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Claim No. <u>01-TC-30</u>

TEST CLAIM FORM

Local Agency or School District Submitting Claim

City of Sacramento and County of Sacramento

Contact Person

Telephone No.

Allan P. Burdick/Pamela A. Stone (MAXIMUS, INC.)

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**4320 Auburn Blvd., Suite 2000
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Representative Organization to be Notified

California State Association of Counties and League of California Cities

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Chapter 901, Statutes of 2000, Title 8, California Code of Regulations, Sections 31001-61630

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Terry Schutten, County Executive

(916) 874-5878

Signature of Authorized Representative

Date

July 26, 2002

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Name and Title of Authorized Representative

Patty Masuda

Asst. City Manager

*

Signature of Authorized Representative

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
City of Sacramento
And
County of Sacramento

Local Government Employment Relations

Chapter 901, Statutes of 2000
(S.B. 739)
Title 8, California Code of Regulations, Sections 31001-61630

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

The passage of Chapter 901, Statutes of 2000, substantially changed the face of labor relations between public employee unions and local government in the State of California.

Prior to the passage of the test claim legislation, public employee labor relations had been governed by the Meyers-Millias-Brown Act (hereinafter "MMBA") since 1968.¹ Labor disputes, strikes and litigation had been relatively infrequent, but the public employee unions had sought an environment more closely allied to their goals and objectives. These efforts resulted in the passage of Chapter 901, Statutes of 2000.

The test claim legislation modifies the existing labor relations environment in two primary areas, being: 1) agency shop, and 2) preemption of local administration of labor relations by expanding the jurisdiction of the Public Employment Relations Board (hereinafter "PERB").

Agency Shop

Prior to January 2, 2001, an agency shop² agreement could be negotiated between a local public agency and a recognized public employee organization. This type of "union

¹ Government Code, Sections 3500 *et seq.*

² An agency shop agreement is one which requires an employee, as a condition of continued employment, to either join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues and general assessments. This requirement under

security” agreement had been a major bargaining goal for most unions in their negotiations with the employer. An agency shop arrangement was part of the negotiations leading to the labor agreement specifying the terms and conditions of employment.

The significance of the test claim legislation is that Government Code, Section 3502.5 was amended to authorize an agency shop without it being part of such a negotiated agreement. Instead, the test claim legislation provides for a signed petition by a minority of 30% of the employees within the bargaining unit. After the submission of the petition, an election will be held. If 50% or more of those voting vote in favor of the agency shop, it will be implemented. Thus, a majority of those within the bargaining unit do not have to be in favor of the agency shop for it to be implemented. The test claim legislation further provides that a petition can be filed after only 30 days of “negotiating” the issue.

The result of this provision is that meaningful labor negotiations over the issue of agency shop are much less likely. Previously, when agency shop agreements were negotiated, an agency invariably obtained “tradeoffs” for its agreement. With this provision, such “tradeoffs” are much less likely as there is no incentive for the unions to agree to concessions. Rather, unions can just wait until another time, “negotiate” for 30 days, and then have an election.

Another important aspect pertains to the duration of the agency shop provision. This legislation provides that unless the agency shop is rescinded according to the MMBA by a majority of all unit employees, the agency shop provision lasts as long as the employee organization is the recognized bargaining representative. This change is significant, as under both private and public sector employment relations, the agency shop is an outgrowth of the collective bargaining process and agreement, and lasts only as long as the collective bargaining agreement remains in effect.³

Expansion of the Jurisdiction of the PERB

This is the most significant change wrought by the enactment of Chapter 901, Statutes of 2000.

Prior to the enactment of the test claim legislation, labor-management relations for local agency employers was governed by the MMBA, which was administered by each local agency in accordance with its own rules and regulations, subject to statutory standards and judicial enforcement.

With the passage of the test claim legislation, PERB is now vested with authority over local agencies, much like the National Labor Relations Board has over private entities.

prior law existed for a period not to exceed the duration of the agreement, or three years from the effective date of the agreement, whichever first occurred.

³ See, for example, *Chemical Workers Local 112 (American Cyanamid Co.)* (1978) 237 NLRB 864, 99 LRRM 1152; *Local No. 25, Int’l Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Tech Weld Corp.)* (1975) 220 NLRB 76, 90 LRRM 1193.

Thus, the PERB was granted jurisdiction to administer and resolve disputes regarding bargaining unit and representation matters, as well as unfair labor practices, including any alleged violations of the MMBA.

Prior to the test claim legislation, the PERB had jurisdiction over three collective bargaining statutes, being: 1) the Education Employment Relations Act of 1976 (EERA)⁴ which established collective bargaining in California's K-12 public schools and community colleges; 2) the State Employer-Employee Relations Act of 1978 (SEERA or the Dills Act)⁵ which established collective bargaining for State government employees; and 3) the Higher Education Employer-Employee Relations Act of 1979 (HEERA)⁶ which established collective bargaining rights to the California State University and University of California systems, as well as the Hastings College of Law.

The PERB board is composed of five members appointed by the Governor, and subject to confirmation by the State Senate. Each board member is appointed to a five year term, with the term of one member expiring at the end of each calendar year. In addition to the responsibility of administering the three statutes listed above, the Board also acts as an appellate body to hear challenges to proposed decisions issued by its staff. Decisions of the Board itself may be appealed under certain circumstances, to the courts.⁷

The primary function of the PERB staff involves the evaluation and adjudication of unfair practice charges and the administration of the statutory process through which public employees select employee organizations for representation in their labor relations with their employers.

The PERB was granted authority in the test claim legislation to hold hearings, subpoena witnesses, administer oaths, take testimony and depositions, issue subpoenas duces tecum for the production of documents and records of employers or employee organizations, conduct investigations, and bring actions in court.

In order to exercise its jurisdiction, the PERB enacted regulations in October of 2001⁸. These regulations set forth the procedure and practice of the PERB as it relates to the test claim legislation. Such requirements are incorporated into the test claim.

Unfair Labor Practice Claims

The test claim legislation defines an unfair labor practice as "a complaint alleging any violation of this chapter or of any rules and regulations adopted by the public agency

⁴ Government Code, Sections 3540 *et seq.*

⁵ Government Code, Sections 3512 *et seq.*

⁶ Government Code, Sections 3560 *et seq.*

⁷ The three statutes which the PERB previously administered prior to the test claim legislation, specified that appeal was to the Court of Appeals. However, the test claim legislation does not specify appeal rights nor the appropriate forum for appeals. It is probable that litigation will be necessary to resolve the issue under the test claim legislation as to whether recourse must be had first to the superior court or directly to the appellate court.

⁸ Amendments to Title 8, California Code of Regulations, Sections 31001 through 61630.

pursuant to Section 3507". Thus, the test claim legislation grants a virtually unlimited scope of issues that can constitute an unfair labor practice. While under the other three statutes administered by the PERB only designated conduct can constitute an unfair labor practice, the new language makes virtually any claimed violation of the MMBA the subject of an unfair labor practice complaint.

Additionally, unlike the other statutes administered by PERB, SB 739 contains no statute of limitations. Thus, while there is a six month statute of limitations under the EERA⁹, the lack of a statute of limitations will necessitate local agencies responding to stale claims.

The regulations of the PERB as adopted, set forth the procedures of unfair labor practice proceedings. The steps include the filing of the charge, Statements of Positions, Issuance of Complaint, Answer, Informal Settlement Conference, Formal Hearing, Appeal to the Board, and Appeal to Court.

A charge is filed in any regional office, alleging that an unfair practice has been committed. The charge is a simple filing, signed under penalty of perjury, and provides a statement of the facts and conduct alleged to constitute the unfair practice. There are no filing fees for the filing of these complaints, unlike the commencement of an action in court.

After a charge is filed, the Board's agent engages in an exchange of information, and makes inquiries to determine whether he or she believes there has been an unfair labor practice. Typically, the responding party is requested to provide a statement of position on the charge for consideration by the PERB in determining whether a complaint should issue. During this part of the process, the charge can be dismissed, withdrawn, amended, or a complaint issued.

The Board will issue a complaint if the allegations are sufficient to establish a prima facie case. Unlike prosecutorial agencies such as the Department of Fair Employment and Housing or the Equal Employment Opportunities Commission, the Board agent typically makes no determination regarding the merits of a factual claim. Thus, if the facts are in contention, typically a complaint will issue.

After a complaint is issued by the PERB, the respondent typically has twenty (20) days to respond by the filing of an Answer. An informal conference is held to clarify the issues and explore the possibility of a voluntary settlement. If the informal conference does not result in a settlement, the matter goes to a hearing. The hearing is a full evidentiary hearing before an Administrative Law Judge (hereinafter "ALJ"), which results in the provision of a written decision.

