LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION
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Notes from Commissioner Paniccia and Executive Director Weinstein:

We have included everyone's input except on those items that addressed typos or other minor corrections, which will be corrected in the final draft.

We may also have omitted listing your input on issues that we understood to have already been solved during our informal meetings with you, e.g., those rules where we could not make some of the changes requested because we are hemmed in by our County Ordinance. We have no authority or funding to change the Ordinance, however in some instances, we created workarounds as best we could.

As we also explained, ERCOM has switched to electronic communication for most procedures, and is currently in the process of converting all procedures, including voting, to digital/electronic. We will be making universal changes to address all the notifications, filing, service, voting, etc. in a final draft that will be prepared after the June 24, 2024 meeting. See Rule 2.02 (d) for a more detailed explanation of the digital/electronic issue.

With regard to the timeline changes, the Executive Director asked each of the Commissioners individually if she could accept those timelines submitted that she thought would work best for ERCOM, and all said yes. Initially, she has accepted many of your timelines, however, these changes will not be final until the Commission has had a chance at the meeting to determine if there is any further input on the proposed timeline changes and then vote on accepting/rejecting them.

At the conclusion of the June 24 meeting (and any subsequent meetings that are necessary) and after the Commission has taken a final vote on all changes, the rules will be edited to reflect a final draft. We will distribute the final draft and if necessary, we will provide an opportunity to comment on the final edits but will not be receiving any new proposals.

At the meeting, we will proceed in order of the rules, except for a few rules that should be discussed in conjunction with other rules. For example, Rule 4.10 addresses timelines for a Motion to Dismiss but needs to be discussed in conjunction with Rule 6.04, which addresses whether we will even add a Motion to Dismiss. Similarly, Rule 2.02(c) will be addressed in conjunction with Rules 2.02 (f), 5.01 and 5.02(d). Also, Rule 4.15 will be discussed in conjunction with Rule 6.06 (c). In each instance, we will discuss the issue the first time it appears in the Rules.

All deletions are in red; all additions in blue; and any notes from us are in green.

Thank you.

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION
ERCOM RULES AND REGULATIONS

PROPOSED COMMENTS FOR AMENDMENTS AND ADDITIONS

RULE 1

SCOPE AND AUTHORITY

Rule 1.01 SCOPE

These Rules and Regulations (herein called "Rules") govern procedures before the Los Angeles County Employee Relations Commission (herein called "Commission" or "Employee Relations Commission"), a commission formed under the Employee Relations Ordinance No. 9646, ~~(herein called "Ordinance"),~~ adopted September 3, 1968, ~~as now or hereafter~~ and as hereafter amended, and set out at Chapter 5.04 of the Los Angeles County Code (herein called "Ordinance").

Rule 1.02 AUTHORITY

Pursuant to Section ~~7(h)~~ 5.04.170 of the Ordinance, the Commission does hereby prescribe and adopt these Rules which shall have the force and effect of law consistent with ERCOM's power under Section 5.04 of the Ordinance.

Rule 1.03 PURPOSE

The Rules prescribe procedures and basic principles which the Commission will utilize in:

a. Deciding questions concerning the appropriate unit for the purpose of recognition as the majority representative and related issues submitted for the Commission's consideration.
b. Supervising elections to determine whether an employee organization is the choice of a majority of the employees in an appropriate unit as their representative, and certifying the results.
c. Deciding charges of alleged unfair employee relations practices and other alleged violations of the Ordinance or these Rules.
d. Resolving disputes through the general procedure relating to mediation, fact-finding and arbitration pursuant to Sections ~~11 and 13~~5.04.230 and 5.04.250 of the Ordinance.
e. Effectuating the purposes and policies of the Ordinance.

PPOA Recommendation:

Rules 1.02 & 1.03 The Authority of ERCOM currently states, "…the Commission does hereby prescribe and adopt these Rules which shall have the force and effect of law." Add language that bolsters the remedial authority of ERCOM regarding Decisions, Orders,

Findings, etc. which also have the force and effect of law consistent with ERCOM's power under Chapter 5.04 of the ~~Los Angeles County Code (~~"Ordinance~~")~~.
At PPOA's request, we added the phrase "consistent with ERCOM's power under Section 5.04 of the Ordinance" to the end of the sentence in Rule 1.02.

