4124

TO: Mark C. Gregersen, Chair
Eric R. Banks, Board Member
Priscilla S. Winslow, Board Member
Erich W. Shiners, Board Member
Arthur A. Krantz, Board Member

DATE: May 23, 2018

FROM: Felix De La Torre, General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Mary Ann Aguayo, Chief Administrative Officer
Loretta van der Pol, Chief, State Mediation and Conciliation Service

SUBJECT: Recommendations Regarding Process Improvement Suggestions

Background

The Board took public comment at meetings in Sacramento and Glendale in March regarding process improvement recommendations included in the Public Employment Relations Board (PERB) Case Processing Efficiency Initiative Report (Report). At the conclusion of the meeting in Glendale, the Board directed PERB's Division Managers to review the Report recommendations and prioritize those recommendations while considering both written and oral comments received at the public meetings from our constituents.

The Subject Matter Expert (SME) committee, composed of PERB Division Managers, met several times to prioritize the various recommendations that were included in the final Report. This Report contains the recommendations of the SME committee.

Analysis

The SME committee first put each of the 124 proposals into one of the following five categories¹.

<u>Category Number</u>	<u>Description</u>
1	Recommended: This category includes all proposals that the committee believe the Board should consider adopting as priorities for implementation.

¹ A complete listing of the proposals and assigned category appears in Appendix A (attached).

- 2 **Immediate Implementation:** This category includes any item that should be immediately implemented because (1) the proposal does not require any additional authority, (2) there is either no cost or a nominal cost, (3) implementation is simple, and (4) it is a good idea.

- 3 **In Process:** This category is for proposals that PERB is in the process of implementing through other initiatives, or PERB has already been using this proposal.

- 4 **Inappropriate Purpose:** This category is for proposals that are inappropriate for consideration through this process because (1) it is a matter the Board should address through its adjudicatory function, or (2) outside of PERB jurisdiction.

- 5 **Excluded:** This category contains the remainder proposals which represent the items that the committee determined should not be pursued through this initiative.

The SME committee next looked at all of the 56 proposals assigned to Category 1 with the goal of coming up with the top 10 recommended proposals in ranked order of priority. Comments of the speakers at our public meetings were reviewed and taken into consideration in the development of the priority list of proposals. The top 10 proposals and linked proposals in ranked order of priority follow.²

Priority ³	Num.	Top 10 Recommended and Linked Proposals	Cost Estimate
1	A.8.03	Create and fill an information technology position at PERB.	Ongoing personnel costs of \$212,000 and \$200,000 of IT Costs
2	A.4.04	Review the processes around what is deemed precedential v. non-precedential.	One time cost of \$40,000 to change regulations
2a	A.4.09	Increase the number of Board counsels to support its members.	Ongoing personnel costs of \$267,000
3	A.1.03	Change regulations to make electronic filing mandatory and allow e-signature.	Costs reported in Priority 1

² The SME committee’s supporting rationale for each proposal appears in Appendix B (attached).

³ Proposals are listed in priority order with Priority 1 being the highest priority. The letters “a”, “b” following the priority number indicates proposals linked to the main proposal because there was a logical relationship between the priority and linked proposals or where there was overlap between the proposals.

Priority	Num.	Top 10 Recommended and Linked Proposals	Cost Estimate
3a	B.4.01	Review exceptions detail and documentation process and implementation plan and impose word limits	One time cost of \$40,000 to change regulations
3b	A.3.03	Require parties to provide a valid e-mail address that infers a legal presumption that the parties have been served when the e-mail has been sent.	One time cost of \$40,000 to change regulations
4	A.3.08	Revise expedited decisions process.	One time cost of \$93,000 to change regulations
4a	A.1.09	Setup an expedited process for charges based on the level of complexity of the charge.	Ongoing personnel costs of \$500,000
5	A.3.01	Review regulations for subpoena duces tecum, document production, and deadlines and the manner in which hearings are administered.	One time cost of \$93,000 to change regulations
6	A.3.06	Institute filing periods for motions.	One time cost of \$40,000 to change regulations
7	A.2.01	Change regulations to enforce appearance, preparation, and settlements for informal settlement conferences.	One time cost of \$40,000 to change regulations
7a	A.3.02	Add a regulation setting forth ramifications for a party's failure to appear.	One time cost of \$40,000 to change regulations
8	A.1.08	Provide additional training and information to guide pro per charging parties.	One time cost of \$66,400 to change regulations
8a	A.1.13	Improve PERB website to clearly guide pro pers - create training embedded training videos on the website to assist pro pers.	One time cost of \$66,400 to change regulations
9	A.7.01	PERB needs more mediators given the size of the State.	Ongoing cost of \$235,000 per year per additional mediator
10	A.3.12	Establish the informal settlement conference on the calendaring schedule closer in time to the formal hearing.	One time cost of \$40,000 to change regulations

The SME committee was also directed to estimate the implementation costs of the various recommendations. The cost estimate is included in the table listed above.

Attachments

APPENDIX A

PERB CASE PROCESSING EFFICIENCY INITIATIVE RECOMMENDATIONS

<u>Key</u>	
<u>Category</u>	<u>Info</u>
1=Recommended	C=Recommendation involve some cost
2=Immediate Implementation	AR=Authorization require Outside of PERB
3=In Process	* =Already in process
4=Inapposite Purpose	
5=Excluded	

Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.03	Change regulations to make electronic filing mandatory and allow e-signature: exceptions should also be set forth for such a regulation.	C, AR	1
A.1.05	Reinstitute the labor relations analyst/specialist classifications: utilize these non-legal classifications to assist constituents, without burdening the attorneys/mediators.	C, AR	1
A.1.07	Implement page restrictions on the unfair practice charge and supporting documentation: reducing the number of long charges which have to be carefully analyzed by regional attorneys. Currently, each allegation must be addressed either by including it in a complaint, or by explaining to the party through the issuance of Warning Letters and Dismissals stating why the allegations fail to state a prima facie case. Most violations would not require more than 15 pages to set forth sufficient facts to establish a prima facie case, excluding exhibits.	C, AR	1
A.1.08	Provide additional training and information to guide pro per charging parties: update literature and materials to provide guidance and provide training workshops and training videos on the unfair practice charge process (this is currently already done for attorneys for MCLE credits). This training would be specifically targeted for pro per charging parties.	C	1

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.09	<p>Setup an expedited process for charges based on the level of complexity of the charge: revise expedited processing regulation. The current regulation is vaguely written and allows only PERB to determine if a charge is eligible for expedited treatment. Consider adding detail both in the regulation and on the unfair practice charge form to select categories. Examples:</p> <ul style="list-style-type: none"> • Anything arising in a new organizing context (first time unionization) • Retaliation against union activities • Strikes • Novel issues which have not been addressed by the Board • Backpay or economic liability • Bad faith bargaining on important issues (wage, health, etc.) • Joint employer cases • A school year is ending and the issue would become moot during the summer. <p>Refusal to furnish information (if not done soon in the bargaining process, renders the remedy moot).</p>	C, AR	1
A.1.13	Improve PERB website to clearly guide pro pers - create training embedded training videos on the website to assist pro pers.	C	1
B.1.02	Set a brighter line for the response time to requests for information: adopt a regulation setting forth that documents are to be provided in “x” number of days before a second request for information is made. This would provide certainty and reduce related litigation.	C, AR	1
C.1.01	Increase the number of remedies to force cooperation and compliance. There is a lack of remedies to force cooperation and compliance. Examples could include: attorney's fees, having PERB communicate directly to unit employees the notice/posting, or require employer to do so more effectively. Look to the ALRB and NLRB for ideas.		1
C.1.04	Provide more guidance and training for PERB attorneys.	C	1
C.1.06	Streamline the process for rewriting a charge into a complaint: have the parties submit a draft of the complaint to speed up the process for the board agent’s review. Add a complaint form for the charging party to submit a “proposed complaint.” (This would require a change in regulation.)	AR	1
C.1.09	Regulatory rules could be instituted to help facilitate charge process: including, requiring parties to two-hole punch charges and documents and other aspects regarding requirements for format.	C, AR	1

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
C.1.12	Create a written acknowledgement for the charging parties that they are restricted from addressing items not set forth in the written complaint.		1
A.1.10	Review similar organizations, such as the National Labor Relations Board (NLRB), State Personnel Board (SPB), and the Agricultural Labor Relations Board (ALRB) for best practices in overall case processing: review and compare with other agency's processes and best practices, although different, would be a good overall approach.	C	2
B.1.03	Add to the unfair practice charge form, "will you go to mediation?" (early informal settlement conference): give parties the opportunity to mediate their disputes at the earliest stage possible.		2
C.1.05	Develop checklists for more standardized processes among attorneys. Each office writes their own headnotes to summarize decisions – quality of which varies widely and information should be improved. Consider the creation of desk manuals or guides to help new staff or temps and clarify process.	C	2
C.1.08	Set forth in the introductory letter expectations of the board agent to better inform parties of the applicable standard surrounding the investigation:		2
A.1.01	Empower board agents in the General Counsel's office to engage parties informally: allow board agents to informally discuss issues rather than be restricted to formal communications. Board agents would set timelines for communications in order to enable quick fixes and resolutions of questions.	*	3
A.1.04	Utilize more non-attorney staff in areas that do not require attorney skills: have non-legal case management staff guide pro pers and take calls from the public. This is very time consuming and most constituent questions do not need to be answered by an attorney. If there isn't a possibility of dedicating non-legal staff for this assignment, an "officer of the day" could be assigned that handles constituent calls which rotate among the attorneys. Additionally, mediation staff in the mediation unit could handle elections because they have similar experience.	C, AR	3
A.1.06	Simplify the unfair practice charge form: create different forms based upon the nature of the charge or enable the parties to better describe the charge. Place other controls over what charging parties can provide, i.e., use a simple form for case initiation, and then have the charge investigator meet with the pro per charging party to direct the pro per as to what documentation is needed.	*	3