The ALJ who conducts the hearing typically has the power to:

- Inquire fully into all issues
- Authorize the taking of depositions

⁹ See Government Code, Sections 3541.5, 3541.5(a) and 3563.2(a).

- Issue subpoenas
- Regulate the course and conduct of the hearing
- Hold settlement conferences
- Take evidence and rule on its admissibility
- Examine witnesses
- Authorize the submission of briefs
- Hear oral argument

As with other administrative hearings, strict compliance with the technical rules of evidence is not required. The charging party has the burden of proof by a preponderance of the evidence in order to prevail. Briefs are typically filed and the proposed decision is then submitted to the parties for review. Either party may appeal the ALJ's decision to the full PERB. The Board acts like an appellate court. Then the Board issues its opinion. The Board's opinion may then be appealed to the courts.¹⁰

This is to be contrasted with the prior state of the law regarding enforcement of the MMBA. Previously, the aggrieved party would file a petition for writ of mandate with the superior court. The matter would be briefed, oral argument had, and a decision issued by the superior court, which could, in turn, be appealed. The nature and extent of the filings were more substantial, and would call for an attorney to present the matter to court.

The net effect of the change in legislation will be to encourage filings for alleged violations of unfair labor practices. First of all, the impediment of having to obtain counsel for the bargaining unit is removed, as is its expense. Secondly, the requirements for filing an unfair labor practice charge is much less onerous or technical, which eliminates another impediment to the filing of such charges. As a result of charges being filed with the regional office of the PERB, those public agencies located in areas where there is no regional office, will have to incur transportation, lodging and food costs, rather than appearing in the local superior court.

Additionally, local governmental agencies will have to comply with a new administrative process prior to having matters resolved in court. Thus, the steps, requirements, and costs for resolving disputes have been substantially increased.

Representation Proceedings

The test claim legislation provides that “[u]nit determinations and representation elections shall be determined in accordance with the rules adopted by a public agency in accordance with this chapter.” The reference to chapter is to the MMBA. While this language appears to grant deference to agency rules in representation proceedings, there is sufficient ambiguity in the context of the legislation's unfair practice provisions that challenges are likely to focus on both the rules of the agency as well as the application of

¹⁰ Please see discussion *supra* regarding issue as to which court the appeal should be made.

the rules. The extent of the jurisdiction of the PERB to preempt local rules is unclear and will no doubt be the subject of litigation.

Local Agency Costs

There are substantial activities and costs which will be undertaken by local government to comply with this legislation, including:

- Engage in separate agency shop negotiations for up to 30 days, Government Code, Section 3502.5(b); Title 8, California Code of Regulations, Section 32990(a)(e)¹¹.
- Process agency shop petitions, Government Code, Section 3502.5(b); see also official website of the California Department of Industrial Relations, State Mediation & Conciliation Service pertaining to SB 739 agency shop elections, at 222.dir.ca.gov/csmcs/ase-sb739.html.
- Participate in meetings with petitioning union to discuss jointly selecting a neutral person or entity to conduct the agency shop election, Government Code, Section 3502.5(b); see also official website of the California Department of Industrial Relations, State Mediation & Conciliation Service pertaining to SB 739 agency shop elections, at 222.dir.ca.gov/csmcs/ase-sb739.html.
- Participate in meetings with such person or entity, or the State Conciliation Service, hereinafter the "Election Supervisor", and the petitioning union, and endeavor to reach an agreement, Government Code, Section 3502.5(b); see also official website of the California Department of Industrial Relations, State Mediation & Conciliation Service pertaining to SB 739 agency shop elections, at 222.dir.ca.gov/csmcs/ase-sb739.html.
- Compile and provide the Election Supervisor the necessary unit employee information to verify the 30% showing of interest, Government Code, Section 3502.5(b); see also official website of the California Department of Industrial Relations, State Mediation & Conciliation Service pertaining to SB 739 agency shop elections, at 222.dir.ca.gov/csmcs/ase-sb739.html.
- Post and distribute notices of election, Government Code, Section 3502.5(b); see also official website of the California Department of Industrial Relations, State Mediation & Conciliation Service pertaining to SB 739 agency shop elections, at 222.dir.ca.gov/csmcs/ase-sb739.html.
- Compile and provide appropriate payroll records for the Election Supervisor, Government Code, Section 3502.5(b); see also official website of the California Department of Industrial Relations, State Mediation & Conciliation Service pertaining to SB 739 agency shop elections, at 222.dir.ca.gov/csmcs/ase-sb739.html.
- Make available employees to serve as voting place observers, Government Code, Section 3502.5(b); see also official website of the California Department of Industrial Relations, State Mediation & Conciliation Service pertaining to SB 739 agency shop elections, at 222.dir.ca.gov/csmcs/ase-sb739.html.

¹¹ Hereinafter, all regulations will be referred to as "PERB Reg".

- Staff, prepare for, and represent the agency in administrative or court proceedings regarding disputes as to management, supervisory and confidential designations (which are excluded from agency shop arrangements), Government Code, Section 3502.5(b)(e), and procedures of the State Mediation & Conciliation Service.
- Staff to institute and administer procedures for agency fee deductions and transmittal to union, Government Code, Sections 3502.5(b) and 3508.5(b)(c).
- Institute and administer procedures and documentation for in lieu fee payments of conscientious objectors, and transmittal to appropriate charities, Government Code, Section 3502.5(b)(c).
- Negotiate with the union concerning the above two procedures, and represent the agency in the event of Public Employment Relations Board intervention regarding disputes, Government Code, Section 3502.5(b).
- Process agency shop rescission petitions, Government Code, Section 3502.5(d).
- Participation in PERB's rulemaking process relating to implementation of its jurisdiction under the within test claim legislation, Government Code, Section 3509(a)(b)(c). See also the official website of the PERB (www.perb.ca.gov), which contains the Final Statement of Reasons on the proposed regulations, which also references statements made on behalf of the League of California Cities, California State Association of Counties and others as provided for under the Administrative Procedures Act.
- Develop and provide training in PERB's rules, procedures and decisions for agency supervisory and management personnel and attorneys.¹²
- Respond to appeals made to the PERB of agency actions regarding unit issues, representation matters, recognition, elections and unfair practice determinations, Government Code, Section 3509(b)(c), PERB Regs 60000 and 60010.
- Responding to, or the filing of, Unfair Labor Practice charges, Government Code, Section 3509(b), PERB Regs 32450, 32455, 32602, 32603, 32615, 32620, 32621, 32625, 32644, 32646, 32647, and 32661.
- Participating in PERB's investigation of charges, PERB Regs 32149, 32162, 32980, and 60010.
- Participating in PERB's procedures, including but not limited to conferences, settlement conferences, and hearings, PERB Regs 32165 through 32230, 32650 and 60030.
- Preparation for hearings before PERB Administrative Law Judges (hereinafter "ALJ's") including, but not limited to the preparation of briefs, documentation, exhibits, witnesses and expert witnesses, PERB Regs 32150, 32160, 32164, 32165, 32190, 32205, 32210, 32212, 32647, and 60040.
- Presenting the agency's case before the PERB's ALJs, including expert witness fees, increased overtime costs for employee witnesses, closing brief, costs of transcripts and travel expenses, PERB Regs 32170, 32175, 32176, 32178, 32180, 32190, 32206, 32648, 32649, 32207, 32209, 32230, 32680, 60041 and 60050.

¹² The Commission on State Mandates typically allows training of individuals charged with implementing a new mandate process.

- Representation at proceedings that appeal ALJ decisions to the Board itself, including attendant travel expenses, PERB Regs 32200, 32300, 32310, 32315, 32320, 32360, 32370, 32375, 32410, 32635, and 60035.
- Preparation and representation at appeals of final PERB decisions to superior and appellate courts, PERB Reg 32500.
- Preparing for and representation in superior and appellate court proceedings regarding litigation over the test claim legislation's ambiguity and scope, as well as the parameters of the jurisdiction of the PERB.¹³

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 901, Statutes of 2000, place local government employee relations under the jurisdiction of the PERB.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in the Government Code, Sections 3500, 3501, 3502.5, 3507.1, 3508.5, 3510, 3511 and Title 8, California Code of Regulations, Sections 31001 to 61630, inclusive.

D. COST ESTIMATES

The activities necessary to comply with the mandated activities cost well in excess of \$200.00 per year, and involve the department, negotiators, attorneys and other personnel in the employ of or contracted by the governmental entity.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the both the City of Sacramento and the County of Sacramento as a result of the statute which is the subject of the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

¹³ Again, see the official PERB website regarding issues which have been discussed in connection with the rulemaking procedure, defining some of the matters which will need litigation for clarification.