Also, add language such as that found in Chapter 5.04.050 of the Ordinance which states: "…the county shall have authority to adopt rules and regulations not inconsistent with law, including Ordinances 9646 and 85-0032 or any other county ordinance, which shall be applicable to any or all departments, agencies or boards of the county in establishing and enforcing the employee relations program provided for herein…" ERCOM should include language in their Authority and/or Purpose Rules that specify ERCOM's Decisions, Orders, Findings, etc. are applicable to all departments, agencies or boards of the county in order to prevent other County departments from attempting to supersede ERCOM's authority.
With regard to adding the language, "the county shall have the authority, etc." this § 5.04.050 gives authority to the County; not to ERCOM so our rulings are not applicable to all departments, agencies or boards of the County, and thus, adding this clause will not "prevent other County departments from attempting to supersede ERCOM's authority."

1.04~~1.03~~ CONSTRUCTION OF RULES

1.05~~2.06~~ AMENDMENTS

After giving at least ~~ten (10)~~ thirty (30) days' notice by posting on the Commission's Official ~~Bulletin Board~~ website and by emailing to all parties on the Commission's Official Mailing List, the Commission may hold may hold public hearings to consider adoption of amendments to these Rules or to adopt~~ing~~ new rules.

Coalition Recommendation:
Rule 1.05 10-days' notice is a short period of time to evaluate a substantial rule change. Recommends that the minimum notice be increased to 30 days.

SEIU - Maria Myers/Katie Engst Recommendation:
Rule 1.05 10-days' notice is a short period of time to evaluate a substantial rule change. Recommends that the minimum notice be increased to 30 days.

Changed to 30-days notice. If any objections, please sign up to speak.

1.06~~2.07~~ EFFECTIVE DATE OF AMENDMENTS

1.07~~2.05~~ SEVERABILITY

RULE 2

DEFINITIONS

Rule 2.01 GENERAL

Rule 2.02 SPECIAL DEFINITIONS

Rule 2.02(a)
DAYS means calendar days exclusive of Saturdays, Sundays and holidays as specified in ~~California Government Code Sections 6700 and 6701 (Good Friday shall not be deemed a holiday for the purposes of this section);~~ Section 6.12.040 of the Ordinance, provided, however, that references herein to periods of thirty (30) days or longer shall be defined to mean calendar days without exclusions. In the event the expiration of such time period falls on a Saturday, Sunday or holiday the next work day shall be considered as the date of expiration.

DHR – Anthony Martinez Recommendation:

DHR Policy - Reference to County holidays within County Code instead of State law.
This change has been made.

CEO - Adrianna Guzman Recommendation:

Rule 2.02(a) Recommend definition of "DAYS" to mean business days i.e., exclusive of Saturdays, Sunday and holidays as specified in California Government Code sections 6700 and 6701, unless otherwise indicated.

When the intention is for a time period to be thirty calendar days, we recommend that the rule explicitly state "thirty (30) calendar days."

> NOTE: *This recommended change is to avoid any confusion as to what 30 calendar days means.*

We don't agree that this creates confusion and this format is commonly used. We prefer to keep the calendar descriptions as they are. Please sign up to speak if you would like to bring this issue before the Commission.

Rule 2.02(b)

Rule 2.02(c)
CERTIFIED EMPLOYEE ORGANIZATION or CERTIFIED EMPLOYEE REPRESENTATIVE means an Employee Organization, or it's duly authorized representative that has been certified by the Employee Relations Commission as representing the majority of the employees in an appropriate employee bargaining unit, and as described in Section 3501 (b) of the Meyers-Milias-Brown-Act (MMBA) as a "recognized employee organization."