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.12	Revisit website (including the State Mediation and Conciliation Service (SMCS)) and redesign in conjunction with the new Case Management System: seek out the best practices of similar organizations to make the website easy to navigate and to obtain information.	C, *	3
A.1.15	Add a triage process, which assigns charges to regional attorneys, by the new Case Management System in Summer 2018: create an online portal which allows for categorization of their charge (discrimination, etc.).	*	3
A.1.16	Use the recommendations from this case processing efficiency initiative to develop the new Case Management System.	*	3
A.1.17	Implement an electronic document management system: allow regional attorneys to access electronic documentation, similar to ProLaw. Currently, hard copies are still maintained and technology is not being fully utilized.	C, AR	3
B.1.04	Clarify complaint naming convention for respondents with multiple entities: identify the individually specified department, institution, or campus of respondent named in the charge, as well as the type of claim (ex. retaliation). Currently, the name of the respondent agency is named without such individualized specification. (“Trustees of the California State University,” instead of “Trustees of the California State University (Cal Poly Pomona)”).	*	3
C.1.02	Review the manner in which the Board uses Warning Letters (WL). The Warning Letters can be too lengthy. Non-precedential Board decisions may need less time to create than a WL that is adopted as precedential. More guidance on WL detail would be helpful and could save time. Currently, WLs are longer than necessary, because a regional attorney believes that a WL should be written to Board’s standards. The Board needs to clearly identify what standards are required for a WL.	C	3
C.1.10	Develop a better structured warning letter that is more helpful to the pro per, less legal, and more specific (like a list of what to provide). There are only five types of claims that a pro per can bring, so PERB should be able to provide guidance for each of those type of claims. PERB should contact the charging party before they create the warning letter, when it strikes the board agent as an opportunity to amend quickly or it is fatal and can be withdrawn prior to the warning letter being written. Example: With the NLRB, the board agent reaches out in an informal way first to resolve issues at the lowest level. Parties then ask for more time to respond to the warning letter.	*, C, AR	3

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
C.1.13	Scan charge documents into searchable PDF so the board agent can cut and paste language into the Agenda Memo. Allow for charge that is under five pages long and well-written to be used in place of rewriting the facts and limit the Agenda Memo to analyzing the strengths/weaknesses of the charge. Cut and paste all the facts and perform the analysis (not allow for the rewriting of the case into Agenda Memo). Create regulations (currently there are none) and General Counsel guidelines for Agenda Memos.	*	3
C.1.15	Improve process for calculating time elapsed for cases/abeyance. Some of the delays experienced are due to a party asking for time to work with other party on settlement. Parties approaching settlement ask staff not to take action. This delays the processing of those cases. Implement clear mechanisms to “stop the clock” on some of those cases, so it doesn’t skew processing times. At the appeals level, a final date is not placed for an abeyance and perhaps the General Counsel can copy this model. Keep the parties working toward settlement. Such a mechanism could allow for an extension of time or an end to the abeyance.	*, C, AR	3
A.1.11	Restrict unalleged violations from coming up later in the process: make parties adhere to the allegations of the complaint issued. The parties come to an agreement on the statement of issue. Many times not every aspect of the case is addressed by the issuance of a dismissal letter or a complaint. Such practices leave the parties in limbo regarding some charges.		4
C.1.03	Create a division of the agency to assist those that are indigent: including having a board agent advocate on an indigent’s behalf, and review the indigents’ filing in their presence. This is likely to require a change in regulation and statute. One model of pro per assistance is family court, where assistance is provided, but the person is not their attorney. This may be a helpful in-between step. This could be done with a regulatory change.	C, AR	4
C.1.07	Review practices regarding "sufficient facts" alleged so that they are clearly and concisely stated. In some instances, an allegation from the charge is not addressed in the complaint or a dismissal letter and therefore it may still be raised later in the process. This may lead to confusion at the informal settlement conference and subsequent disputes. A “clear and concise statement of facts” needs to be a standard that is enforced (this standard already exists, but regulations may be amended to further define "clear and concise statement of facts").		4

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.02	Expedite a “vexatious litigants” process: establish a process for vexatious litigants (those who file the same charge more than three times) by putting a limit on the amount of amendments a litigant can file or impose attorney fees to dissuade repeated unfair practice charge filers.	C, AR	5
B.1.01	Give General Counsel the authority to issue Advice Memos to guide parties, like the NLRB does: review the NLRB’s regulations to determine the authority that the General Counsel would need to implement. PERB does not have an Advice Division like the NLRB.	C, AR	5
B.1.05	Set up an unfair practice charge team and assign attorneys to work on it on a rotational basis as done in law firms: create a triage system for allocating unfair practice charges to regional attorneys. Charges are currently assigned on a rotation, not based on complexity or importance, which leads to workload distribution issues. Consider triage assignment based upon: complexity, source of charge, history, importance, parties, themes among employers, consolidation of similar issues. Often an individual charge will contain multiple claims. As such, the task of performing the initial review of a charge (and, actually, rendering a decision at the Administrative Law Judge (ALJ) and Board levels) can vary widely depending on the number of claims contained within it. PERB’s usual practice is to divide work and assess workload according to the raw number of charges filed. That sort of analysis blurs over the fact that an individual charge can in scope be equal in scope to multiple ones.		5
B.1.06	Address backlog of charges in a targeted approach by creating a task force or committee to focus on reducing the backlog of charges. For example: three regional attorneys on rotation focus on processing charges three days a month and consider setting a quota of 10 charges investigated per task force meeting – resulting in 120 charges processed per year. Select a senior regional attorney to review these. Prioritized work (litigation, election, etc.) currently interferes with regional attorneys’ ability to process unfair practice charges. Litigation and election work takes precedence over charges. However, attorneys enjoy the mixture and exposure to different assignments. To control the backlog build up, at the end of fiscal year or every six months, revisit the oldest charges and redistribute them in the same task force manner to close them.	C	5
C.1.11	Have all charges filed at the Sacramento Headquarters Office and have a clerk distribute the charges to the regional offices.		5

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
C.1.14	Consider allowing the ALJs to have access to the Agenda Memos: trust ALJs to filter the information accordingly.		5

	2.0 Dispute Resolutions and Settlements		SME CATEGORY
A.2.01	Change regulations to enforce appearance, preparation, and settlements for informal settlement conferences.	C, AR	1
A.2.02	Provide ongoing training to PERB board agents on mediation techniques and strategies. Mediation staff could be a resource for some of this training.	C, *	1
B.2.01	Have ALJs perform informal settlement conferences. The ALJs can provide a formality to the process and tell parties the direction the case is headed. PERB may need to increase the number of ALJs on their staff (SPB has many more ALJs and they also travel), especially if this precludes the settlement ALJ from handling that case. Implement this change as a pilot program to see if there is a change in the settlement rate.	C	1
B.2.02	Have mediators mediate informal settlement conferences. The staff in the Office of the General Counsel and the Office of Administrative Law are attorneys first. SMCS mediators are mediators first in the area of collective bargaining and grievance resolution. Consider having SMCS mediators conduct the informal settlement conferences. Some mediators are also attorneys. Mediation staff could help as both: 1) loaned staff to the General Counsel, and 2) early in the process (if parties are interested in mediation even before a complaint is filed).	C	1
B.2.05	Ask parties to meet with each other before the informal settlement conference and come to the conference with an informal settlement conference statement.	C, AR	1
B.2.08	Establish a mechanism to ensure that both parties have someone in authority to settle present at the informal settlement conference.	C, AR	1
C.2.02	Bring in outside volunteer attorneys to act as an informal judge/board agent to assist with settlement. PERB would need to create training, standards, and principles, to use non-employee resources (especially retirees, like judges who would be appointed by Board subcommittee with a \$100 a day stipend). The courts have a similar program.	C, AR	1
C.2.04	Consider additional criteria to allow bypassing the informal settlement conference stage, if parties know they will not settle.	C, AR	1

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2.0 Dispute Resolutions and Settlements			SME CATEGORY
B.2.03	Enhance informal settlement conference. Institute a pro per pre-informal settlement conference over the phone to help parties settle even before the informal settlement conference.	*	2
B.2.06	Create a complaint letter that clearly directs the parties regarding PERB's expectations for informal settlement conference preparation.		2
B.2.07	Explore how to better communicate that the informal settlement conference option/facilitation is available at every stage of the process.		2
B.2.04	Institute a pre-informal settlement conference brief. SPB has such a process in which statements are submitted 10 days prior to conference so parties must review, prepare, and consider what a settlement could look like.	C, AR	5
C.2.01	Allow for parties to get together for an abbreviated formal hearing to dispense with those cases quickly. This would be a radical change from the current practice.	C, AR	5
C.2.03	Consider having the informal settlement conference conclude and begin with the formal hearing, if parties are not prepared.	C, AR	5