3. The costs are the result of “a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these three statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the “unique to government” and the “carry out a state policy” tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. The terms of the mandate refers only to local government and its relations to its employees.

Mandate Carries Out a State Policy

The state has previously set forth that local government employment relations is governed by the MMBA. This test claim legislation creates a new level of requirements, and places local government in the same position as the state in its bargaining with local governments' bargaining units.

In summary, the City of Sacramento and the County of Sacramento each believes that the test claim legislation placing local government employment relations under the jurisdiction of the PERB satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of “costs mandated by the State”, as defined in Government Code, Section 17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the within test claim by the City of Sacramento and the County of Sacramento.

CONCLUSION

As seen from the foregoing, the enactment of Chapter 901, Statutes of 2000 (S.B. 739) has subjected local government employment relations under the jurisdiction of the PERB. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

- Exhibit 1: Chapter 901, Statutes of 2000
- Exhibit 2: Title 8, California Code of Regulations, Sections 31001-61630

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this ~~26th~~ day of July, 2002, at Sacramento, California, by:



Terry Schutten, County Executive
County of Sacramento

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 29th day of July, 2002, at Sacramento, California, by:

* Patricia Masarik

City of Sacramento

Senate Bill No. 739

CHAPTER 901

An act to amend Sections 3500, 3501, 3502.5, and 3508.5 of, to amend, renumber, and add Section 3509 of, to amend and renumber Section 3510 of, to add Section 3511 to, and to repeal and add Section 3507.1 of, the Government Code, relating to public employment.

[Approved by Governor September 28, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 739, Solis. Local public employees: agency shop arrangement and the Public Employment Relations Board.

(1) Under the Meyers-Milias-Brown Act, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization.

This bill would additionally authorize an agency shop arrangement without a negotiated agreement upon a signed petition by 30% of the employees in the applicable bargaining unit requesting an agency shop agreement and majority approval of the employees voting in a secret ballot election on the issue. The bill would provide that the petition may be filed only after good faith negotiations, not to exceed 30 days, have taken place between the parties in an effort to reach an agreement. The bill would require the Division of Conciliation of the Department of Industrial Relations to conduct an election that may not be held more frequently than once a year, if the parties cannot agree within a prescribed time period on the selection of a neutral person or entity to conduct the election.

(2) Existing law establishes the Public Employment Relations Board in state government as a means of resolving disputes and enforcing the statutory duties and rights of employers and employees under the Educational Employment Relations Act, the Higher Education Employer-Employee Relations Act, and the Ralph C. Dills Act.

This bill would expand the jurisdiction of the Public Employment Relations Board to include resolving disputes and enforcing the statutory duties and rights of employers and employees under the Meyers-Milias-Brown Act and would specifically include resolving disputes alleging violation of rules and regulations adopted by a public agency, other than the County of Los Angeles and the City of Los Angeles, pursuant to the Meyers-Milias-Brown Act that are consistent with the act concerning unit determinations, representations, recognition, and elections. The bill would provide that implementation of this provision is subject to the appropriation

of funds for this purpose in the annual Budget Act and that the provision becomes operative on July 1, 2001.

(3) Existing law provides that in the absence of local procedures for resolving disputes on the appropriateness of a unit of representation, upon the request of any of the parties, the dispute is to be submitted to the Division of Conciliation of the Department of Industrial Relations.

This bill would require any dispute under rules adopted by a public agency on the appropriateness of a unit, exclusive or majority representation, and election procedures, upon request of a party, to be submitted to the board for resolution. The board would make its determinations based on the rules adopted by the public agency.

(4) The act specifies that nothing in its provisions affects the rights of a public employee to authorize a dues deduction from his or her salary or wages pursuant to specified provisions of law.

This bill would additionally require a public employer to deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer. It would also provide that agency fee obligations shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the public employer and the recognized employee organization.

(5) The provisions of this bill would not apply to any recognized employee organization representing peace officers, as defined in a specified provision of existing law.

The people of the State of California do enact as follows:

SECTION 1. Section 3500 of the Government Code is amended to read:

3500. (a) It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate a merit or civil service system or which provide for other methods of administering

employer-employee relations nor is it intended that this chapter be binding upon those public agencies that provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

(b) The Legislature finds and declares that the duties and responsibilities of local agency employer representatives under this chapter are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the local agency employer representatives in performing those duties and responsibilities under this chapter are not reimbursable as state-mandated costs.

SEC. 2. Section 3501 of the Government Code is amended to read:

3501. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of a public agency and which has as one of its primary purposes representing those employees in their relations with that public agency.

(b) "Recognized employee organization" means an employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency.

(c) Except as otherwise provided in this subdivision, "public agency" means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, "public agency" does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California.

(d) "Public employee" means any person employed by any public agency, including employees of the fire departments and fire services of counties, cities, cities and counties, districts, and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this state.

(e) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public

agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(f) "Board" means the Public Employment Relations Board established pursuant to Section 3541.

SEC. 3. Section 3502.5 of the Government Code is amended to read:

3502.5. (a) Notwithstanding Section 3502 or 3502.6, or any other provision of this chapter, or any other law, rule, or regulation, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization which has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, ordinances, and enactments, in accordance with this chapter. As used in this chapter, "agency shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization.

(b) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the public agency and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after good faith negotiations, not to exceed 30 days, have taken place between the parties in an effort to reach agreement. An election that may not be held more frequently than once a year shall be conducted by the Division of Conciliation of the Department of Industrial Relations in the event that the public agency and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that is in effect, the recognized employee organization shall indemnify and hold the public agency harmless against any liability arising from any claims, demands, or other action relating to the public agency's compliance with the agency fee obligation.

(c) Any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees,

to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the public agency and the public employee organization, or if the memorandum of understanding fails to designate the funds, then to any such fund chosen by the employee. Proof of the payments shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization.

(d) An agency shop provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during that term. Notwithstanding the above, the public agency and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on an agency shop agreement. The procedures in this subdivision are also applicable to an agency shop agreement placed in effect pursuant to subdivision (b).

(e) An agency shop arrangement shall not apply to management, confidential, or supervisory employees.

(f) Every recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement shall keep an adequate itemized record of its financial transactions and shall make available annually, to the public agency with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the Labor-Management Disclosure Act of 1959 covering employees governed by this chapter, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the public agency with a copy of the financial reports.

SEC. 4. Section 3507.1 of the Government Code is repealed.

SEC. 5. Section 3507.1 is added to the Government Code, to read:

3507.1. (a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted

by a public agency in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a public agency pursuant to Section 3507, a bargaining unit in effect as of the effective date of this section shall continue in effect unless changed under the rules adopted by a public agency pursuant to Section 3507.

SEC. 6. Section 3508.5 of the Government Code is amended to read:

3508.5. (a) Nothing in this chapter shall affect the right of a public employee to authorize a dues or service fees deduction from his or her salary or wages pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

(b) A public employer shall deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer.

(c) Agency fee obligations, including, but not limited to, dues or agency fee deductions on behalf of a recognized employee organization, shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the public employer and the recognized employee organization.

SEC. 7. Section 3509 of the Government Code is amended and renumbered to read:

3510. (a) The provisions of this chapter shall be interpreted and applied by the board in a manner consistent with and in accordance with judicial interpretations of this chapter.

(b) The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public employees.

SEC. 8. Section 3509 is added to the Government Code, to read:

3509. (a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c).

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(d) Notwithstanding subdivisions (a) to (c), inclusive, the employee relations commissions established by, and in effect for, the County of Los Angeles and the City of Los Angeles pursuant to Section 3507 shall have the power and responsibility to take actions on recognition, unit determinations, elections, and unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary, consistent with and pursuant to the policies of this chapter.

(e) This section shall not apply to employees designated as management employees under Section 3507.5.

(f) Implementation of this section is subject to the appropriation of funds for this purpose in the annual Budget Act.

(g) This section shall become operative on July 1, 2001.

SEC. 9. Section 3510 of the Government Code is amended and renumbered to read:

3500.5. This chapter shall be known and may be cited as the "Meyers-Milias-Brown Act."

SEC. 10. Section 3511 is added to the Government Code, to read:

3511. The changes made to Sections 3501, 3507.1, and 3509 of the Government Code by legislation enacted during the 1999-2000 Regular Session of the Legislature shall not apply to persons who are peace officers as defined in Section 830.1 of the Penal Code.



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) and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3541.3 and 3563, Government Code.

