

DISCUSSION DRAFT  
(JUNE 18, 2012)

The following is a draft of regulation changes that has been prepared solely for the purpose of discussion as to which, if any, of the changes should be presented for consideration by the Board. The regulations are grouped by subject area and in some cases appear in more than one subject area [an asterisk (\*) by the section number denotes that the regulation section appears more than once in the document].

Following each regulation section, a note (in bold type) provides a brief explanation of the intent and reason for the changes shown.

Other Topics

In addition to the various draft proposals, we are also requesting the Advisory Committee consider and discuss three other topics of possible rulemaking activity, but without draft language. Those three topics are:

- (1) Whether to change the treatment of the partial dismissal of unfair practice charges;
- (2) Whether to address in regulations any change in the standards for deferral, based in part on recent developments with how the National Labor Relations Board addresses this area; and
- (3) Whether to undo regulatory changes made several years ago that eliminated separate public notice and financial statement complaint procedures, and instead provide for those disputes to be filed as unfair practice charges.

## Decisions

### \*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), 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), 3563.5, 71639.1, 71639.15, and 71825, and 71825.05, Government Code; and Section 99561(m) and 99561.4, Public Utilities Code.

**NOTE: Subdivision (b) would prohibit extensions of time in representation cases subject to the 180-day limit for processing representation cases set forth in SB 609.**

### 32305.        ~~Failure to File Exceptions~~ 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), 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, 3563(j), (m), 3563.5, 71639.1, 71639.15, and 71825, and 71825.05, Government Code; and Section 99561(j), (m), and 99561.4, Public Utilities Code.

**NOTE: Clarifies when decisions become final, pursuant to mandate of SB 609. Would prohibit extensions of time in representation cases subject to the 180-day limit for processing representation cases set forth in SB 609.**

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, prior to July 1, 2012, are precedential and may be cited in any matter pending before a Board agent or the Board itself. ~~The precedential status of decisions issued by the Board itself includes decisions issued prior to July 1, 1997.~~

(d) Effective July 1, 2012, a majority of the Board members issuing a decision or order may order that the decision or order, or any part thereof, be designated as precedential. In determining whether all or part of 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), and 3563(f), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3514.5, 3541.3(k), (n), 3563(j), (m), 3563.2, 11425.60, 71639.1, and 71825, Government Code; and Sections 99561(j), (m) and 99561.2, Public Utilities Code.

**Note: Would eliminate current provision making all Board decisions precedential and instead give Board discretion to designate those decisions it wishes to make precedential.**

### Expediting Cases

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 ~~pursuant to policy established by the Board itself,~~ 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 matters in the case of the Board itself means the matter shall be given priority and decided on an expedited basis. For purposes of this Section, the expediting of a matter by the Chief Administrative Law Judge or the General Counsel means the matter shall be given priority in the processing of the charge or petition, the scheduling of dates for informal conferences and formal hearings, the setting of deadlines for any action required to be taken by the parties, and the disposition of the matter.

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 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

**NOTE: These amendments make explicit and codify existing Board policy.**

## Extensions of Time/Filing/Service

### 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, 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.

**NOTE: Provides for filing of documents with PERB by electronic mail, replacing existing online filing procedures that have been problematic to administer and expanding scope of what can be filed electronically.**

### \*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), 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), 3563.5, 71639.1, 71639.15, and 71825, and 71825.05, Government Code; and Section 99561(m) and 99561.4, Public Utilities Code.

**NOTE: Subdivision (b) would prohibit extensions of time in representation cases subject to the 180-day limit for processing representation cases set forth in SB 609.**

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 ~~on-line filing as defined in Section 32613.~~

(c) A party filing documents by facsimile transmission or by ~~on-line filing~~ 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 ~~be accompanied by a Facsimile Transmission Cover Sheet which~~ includes the following information:

- (1) The name of the party serving or filing papers ~~by fax~~ and the name and telephone number of the agent transmitting the document ~~by facsimile transmission~~;
- (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), 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.

**NOTE: Provides for filing of documents by electronic mail, replacing existing online filing system which has been problematic to administer and expanding scope of what can be filed electronically. Parties would still be required to follow up with filing of complete, hard copies, including all exhibits, as is current practice with facsimile filing.**

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, deposited in the mail or with a delivery service properly addressed, or when sent by facsimile transmission in accordance with the requirements of Sections 32090 and 32135(d). 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 ~~and not a party to the case~~; (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) used for service on the party(ies); and (8) the date of service.