Coalition Recommendation:

Rule 2.02(c) Should be replaced with the language of Section 5.04.030(A) of the ERO, which provides as follows:

> "Certified employee organizations" or "certified employee representative" means an employee organization, or its duly authorized representative, that has been certified by the employee relations commission as representing the majority of the employees in an appropriate employee representation unit.

The proposal for Rule 2.02(c) mixes the definition for "certified employee organization" under the ERO with that for "recognized employee organizations" under the MMBA. As those definitions are different, the two should not be mixed.

If the proposal for Rule 2.02(c) is to be retained, **recommendation phrase is** "or it's duly authorized representative" should not be preceded by a comma and that "its" should replace "it's."

PPOA Recommendation:

Rule 2.02(c) Section 5.04.030 of the Ordinance defines a "certified employee organization" as: "'Certified employee organizations' or 'certified employee representative' means an employee organization, or its duly authorized representative, that has been certified by the employee relations commission as representing the majority of the employees in an appropriate employee representation unit." Proposed Rule 2.02(c) includes additional language stating that the definition of a "certified employee organization" is further defined: "…as described in Section 3501 (2) (b) of the Meyers-Milias-Brown-Act (MMBA) as a 'recognized employee organization.'"

In order to maintain consistency between ERCOM Rules and the Ordinance, any language referring to the MMBA's definition of recognized employee organizations should be removed. Section 3501(2)(b) of the MMBA provides: "(2) Any organization that seeks to represent employees of a public agency 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." Rule 2.02(c) should solely refer to the Ordinance definition of employee organizations which requires certification from the Commission, above mere formal acknowledgment mentioned in the MMBA definition. Proposed Rule 2.02(c) also includes a grammatical error stating "it's duly authorized representative…" This should be changed to "its duly authorized representative…"

Rule 2.02(f) ERCOM should clarify Proposed Rule 2.02(c) in order to prevent any overlap between the definition of "Certified Employee Organization" and "Employee Organization." Proposed Rule 2.02(f) states "Employee organization means any lawful organization which includes employees of the County and which has as one of its primary purposes representing such employees in their employment relations with the county…" ERCOM does not define what a "lawful" organization is supposed to be (what is the criteria to be considered a "lawful" organization versus an unlawful organization?). ERCOM should also

limit recognition of employee organizations to entities whose primary purpose is representing employees, not one of many primary purposes.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 2.02(c) Recommends that Rule 2.02(c) be replaced with the language of Section 5.04.030(A) of the ERO, which provides as follows:
"Certified employee organizations" or "certified employee representative" means an employee organization, or its duly authorized representative, that has been certified by the employee relations commission as representing the majority of the employees in an appropriate employee representation unit.

As written, the proposed Rule 2.02(c) mixes the definition for "certified employee organization" under the ERO with that for "recognized employee organizations" under the MMBA. As those definitions are different, the two should not be mixed.
If the proposal for Rule 2.02(c) is to be retained, recommends that the phrase "or it's duly authorized representative" should not follow a comma and that "its" should replace "it's."

This Rule 2.02(c) requires a significant explanation and should be reviewed in conjunction with Rules 2.02 (f), 5.01 and 5.02(d).

Commissioner Cameron requested that the rules do a better of distinguishing between certified and non-certified organizations as there have been some problems in the past with some non-certified organizations mistakenly believing that they could bargain, represent, and/or engage in activities that are specifically reserved for certified organizations.

At ERCOM, all organizations must be registered, regardless of whether they are certified or non-certified. Fuzziness occurs because ERCOM often refers to these two types of organizations as either "certified or "registered" but again, all are registered so it creates confusion. I suggest we change our vernacular to "certified" and "non-certified."

For example, in the Frequently Asked Questions part of the ERCOM Website, one question asks: "What is the difference between a Certified Organization and a Registered Organization?" It then answers: "**Certified Organizations** are all the Unions that represent County employees in labor relations matters such as grievances and discipline and contract (MOU) matters. **Registered organizations** are interest-based and enhance employee-employer relationships and provide career development and other activities for County employees who are members of that organization." This is not accurate because all are registered.