Article 2. Conflict of Interest Code

31100. General Provisions.

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

Designated employees shall file statements of economic interests with the agencies who will make the statements available for public inspection and reproduction. (Gov. Code section 1008). Upon receipt of the statements of Board Members, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be maintained by the agency.

APPENDIX

<i>Designated Positions</i>	<i>Disclosure Category</i>
Board Members	(a) and (b)
Executive Director	(a) and (b)
Administrative Officer	(a) and (b)
General Counsel	(a) and (b)
Chief Administrative Law Judge	(a) and (b)
All attorneys employed in the Office of the General Counsel	(a)
All attorneys employed in the Division of Administrative Law Judges	(a)
All persons employed as Legal Advisors to a Board Member	(a)
Regional Directors	(a)
Executive Assistant to the Board	(a)
All Public Employment Relations Representatives and Specialists	(a)
Business Services Officer	(b)
Consultant ¹	

¹ Consultants shall be included in the list of designated employees and shall disclose pursuant to

Disclosure Categories

(a) Designated employees assigned to this disclosure category shall disclose: Investments held, income derived including salary and reimbursements for expenses, travel or per diem, and any positions of management, director, officer, partner, trustee or employee held by a designated employee to the extent that they know or have reason to know that the entity or source is a ~~school district, community college district,~~ **public employer,**² organization of employers, employee organization, individual, law firm, labor negotiations firm or consulting firm, which is subject to the jurisdiction of the Public Employment Relations Board or has appeared within the last 12 months in a dispute before the Board as a party, a representative for a party, or has provided assistance to a party in preparation for an appearance in a dispute before the Board.

(b) Designated employees assigned to this disclosure category shall disclose: Investments held, income derived including salary and reimbursements for expenses, travel or per diem, and any positions of management, director, officer, partner, trustee or employee held in any entity or source of the type which has provided services, supplies, materials, machinery, leased space or equipment to the Public Employment Relations Board within the previous two years.

EXCEPTIONS:

As provided in Section 1 of the standard Code, 2 California Code of Regulations Section 18730(b)(1), the definitions contained in the Political Reform Act of 1974 shall apply to the terms used in this Code except that:

(a) Designated employees who are required to disclose investments or positions of management, director, officer, partner, trustee or employee in a "business entity" shall also disclose such investments or positions held in a school district or other governmental or non-profit entity described in the disclosure categories; and

(b) Designated employees who are required to disclose "income from any source" shall also disclose salary and reimbursement for expenses or per diem from a local governmental agency described in the disclosure categories and shall further disclose reimbursement for travel expenses and per diem received from a bona fide educational or academic organization described in the

the broadest disclosure category in the code subject to the following limitation:

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

² **The term "public employer" as used herein does not include the Public Employment Relations Board of the State of California.**

disclosure categories.

Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

32015. MMBA.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Section 3500.5, Government Code.

32016. Definition of Terms Under MMBA.

As applied to matters arising under MMBA:

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

(b) Exclusive representative. References in these regulations to an "exclusive representative" means an employee organization that has been recognized or certified as an exclusive or majority bargaining agent pursuant to MMBA.

(c) Local rules. "Local rules" means the rules and regulations of a public agency adopted pursuant to the MMBA.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3501(a), (b) and (c), 3501.5, 3507, 3507.1, 3507.3, 3507.5 and 3508, Government Code.

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) and 3563(f), Government Code.

Reference: Sections ~~3501(f), 3509~~, 3513(h), 3540.1(a), 3541 and 3562(b), Government 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) and 3563(f), Government Code.

Reference: Sections ~~3501(f), 3509~~, 3513(h), 3540.1(a), 3541 and 3562(b), Government Code.

32040. Executive Director.

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

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Section 3541(f), 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) and 3563(f), Government 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(k), and 3563(j), Government 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), and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(n), and 3563(m), Government 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), and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(n) and 3563(m), Government Code.

32080. Day.

"Day" means calendar day unless otherwise specified.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections 3509, 3513(h), 3541.3(n) and 3563(m), Government Code.

32085. Workday.

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

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

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

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

Authority cited: Sections **3509(a)**, 3541.3(g), 3563(f), 3513(h) and 3563(f), Government Code.
Reference: Sections **3509**, 3541.3(n), 3563(m), 3513(h), 3541.3(g) and 3563(f), Government 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 and 3563, Government Code. Reference: Sections **3509**, 3513, 3514.5, 3541.3, 3541.5, 3563 and 3563.2, Government Code.

Article 2. General Provisions

32100. Application of Regulations.

~~(a) All rules and regulations within this Chapter shall apply to proceedings conducted under any law under the jurisdiction of the Board EERA, Ralph C. Dills Act, and HEERA and to each other Chapter 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.~~

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections ~~3507, 3507.1, 3507.5, 3508, 3509~~, 3513(h), 3541.3 and 3563, Government 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), and 3563(f), Government Code.

Reference: Sections 3509, 3513(h), 3541.3, and 3563, Government Code.

32130. Computation of Time.

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

(b) Except for filings required during a "window period" as defined in Sections 33020, 40130, or 51026 or 61010, 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.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections 12, 12(a) and 1013(a), Code of Civil Procedure.

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) 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(n) and 3563(m), Government Code.

32135. Filing.

(a) All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date set for filing, or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing and addressed to the proper PERB office.

(b) All documents, except proof of support as described in sections 32700 ~~and 61020~~, shall also be considered "filed" when received by facsimile transmission at the appropriate PERB office before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet.

(c) A party filing documents by facsimile transmission must also place the original, together with the required proof of service and the required number of copies, in the U.S. mail for delivery to the appropriate PERB office. As an alternative to the service requirements set forth in Section 32140, any document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding.

(d) A facsimile filing shall be accompanied by a Facsimile Transmission Cover Sheet which includes the following:

- (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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(n) and 3563(m), Government 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(n) and 3563(m), Government Code; and Sections 12, 12(a) and 1013, Code of Civil Procedure.

32140. Service.

(a) All documents referred to in these regulations requiring "service" or required to be accompanied by "proof of service," except subpoenas, shall be considered "served" by the Board or a party when personally delivered or deposited in the first-class mail properly addressed. All documents required to be served shall include a "proof of service" affidavit or declaration signed under penalty of perjury which meets the requirements of Section 1013(a) of the Code of Civil Procedure or which contains the following information:

I declare that I am employed or reside in the County of _____, California. I am over the age of 18 years and not a party to the within entitled cause; my address is _____. On _____, I served the _____ on the _____ by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail at _____ addressed as follows:

(Names of Parties Served)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on _____ at _____, California.

(Type or print name)

(Signature)

(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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(n) and 3563(m), Government 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.**
- (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) and 3563(f), Government Code.
Reference: Sections **3501(c)**, 3513(j), 3541.3(n) and 3563(m), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(n) and 3563(m), Government 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 pursuant to policy established by the Board itself. For purposes of this Section, expediting matters in the case of the Board itself means the matter shall be given priority and decided on an expedited basis.

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(f) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(n) and 3563(m), Government 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(h) and 3563(g), Government 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.

(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) and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3541.3(h) and 3563(g), Government Code.

32155. Disqualification of Board Agent or Board Members.

(a) No Board member, and no Board agent performing an adjudicatory function, 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 3520, 3542 or 3564 seeking judicial review of the Board's decision on the merits.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563, Government Code. Reference: Sections ~~3509~~, 3513, 3520, 3541.3, 3542, 3563 and 3564, Government Code.

32160. 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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(h) and 3563(g), Government Code.

SUBCHAPTER 3. HEARINGS

32165. Application to Join a Representation Hearing As a Limited Party.

In a representation proceeding the Board agent may allow any person, employer, or employee organization which did not file a timely request for recognition, intervention or petition to join the hearing as a limited party provided:

- (a) The person, employer, or employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the proceedings; and
- (b) The Board agent determines that the person, employee organization or employer has an interest in the case and will not unduly impede the proceeding.
- (c) The Board agent may grant participation in the hearing which shall be limited to the right to make an oral statement on the record and to file a written brief subject to such conditions as may be prescribed.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: ~~3509~~, 3513(h), 3541.3(a), (b), (h), (l), (m), (n) and 3563(a), (b), (g), (k), (l), (n), Government Code.

32166. Application to Join a Representation Hearing As a Full Party.

(a) An employee organization shall be allowed to participate fully in a representation hearing provided it has filed a written application with the regional office not less than 10 days prior to the commencement of the hearing, accompanied by either 10 percent support of any unit in dispute at the hearing, or 10 percent support of a proposed unit which overlaps another unit in dispute at the hearing. Proof of support is defined in Chapter 1, Section 32700, **and Chapter 5, Section 61020.** A copy of the written application, excluding the proof of support, shall be served on the parties. Proof of service pursuant to Section 32140 is required.

