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Jonathan Levy, Regional Attorney
Katharine Nyman, Regional Attorney
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811

Re: ***Notice of Proposed Rulemaking: General Regulation Changes***

Dear Mr. Levy and Ms. Nyman:

I am writing in response to the *Notice of Proposed Rulemaking: General Regulation Changes* issued by the Public Employment Relations Board (PERB). I want to thank the Members of PERB and its staff for the time and effort spent drafting these proposed regulations. I write only to comment on the proposed change to PERB Regulation 32320.

Currently, PERB Regulation 32320, subdivision (c), provides that all decisions and orders issued by the Board are precedential. Under the proposed regulatory change, the Board would have the option to designate appeals filed under PERB Regulation 32635 as precedential. However, all other Board issued decisions and orders—including administrative appeals, appeals of interlocutory rulings, and requests for judicial review, among others—would remain precedential. I fully support the proposed regulatory change, but would urge the Board to go even further and make the designation of any decision or order as precedential *optional*.

For example, I would propose that subdivisions (c) and (d) of the proposed regulation be combined into the following:

(c) Effective July 1, 2013, a majority of the Board members issuing any decision or order shall determine whether the decision or order, or any part thereof, shall be designated as precedential. Any decision or order, or any part thereof, designated as precedential 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 all decisions issued prior to July 1, 2013. 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;



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(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.

I believe this modification provides the Board with maximum flexibility to develop law and policy. To the extent the Board desires to designate any decision or order as precedential, it will continue to have the authority to do so. However, the proposed modification would give the Board the flexibility to not designate as precedential any decision issued pursuant to PERB Regulation 32300 et. seq. that does not meet the criteria set forth in this regulation. In addition, the proposed modification would give the Board the flexibility to not designate as precedential decisions on administrative appeals, requests for judicial review, and other matters that often do not meet the criteria for precedential value.

Again, I want to thank the Board Members of PERB and its staff for the time and effort spent drafting these proposed regulations. I hope you will find my comment on proposed regulation 32320 helpful.

Very truly yours,

Timothy G. Yeung, Partner
Renne Sloan Holtzman Sakai LLP