3.0 Administrative Adjudication			SME CATEGORY
A.3.01	Review regulations for subpoena duces tecum, document production, and deadlines and the manner in which hearings are administered. For example, subpoena duces tecum regulations should be changed to require a production response in advance of hearing (and the resolution of any related issues before the formal hearing). Add additional regulations regarding documentation production in advance of hearings. The process would still allow for objections. Add deadlines for both sides to provide some certainty. Potentially, have PERB set other limits on the amount of documents to be produced (ex. reams of paper).	C, AR	1
A.3.02	Add a regulation setting forth ramifications for a party's failure to appear.	C, AR	1
A.3.03	Require parties to provide a valid e-mail address that infers a legal presumption that the parties have been served when the e-mail has been sent. Many times PERB gets contact information that is invalid (resulting in documents having to be provided in writing and mailed). This adds time and delays.	C, AR	1

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3.0 Administrative Adjudication			SME CATEGORY
A.3.04	Add a new regulation setting a timeline in which a party must have a first day of hearing after the complaint has been issued (with “good cause” for exceptions).	C, AR	1
A.3.06	Institute filing periods for motions.	C, AR	1
A.3.08	Revise expedited decisions process. Not all complaints are equal, but there are no set guidelines for an expedited process. Include limited issues, one-day hearings, no transcripts, etc. Look at SPB and other courts for guidance as to the type of cases which are placed on an expedited track.	C, AR	1
A.3.09	Speed up the decision process. Cases languish at PERB for years (the biggest complaint from the parties). Parties want input from judges to encourage settlement or to create realistic expectations as to the potential of the case. Another idea: can decisions be emailed to the counsel of record upon issuance?	C, AR	1
A.3.10	In lieu of briefs, the parties could be ordered to give an oral closing argument.	C, AR	1
A.3.11	Indicate to the parties that they may move for a bench decision. This would require a waiver of any option to appeal. The ALJ would not be required to entertain the request if the parties are unprepared to decide, but where the parties are agreeable it would dispense with what could be hundreds of extra hours of work. This option should be communicated at the informal settlement conference and at the conclusion of the hearing.	AR	1
A.3.12	Establish the informal settlement conference on the calendaring schedule closer in time to the formal hearing.	*	1
B.3.01	Review process for travel and implement video conferencing for witness testimony.	C, AR	1
B.3.02	The ALJ could issue a tentative decision, either on the record or within a few days after the close of the formal hearing or hold a second informal settlement conference afterward.	C, AR	1
C.3.01	Assign/hire a support staff for ALJs. There is just one person statewide, located in Sacramento. Hole-punching, indexing, scheduling, etc. are now done by judges (a poor use of their time). This could be a shared support resource or part-time, but support staff should be located physically in each office.	C, AR	1

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3.0 Administrative Adjudication			SME CATEGORY
C.3.03	<p>Shorten the amount of time it takes ALJs to write a proposed decision. Parties seeking expedited cases must agree to submit to a truncated hearing process that could include any number of time-saving features. For example: parties agree to submit a stipulated hearing record resolving all authenticity issues prior to the hearing; parties agree to waive written briefs and submit oral closing arguments on the record; and the ALJ places a page limit on closing briefs.</p> <p>Adopt procedures allowing the parties to submit to a one-day hearing after which the ALJ issues a statement of decision on the record in lieu of written findings.</p>	C, AR	1
A.3.13	<p>Implement a shared electronic management/knowledge management tool. Create a shared research library to consolidate all of the knowledge of the staff and offices – sharable by topic. This could allow for an easier consolidation of case information involving the same parties.</p>	*	3
A.3.14	<p>Allow access to case documentation via the public website. Public, web-based (possibly app-based) portal to allow people access to their case status and possibly documents. This may reduce the number of status inquiry calls PERB gets and will also improve PERB’s public appearance as a transparent entity serving the public.</p>	C	3
C.3.02	<p>Enhance informal settlement conference memo. It would be helpful to know who is representing a party in a meeting without having to look it up in the Case Management System to assist with contacting the parties regarding scheduling.</p>	*	3
A.3.05	<p>Introduce a limited discovery process for complex cases.</p>	C, AR	5
A.3.07	<p>Setup a Prehearing Disclosure Process. Require the ALJ to call the parties or have a prehearing conference to guide the parties and set expectations for the formal hearing, documentation, etc. Consider a “trial readiness” conference and make it mandatory. For example, if a trial readiness conference is set a month before trial, it could help lead to settlement.</p>	C, AR	5
C.3.04	<p>Implement a software system for transcripts rather than sending recordings to a third party to transcribe. The software “dirty version” would be helpful to ALJs for their quick review and refreshing their recollection of what occurred during the formal hearing, or to resolve disputes during the hearing (ALJs don’t have this ability currently).</p>	C	5
C.3.05	<p>Compile records on local rules, as they are the law. Create and use a database of local rules and case law which interpret them.</p>	C	5

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4.0 Board Decisions			SME CATEGORY
A.4.01	Create time limits for the issuance of decisions for ALJs and Board. In other courts (Art 6, Sec 19), the deadline is 90 days to issue a pending decision (and the judge won't get paid if they miss the deadline). Possibly create a regulation that if after x number of days from the proposed decision being appealed to the board, the ALJ's proposed decision becomes a final decision of the Board if no action taken. The largest backlog appears to be at the Board level. As the backlog is relieved at the General Counsel and ALJ levels, the backlog is shifted to the Board and sits there. What is the purpose of PERB, if it takes longer than the courts? There seems to be inconsistencies in why some cases take longer and no one knows why.	C, AR	1
A.4.02	Limit the written length of Board decisions. Place page limits on Board decisions, exceptions, and briefs with justification for an allowance to exceed the limit. Can the decision be shortened and stay on the issues (not procedural history, party positions, etc.)? Decisions do not need to be re-summarized if it is upholding the ALJ decision. When the Board adds 40 pages to a 70-page ALJ proposed decision, it can be really confusing to Board staff and the parties with respect to understanding what was upheld and what was not.	C, AR	1
A.4.03	Have PERB and Board staff collaborate together to develop standards and guidelines for written Board decisions, exceptions, and briefs. Place the standards and guidelines in a regulation to enforce current and future Board member use.	C, AR	1
A.4.04	Review the processes around what is deemed precedential v. non-precedential. For example, appeals from dismissal letters do not need to be precedential. Allow PERB to summarily affirm dismissal letters that are non-precedential decisions – this could save time. There is no need for a full blown decision on these issues. Consider a summary disposition in non-precedential cases. Expand the use of non-precedential affirmation/decisions. Just say “the Board agrees with the ALJ's proposed decision.” Could also allow this in precedential instances, if the ALJ decision is complete. The Board's upholding or reversing and remanding a General Counsel's dismissal does not have to be precedential. Consider expanding non-precedential decision to the Board's review of an ALJ's proposed decisions. Reserve the right of appeal on Board cases only to novel areas of law or complex/important issues.	C	1
A.4.05	Change the way exceptions are taken up by the Board. The Board should have the option to review; it isn't a right to get a review. The Board can deny such review in a simple one-line document. Right now there is nothing to lose for parties to file exceptions.	C, AR	1

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4.0 Board Decisions			SME CATEGORY
A.4.09	Increase the number of Board counsels to support its members. It appears there is minimal number of Board counsel to support Board members, and it is burdensome to those who do provide it. Institute the approach of employing a “bullpen” of attorneys to help Board members write board decisions. Increasing the number of Board counsel as part of a “bullpen” would help focus the Board on deciding complex cases.	C, AR, *	1
A.4.10	Fill the Executive Officer position that exists in statute. There is a lot of distraction placed upon Board Members regarding administrative issues. The Executive Officer position exists in statute, but is vacant now.	C	1
B.4.01	Review exceptions detail and documentation process and implementation plan. Impose word limits. Publish examples and clarification guidelines (how to file exceptions). The Board can add delineation to its decision writing process (format for headings).	C, AR	1
C.4.02	Institute an informal settlement conference after the ALJ’s proposed decision, but prior to the Board receiving the case. A proposed decision helps the parties understand their case and may encourage the parties toward settlement.	C, AR	1
A.4.08	Create a collaborative team culture at PERB. There are no set team meetings between all of the divisions of PERB employees. There are rare exchanges between all staff and divisions. Give the staff space to talk about what is and is not helpful and important, etc. Institute “all staff” meetings.	C, *	2
C.4.03	Increase transparency of the Board process via the website. The Board’s docket is online, but it would be helpful to see the case, issues, timeframe, etc. (like an appellate body might). For example, what is the briefing in the case (as well as providing a link to them), etc.	C, *	2
A.4.06	Review and update statutes and regulations for PERB. Several regulations are out of date and need to be reviewed/revamped. They need to be streamlined to match today's technology. Clean up some of the regulations and the code. For example, there is a Public Utilities Code (PUC) that takes some disputes to SMCS (Mediation) for adjudication – and they are appealable to the Board even though the PUC entities are not under the Board’s jurisdiction. This law needs to be fixed and taken out of the regulations. Another example concerns auditing the horse racing board (statutory change).	C, AR	3
C.4.01	Fill Board vacancies. (Governor controls.)	AR	4