(b) The Board agent may waive the deadline for filing an application pursuant to this Section for good cause.

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(a), (b), (h), (l), (m), (n) and 3563(a), (b), (g), (k), (l), (n), Government Code.

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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(h), (k) and 3563(g), (j), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(h), (k) and 3563(g), (j), Government Code.

32175. Rules of Evidence: Representation Cases.

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

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

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3541.3(a), (b), (h), (l), (m) and 3563(a), (b), (g), (k), (l), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(h), (i) and 3563(g), (h), Government 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(h), (i) and 3563(g), (h), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563, Government Code. Reference: Sections ~~3509~~, 3513(h), 3541.3(h), ~~3541.3(i)~~, ~~and 3541.3(n)~~, ~~and 3563(g)~~, 3563(h) and 3563(m), Government 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) Except as provided in Section 32646, 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 32646.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.

Reference: Sections 3509, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(h) and 3563(g), Government 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); 3563 (f), (m), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3 (a), (b), (e), (g), (h), (i), (l), (m), (n), ~~and~~ 3563 (a), (b), (e), (f), (g), (h), (k), (l), (m), Government 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) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(h) and 3563(g), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(h) and 3563(g), Government Code.

SUBCHAPTER 4. DECISIONS OF THE BOARD ITSELF

Article 1. Ex Parte Communication

32295. Ex Parte Communications.

No party shall communicate with the Board itself, any member of the Board itself or any legal advisor 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 and 3563, Government Code. Reference: Sections ~~3509~~, 3513, 3514.5, 3541.3, 3541.5, 3563, and 3563.2, Government 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) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government Code.

32305. Failure to File Exceptions.

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

Authority cited: Sections 3509(a), 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government 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) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government 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. The precedential status of decisions issued by the Board itself includes decisions issued prior to July 1, 1997.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3514.5, 3541.3(k), (n), 3563(j), (m), 3563.2 and 11425.60, Government 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 and 3563, Government Code. Reference: Sections 3509, 3514.5(c), 3520, 3541.5(c), 3542, 3563.3 and 3564, Government 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,

(3) a determination of a public notice complaint, or

(4) 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.

(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) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government Code.

32360. Appeal Requirements.

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

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

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

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

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government Code

32370. Request for Stay of Activity.

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

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government Code.

32375. Response to the Administrative Appeal.

Within 10 days following the date of service of the appeal, any party may file a response to the appeal. 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.

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government Code.

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.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government 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) and 3563(f), Government Code.

Reference: Sections 3509, 3520, 3542 and 3564, Government 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) and 3563(f), Government Code.
Reference: Sections **3509**, 3513(h), 3541.3(k), (n) and 3563(j), (m), Government 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 with a copy to the appropriate regional office as designated in sections 32075 and 32612 and shall include:

- (1) The written request, accompanied by reasons stating why injunctive relief is appropriate;
- (2) A copy of the charge or complaint; 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 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.

(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) and 3563, Government Code. Reference: Sections ~~3509~~, 3513(h), 3541.3(j), (n) and 3563(i), Government 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 by mail, shall be done by express mail, or by another common carrier promising overnight delivery thereof. Service and proof of service on opposite party shall be pursuant to section 32140 except that service shall be by express mail instead of first class mail. The Board agent may contact and question such persons as necessary to effectuate the investigation.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3 and 3563, Government Code. Reference: Sections ~~3509~~, 3513(h), 3541.3(j), and 3563(i), Government 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) and 3563(f), Government Code.

Reference: Sections 3509, 3513(h), 3541.3(j), (n) and 3563(i), (m), Government 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) and 3563(f), Government Code.
Reference: Sections 3509, 3513(h), 3541.3(j), (n) and 3563(i), (m), Government 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) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3541(f), (g), 3541.3(j), (k) and 3563(i), (j), Government Code.

Article 6. Request for Judicial Review

32500. Review of Representation Case.

(a) Any party to a decision in a representation case by the Board itself, **except for decisions rendered pursuant to Chapter 5, Subchapter 1 of these Regulations,** may file a request to seek judicial review within 20 days following the date of service of the decision. An original and five copies of the request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. Service and proof of service of the request pursuant to Section 32140 are required.

(b) Any party shall have 10 days following the date of service of the request to file a response. 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 request pursuant to Section 32140 are required.

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

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections **3509**, 3520, 3542, and 3564, Government Code.

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32602. Processing Violations.

~~Complaints alleging~~ **Alleged** violations of ~~MMBA or local rules,~~ EERA, Ralph C. Dills Act or HEERA shall be processed as unfair practice charges except as otherwise provided in these regulations. **Such unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer.**

Authority cited: Sections ~~3509,~~ 3513, 3541.3 and 3563, Government Code. Reference: Sections ~~3509,~~ 3514.5, 3524, 3541.5 and 3563.2, Government 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, 3508(c) 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 any local rule adopted pursuant to Government Code section 3507.

(f) Adopt or enforce a local rule that is not in conformance with the requirements of Government Code section 3507, 3507.1 and/or 3507.5.

(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, 3505, 3505.2, 3505.3, 3506, 3507, 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.

If 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 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, 3505, 3505.2, 3506, 3507 and 3509, Government Code, and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.

32605. Copies of Documents Required to be Filed.

All documents referred to in this chapter, unless otherwise noted, which are required to be "filed" by a party shall consist of an original and two copies of the document.

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3514.5, 3541.3(i), 3541.5, 3563(h) and 3563.2, Government Code.

32612. Venue of Charge.

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. 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. 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), and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3514.5, 3541.3(i), 3541.5, 3563(h) and 3563.2, Government 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, the applicable local rules alleged to have been violated;

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

(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;

(8) A statement of the remedy sought by the charging party;

(b) A charge filed under MMBA 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 and 3563, Government Code. Reference: Sections ~~3509~~, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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 or 3563.2.
 - (6) Place the charge in abeyance if the dispute arises under MMBA or HEERA and is subject 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 or HEERA, 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.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections ~~3509~~, 3513(h), ~~3514.5~~3541.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1 and 3571.3, Government Code, and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.

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 and 3563, Government Code. Reference: Sections ~~3509~~, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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 refileing 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 and 3563, Government Code. Reference: Sections 3509, 3513, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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 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), and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3514.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1 and 3571.3, Government 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. Except as provided in Section 32162, 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 and 3563, Government Code. Reference: Sections ~~3509~~, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3514.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1 and 3571.3, Government 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 and 3563, Government Code. Reference: Sections ~~3509~~, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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 and 3563, Government Code. Reference: Sections ~~3509~~, 3514.5(a), 3541.5(a) and 3563.2, Government Code.

32646. Defenses to Complaint.

If the respondent believes that issuance of the complaint is inappropriate either because the dispute is subject to final and binding arbitration, or because the charge is untimely, the respondent may assert such a defense in its answer and may move to dismiss the complaint, specifying fully the legal and factual reasons for its motion. The motion and all accompanying documents shall be served on the charging party. The charging party may respond to the respondent's motion within 10 days after service or within a lesser period of time set by the Board agent. The Board agent shall inquire into the issues raised by the motion, and shall dismiss the complaint and charge if appropriate. If the Board agent sustains the motion, the dismissal may be appealed to the Board itself in accordance with Section 32635. If the Board agent denies the motion, the denial is appealable only as provided in section 32200.

Authority cited: Sections ~~3509~~, 3513, 3541.3 and 3563, Government Code. Reference: Sections ~~3509~~, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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 and 3563, Government Code. Reference: Sections ~~3509~~, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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 and 3563, Government Code. Reference: Sections **3509**, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1 and 3571.3, Government 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) and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3514.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1 and 3571.3, Government 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) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3514.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1, and 3571.3, Government 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 MMBA or HEERA, 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 Section 32620. 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 and 3563, Government Code. Reference: Sections 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1, 3571.3 and 3589, Government 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) and 3563(f), Government Code.

Reference: Sections **3509**, 3513(h), 3514.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1, and 3571.3, Government 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) and 3563(f), Government Code.

Reference: Sections ~~3509~~, 3513(h), 3514.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1 and 3571.3, Government Code.

SUBCHAPTER 7. COMPLIANCE

Article 1. Compliance

32980. Compliance.

The General Counsel is responsible for determining that parties have complied with final Board orders. The General Counsel or his designate may conduct an inquiry, investigation, or hearing under Chapter 1, Subchapter 3 of these regulations, concerning any compliance matter.

- (a) In each case in which a compliance investigation or hearing is conducted, a written determination shall be served on the parties.
- (b) A determination based on an investigation may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.
- (c) A determination based on a hearing may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 1 of these regulations.