(b) 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), 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.

**NOTE: Would allow a party to sign the proof of service document. Given that the identity of the person effecting service has rarely, if ever, been an issue in PERB proceedings, and that PERB case law has held that actual notice may excuse technical noncompliance with service requirements, this change would simplify the procedural requirements before PERB.**

\*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. ~~with a~~ A copy shall be concurrently served on ~~to~~ the appropriate regional office as designated in sections 32075 and 32612. The request ~~and~~ 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 ~~by mail~~ must be ~~done~~ by personal delivery, express mail, or by another common carrier promising overnight delivery thereof. ~~If the request is made~~

~~during a work stoppage or lockout, personal service on the respondent of all documents filed with the General Counsel is required~~ 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), 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), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

**NOTE: Provides for service of request only by personal delivery, fax, or e-mail, in all cases. Other, non-substantive changes included.**

\*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 ~~by mail~~, shall be ~~done by~~ personal delivery, express mail, or by another common carrier promising overnight delivery thereof. Service and proof of service on ~~opposite~~ the opposing party shall be pursuant to section 32140 except that service shall be by ~~express mail instead of first class mail~~ 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, 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

**NOTE: Provides for personal delivery as a method of filing a response to request for injunctive relief , while still allowing use of express mail or other overnight delivery service. Provides for service of the response to a request only by personal delivery, fax, or e-mail. Other, non-substantive changes included.**

~~32613. On-Line Filing.~~

- ~~(a) “On line filing” and “electronic filing” refer to utilization of the web based electronic filing service provided by the Board as an alternative means to file an unfair practice charge pursuant to this Subchapter.~~
- ~~(b) Utilization of on line filing requires access by the user to the following:~~
- ~~(1) Personal computer with a Windows or Mac operating system;~~
  - ~~(2) Internet web browser;~~
  - ~~(3) Internet connection; and~~
  - ~~(4) Digital copies of any attachments that are to be submitted with the charge.~~
- ~~(c) Utilization of on line filing will require the user to provide an e-mail address, establish a user password, and agree to the terms of the following Disclaimer Statement found on the PERB website:~~

~~This application uses Javascript which will not work with some Ad Blocking Software. We suggest that you either turn off your Ad Blocking Software, or add our site URL ([www.perb.ca.gov](http://www.perb.ca.gov)) to the trusted sites on your Ad Blocking Software. PERB is not responsible for difficulties encountered between your internet provider and PERB’s network. An unfair practice charge (UPC) is considered “filed” when actually received before the close of business (5 p.m.) on a regular PERB business day. (PERB Regulation 32135.) The date and time a UPC is deemed filed will be determined by the date/time stamp applied by our server which points to Santa Cruz, CA: [scruc-net, inc. 165.227.1.1: ns.scruc.net](http://scruc-net, inc. 165.227.1.1: ns.scruc.net) Service area: Western U.S. If, after submitting your UPC, you do not receive an e-mail response containing a confirmation your charge has been successfully filed within a few minutes, there was a problem with your submission and your claim will not be considered filed. Using the PERB on line filing application does not relieve the user of the responsibility for filing the signed original plus one copy of the charge along with the original signed proof of service in the appropriate PERB office (PERB Regulations 32605 and 32615). A copy of the completed unfair practice charge and proof of service form must also be served on the party being charged (respondent) by someone other than the charging party. A proof of service form must be attached to each copy of the charge to prove that a copy of the charge has been served on the respondent. If you have uploaded your attachments at the time of electronically filing~~

~~your UPC, you DO NOT need to submit copies of the same attachments through the U.S. Mail to PERB. However, a copy of the charge and all attachments must be served on the responding party. Failure to provide the original signed UPC, signed Proof of Service and attachments (if necessary) to the appropriate PERB office within 5 business days from the date stamp provided by PERB's server in your confirmation e-mail will result in the UPC being dismissed except in cases where good cause is demonstrated.~~

~~(d) Upon successful submission of an unfair practice charge, including any attachments, and the proof of service, through utilization of on-line filing, PERB will provide confirmation of receipt via e-mail to the e-mail address provided by the user.~~

Authority cited: Sections 3509(a), 3513(h), 3541.3, 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.

**Note: Eliminates existing online filing process, to be replaced by electronic (e-mail) filing expanding scope of what can be electronically filed. Existing online process has been problematic for PERB staff to administer.**

### Factfinding (EERA/HEERA)

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

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

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

Authority cited: Sections 3541.3(g) and 3563(f), Government Code. Reference: Sections 3548.1 and 3591, Government Code.