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4.0 Board Decisions			SME CATEGORY
A.4.07	Reassess the culture and practices of the Board. The Board should be focused on novel and complex issues. Board should not “cherry-pick cases.” The culture of the Board impacts the entire organization. Re-evaluate the level of scrutiny and interpretation so that the entire organization does not over-analyze or invite vexatious litigants at the cost of those with real problems.		5

5.0 Appeals and Litigation			SME CATEGORY
B.5.01	Clarify and streamline appeal deadline/date received rule. The five-day mail rule applies if a fax is received, but not to an e-mail (seems odd to be different from fax).	C, AR	1
B.5.02	Add PERB case number to PERB Decision Bank on PERB’s Website. This would make locating the correct decision easier for constituents.		1
B.5.03	Update Decision Name to include the campus. For all California State University and University of California cases, add the campus to the name of the decision so it is easier to locate the correct decision. Also for Cities and Counties where the case is department specific (similar to the way it is done for the State of California).		1
C.5.02	Create a regulation or rule of court requiring the parties to notify PERB if it is filing in superior court, appellate court, or the supreme court.	C, AR	1
A.5.01	Ensure the new Case Management System can accommodate charge number and case number tracking. The current system does not allow for charge number and case number tracking, resulting in multiple reference numbers and confusion. Separating case numbers for litigation would be helpful. The caption for a PERB case is different than a litigation case.	*	3
C.5.04	Review the role of the Appeals Assistant. Provide the Appeals Assistant access to legal advice from the General Counsel – timelines and granting extensions to the parties, etc. This person is the gate keeper for the Board, but does not provide legal advice and lacks the ability to seek legal advice on case law or regulations.		3

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5.0 Appeals and Litigation			SME CATEGORY
C.5.05	Reduce resources spent defending Board decisions in court. Review and address the amount of time spent in appellate work. The General Counsel’s policy is to have early interaction with General Counsel staff and Board Counsel so they know what the Board is looking for when it files in appellate court.	C, AR	3
C.5.01	Change regulations or practices to prevent parties from gaming the system by filing requests for Injunctive Relief (IR). Review the IR process.	C, AR	5
C.5.03	Change the statute or rule of court to change the requirement for PERB to file a brief on all appeals.	C, AR	5

6.0 Representation Activity			SME CATEGORY
B.6.01	Review regulations for representation activity so that it is not handled under the jurisdiction of a local rule. Representation activity should not be handled by local rule. This requirement costs public agencies because they have to engage the services of an attorney to review the application of the rule. The MMBA gives public agencies the statutory right to administer its local rules, but PERB would do a better job. This would increase the number of cases going to PERB. Update the regulations for MMBA regarding jurisdictional issues. Currently, PERB must spend time determining jurisdiction.	C, AR	1
B.6.03	Reinstate Labor Relations classifications for the General Counsel’s office and assign representation cases to staff members who specialize/focus on representation matters. This could be a new non-attorney position or an annual rotation among General Counsel staff, one per office.	C, AR	1
B.6.05	Enforce current regulatory timelines. PERB must communicate and enforce its timeline and process representation petitions faster. Representation takes too long and is time sensitive. Look to the NLRB for direction on a good process that is fast and efficient.	*	1
B.6.02	Use Mediation staff in some representation cases (ex. election work).	C	2
C.6.03	Communicate plan for the outcome of <i>Janus v. AFSCME</i>. What will happen if there isn’t enough staff?	C	3

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6.0 Representation Activity			SME CATEGORY
C.6.04	Update form letters to provide a more robust analysis. For example, if the entity follows local rules, consider requiring it to be submitted to PERB electronically. Normalize agreements and standard letters for cases that have been helpful and have improved a consistent approach and process.	C, *	3
C.6.01	Overrule <i>City of Fremont</i> Case. When a party signs an election agreement with state mediation, that party waives the right to block a decertification due to unfair labor practices – this practice is not done by ALRB/NLRB.		4
C.6.02	Use more "Gap Filling Powers." PERB should more aggressively use its "gap filling powers" (under <i>Siskiyou</i> and <i>Amador</i>) in joint employer issues.		4
B.6.04	Review the process regarding consent election agreement. SMCS is currently restricted to conducting only consent elections. It was helpful to charge for elections and to allow mediation to go out into the field of elections (SMCS and constituents want to see this practice continued).	C, AR	5

7.0 Mediation/Fact Finding/Arbitration			SME CATEGORY
A.7.01	PERB needs more mediators given the size of the State. Even though the workload is sporadic, there are only eight mediators statewide. They are required to travel around the State.	C, AR	1
A.7.02	Replace MATS, the case management system for SMCS mediation, or combine with the new Case Management System for PERB. MATS is an antiquated system with little value or efficiency for those staff who use it. For example, one cannot currently scan through cases and identify where mediators will be, so they can schedule cases more efficiently (example: multiple meetings in different areas, with different staff) resulting in a duplication of effort. Cases are assigned by division chief, through use of a spreadsheet. Additional desirable functionality would be reporting, and a remote access app.	C	1
B.7.01	Harmonize statutes combining SMCS and PERB. Since being transferred to PERB, the Department of Industrial Relations is still referenced in the statute, and other items may be out of date. Review statute of limitation problems. For example, HEERA has a six-month statute of limitations – even though some issues may be 10 years old – it's not reasonable or enforced.	C, AR	3

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7.0 Mediation/Fact Finding/Arbitration			SME CATEGORY
C.7.03	Continue the model that the same mediator addresses the same parties/issues. The fact that the same mediator addresses the same parties/issues is very helpful to the parties and the hope is to continue this model. Mediator and arbitrator processes seem to work well.	*	3
C.7.01	Change the statutory processing deadline (currently 30 days) to better align with reality. The process takes longer than the 30-day statutory period to coordinate due to the mediator's and the parties' schedules. The case load ebbs and flows because most of the work is with the school districts (EERA/HEERA) and they don't want to schedule mediations during the summer and holidays.	C, AR	5
C.7.02	Open up factfinding duties to non-mediation and non-legal staff. It is mostly about process as much of the work does not require mediators or attorneys to perform. The statute requires priority over the processing of charges. Some attorneys are doing clerical work to contact parties to initiate factfinding identification (when parties do not agree to one) and communicate by sending letters to the parties.		5

8.0 Administration			SME CATEGORY
A.8.03	Create and fill an information technology position at PERB. The network has gone down which caused major problems and slowed the process for lengthy periods of time. There needs to be information technology staff at PERB. Need to analyze the management of information technology for PERB.	C	1
A.8.09	Implement a scheduling system online for PERB staff and parties similar to other state agency online scheduling systems.	C	1
B.8.01	Analyze the imposition of fees on parties. Consider implementing a Formal Hearing Fee or an Appeal Fee. Even assessing the parties a nominal fee will change the way they think about the process. Cost equates to value and currently, there is no cost associated with filing a charge and pursuing it, even if it is unmeritorious or serves no functional purpose for the charging party. Fairness and how to go about collecting the fees will need to be addressed.	C	1

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8.0 Administration			SME CATEGORY
C.8.01	Consider reassigning administrative positions to Glendale and Oakland offices. As it stands, professional and legal staff make copies, juggle calendars, handle office supplies, visitors, and tag surplus equipment all in the middle of litigation deadlines. Judges are also testing server equipment.	C, AR	1
A.8.04	Conduct a review of resource allocation, both administrative and legal.	C	3
A.8.05	Take into account the impact of any proposed change taken as a result of this improvement process upon PERB's current staff and budgetary allotment. Additionally, take into consideration the time and costs of improvement recommendations on PERB administrative staff and services.	C	3
A.8.06	Accept credit cards for arbitration payment. Payment is only available by checks and money orders (it takes parties a long time to do this) and requests cannot be processed until payment is made. (Note: the Department of General Services has a master contract for credit card services that PERB could utilize.)	*	3
A.8.07	Implement an Interactive Voice Response (IVR) System: create an IVR system to answer FAQs, route calls to the appropriate board agent, provide constituents basic information to access the website, redirect calls, and refer callers to appropriate organization, etc.	C, *	3
A.8.08	Digitize documents as they come into the office. Additionally, scan permanent representation files that are old and degrading (this should be the #1 priority to scan).	C	3
A.8.10	Assess and improve network capabilities: remedy network issues that cause major problems and slow the process for lengthy periods of time. The system is so slow in some locations that it impacts work and communication with the public.	C	3
A.8.01	Provide uniform classification and compensation among administrative support positions, regardless of the regional office in which they are employed. All positions should have the same training/pay/abilities. The Supervising Secretary would have to be on a higher pay scale, but the other positions should be equal. If the proposed Charge Clerk or Calendaring Clerk positions do not justify a 1.0 Full Time Equivalent position, the duties can be added on to another position.	C, AR	5