Authority cited: Sections ~~3509(a)~~, 3513, 3541.3 and 3563, Government Code. Reference: Sections ~~3509, 3514.5(c)~~, 3520, ~~3541.5(c)~~, 3542, ~~3563.3~~ and 3564, Government Code, **and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.**

SUBCHAPTER 8. AGENCY FEE REGULATIONS

Article 1. Agency Fee

32990. Agency Fee.

(a) Pursuant to Government Code Section 3502.5, an exclusive representative may enter into an agreement with a public agency that provides for an "agency shop" form of organizational security or, alternatively, an exclusive representative may cause an "agency shop" arrangement to be placed in effect upon approval of a majority vote of those affected employees voting in a secret ballot election.

(ab) Pursuant to Government Code Sections 3515.7, 3540.1 and 3543, an exclusive representative may enter into an agreement with an employer which provides for the "fair share" or "agency shop" form of organizational security.

(bc) Pursuant to Government Code Section 3546, an exclusive representative of a bargaining unit including public school employees may initiate implementation of an organizational security provision for the payment of "fair share" or "agency shop" fees by covered employees.

(cd) Pursuant to Government Code Section 3583.5, an exclusive representative of a bargaining unit including employees of the University of California, other than a unit including faculty who are eligible for membership in the Academic Senate, or employees of the California State University may initiate implementation of an organizational security provision for the payment of "fair share" or "agency shop" fees by covered employees.

(de) "Fair share" and "agency shop" forms of organizational security shall be known herein as "agency fee." All such agency fee agreements and provisions shall be administered in accordance with the following regulations.

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g), (i) and (n) and 3563(f), (h) and (m), Government Code. Reference: Sections **3502.5**, 3515.7, 3540.1(i), 3543, 3546 and 3583.5, Government Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32991. Amount of Agency Fee.

The agency fee shall not exceed the amounts set forth in Government Code Sections **3502.5(a)**, 3513(k), 3540.1(i)(2), 3546, and 3583.5.

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections **3502.5(a)**, 3513(k), 3540.1(i), 3543, 3546 and 3583.5(a), Government Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32992. Notification of Nonmember.

(a) Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:

(1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;

(2) The basis for the calculation of the agency fee; and

(3) A procedure for appealing all or any part of the agency fee.

(b) All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember.

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) At least 30 days prior to collection of the agency fee, after which the exclusive representative shall place those fees subject to objection in escrow, pursuant to Section 32995 of these regulations; or

(2) Concurrent with the initial agency fee collection, provided however, that all agency fees so noticed shall be held in escrow in toto until all objectors are identified. Thereafter, only the agency fees for agency fee objectors shall be held in escrow, pursuant to Section 32995 of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546 and 3583.5, Government Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32993. Filing of Financial Report.

Each exclusive representative that has agreed to or has had implemented an agency fee provision shall, as part of the financial report required by Government Code Sections ~~3502.5(f)~~, 3515.7(e), 3546.5, 3584(b), and 3587, also include (a) the amount of membership dues and agency fees paid by employees in the affected bargaining unit, and (b) identify the expenditure(s) that constitute(s) the basis for the amount of the agency fee.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections ~~3502.5~~, 3515.7(e), 3546.5, 3584(b) and 3587, Government Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32994. Agency Fee Appeal Procedure.

(a) If an agency fee payer disagrees with the exclusive representative's determination of the agency fee amount, that employee (hereinafter known as an "agency fee objector") may file an agency fee objection. Such agency fee objection shall be filed with the exclusive representative. An agency fee objector may file an unfair practice charge that challenges the amount of the agency fee; however, no complaint shall issue until the agency fee objector has first exhausted the exclusive representative's Agency Fee Appeal Procedure. No objector shall be required to exhaust the Agency Fee Appeal Procedure where it is insufficient on its face.

(b) Each exclusive representative that has an agency fee provision shall administer an Agency Fee Appeal Procedure in accordance with the following:

(1) A agency fee objection shall be initiated in writing and shall be filed with an official of the exclusive representative who has authority to resolve agency fee objections.

(2) An agency fee objection shall be filed not later than 30 days following distribution of the notice required under Section 32992 of these regulations.

(3) Within 45 days of the last day for filing an objection under Section 32994(b)(2) of these regulations and upon receipt of the employee's agency fee objection, the exclusive representative shall request a prompt hearing regarding the agency fee before an impartial decisionmaker.

(4) The impartial decisionmaker shall be selected by the Public Employment Relations Board, the American Arbitration Association, or the California State Mediation Service. The selection among these entities shall be made by the exclusive representative.

(5) Any party may make a request for a consolidated hearing of multiple agency fee objections based on case similarities, including but not limited to, hearing location. At any time prior to the start of the hearing, any party may make a motion to the impartial decisionmaker challenging any consolidation of the hearing.

(6) The exclusive representative bears the burden of establishing the reasonableness of the amount of the agency fee.

(7) Agency fee objection hearings shall be fair, informal proceedings conducted in conformance with basic precepts of due process.

(8) All decisions of the agency fee impartial decisionmaker shall be in writing, and shall be rendered no later than 30 days after the close of the hearing.

(9) All hearing costs shall be borne by the exclusive representative, unless the exclusive representative and the agency fee objector agree otherwise.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546 and 3583.5, Government Code; and

Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32995. Escrow of Agency Fees in Dispute.

(a) The exclusive representative shall open an account in any independent financial institution in which to place in escrow either:

(1) Agency fees to be collected from nonmembers who have filed timely agency fee objections pursuant to Section 32994(b)(2) of these regulations; or

(2) Agency fees collected from nonmembers receiving concurrent notice with the initial agency fee collection provided in Section 32992(c)(2) of these regulations.

(b) Escrowed agency fees that are being challenged shall not be released until after either:

(1) Mutual agreement between the agency fee objector and the exclusive representative has been reached on the proper amount of the agency fee; or

(2) The impartial decisionmaker has made his/her decision, whichever comes first.

(c) Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and 3563(f), Government Code.

Reference: Sections ~~3502.5~~, 3515.7, 3540.1(i), 3543, 3546 and 3583.5, Government Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32996. Filing of Agency Fee Appeal Procedure.

An exclusive representative with an agency fee agreement or provision shall file a copy of its Agency Fee Appeal Procedure with the Board within 30 days after entering into an agency fee agreement, or within 30 days of its notification to the employer that initiates the collection of agency fees, **or within 30 days after an election result is certified that initiates the collection of agency fees. For agency fee arrangements in effect under MMBA on July 1, 2001, the exclusive representative shall file its Agency Fee Appeal Procedure with the Board no later than July 31, 2001.**

Authority cited: Sections **3509(a)**, 3513(h), 3541.3(g) and 3563(f), Government Code.
Reference: Sections **3502.5**, 3515.7, 3540.1(i), 3543, 3546 and 3583.5, Government Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32997. Compliance.

It shall be an unfair practice for an exclusive representative to collect agency fees in violation of these regulations.

Authority cited: Sections ~~3509(a)~~, 3513(h), 3541.3(g) and (i) and 3563(f), Government Code.
Reference: Sections ~~3502.5~~, 3515.7, 3519.5, 3540.1(i), 3542(d), 3543.6, 3543, 3546, 3546.5, 3563.2, 3564(d), 3571.1 and 3583.5, Government Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

CHAPTER 5. MEYERS-MILIAS-BROWN ACT

**SUBCHAPTER 1. ENFORCEMENT AND APPLICATION OF LOCAL RULES
CONCERNING UNIT DETERMINATIONS, RECOGNITION, REPRESENTATION
AND ELECTIONS**

60000. _____ Petition for Board Review.

(a) Any party to a determination by a public agency concerning unit determination, representation, recognition or elections may file a petition requesting the Board review the determination. Such a petition may only be filed within 30 days following exhaustion of administrative remedies available under the applicable local rules. A challenge to the validity of a local rule may not be filed under this section and may only be filed as an unfair practice charge pursuant to Section 32602 of these regulations.

(b) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.

(c) The petition shall contain the following information:

(1) The name, address, county and telephone number of the public agency and the name, address and telephone number of the public agency agent to be contacted;

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

(3) The name, address and telephone number of any other interested party and the name, address and telephone number of the party's agent to be contacted;

(4) A copy of any petition or request filed with the public agency, a copy of the final determination of the public agency, and any related materials;

(5) A statement of the issue(s) in dispute;

(6) A statement indicating the specific action(s) requested of the Board.

**Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3,
Government Code.**

60010. Board Investigation.

(a) Whenever a petition under Section 60000 is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing, or take such other action as deemed necessary to decide the questions raised by the petition.