**NOTE: Codifies existing practice.**

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

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

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

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

~~Authority cited: Sections 3541.3(g) and 3563(f), Government Code. Reference: Sections 3548.3(a) and 3593, Government Code.~~

**NOTE: This section is duplicative of existing statute and is unnecessary given that PERB does not play a role.**

### Hearings

~~32160~~ 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), 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), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.

**Note: Section renumbered to more appropriate location within hearing process regulations.**

## Injunctive Relief Requests

\*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, ~~with a~~ A copy shall be concurrently served on ~~to~~ the appropriate regional office as designated in sections 32075 and 32612. The request and 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 ~~by mail~~ must be ~~done~~ by personal delivery, express mail, or by another common carrier promising overnight delivery thereof. ~~If the request is made during a work stoppage or lockout, personal service on the respondent of all documents filed with the General Counsel is required~~ 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), 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), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

**NOTE: Provides for service of request only by personal delivery, fax, or e-mail, in all cases. Other, non-substantive changes included.**

\*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 ~~by mail~~, shall be ~~done by~~ personal delivery, express mail, or by another common carrier promising overnight delivery thereof. Service and proof of service on ~~opposite~~ the opposing party shall be pursuant to section 32140 except that service shall be by ~~express mail instead of first class mail~~ 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, 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), 3563(i), 71639.1 and 71825, Government Code; and Section 99561(i), Public Utilities Code.

**NOTE: Provides for personal delivery as a method of filing a response to request for injunctive relief , while still allowing use of express mail or other overnight delivery service. Provides for service of the response to a request only by personal delivery, fax, or e-mail. Other, non-substantive changes included.**

### MMBA Representation Petitions

61090. Recognition.

If only one employee organization qualifies to appear on the ballot and the organization has demonstrated proof of majority support in the appropriate unit, the Board shall cancel the election, and certify the organization as the exclusive representative unless the public agency has granted recognition ~~the public agency shall grant recognition~~.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1(a), (c), 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

### Article 3. Petition for Certification or Recognition

61210. Petition for Certification.

(a) An employee organization may file a petition for certification, by means of an election, to become the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit represented by an exclusive representative. The petition shall be filed with the appropriate regional office; be signed by an authorized agent of the employee organization; and include the following information:

- (1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;
  - (2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;
  - (3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;
  - (4) The approximate number of employees in the proposed appropriate unit;
  - (5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.
- (b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 61020 of these regulations.
  - (c) Service of the petition, excluding the proof of ~~at least 30 percent~~ support, and proof of service pursuant to Section 32140 are required.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

**61215. Petition for Recognition.**

(a) An employee organization may file a petition for recognition as the exclusive representative of an appropriate unit consisting of a group of employees who are not included in an established unit represented by an exclusive representative. The petition shall be filed with the appropriate regional office; be signed by an authorized agent of the employee organization; and include the following information:

- (1) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;
- (2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;
- (3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;
- (4) The approximate number of employees in the proposed appropriate unit;

(5) The name and address of any other employee organization, if any, known to have an interest in representing the employees covered by the unit.

(b) The petition shall be accompanied by proof of at least majority support of the employees in the unit claimed to be appropriate. Proof of support is defined in Section 61020 of these regulations.

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

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

61220. Posting Notice of Petition for Certification or Recognition.

(a) The employer shall post a notice of ~~the~~ a petition filed pursuant to either section 61210 or 61215, as provided by the Board, as soon as possible but in no event later than 10 days following service of a copy of the petition.

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

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

(d) The employer shall inform the regional office and the parties in writing of the locations and date of posting of the notice.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

61240. Determination of Proof of Support.

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

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

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. ~~The Board's determination shall also indicate whether proof of majority support has been established.~~

(d) The A petition for certification shall be dismissed if the Board determines that the petition lacks at least 30 percent proof of support.

(e) A petition for recognition shall be dismissed if the Board determines that the petition lacks proof of majority support.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

61250. Employer Response Regarding Petition for Certification.

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of ~~the~~ a petition for certification, the employer shall file a written response with the regional office.

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

(c) The employer shall use the following format for its response regarding a petition for certification:

(1) Name, address and telephone number of the employer and name, address and telephone number of the employer's agent to be contacted;

(2) Attach a copy of the petition for certification;

(3) Employer position regarding the petition for certification:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why a representation election should not be held in the proposed unit? If so, please fully explain.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

61255. Employer Response Regarding Petition for Recognition.

(a) Within 15 days following service of a Board determination finding sufficient proof submitted in support of a petition for recognition, the employer shall file a written response with the regional office.