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8.0 Administration			SME CATEGORY
A.8.02	Designate administrative staff in Sacramento to support offices in Glendale and Oakland. Assign a single contact for each office. Assign an equivalent contact person in each office who is familiar with the capabilities and limitations of that office’s staff, calendars, etc. Possibly create an office manager position to coordinate the work of the administrative support staff throughout all offices and divisions, but the other positions should be equal. The perception outside of Sacramento is that the administrative office has changed significantly in the past 2-3 years and it is hard for those in satellite offices to understand who should be contacted for various administrative needs. Request improved communication and encourage use of intranet and an information technology helpline or use the new Case Management System/E-court system for contact information, announcements, etc. Bring it up at staff meetings and provide a tour of the intranet.	C, AR	5
B.8.02	Create a new Charge Clerk position assigned to the Sacramento Regional Office. A Charge Clerk would be responsible for all Case Management System functions and file transfers from the point of filing until the closure of assignment or transfer to the Board, and for maintaining proper rotation for new charges and informal settlement conference assignments. Location of documents and case files would be more carefully accounted for, and noted in the Case Management System.	C, AR	5
B.8.03	Create a Calendaring Clerk for the scheduling of formal hearings and informal settlement conferences. Currently, each ALJ and attorney calendars their own appearances subject to their own schedule and the parties’ availability. A calendaring clerk would take this work away from the ALJ/attorney, freeing up their time for other tasks.	C, AR	5

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Supporting Rationale for Priority Recommendations Regarding Process Improvement Suggestions

Priority 1: H.8.03 – Create and fill an information technology position at PERB.

Rationale: Currently, PERB has no dedicated information technology (IT) staffing and so relies on its Chief Administrative Officer to multitask and manage technology needs. PERB maintains its technology infrastructure through a contract. This leaves a significant gap in technology needs. PERB's existing business model provides for no dedicated IT staff that can understand the increasingly advanced technical complexities of both existing and emerging technologies, risks, and security requirements to reduce risks inherent with technology applications and lead PERB in high-level decision making that is critical to achieving its mission. There is also no dedicated staff to coordinate projects needed to address those operational inefficiencies that may benefit through an application of current technology. In contrast, similarly-sized State departments have from one to six IT staff, with one dedicated high level staff serving as their Chief Information Officer and one other serving as the Information Security Officer.

Frequently, IT solutions are used to facilitate an organization's process improvements. Having dedicated IT staff with this capacity would help better ensure PERB's adherence to best practices and conformance to emerging new technologies and requirements necessary to maintain an efficient and reliable infrastructure that is essential to PERB's continued productivity and protection of client/attorney privilege, and reduce the potential costly consequences from information breaches or delays caused by avoidable outages. Enhanced IT capabilities are also integral to many of the other recommendations brought forth in this process improvement process, such as e-signature and e-filing, improved website, increased transparency of the Board's process via the webpage including access to case documentation, document digitization, implementation of software systems for transcripts, and video conferencing for witness testimony. In addition to meeting this identified staffing need PERB would also require an ability to fund procurements necessary to maintain current infrastructure. To date, PERB has managed to maintain an acceptable, yet substandard, infrastructure by utilizing salary savings for more costly replacements and updates—not a best practice.

Priority 2: A.4.04 – Review the processes around what is deemed precedential v. non-precedential.

Rationale: Under PERB's current regulations, every decision issued by the Board is precedential, with one exception: the Board may issue a non-precedential decision only on an appeal from the Office of the General Counsel's dismissal of an unfair practice charge. This system requires the Board to spend considerable time ensuring that each decision is thoroughly explained and precisely worded—even if the decision adds nothing significant to PERB's body of law.

With discretion to designate decisions as precedential or non-precedential, the Board could devote more of its resources to cases that truly raise precedential issues, while simultaneously allowing it to rule more quickly on the remainder of the cases on its

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docket. Such a system would preserve the Board's error-correction function while easing the current burden of writing a precedential decision in most cases. It also would reduce the number of Board decisions constituents would need to digest to stay current with PERB precedent.

Priority 2a: A.4.09 – Increase the number of Board counsels to support its members.

Rationale: Currently, each Board member has one Board counsel to advise and assist the member with drafting and reviewing pending Board decisions. Because of the attorney-client relationship between each Board member and his/her counsel, the ability of Board counsel to assist other members is limited. When Board counsel is disqualified from participating in a case, the member typically seeks assistance on that case from an attorney in the General Counsel's Office, which in turn reduces the General Counsel's ability to process unfair practice charges and other matters. Additionally, there is no central mechanism for the Board to triage cases and assign them a priority.

Having additional attorneys who work for the entire Board, not just a single Board member, would provide several advantages. For one, a pool attorney could be drafting a decision for a member at the same time that member's Board counsel is working on a different case. This would allow the Board to issue decisions more quickly. Second, when a Board counsel is disqualified, a pool attorney could step in for that case, eliminating the need to borrow an attorney from the General Counsel's Office. Finally, if the Board had discretion to designate decisions as non-precedential, the pool attorneys could conduct initial review of cases as they are placed on the Board's docket and recommend whether the decision should be precedential or not. This would allow the Board to more expeditiously resolve less complex cases and devote more resources to cases that will contribute significantly to PERB's body of law.

Priority 3: A.1.03 - Change regulations to make electronic filing mandatory and allow e-signature.

Priority 3b: A.3.03 - Require parties to provide a valid e-mail address that infers a legal presumption that the parties have been served when the e-mail has been sent.

Rationale: The availability and advancement of case management software has led most judicial systems to adopt e-filing processes as the preferred method of filing. Case management software automates processes and workflow, reducing errors in case processing and creating audit trails. The software digitizes records, and allows PERB to better manage information. Data is stored securely in the cloud, reducing the need for paper storage, document retrieval, and photocopying costs. This would allow PERB staff to access documents from any location 24/7, and would reduce the time spent responding to California Public Records Act requests.

The use of e-signatures and e-service works hand-in-hand with e-filing. E-service eliminates the need for late night drives to the post office to meet deadlines; the costs of printing and postage; and the need for couriers may be entirely alleviated. Parties can

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also be sure that they will receive the correct documents. E-service also allows constituents to receive notices, order, and decisions from PERB electronically.

Priority 3a: B.4.01 – Review exceptions detail and documentation process and implementation plan and impose word limits.

Rationale: PERB’s current regulations governing exceptions to a proposed decision often result in a party filing dozens of individual exceptions, which take considerable time for the Board to consider and address in a decision. Revising PERB’s regulations to provide for more streamlined appeal filings would make it easier for the Board to render decisions while saving parties time and money drafting their appeals. Alternatively, the Board could instruct parties, perhaps on its website, on how to file concise but adequate exceptions under the current regulations.

Additionally, because PERB regulations set no page or word limit on briefs in support of exceptions, parties often file unnecessarily lengthy briefs. Adopting a word limit like the California courts of appeal impose on briefs would force parties to argue their appeals concisely and focus only on those points that truly matter in their case. Of course, because some cases are more complex than others, the Board should have discretion to allow a party to file a longer brief upon showing good cause.

Priority 4: A.3.08 - Revise expedited decisions process.

Priority 4a: A.1.09 - Setup an expedited process for charges based on the level of complexity of the charge.

Rationale: When granted, a request to expedite moves the case atop the queue of cases awaiting investigation or adjudication. The reasons for the request must be sufficiently compelling to justify moving the case to the head of the line. Depending on the criteria for expediting a case, the benefits may include: (1) an improved likelihood of settlement; (2) a more suitable remedy—particularly in charges involving active collective bargaining or unilateral changes; (3) averting a larger labor dispute that could significantly consume additional PERB resources; or (4) serve as a deterrent for misconduct when a party could be compelled to answer for its actions immediately.

Priority 5: A.3.01 - Review regulations for subpoena duces tecum, document production, and deadlines and the manner in which hearings are to be administered.

Rationale: Currently there is no requirement for a party to produce documents prior to the first day of hearing. This can lead to formal hearing time being used to review large document productions. Giving the Administrative Law Judge express discretion and authority to order alternate production dates would assist the parties to be more prepared for the first formal hearing day and maximize the use of hearing time for testimonial evidence.

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Priority 6: A.3.06 - Institute filing periods for motions.

Rationale: Current regulations have deadlines for responding to motions, but do not set a cut-off date for filing motions before the hearing. This can lead to parties spending the days immediately before a hearing filing and responding to motions instead of preparing for the hearing. A regulation setting filing deadlines for pre-hearing motion(s) would give the Administrative Law Judge sufficient time to consider and rule on the motions before the hearing, and allow the parties to spend the days leading up to the hearing preparing their cases.

Priority 7: A.2.01 - Change regulations to enforce appearance, preparation, and settlements for informal settlement conferences.

Priority 7a: A.3.02 - Add a regulation setting forth ramifications for a party's failure to appear.

Priority 10: A.3.12 - Establish the informal settlement conference on the calendaring schedule closer in time to the formal hearing.