(b) The petition shall be dismissed in part or in whole whenever the Board determines that:

(1) The petitioner has no standing to petition for the action requested; or

(2) The determination of the public agency was rendered in accordance with MMBA, the local rules of the public agency, and applicable precedent.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.

Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

60020. Withdrawal of a Petition.

Any petition filed under Section 60000 may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3,
Government Code.

60030. Informal Conference.

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

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

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.

Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

60035. Administrative Decision.

Any determination rendered without a hearing shall be issued in accordance with Section 32350 and may be appealed pursuant to Section 32360 of these Regulations.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

60040. Notice of Hearing.

If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

60050. Conduct of Hearing; Issuance of Proposed Decision.

Hearings shall be conducted and proposed decisions shall be issued pursuant to procedures set forth in Chapter 1, Subchapter 3 of these Regulations.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

60070. Decisions of the Board Itself.

Procedures before the Board itself shall be in accordance with Chapter 1, Subchapter 4, Articles 1 through 4 of these Regulations.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

**SUBCHAPTER 2. REPRESENTATION PROCEEDINGS CONDUCTED BY THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

Article 1. General Provisions

61000. Application of Regulations.

Except as otherwise ordered pursuant to Chapter 1, the Board will conduct representation proceedings and/or agency fee rescission elections under MMBA in accordance with the applicable provisions of this Subchapter only where a public agency has adopted such provisions as its local rules or where all parties to a representation case agree to be bound by the applicable PERB Regulations.

Authority cited: Section 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

61005. Parties.

"Parties" means the public agency, the employee organization that is the exclusive or majority representative of any employee covered by a petition, any employee organization known to have an interest in representing any employees as demonstrated by having filed a pending petition, and/or any group of public employees which has filed a pending petition pursuant to Government Code Section 3502.5(d) or 3507.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3501(a), (b), (c) and (d), 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.

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

61020. Proof of Support.

(a) Except as required in Section 61350(b)(1) or 61600, proof of employee support for all petitions requiring such support shall clearly demonstrate that the employee desires to be represented by the employee organization for the purpose of meeting and conferring on wages, hours and other terms and conditions of employment.

(b) The proof of support shall indicate each employee's printed name, signature, job title or classification and the date on which each individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signatory has executed authorizations for more than one employee organization.

(c) Any proof of support validly obtained within one year immediately prior to the date the petition or amendment requiring employee support is filed shall remain valid and may be used as proof of support to qualify for appearance on the ballot in an election, provided the employee's job classification is included in the unit in which the election is to be conducted.

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

(1) Current dues deduction authorization forms;

(2) Membership applications;

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

(4) A notarized membership list, provided it is accompanied by the date of each member's signature on an enrollment form, membership application, or designation card or cards, supported by a declaration under penalty of perjury that the employee organization has on file the aforementioned documents which indicate the employee's desire to be represented by the employee organization. A sample of such signed forms shall accompany the list.

(5) Other evidence as determined by the Board.

(e) Documents submitted to the board as proof of employee support shall remain confidential and not be disclosed by the Board.

(f) Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documents are not genuine, shall file with the regional office evidence in the form of declarations under penalty of perjury supporting such contention within 20 days after the filing of the petition which the proof of support accompanied. The Board shall refuse to consider any evidence not timely submitted,

absent a showing of good cause for late submission. When prima facie evidence is submitted to the Board supporting a claim that proof of support was tainted by such misconduct, the Board shall conduct further investigations. If, as a result of such investigation, the Board determines that the proof of support is inadequate because of such misconduct, the petition shall be dismissed.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61030. Withdrawal of a Petition.

Any petition may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

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

61040. Informal Conference.

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

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

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

61050. Notice of Hearing.

If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.

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

61055. Conduct of Hearing; Issuance of Proposed Decision.

Hearings shall be conducted and proposed decisions shall be issued pursuant to procedures set forth in Chapter 1, Subchapter 3 of these Regulations.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

61060. Administrative Decision.

Any determination rendered without a hearing shall be issued in accordance with Section 32350 and may be appealed pursuant to Section 32360 of these Regulations.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

61065. Elections in Consent Units.

At any time prior to a final decision of the Board regarding an appropriate unit, the parties may mutually agree upon an appropriate unit and request the Board to conduct a consent election. The conduct of an election in a consent unit should not be interpreted to mean that the Board would find the unit in question to be an appropriate unit in a disputed case.

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

61070. Decisions of the Board Itself.

Procedures before the Board itself shall be in accordance with Chapter 1, Subchapter 4, Articles 1 through 4 of these Regulations.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

61072. Judicial Review.

A request for judicial review of a decision by the Board itself may be filed pursuant to Section 32500 and shall be allowed: (1) when the board, in response to a petition from the employer or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

61075. Notice of Decision.

When the Board itself issues a decision or when a hearing officer decision becomes final, the Board shall serve the decision and a notice of decision on the parties.

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

61080. Conduct of Elections: Eligibility to Appear on Ballot.

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this Subchapter.

(b) Any employee organization which filed a valid petition or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Section 61020 of these Regulations.

**Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code.
Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3,
Government Code.**

61090. Voluntary 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 public agency may grant recognition.

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

Article 2. Elections

61100. Authority to Conduct Elections.

An election shall be conducted when the Board issues a decision directing an election or approves an agreement for a consent election pursuant to the provisions of this Chapter. The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61105. Ballot.

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

(b) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.

(c) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 61145, or an election conducted pursuant to either Article 4 or 7 of this Subchapter, the ballot entry of "No Representation" shall appear on each ballot in a representation election.

(d) At any time prior to issuance of the notice of election (pursuant to Section 61110), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61110. Directed Election Order/Consent Election Agreement: Notice of Election.

(a) When the Board has determined that an election is required, the Board shall serve on the employer and the parties a Directed Election Order containing specific instructions regarding the conduct of the election. The Board may approve a Consent Election Agreement of the parties regarding the conduct of an election.

(b) Thereafter, the Board shall serve a notice of election on the parties. The notice shall contain a sample ballot, a description of the voting unit, and information regarding the balloting process. Unless otherwise directed by the Board, the employer shall post such notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the described unit are employed.

(c) The Board shall supply the employer with sufficient copies of the notice for posting. The posting shall be accomplished by the date specified in the Consent Election Agreement or the Directed Election Order. The notice shall remain posted through the final day for casting ballots.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61115. List of Voters.

(a) At a date established by the Board, the employer shall file with the regional office a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility. Unless otherwise directed by the Board, the voter list for an on-site election shall be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter. Unless otherwise directed by the Board, the voter list for a mailed ballot election shall be in alphabetical order and include the job title and home address of each eligible voter, and shall be accompanied by two sets of name and home address labels for each eligible voter.

(b) A list of eligible voters which meets the requirements of subsection (a) above but which contains in lieu of the home address a mailing address for each eligible voter shall be concurrently served by the employer on each other party to the election. Proof of service shall be filed with the regional office. For purposes of this subsection, mailing address means the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if the Board shall determine that the release of home addresses is likely to be harmful to the employees.

(c) Any party which receives the mailing addresses of eligible voters pursuant to this section shall keep these addresses confidential and shall neither distribute them to any other organization or individual nor utilize them for any other purpose.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1 and 3509, Government Code.

61120. Voter Eligibility.

Unless otherwise directed by the Board, to be eligible to vote in an election employees must be employed in the voting unit as of the cutoff date for voter eligibility and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, on leave of absence or sabbatical, or temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61125. Observers.

Each party shall be allowed to station an authorized observer selected from the employees of the employer at each polling site during an on-site election to assist in the conduct of the election and to challenge the eligibility of voters.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61130. Challenges.

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

(b) In a mailed ballot election, a Board agent or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Such challenges shall be made prior to the tally of the ballots.

(c) When sufficient in number to affect the outcome of the election, unresolved challenges shall be resolved by the Board.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61135. Tally of Ballots.

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

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

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61140. Resolution of Challenges.

When the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, the Board agent shall conduct an investigation and, where appropriate, conduct a hearing or take such other action as deemed necessary to determine the eligibility of the challenged voters. Any determination made by a Board agent pursuant to this Section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61145. Runoff Elections.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61150. Objections.

(a) Within 10 days following the service of the tally of ballots, any party to the election may file with the regional office objections to the conduct of the election. Any objections must be filed within the 10 day time period whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election.

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

(c) Objections shall be entertained by the Board only on the following grounds:

(1) The conduct complained of interfered with the employees' right to freely choose a representative, or

(2) Serious irregularity in the conduct of the election.

(d) The statement of the objections must contain specific facts which, if true, would establish that the election result should be set aside, and must also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of subsection (c) above.