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

(c) The employer shall use the following format for its response regarding a petition for recognition:

(1) Name, address and telephone number of the employer and name, address and telephone number of the employer's agent to be contacted;

(2) Attach a copy of the petition for recognition;

(3) Employer position regarding the petition for recognition:

(A) Does the employer reasonably doubt the appropriateness of the unit proposed by the petitioner? If so, what classifications or positions remain in dispute? What is the employer's position regarding the dispute?

(B) Does the employer believe that there are other reasons why recognition should not be granted in the proposed unit? If so, please fully explain.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

61260. Amendment of Petition for Certification or Recognition.

(a) A petition ~~for certification~~ may be amended to correct technical errors or to add or delete job classifications from the proposed unit at any time prior to the issuance of a notice of hearing. The amendment shall be filed with the regional office and provide the information required in Section 61210(a). Service and proof of service of the amendment pursuant to Section 32140 are required.

(b) In addition, amendments to add new job classifications to a proposed unit shall be subject to the following:

(1) Additional proof of support, if needed to maintain standing as a petitioner, shall be filed with the regional office concurrently with the amendment.

(2) An employer response to the amended petition shall be filed with the regional office within 15 days following the service of the Board determination of adequacy of proof submitted in support of the petition, unless otherwise directed by the Board. The response shall conform to the requirements for employer responses set forth in Section 61250.

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

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

61270. Board Investigation.

Whenever a petition for certification or recognition is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary to decide the questions raised by the petition.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(h) and (l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

61275. Certification of Exclusive Representative.

If the Board determines (1) an employee organization requesting recognition has demonstrated at least majority proof of the employees in an appropriate unit, (2) no other employee organization has demonstrated proof of support of at least 30 percent of the employees, and (3) the public agency has not granted recognition, the Board shall certify the petitioner as the exclusive representative.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1(a), (c), 3509 and 3541.3(l), Government Code.

**NOTE: Clarifies MMBA representation procedures, consistent with EERA and HEERA, pursuant to statutory change enacted in 2001.**

## SMCS Transfer/Merger

### 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.

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 3507, 3507.1, 3507.5, 3508, 3509, 3513(h), 3541.3, 3563, 71636, 71636.3, 71637.1, 71639.1, 71823 and 71825, Government Code, and Section 99561, Public Utilities Code. [\*\*Note: Authority and Reference citations will need to be updated for each section amended based on the legislation enacted to effect the transfer of SMCS from DIR to PERB.\*\*]

**NOTE: These changes address only technical areas associated with the transfer of mediation functions to PERB. Additional revisions may be considered at a future date if necessary to implement these additional functions.**

### 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), 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), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

**NOTE: These changes address only technical areas associated with the transfer of mediation functions to PERB. Additional revisions may be considered at a future date if necessary to implement these additional functions.**

32155. Disqualification of Board Agent or Board Members.

(a) No Board member, and no Board agent performing an adjudicatory function, including a 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), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, and Sections 99561 and 99562, Public Utilities Code.

**Note: These changes address only technical areas associated with the transfer of mediation functions to PERB. Additional revisions may be considered at a future date if necessary to implement these additional functions.**

### Subpoenas

\*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), 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), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

**Note: These changes address only technical areas associated with the transfer of mediation functions to PERB. Additional revisions may be considered at a future date if necessary to implement these additional functions.**

### Unfair Practice Charges

~~\*32613. — On Line Filing.~~

~~(a) “On line filing” and “electronic filing” refer to utilization of the web based electronic filing service provided by the Board as an alternative means to file an unfair practice charge pursuant to this Subchapter.~~

~~(b) Utilization of on line filing requires access by the user to the following:~~

~~(1) Personal computer with a Windows or Mac operating system;~~

~~(2) Internet web browser;~~

~~(3) Internet connection; and~~

~~(4) Digital copies of any attachments that are to be submitted with the charge.~~

~~(c) Utilization of on line filing will require the user to provide an e-mail address, establish a user password, and agree to the terms of the following Disclaimer Statement found on the PERB website:~~