Rationale: The settlement of labor disputes is one of PERB's major purposes. Yet parties currently are under no obligation to appear or prepare for the informal settlement conference. Further, the settlement conference usually occurs about 30 days after issuance of the complaint, often before the advocates have interviewed witnesses, located and collected the needed evidence, or conducted legal research on the questions of law important to the case. When parties are unprepared, they do not understand the strengths and weaknesses of their cases. Settlement then becomes a significant challenge since a strong understanding of the merits (or lack thereof) of a case is necessary for an informed decision on settlement terms. Requiring the parties to appear at informal settlement conferences and be prepared to make informed decisions about settlement, when coupled with giving parties additional time to assess their cases, should result in more cases settling before being set for a formal hearing. This reduction in case load would, in turn, reduce the time it takes PERB to hold hearings and issue decisions.

Additionally, current regulations do not address the ramifications of a party's failure to appear at a formal hearing. Although PERB decisional law addresses this issue to some extent, a regulation would give parties (especially pro per litigants) clear notice of the consequences of their failure to appear at a scheduled formal hearing. This would prevent non-appearing parties from consuming additional PERB resources by having the matter constantly rescheduled.

Priority 8: A.1.08 - Provide additional training and information to guide pro per charging parties.

Priority 8a: A.1.13 - Improve PERB website to clearly guide pro pers - create embedded training videos on the website to assist pro pers.

Rationale: By far, pro per cases require the highest time commitment from Regional Attorneys and ALJs. Generally, pro per litigants are unfamiliar with PERB's regulations and legal processes. As a result, they often have missteps that delay the adjudication of

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their cases. For example, unfair practice charges filed by pro per litigants often leave out important facts, which results in multiple phone calls, warning letters and amendments. At the other extreme, pro pers often submit far more information or documents than necessary, requiring the Regional Attorney or ALJ to pore over numerous documents to find those relevant to the case.

The delays and unnecessary time spent addressing the issues often associated with pro per litigants can be reduced significantly by providing information and resources that educate and guide them through PERB's processes. This will allow Regional Attorneys and ALJs to use their time more efficiently to reduce the various backlogs and the extraordinarily long time it takes to move cases through each division.

Priority 9: A.7.01 - PERB needs more mediators given the size of the State.

Rationale: Mediators work directly with parties at their own work sites, making their practical experience and knowledge of how employment and working conditions are impacted by external forces invaluable to the SMCS division's overall base of knowledge for subsequent disputes. This experience short-cuts the time needed by private practitioners to become familiar with funding mechanisms, changing technology, changes in the labor/management landscape, and other emerging issues.

The amount of time needed for travel for work assignments reduces available mediation days among the existing mediators. With its current staffing, SMCS cannot meet statutory timelines under the HEERA, EERA, or MMBA for initiating mediation, which extends the amount of time the parties are in a status that precludes a return to normalcy. This delay increases the likelihood of unfair practice charges being filed, or that the parties will engage in other forms of litigation and/or serious job actions.

SMCS's ability to resolve many labor/management disputes through mutual settlement is a significant economic benefit to the State because: (1) strikes and other job actions disrupt local economies; (2) parents, caregivers, and students are severely impacted by disruptions in school schedules and activities; (3) dispute resolutions that are forced-upon one party or the other create relationship problems that can survive decades into the future, resulting in chronic labor disputes; and (4) unresolved disputes that result in unfair practice charges impact the workload throughout PERB.

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PROPOSED TEXT:

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

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b), and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3563, 71639.1, and 71825, Government Code; and Section 99561, Public Utilities Code.

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

32020. Board.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3501(f), 3509, 3513(h), 3540.1(a), 3541, 3562(b), 71639.1(a) and 71825(a), Government Code; and Section 99560.1(b), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections

3501(f), 3509, 3513(h), 3540.1(a), 3541, 3562(b), 71639.1(a) and 71825(a), Government Code, and Section 99560.1(b), Public Utilities Code.

32038. PECC.

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

Authority cited: Sections 3541.3, 3555.5(c), Government Code. Reference: Section 3555.5(c), Government Code.

32050. General Counsel.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Section 3541(f), Government Code.

32055. Chief Administrative Law Judge.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3563(j), 71639.1 and 71825, Government Code, and Section 99561(j), Public Utilities Code.

32060. Headquarters Office.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

32080. Day.

“Day” means calendar day unless otherwise specified.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(f), Public Utilities Code.

32090. Fax Filing.

(a) “Facsimile transmission” is the transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

(b) “Facsimile machine” means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union, in regular resolution. Any facsimile machine used to send documents must send at an initial transmission speed of no less than 4800 baud and be able to

generate a transmission record. Facsimile machine includes, but is not limited to, a facsimile modem that is connected to a personal computer.

(c) “Facsimile filing” or “filing by fax” means the facsimile transmission of a document to PERB.

(d) “Fax” is an abbreviation for “facsimile,” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3563, 3563.2, 71639.1 and 71825, Government Code, and Sections 99561 and 99561.2, Public Utilities Code.

32091. Electronic Filing.

(a) “Electronic filing” or “filing by electronic mail” means the transmission of a document to PERB via an electronic mail (e-mail) message.

(b) Electronic filing must be directed to the e-mail address currently published by PERB for that purpose on its website.

(c) Any attachments to an electronic filing shall be in PDF format and the total size of any e-mail message, including attachments, shall not exceed 3 MB, unless the files are compressed (in a zip file format).

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3563, 3563.2, 71639.1 and 71825, Government Code, and Sections 99561 and 99561.2, Public Utilities Code.

Article 2. General Provisions

32100. Application of Regulations.

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

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

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

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

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

(f) Except as expressly provided otherwise, the rules and regulations within this Chapter, and Chapters 2 through 8, do not apply to mediation, election or other services provided by mediators or conciliators pursuant to Government Code sections 3600 and 3601, or to services provided by PERB pursuant to Government Code Section 3557(b)(4).

(g) All rules and regulations within this Chapter, except for Subchapters 6 and 8, shall apply to proceedings conducted under the PECC within this Division.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Section 19604, Business and Professions Code; Section 57031, Food and Agricultural Code; Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509, 3513(h), 3541.3, 3555.5(c), 3557, 3563, 3600, 3601, 3602, 3603, 3611, 71632.5, 71636, 71636.1, 71636.3, 71637, 71637.1, 71639.1, 71823 and 71825, Government Code; Section 2686, Labor Code; and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 99561, 100301, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4, and Appendix 2, Sections 13.90, 13.91, and 13.96, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3555.5(c), 3563, 71639.1 and 71825, Government Code, and Section 99561, Public Utilities Code.

32120. Filing Contracts with Board.

Each employer entering into a written agreement or memorandum of understanding with an exclusive representative pursuant to the PECC, Trial Court Act, Court Interpreter Act, TEERA, MMBA, EERA, Ralph C. Dills Act or HEERA, 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.

Authority cited: Sections 3509(a), 3524, 3541.3(g), 3555.5(c), 3563(f), 3513(h), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3524, 3541.3(n), 3555.5(c), 3563(m), 3541.3(f), (g), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

32130. Computation of Time.

(a) In computing any period of time under these regulations, except under Section 32776(c), (d), (e) and (f), 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, as defined in Government Code Sections 6700 and 6701, 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.

(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 facsimile transmission as defined in Section 32090.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3555.5(c), 3563, 3577(b), 71639.1, and 71825, Government Code, and Sections 99561 and 99564.4(b), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(n), 3541.35, 3563(m), 3555.5(c), 3563.5, 71639.1, 71639.15, 71825, and 71825.05, Government Code; and Sections 99561(m) and 99561.4, Public Utilities Code.

32135. Filing.

(a) All documents shall be considered “filed” when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office during a regular PERB business day. All documents, except for proof of support as described in sections 32700, 61020, 81020 and 91020, must also be accompanied by proof of service pursuant to Section 32140.

(b) All documents, except proof of support as described in sections 32700, 61020, 81020 and 91020, shall also be considered “filed” when received during a regular PERB business day by facsimile transmission at the appropriate PERB office together with a Facsimile Transmission Cover Sheet, or when received by electronic mail in accordance with Section 32091.

(c) A party filing documents by facsimile transmission or by electronic mail must also deposit the original, together with the required proof of service and the required number of copies, in the U.S. mail or with a delivery service for delivery to the appropriate PERB office.

(d) A facsimile or electronic mail filing shall include the following information:

(1) The name of the party serving or filing papers and the name and telephone number of the agent transmitting the document;

(2) The name or title of the document being transmitted and the number of pages;

(3) The date and time of the transmission;

(4) The PERB case number, if any.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Sections 12, 12(a) and 1013, Code of Civil Procedure; and Section 99561(m), Public Utilities Code.

32140. 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, when sent by facsimile transmission in accordance with the requirements of Sections 32090 and 32135(d), or when sent by electronic mail in accordance with the requirements of Section 32091, 32135(d) and 32140(b). 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, fax number(s) or 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code.

32142. Proper Recipient for Filing or Service.

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

(a) The Board: the appropriate or designated regional office (see, e.g. Sections 32075, 32122, or 32612) unless the headquarters office is specified;

(b) The Board itself: only at the headquarters office;

(c) An employer

(1) in the case of a public school employer: the superintendent, deputy superintendent, or a designated representative of a school district; or to the school board at a regular or extraordinary meeting;

(2) in the case of a state employer: the Governor or his designated representative on behalf of the State of California;

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

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

(B) If the employer is the Directors of Hastings College of the Law, the Office of the General Counsel of Hastings;

(C) 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.