There was no definition for Certified Employee Organization in our rules, and there was only a bizarre one-line definition for Employee Organization that read "a council of employee organizations where the latter term is applicable." So I have inserted definitions for both in (c) "Certified Employee Organization" and (f) "Employee Organization." The definitions I used are word-for-word taken from our Ordinance definitions 5.04.030 (A) and (G), so we don't have a lot of wiggle room to change them. But using these definitions in our rules without adding some additional clarifying words would just further the confusion created by the Ordinance wording.

Specifically, 5.04.030 (G) of the Ordinance reads in relevant part that "Employee Organization means any lawful organization which includes employees of the County and **which has as one of its primary purposes representing such employees in their employment relation with the County…".** This is understandably misread by some as if it is defining a "certified organization."

Therefore, I added the last sentence to Rule 2.02 (f) Employee Organization to clearly distinguish between certified and non-certified employee organizations, so it now reads:

> **2.02(f)** EMPLOYEE ORGANIZATION means ~~a council of employee organizations where the latter term is applicable~~ any lawful organization which includes employees of the County and which has as one of its primary purposes representing such employees in their employment relations with the County provided that said Employee Organization has no restrictions based on race, color, ancestry, national origin, religion, creed, age, mental or physical disability, sex, gender (including pregnancy, childbirth, breastfeeding, or related medical condition), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military or veteran status, or any other category defined as discriminatory under federal, state or local law. **Such representation of employees is not in the capacity of a Certified Employee Organization or Certified Employee Representative as defined in this Rule 2.02(c) unless and until said Employee Organization has been so certified as the majority representative by the Commission under Rule 5.**

Commissioner Khoury then requested to add the last phrase in Rule 2.02 (c) in order to make very clear and allow all to understand that only ERCOM's certified organizations are the equivalent of what many in PERB know as "recognized organizations," so it now reads:

> **Rule 2.02(c)** CERTIFIED EMPLOYEE ORGANIZATION or CERTIFIED EMPLOYEE REPRESENTATIVE means an Employee Organization, or it's duly authorized representative that has been certified by the Employee Relations Commission as representing the majority of the employees in an appropriate employee bargaining unit**, and as described in Section 3501 (2) (b) of the Meyers-Milias-Brown-Act (MMBA) as a "recognized employee organization."**

That's the jumping off point should there be discussion of Rules 2.02(c), 2.02(f), 5.01 and 5.02(d).

Rule 2.02(d)

COMMISSION'S OFFICIAL ~~BULLETIN BOARD~~ WEBSITE means the ~~bulletin board~~ public website ~~established and located at a place~~ formally designated by the Commission and located at https://ercom.lacounty.gov/

ERCOM is already in the process of switching to digital/electronic for filings, notices, etc. We have not brought forth your particular recommendations to delete various rules that presently require manual filings. Instead, after the meeting process, we will add under this *Rule 2 Definitions* a definition that will encompass a broad digital/electronic rule that will address filing/submitting all (or most) documents to ERCOM, such as charges, amended charges, motions, subpoenas, accretions; serving documents to parties; electronic voting and more. Once we garner from our meetings as to whether there are any exceptions to that, we can add the new rule and then purge the many references throughout the various rules that require hard copies, US mail notice etc.. If you want to speak on proposing any exceptions to this digital changeover, please sign up to speak under this Rule 2.02(d). You will again be able to speak on it when these new digital/electronic rules are complete and a final draft is circulated.

Rule 2.02(e)

Rule 2.02(f)

EMPLOYEE ORGANIZATION means ~~a council of employee organizations where the latter term is applicable~~.any lawful organization which includes employees of the county and which has as one of its primary purposes representing such employees in their employment relations with Los Angeles County (hereinafter "County") provided that said Employee Organization has no restrictions based on race, color, ancestry, national origin, religion, creed, age, mental or physical disability, sex, gender (including pregnancy, childbirth, breastfeeding, or related medical condition), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military or veteran status, or any other category defined as discriminatory under federal, state of local law. Such representation of employees is not in the capacity of a Certified Employee Organization or Certified Employee Representative as defined in this Rule 2.02(c) unless and until said Employee Organization has been so certified as the majority representative by the Commission under Rule 5.