~~This application uses Javascript which will not work with some Ad Blocking Software. We suggest that you either turn off your Ad Blocking Software, or add our site URL (www.perb.ca.gov) to the trusted sites on your Ad Blocking Software. PERB is not responsible for difficulties encountered between your internet provider and PERB’s network. An unfair practice charge (UPC) is considered “filed” when actually received before the close of business (5 p.m.) on a regular PERB business day. (PERB Regulation 32135.) The date and time a UPC is deemed filed will be determined by the date/time stamp applied by our server which points to Santa Cruz, CA: Scruz-net, inc. 165.227.1.1: ns.scruz.net Service area: Western U.S. If, after submitting your UPC, you do not receive an e-mail response containing a confirmation your charge has been successfully filed within a few minutes, there was a problem with your submission and your claim will not be considered filed. Using the PERB on line filing application does not relieve the user of the responsibility for filing the signed original plus one copy of the charge along with the original signed proof of service in the appropriate PERB office (PERB Regulations 32605 and 32615). A copy of the~~

~~completed unfair practice charge and proof of service form must also be served on the party being charged (respondent) by someone other than the charging party. A proof of service form must be attached to each copy of the charge to prove that a copy of the charge has been served on the respondent. If you have uploaded your attachments at the time of electronically filing your UPC, you DO NOT need to submit copies of the same attachments through the U.S. Mail to PERB. However, a copy of the charge and all attachments must be served on the responding party. Failure to provide the original signed UPC, signed Proof of Service and attachments (if necessary) to the appropriate PERB office within 5 business days from the date stamp provided by PERB's server in your confirmation e-mail will result in the UPC being dismissed except in cases where good cause is demonstrated.~~

~~(d) Upon successful submission of an unfair practice charge, including any attachments, and the proof of service, through utilization of on-line filing, PERB will provide confirmation of receipt via e-mail to the e-mail address provided by the user.~~

~~Authority cited: Sections 3509(a), 3513(h), 3541.3, 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.~~

**Note: Eliminates existing online filing process, to be replaced by electronic (e-mail) filing expanding scope of what can be electronically filed. Existing online process has been problematic for PERB staff to administer.**

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 whether or not an agreement or memorandum of understanding exists between the parties, and the date and duration of such agreement or memorandum of understanding;~~

~~(7) A statement of the extent to which and the inclusive dates during which the parties have invoked any grievance machinery provided by an agreement, or, where applicable, have invoked procedures provided by the employer for resolving public notice complaints;~~

(8 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, 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, 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.

**Note: Simplifies charge filing process by eliminating requirement that charge include statement as to whether a MOU between parties exists and the dates of such MOU. Also eliminates requirement that charge include statement regarding grievance procedures. Questions are often not relevant and confusing, especially in charges filed by employees against their union.**

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) Dismiss the charge or any part thereof if it is determined that the charge is based upon conduct occurring more than six months prior to the filing of the charge.

~~(7) Place the charge in abeyance~~ Dismiss the charge or any part thereof 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 8)~~ 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 ~~written~~ 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) Facts obtained from oral responses that reveal potential deficiencies in the allegations must be communicated to the charging party before dismissal of a charge under Section 32630. The Board agent shall advise the charging party in writing of the 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 warning letter shall also be served on the respondent. Responses which are obtained after the warning letter and which supports dismissal of the charge must be communicated to the charging party before the dismissal is issued under Section 32630. 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), 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, 3519, 3519.5, 3523, 3541.3(i), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 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 [~~29 Cal.Rptr.3d 234~~].

**NOTE: Addresses three substantive changes: (1) provides for dismissal of charges that are filed under MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act and subject to deferral to arbitration (rather than placing them in abeyance), as is currently the practice with regard to charges filed under the EERA and Dills Act; (2) clarifies subparagraphs (c) and (d) so that it is clear that Board agent will rely only on written responses to a charge in his or her investigation; and (3) changes existing practice by providing that warning letters will be served on the respondent prior to the dismissal of a charge. The revisions to subdivision (b), in paragraphs now numbered (5), (6) and (7), are intended to clarify the rules by plainly stating the actions that may be taken, rather than by merely referencing the statute sections.**

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. In determining whether a charge filed pursuant to this section is timely filed, and a related charge was dismissed pursuant to the provisions of section 32620(b)(6), the limitations period shall be tolled from the date the earlier charge was dismissed and the date the arbitration award or settlement became final.

(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 ~~Section 32620~~ 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, 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 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.

**NOTE: The substantive change is to provide for tolling where a charge is deferred to arbitration and dismissed under 32620(b), under the MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act, in order to allow a charging party to seek a repugnancy review.**