(4) in the case of a public agency employer as defined in Government Code section 3501(c): the individual designated to receive service or the chief executive officer.

(5) 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.

(6) 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.

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

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

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3501(c), 3513(j), 3541.3(n), 3555.5(c), 3563(m), 71601(k), 71639.1, 71801(h), 71807 and 71825, Government Code, and Section 99560.1(g), (h) Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

32147. Expediting Matters Before the Board.

The Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board, as follows:

(a) In any case arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, or 91450;

(b) In any case that presents an important question of law or policy under any statute administered by the Board, the early resolution of which is likely to improve labor relations between or among affected parties;

(c) In conjunction with any determination to seek injunctive relief pursuant to Section 32450 et seq.;

(d) In any case, as ordered or directed by the Board itself.

For purposes of this Section, the expediting of a matter means the matter shall be given priority and decided on an expedited basis, in the manner determined to be appropriate by, as applicable, the Board itself, the General Counsel, or the Chief Administrative Law Judge.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

32150. Subpoenas.

(a) Before the hearing has commenced, the Board shall issue subpoenas at the request of any party for attendance of witnesses or production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena for production of documents. After the hearing has commenced the Board may issue subpoenas.

(b) Any subpoenas issued pursuant to subdivision (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of sections 1987 and 1988 of the Code of Civil Procedure.

(c) All witnesses appearing pursuant to subpoena, other than the parties, shall receive fees and mileage in the amount as prescribed by law for civil actions in a superior court. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

(d) A written motion to revoke a subpoena may be filed prior to the proceeding or made by an oral motion at the commencement of the proceeding. The Board shall revoke the subpoena if the evidence requested to be produced is not relevant to any matter under consideration in the proceeding or the subpoena is otherwise invalid.

(e) Upon a finding of the Board itself that a Board agent is essential to the resolution of a case and that no rational decision of the Board can be reached without such agent, the Board itself shall produce the agent if subpoenaed to do so by any party to the dispute. For purposes of this subdivision, the term "Board agent" includes a mediator or conciliator employed within the State Mediation and Conciliation Service. This subdivision shall not apply when the mediator or conciliator is performing services pursuant to Government Code section 3601 to which the confidentiality provisions of that section or section 703.5 and Chapter 2, commencing with section 1115, of Division 9 of the Evidence Code apply.

(f) Upon the failure of any person to comply with a subpoena, the Board may apply to an appropriate superior court for an order requiring such person to appear and produce evidence and give testimony regarding the matter under investigation or in question. Requests for compliance with a subpoena shall be made to the Board agent assigned the case. If the Board agent deems it appropriate, he or she shall promptly recommend to the General Counsel that the Board seek enforcement of the subpoena. A request that the Board apply for an order may be made by the General Counsel at any stage of the proceedings. The Board shall seek enforcement on recommendation of the General Counsel unless in the judgment of the Board the enforcement of such subpoena or notice would be inconsistent with law or the policies of the applicable Act. If the request is granted, the record will remain open in the matter until the Board determines that the court order will not be forthcoming, or that further delay would frustrate the policies of the applicable Act, or until the testimony sought is included in the record.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 3601, 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

32155. Disqualification of Board Agent or Board Members.

(a) No Board member, and no Board agent performing an adjudicatory function, and no mediator or conciliator employed within the State Mediation and Conciliation Service, shall decide or otherwise participate in any case or proceeding:

(1) In which he or she has a financial interest in the outcome.

(2) When he or she is related to any party or to an agent or officer of any party, or to an attorney or counsel of any party by consanguinity or affinity within the third degree computed according to the rules of law, or when he or she is indebted, through money borrowed as a loan, to any party or to an attorney or counsel of any party.

(3) When, in the case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level.

(4) When it is made to appear probable that, by reason of prejudice of such Board member or Board agent, a fair and impartial consideration of the case cannot be had before him or her.

(b) Whenever such a Board agent shall have knowledge of any facts, which under the provisions of this rule disqualify him or her from presiding over any aspect of a hearing or investigation, it shall be his or her duty immediately to notify the General Counsel or the Chief Administrative Law Judge, as appropriate, setting forth all reasons for his or her belief.

(c) Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts supporting it. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such Board agent admits his or her disqualification, such admission shall be immediately communicated to the General Counsel or the Chief Administrative Law Judge, as appropriate, who shall designate another Board agent to hear the matter.

Notwithstanding his or her disqualification, a Board agent who is disqualified may request another Board agent who has been agreed upon by all parties to conduct the hearing or investigation.

(d) If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board itself a request for special permission

to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

(e) Whenever a Board member shall have knowledge of any facts which, under the provisions of this rule, disqualify him or her to consider any case before the Board, it shall be his or her duty to declare the disqualification to the Board immediately upon learning of such facts. This declaration shall be made part of the official record of the Board. The Board member shall then refrain from participating and shall attempt in no way to influence any other person with respect to the matter.

(f) Any party to a case before the Board may file directly with the Board member a motion for his or her recusal from the case when exceptions are filed with the Board or within ten days of discovering a disqualifying interest provided that such facts were not available at the time exceptions were filed. The motion shall be supported by sworn affidavits stating the facts constituting the ground for disqualification of the Board member. Copies of the motion and supporting affidavits shall be served on all parties to the case.

(g) Within ten days after the filing of a motion for recusal, the Board member alleged to be disqualified shall render a decision stating the reasons therefore. If the Board member is not on the panel assigned to hear the case, he or she shall so inform the parties and indicate that he or she does not intend to participate in the case. In the event that the Board member decides to participate, he or she shall render a decision on the motion for recusal before doing so.

(h) Any party aggrieved by a determination made pursuant to subsections (d) or (g) of this rule may include the matter of claimed disqualification in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3555.5(c), 3557, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561, 99562, 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

32164. Application for 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 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 party 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3 (k), 3555.5(c), 3563(g), (j), 71639.1 and 71825, Government Code, and Section 99561(g), (j), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

32170. Powers and Duties of Board Agent Conducting a Hearing.

The board agent conducting a hearing shall have the powers and duties to:

- (a) Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;
- (b) Authorize the taking of depositions;
- (c) Issue subpoenas and rule upon petitions to revoke subpoenas;
- (d) Regulate the course and conduct of the hearing, including the power to exclude a witness from the hearing room;
- (e) Hold conferences for the settlement or simplification of issues;
- (f) Rule on objections, motions and questions of procedure;
- (g) Administer oaths and affirmations;
- (h) Take evidence and rule on the admissibility of evidence;
- (i) Examine witnesses for the purpose of clarifying the facts and issues;
- (j) Authorize the submission of briefs and set the time for the filing thereof;
- (k) Hear oral argument;
- (l) Render and serve the proposed decision on each party;
- (m) Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(k), 3555.5(c), 3563(g), (j), 71639.1 and 71825, Government Code, and Section 99561(g), (j), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code, and Section 99561(g), 99561(h), Public Utilities Code.

32178. Burden of Proof: Unfair Practice Cases.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(i), 3555.5(c), 3563(g), 3563(h), 71639.1 and 71825, Government Code, and Section 99561(g), 99561(h), Public Utilities Code.

32180. Rights of Parties.

Each party to the hearing shall have the right to appear in person, by counsel or by other representative, and to call, examine and cross-examine witnesses and introduce documentary and other evidence on the issues.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3541.3, 3513(h), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), (i), and (n), 3555.5(c), 3563(g), (h) and (m), 71639.1 and 71825, Government Code, and Section 99561(g), (h) and (m), Public Utilities Code.

32190. Motions.

(a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(b) Responses to motions shall be filed with the Board agent within fourteen 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.

(c) During the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

32205. Continuances.

A party may file a request for a continuance of the formal hearing no later than five days prior to such hearing. Such request shall be in writing, signed by the party or its agent, state the grounds for the request, and state the position of each party regarding the request. An oral request or a request for continuance submitted less than five days prior to the hearing may be made only under unusual circumstances. A request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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 his or her 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections

3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a); 3513(h); 3541.3 (g), (n); 3555.5(c); 3563 (f), (m); 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3 (a), (b), (e), (g), (h), (i), (l), (m), (n), 3555.5(c), 3563 (a), (b), (e), (f), (g), (h), (k), (l), (m), 71639.1 and 71825, Government Code, and Section 99561, Public Utilities Code.

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 original and one copy with the Board agent. Service and proof of service of the brief pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code, and Sections 99561 and 99561.2, Public Utilities Code.

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 an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to Section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in Section 32310. The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. Service and proof of service of the statement and brief pursuant to Section 32140 are required. The statement of exceptions or brief shall:

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

(2) Identify the page or part of the decision to which each exception is taken;

(3) Designate by page citation or exhibit number the portions of the record, if any, relied upon for each exception;

(4) State the grounds for each exception.

(b) Reference shall be made in the statement of exceptions only to matters contained in the record of the case.

(c) An exception not specifically urged shall be waived.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505, and 125521, Public Utilities Code.