(e) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(f) At the direction of the Board, facts alleged as supportive of the election conduct objected to shall be supported by declarations. Such declarations must be within the personal knowledge of the declarant, or must otherwise be admissible in a PERB election objections hearing. The declarations shall specify the details of each occurrence; identify the person(s) alleged to have engaged in the allegedly objectionable conduct; state their relationship to the parties; state where and when the allegedly objectionable conduct occurred; and give a detailed description of the allegedly objectionable conduct. All declarations shall state the date and place of execution and shall be signed by the declarant and certified by him or her to be true under penalty of perjury.

(g) The Board agent shall dismiss objections that fail to satisfy the requirements of subsections (a) through (d). The objecting party may appeal the dismissal to the Board itself in accordance with Chapter 1, Subchapter 4, Article 3 of these regulations.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61155. Powers and Duties of Board Agent Concerning Objections.

Concerning objections, the Board agent has the power to:

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61160. Withdrawal of Objections.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61165. Hearings on Objections and Challenges.

Objections to the conduct of an election which have not been dismissed pursuant to Section 61155(f) or unresolved challenged ballots sufficient in number to affect the outcome of the election may be resolved through the hearing procedures described in Chapter 1, Subchapter 3.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61170. Exception to Decision on Objections or Challenges.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61175. Revised Tally of Ballots.

Should a ruling on challenged ballots direct that any such ballots be voided or opened and counted, the Board shall serve a revised tally of ballots on each party at the conclusion of the counting and/or voiding of such ballots. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61180. _____ Objections to Revised Tally of Ballots.

(a) Within 10 days following the service of a revised tally of ballots, any party may file with the regional office objections to the revised tally.

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

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61185. Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to either Article 4 or 7 of this Subchapter, the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61190. Stay of Election.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61200. Bar to Conducting Election.

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

Article 3. Petition for Certification

61210. Petition for Certification.

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

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

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

(3) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(4) The approximate number of employees in the proposed appropriate unit;

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

(b) The petition shall be accompanied by proof of at least 30 percent support of the employees in the unit claimed to be appropriate. Proof of support is defined in 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.

61220. Posting Notice of Petition for Certification.

(a) The employer shall post a notice of the petition, as provided by the Board, as soon as possible but in no event later than 10 days following service of a copy of the petition.

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

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

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

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.

61240. Determination of Proof of Support.

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

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

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the final determination as to sufficiency or lack thereof regarding the proof of support. The petition shall be dismissed if the Board determines that the petition lacks sufficient proof of support.

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.

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 petition, the employer shall file a written response with the regional office.

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

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

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

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

(3) Employer position regarding the petition for certification:

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

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

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.

61260. Amendment of Petition for Certification.

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

61270. Board Investigation.

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

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.

Article 4. Petition for Amendment of Certification

61300. Petition.

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

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

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

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

(3) A brief description and the title of the established unit;

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

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

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3507, 3507.1, 3509 and 3541.3(m), Government Code.

61310. Employer Response.

The employer may file a responding statement to the petition filed pursuant to Section 61300. The statement shall be filed with the regional office within 15 days following the date of service of the petition. Service and proof of service pursuant to Section 32140 are required.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3507, 3507.1, 3509 and 3541.3(m), Government Code.

61320. Board Investigation.

(a) Upon receipt of a petition filed pursuant to Section 61300, the Board shall conduct such inquiries and investigations or hold such hearings as deemed necessary and/or conduct a representation election in order to decide the questions raised by the petition.

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

(c) Upon approval of a petition, the Board shall issue a certification reflecting the new identity of the exclusive representative and/or employer. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 61200 of these regulations.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3507, 3507.1, 3509 and 3541.3(h) and (m), Government Code.

Article 5. Decertification Petition

61350. Petition.

(a) A petition for an election to decertify an existing exclusive representative in an established unit may be filed by a group of employees within the unit or an employee organization. The petition shall be filed with the regional office and include the following information:

(1) The name, address and telephone number of the petitioning employee organization, if any, and/or the name, address and telephone number of the agent to be contacted on behalf of a petitioning employee organization or group of employees;

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

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) The approximate number of employees in the established unit;

(6) The date on which the exclusive representative was recognized or certified;

(7) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the unit.

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

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

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

Proof of support is defined in 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: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3507, 3507.1, 3509 and 3541.3(c) and (l), Government Code.

61360. Posting Notice of Decertification Petition.

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

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

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

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

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

61370. Board Determination Regarding Proof of Support.

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

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

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

61380. Board Investigation/Election.

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

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

(c) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of the employees covered by a petition, unless the petition is filed during the window period defined in Section 61010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

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

Article 6. Severance Petition

61400. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this Subchapter. Such a petition shall include the following information:

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

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

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(6) The approximate number of employees in the proposed appropriate unit;

(7) The date on which the exclusive representative was recognized or certified;

(8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.

(b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the "window period" defined by Section 61010.

(c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

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

61410. Response to Severance Petition.

(a) The public agency and the exclusive representative of the established unit may file responding statements supporting or opposing the severance petition. Such response shall be filed with the regional office within 20 days following the date of service of the severance petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) A copy of the severance petition;

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

(3) A statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized or certified, and the effective date and the expiration date of any current memorandum of understanding covering employees in the established unit; and,

(4) A concise statement setting forth the basis for support of or opposition to the unit proposed by the petition.

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

61420. Board Investigation.

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

(b) The petition shall be dismissed (1) whenever there is currently in effect a memorandum of understanding between the employer and the exclusive representative of any employees covered by a petition, unless the petition is filed during the window period defined in Section 61010 of these regulations, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or, (2) whenever a representation election result has been certified affecting the described unit or a subdivision thereof within the 12 months immediately preceding the date of filing of the petition.

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

Article 7. Petition for Unit Modification

61450. Petition.

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

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

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

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

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

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

(1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit;

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

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

(4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

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

(C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 61010.

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

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

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

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

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e) If the petition requests the addition of classifications or positions to an established unit, the Board may require proof of majority support of persons employed in the classifications or positions to be added. Proof of support is defined in Section 61020 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

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

61460. Response to Petition.

(a) Unless otherwise notified by the Board, a party or interested party may file a response to a petition filed solely by an exclusive representative or an employer. Such response shall be filed with the regional office within 20 days following the date of service of the petition. Service and proof of service of the response pursuant to Section 32140 are required.

(b) The response shall be in writing, signed by an authorized agent of the responding party and contain the following information:

(1) The name, address and telephone number of the petitioner(s);

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

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

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

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

61470. Board Determination Regarding Proof of Support.

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

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

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

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

61480. Disposition of Petitions.

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

(b) The Board shall dismiss a petition if it is found to be improperly or not timely filed, or if proof of support submitted falls short of the required majority support, or if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit.

(c) Board Order of Unit Modification.

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

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 61200.

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

Article 8. Rescission of Agency Shop Agreement or Provision

61600. Employee Petition.

(a) A group of employees in an established unit may file with the regional office a petition to rescind an existing agency shop agreement or provision pursuant to Government Code Section 3502.5(d).

(b) The petition shall be signed by an authorized representative of the group of employees and shall include the following information:

(1) The name, address and telephone number of the agent to be contacted on behalf of a petitioning group of employees;

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

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) The approximate number of employees in the established unit;

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the unit.

(c) Proof that at least 30 percent of the employees in the unit desire a vote to rescind the existing agency shop provision shall be filed with the regional office concurrent with the petition. Proof of support shall conform to the requirements of Section 61020(b), (c), (d)(3), (e) and (f).

(d) 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 3502.5(d), 3507, 3509 and 3541.3(c), Government Code.

61610. Board Determination Regarding Proof of Support.

(a) Within 20 days following the filing of the petition to rescind an agency shop agreement or provision, the public agency shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

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

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

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5(d), 3507, 3509 and 3541.3(c), Government Code.

61620. Employee Vote.

(a) Provided the rescission petition is timely and properly filed pursuant to this Article 2, and the proof submitted in support of the petition is determined to be adequate pursuant to Section 61600, a rescission election among the employees in the established unit shall be conducted under procedures established by the Board and in accordance with election procedures described in these regulations.

(b) The agency shop agreement or provision shall be rescinded if a majority of the employees in the negotiating unit covered by the provision vote to rescind the agreement.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5(d), 3507, 3509 and 3541.3(c), Government Code.

61630. Bar to Rescission.

The Board shall dismiss any petition to rescind the existing agency shop agreement or provision if the results of a prior rescission election concerning the agreement or provision in the same unit were certified during the term of the same memorandum of understanding.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5(d), 3507, 3509 and 3541.3(c), Government Code.