

**State of California  
Office of Administrative Law**

In re:  
Public Employment Relations Board

Regulatory Action:

Title 8, California Code of Regulations

Adopt sections: 32802, 32804  
Amend sections: 32380, 32603, 32604  
Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION

Government Code Sections 11346.1 and  
11349.6

OAL File No. 2011-1219-01 E

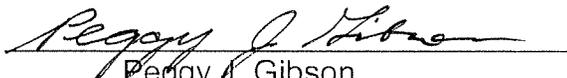
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The Public Employment Relations Board (PERB) is adopting two sections and amending three sections in Title 8 of the California Code of Regulations. This emergency rulemaking is the result of AB 646 (CH 680, Stats. 2011) that provides for a mandatory impasse procedure if requested when the parties have not reached a settlement of their dispute following mediation. These regulations establish the impasse procedure and the timelines for the procedure.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/1/2012 and will expire on 6/30/2012. The Certificate of Compliance for this action is due no later than 6/29/2012.

Date: 12/29/2011

  
Peggy J. Gibson  
Staff Counsel

For: DEBRA M. CORNEZ  
Assistant Chief Counsel/Acting Director

Original: Anita Martinez  
Copy: Les Chisholm

# EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2011-1219-01E</b>
For use by Office of Administrative Law (OAL) only		2011 DEC 19 AM 10:45 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Public Employment Relations Board			AGENCY FILE NUMBER (if any)

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Factfinding under the Meyers-Milias-Brown Act		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>		ADOPT 32802, 32804	
		AMEND 32380, 32603, 32604	
TITLE(S) 8		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>January 1, 2012</b>
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Les Chisholm	TELEPHONE NUMBER (916) 327-8383	FAX NUMBER (Optional) (916) 327-6377	E-MAIL ADDRESS (Optional) lchisholm@perb.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 12.19.11
TYPED NAME AND TITLE OF SIGNATORY Anita Martinez, Board Chair	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED  
DEC 29 2011  
Office of Administrative Law

PROPOSED TEXT -- REGULATION CHANGES RELATED TO  
IMPLEMENTATION OF PROVISIONS OF ASSEMBLY BILL 646  
(New language shown in *italics*.)

32380.           Limitation of Appeals.

The following administrative decisions shall not be appealable:

- (a) A decision by a Board agent regarding the mechanics of an election provided the decision does not affect standing of a party to appear on a ballot;
- (b) Except as provided in Section 32200, any interlocutory order or ruling on a motion.
- (c) A decision by a Board agent pursuant to Section 32793 regarding the existence of an impasse.
- (d) A decision by a Board agent pursuant to Section 32802 regarding the sufficiency of a request for factfinding under the MMBA.*

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3505.4, 3509, 3513(h), 3541.3(k), (n), 3563(j), (m), 71639.1 and 71825, Government Code; and Section 99561(j), (m), Public Utilities Code.

32603.           Employer Unfair Practices under MMBA.

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

- (a) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.
- (b) Deny to employee organizations rights guaranteed to them by Government Code section 3503, 3504.5, 3505.1, 3505.3, 3507.1, 3508(d) or 3508.5 or by any local rule adopted pursuant to Government Code section 3507.
- (c) Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 3505 or any local rule adopted pursuant to Government Code section 3507.
- (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another in violation of rights guaranteed by Government Code section 3502 or 3508(c) or any local rule adopted pursuant to Government Code section 3507.

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

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

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502, 3502.1, 3505, 3505.2, 3505.3, 3505.4, 3505.5, 3505.7, 3506, 3507, 3507(d), 3507.1, 3507.5, 3508, 3508.1, 3508.5 and 3509, Government Code; and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.

32604. Employee Organization Unfair Practices under MMBA.

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

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

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

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

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

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502, 3502.1, 3502.5, 3505, 3505.2, 3505.4, 3505.5, 3505.7, 3506, 3507 and 3509, Government Code; and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.

32802. *Request for Factfinding Under the MMBA.*

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

*(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules; or*

*(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.*

*(b) A request for factfinding must be filed with the appropriate regional office; service and proof of service pursuant to Section 32140 are required.*

*(c) Within five working days from the date the request is filed, the Board shall notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a)(1) or (2), above, no further action shall be taken by the Board. If the request is determined to be sufficient, the Board shall request that each party provide notification of the name and contact information of its panel member within five working days.*

*(d) "Working days," for purposes of this Section and Section 32804, shall be those days when the offices of the Public Employment Relations Board are officially open for business.*

*(e) The determination as to whether a request is sufficient shall not be appealable to the Board itself.*

*Authority cited: Sections 3509(a) and 3541.3(e) and (g), Government Code. Reference: Sections 3505.4, 3505.5, and 3505.7, Government Code.*

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

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

*Authority cited: Sections 3509(a) and 3541.3(e) and (g), Government Code. Reference: Sections 3505.4, 3505.5, and 3505.7, Government Code.*