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, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, or 91450, 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 extensions of time in cases before the Board itself that are subject to subparagraph (b), above.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b), and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.3, 3513(h), 3520.8, 3541.3(k), (n), 3541.35, 3555.5(c), 3563(j), (m), 3563.5, 71639.1, 71639.15, 71825, and 71825.05, Government Code; and Section 99561(j), (m), and 99561.4, Public Utilities Code.

32310. Response to Exceptions.

Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself an original and five copies of a response to the statement of exceptions and a supporting brief. The response shall be filed with the Board itself in the headquarters office. The response may contain a statement of any exceptions the responding party wishes to take to the recommended decision. Any such statement of exceptions shall comply in form with the requirements of Section 32300. A response to such exceptions may be filed within 20 days. Such response shall comply in form with the provisions of this Section. Service and proof of service of these documents pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3555.5(c), 3563(j), 3563(m), 71639.1, and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505, and 125521, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3555.5(c), 3563(j), 3563(m), 71639.1, and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code.

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) 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, except as set forth in subsection (d). The precedential status of decisions issued by the Board itself includes all decisions issued prior to July 1, 2013.

(d) Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under Section 32635 shall determine whether the decision or order, or any part thereof, shall be designated as precedential. In determining whether all or part of such a decision or order shall be designated as 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(k), (n), 3555.5(c), 3563(j), (m), 3563.2, 11425.60, 71639.1, and 71825, Government Code; and Sections 99561(j), (m) and 99561.2, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, Section 99561(f), Public Utilities Code, and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

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, or
 - (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.

(4) a decision made 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3555.5(c), 3557, 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code.

Article 4. Reconsideration

32400. Administrative Remedies.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3520, 3542, 3555.5(c), 3564, 71639.4 and 71825.1, Government Code, and Section 99562, Public Utilities Code.

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. An original and five copies of 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. 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.

(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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344 102403, 103401, 120505, and 125521, Public Utilities Code.

Article 5. Request for Injunctive Relief

32450. Request.

(a) An original and six (6) copies of a request from a party that the Board seek injunctive relief shall be filed with the General Counsel at the headquarters office. A copy shall be concurrently served on the appropriate regional office as designated in sections 32075 and 32612. 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3555.5(c), 3541.3(j), (n), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

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 original and six (6) copies of any written position statements or other documents filed with the General Counsel must be filed at the headquarters office with a copy to the appropriate regional office as designated in section 32075, and service and proof of service on the opposite party. Any filing with the General Counsel in accordance with this section shall be by personal delivery, express mail, or by another common carrier promising overnight delivery thereof. Service and proof of service on the opposing party shall be pursuant to section 32140 except that service shall be by facsimile transmission, electronic mail, or personal delivery. The Board agent may contact and question such persons as necessary to effectuate the investigation.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), (n), 3555.5(c), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), (n), 3555.5(c), 3563(i), (m), 71639.1 and 71825, Government Code, and Section 99561(i), (m), Public Utilities Code.

32465. Decision of the Board Itself.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), (n), 3555.5(c), 3563(i), (m), 71639.1 and 71825, Government Code, and Section 99561(i), (m), Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541(f), (g), 3541.3(j), (k), 3555.5(c), 3563(i), (j), 71639.1 and 71825, Government Code, and Section 99561(i), (j), Public Utilities Code.

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32602. Processing Violations.

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, the PECC, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act or Court Interpreter Act, shall be processed as unfair practice charges.

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

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

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

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

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code; and Sections 99561(h), 9561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

32605. Copies of Unfair Practice Charges Required to be Filed.

Any party filing an unfair practice charge or amended charge must file the original and one copy with the appropriate regional office.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3523, 3541.3(i), (n), 3541.5, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), (m), 3563.2, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code, and Sections 99561(h), 99561.2, 99566.3, and 99569, Public Utilities Code.

32612. 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(i), 3541.5, 3555.5(c), 3563(h), 3563.2, 71639.1, 71807 and 71825, Government Code, and Sections 99561(h) and 99561.2, Public Utilities Code.

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. If the party is the State of California, the name and address of the "appointing power" as defined in Government Code Section 18524, and of the Governor shall be set forth;

(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 and/or, under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act, the applicable local rules, or the sections of the Public Utilities 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 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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

32620. Processing of Case.

- (a) When a charge is filed, it shall be assigned to a Board agent for processing.
- (b) The powers and duties of such Board agent shall be to:
 - (1) Assist the charging party to state in proper form the information required by section 32615;
 - (2) Answer procedural questions of each party regarding the processing of the case;
 - (3) Facilitate communication and the exchange of information between the parties;
 - (4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.
 - (5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), or Public Utilities Code Section 99561.2; or if it is determined that a charge filed pursuant to Government Code section 3509(b) is based upon conduct occurring more than six months prior to the filing of the charge.
 - (6) Place the charge in abeyance if the dispute arises under MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act and is subject to deferral to final and binding arbitration pursuant to a collective bargaining agreement, and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act, 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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1 and 71825, Government Code; Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code; *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608, and *Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.

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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3509, 3513, 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i) and (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

32635. Review of Dismissals.

(a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. 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;
- (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 the charging party files a timely appeal of the dismissal, any other party may file a statement in opposition to the appeal within 20 days following the date of service of the appeal. The original opposition and five (5) copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the filing party. Service and proof of service of the statement pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. 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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3514.5(a), 3541.5(a), 3555.5(c), 3563.2, 71639.1 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7 and 99563.8, Public Utilities Code.

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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

32661. Repugnancy Claims.

(a) An unfair practice charge concerning conduct subject to Government Code Section 3514.5(a)(2) or 3541.5(a)(2), or subject to final and binding arbitration pursuant to a collective bargaining agreement for parties governed by the TEERA, MMBA, HEERA, Trial Court Act, or Court Interpreter Act, 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.

Authority cited: Sections 3509, 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3506.5, 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3555.5(c), 3563.2, 3571, 3571.1, 3571.3, 3589, 71639.1 and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8 and 99567, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3555.5(c), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3502.5, 3506.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3555.5(c), 3563(h), 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code; and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code.

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.

Authority cited: Sections 3509(a), 3513, 3541.3, 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3555.5(c), 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, and Sections 99561.3 and 99562, Public Utilities Code, and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

SUBCHAPTER 9. STATE MEDIATION AND CONCILIATION SERVICE

Article 1. Services

§ 32998. Reimbursement for Services.

(a) Beginning July 1, 2010, training and facilitation services provided by the SMCS pursuant to Section 3602 of the Government Code and representation services, other than election services, relating to public transit labor relations pursuant to the Public Utilities Code 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, shall include travel time and time spent with the parties to determine the content of the training and goals for the facilitation, and shall continue until the services are completed.

(1) Facilitation services include facilitation of collective bargaining prior to impasse, facilitation of labor-management processes such as labor-management committees, and facilitation of workplace dispute resolution processes. 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 and have requested mediation, or mediation of grievances arising under a collective bargaining agreement or memorandum of understanding.

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

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

(4) SMCS shall bill the parties for training, facilitation and representation services after completion of the work. The matter of which party or parties will be responsible for reimbursement of SMCS will be determined between or among the parties and will be recorded in a memorandum of agreement signed by all parties. The cost of representation services shall be split equally between or among the parties unless otherwise agreed to by the parties as permitted by law.

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

(1) Election services shall be reimbursed as follows:

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

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

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

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

Authority cited: Sections 3541.3(g), 3555.5(c), 3602 and 3603, Government Code. Reference: Sections 3555.5(c), 3557, 3600, 3601, 3602, 3603 and 3611, Government Code; Sections 25051, 25052, 28850, 28852, 30750, 30751, 30756, 40120, 40122, 50120, 50121, 70120, 70121, 95650, 95651, 98162.5, 100301, 100304, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 120502, 120503, 120505, 125521, 125524, 125525 and 125526; Appendix 1, Section 4.1 and Appendix 2, Section 13.90, Public Utilities Code; Section 11010, Government Code; and Sections 8740 and 8752, State Administrative Manual.

SUBCHAPTER 10: INTEREST ARBITRATION.

Article 1. General Provisions

33013. Arbitration Decision

An arbitration decision issued pursuant to Government Code Section 3557(b)(4) is not:

(a) a proposed decision as set forth in PERB Regulation 32215; or

(b) an administrative determination as set forth in PERB Regulation 32350.

Authority cited: Sections 3541.3, 3555.5(c), Government Code. Reference: Section 3557, Government Code.

33014. Procedures for Interest Arbitration Proceedings

Interest arbitration proceedings shall be conducted in accordance with Government Code Section 11425.10, Chapter 4.5 (commencing with section 11400) of Part 1 of Division 3 of Title 2.

Authority Cited: Sections 3541.3, 3555.5(c), Government Code. Reference: Sections 3557, 11425.10, Government Code.

Article 2. Services

33020. 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.

ALTERNATIVE LANGUAGE:

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 set forth in the 2018-2019 State of California Department of General Services Price Book for the Office of Administrative Hearings, 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.

Authority cited: Sections 3541.3, 3555.5(c), 3557, Government Code. Reference: Section 3557, Government Code.