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VIA EMAIL ONLY

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Public Employment Relations Board  
c/o Ms. Kristina Gonzalez  
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**In Regards to LCW's Written Comments on Proposed Regulation Packages  
– October 2019 Board Meeting**

Dear Honorable Board Members:

Thank you for the opportunity to provide input regarding PERB's proposed regulation packages, which will be considered at the October 2019 Board meeting. Liebert Cassidy Whitmore ("LCW") submits the following comments concerning several of the proposed regulations.

**Comments in Regards to Proposed Revisions to Continuance Regulations**

PERB proposes to change the standard applicable to requests to continue a hearing. Currently, PERB Regulation 32205 provides that a request to continue a hearing will be granted only under "unusual circumstances." But what constitutes "unusual circumstances" is unclear. For that reason, LCW welcomes PERB's efforts to provide clarification by replacing "unusual circumstances" with "good cause" for requests submitted seven or more days prior to the start of the hearing.

But LCW is concerned with PERB's proposal to apply an "extraordinary circumstances" standard to continuance requests submitted less than seven days prior to the hearing. This proposed standard is even vaguer than "unusual circumstances," and it is unclear what, if any, circumstance could even qualify under this proposed standard. For example, would "extraordinary circumstances" exist if the party's counsel were hospitalized because of an auto accident or a serious medical condition? Would

extraordinary circumstances” exist if a party’s family member unexpectedly passed away? Would “extraordinary circumstances” exist if the party’s legal counsel is simply too sick to participate in the hearing? Because this proposed standard sets the bar unnecessarily high, we recommend that PERB apply a "good cause" standard to all continuance requests regardless of when they are submitted.

### **Comments to Proposed Revisions to Recusal Regulations**

LCW’s comments to the proposed revisions remain the same as set forth in our June 2019 comments. A copy of those comments is attached here.

### **Comments to Proposed Revisions to E-File Regulations**

With Proposed Regulation 32092, PERB proposes that most documents electronically filed include a certification that the document has been properly signed or has been electronically signed. PERB, however, has proposed to exclude “proof of support” under PERB Regulation 32700 from this requirement.

Instead, as set forth in Proposed Regulation 32700, subsection (d), PERB has proposed that an employee organization be allowed to establish “proof of support” by providing PERB with a list of employees who have either “signed or electronically signed proofs of support, or provided a pdf, screenshot, or image demonstrating their signatures on such proofs of support.” While we agree that electronic signatures may be used to show proof of support, we are concerned that, as written, the proposed revisions would entitle an employee organization as the exclusive representative based on nothing more than a text message and something that is not his/her actual signature.

We are also concerned with PERB’s proposal set forth in PERB Regulation 32700(a)(3), which adds the following new language:

***This section governs proof of employee support under all statutes that the Board enforces.*** It also governs proof of support under section 8434 of the Education Code and related provisions. When applying this section with respect to providers as defined under section 8431 of the Education Code, the term “employee” used in this section shall include such providers.” (Emphasis added.)

Our concern is that, as written, this proposed revision would not simply revise PERB’s regulations, but would also revise the local rules that agencies may adopt for

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governing representation proceedings. (See Government Code Sections 3507, 3507.1, 71636, 71636.3, 71823.) It is unclear whether that was PERB's intent, but we recommend that PERB not make changes that would unnecessarily restrict an agency's ability to establish its own rules.

Liebert Cassidy Whitmore appreciates the Board's efforts in actively seeking input from its various practitioners and stakeholders in preparing clearer, more efficient and practically relevant regulations. We look forward to further working with the Board and providing comments to any future regulation packages.

If you have any questions regarding the above, please do not hesitate to contact us.

Very truly yours,  
LIEBERT CASSIDY WHITMORE

A handwritten signature in black ink that reads "Adrianna Guzman". The signature is written in a cursive, flowing style.

Adrianna E. Guzman

AEG:fg  
Encl: As Stated

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