CEO - Adrianna Guzman Recommendation:

Rule 2.02(f) EMPLOYEE ORGANIZATION means any lawful organization which includes employees of the County and which has as one of its primary purposes representing such employees in their employment relations with the County provided that said Employee Organization has no restrictions based on race, color, ancestry, national origin, religion, creed, age, mental or physical disability, sex, gender (including pregnancy, childbirth, breastfeeding, or related medical condition), **reproductive health decision-making**, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military or veteran status, or any other protected category as defined **~~as~~ ~~discriminatory~~ under federal, state ~~of~~ or** local law. Such representation of employees is not in the capacity of a Certified Employee Organization or Certified Employee Representative as defined in this Rule 2.02(c) unless and until said Employee Organization has been so certified as the majority representative by the Commission under Rule 5.

NOTE: *This recommended change is to (1) correct typos; (2) correspond to the protected categories now identified in the Fair Employment and Housing Act, Government Code section 12940(a); and (3) clarify that federal, state and local laws define protected categories that may not be the basis of discriminatory actions; as written, it suggests that the federal, state or local laws deems the protected categories themselves as discriminatory.*

DHR – Anthony Martinez Recommendation:

DHR Policy - Reference to protected characteristics under CPOE.

This section mirrors all language describing protected characteristics as specifically worded in the Los Angeles County Policy of Equity as opposed to the State classifications. Plus I added "and any other characteristic protected by federal, state or local law." It now reads:

EMPLOYEE ORGANIZATION means any lawful organization which includes employees of the County and which has as one of its primary purposes representing such employees in its relations with the County; provided that said EMPLOYEE ORGANIZATION has no restrictions based on the characteristics listed in the Los Angeles County Policy of Equity, which include age (40 and over), ancestry, color, ethnicity, religious creed (including religious dress and grooming practices), denial of family and medical care leave, disability (including mental and physical disability), marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race (inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles), sex (including pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, reproductive health decision making, reproductive loss leave, off-duty cannabis use, any future characteristics that may be added to the Los Angeles County Policy of Equity, and any other characteristics protected by federal, state or local law. Such representation of employees is not in the capacity of a Certified Employee Organization or Certified Employee Representative as defined in this Rule 2.02(c) unless and until said Employee Organization has been so certified as the majority representative by the Commission under Rule 5.

~~**Rule 202(h) HUMAN RESOURCES**~~

~~HUMAN RESOURCES refers to the Los Angeles County Personnal Department.~~

We are reversing our suggestion to include this new definition in our rules. Our attempt to update Rule 2.02 (h) was for the purpose of updating the term of "Personnel" to "Human Resources." But the Department of Human Resources (DHR) has advised us that the term "Personnel" is "cemented in the code" and should remain in our rules. Lisa Garrett uses the title "Director of Personnel, Department of Human Resources." For our rules, I've since removed all references to "Human Resources" and have instead changed the rules to refer only to the "Director of Personnel" and it will not conflict with the Ordinance.

Rule 2.02(i)

PROOF OF SERVICE means service made either in person, ~~or by U.S. mail and attested to on the form provided by the Commission,~~ or sent via trackable mail, signature required, via either the United States Post Office or a private courier. Notices may also be deemed served if sent via trackable email, or non-trackable email provided that the sender receives written or email acknowledgment of receipt. Any one of the above methods of service shall be attested to on the form provided by the Commission.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 2.02(i) By requiring that documents be sent "via trackable mail, signature required," this rule imposes a more costly and burdensome requirement to establish service than what is required at PERB, NLRB, or even state and federal court. Proposes that the rules continue to allow service by regular U.S. mail and attestation.

We will be changing our requirements in the rules to include electronic filing. See Rule 2.02(d) above.

Rule 2.02(j) PUBLIC RECORDS

Rule 2.02(k) SUBMIT TO THE COMMISSION OR FILE WITH THE COMMISSION

Rule 2.02(l) THE SINGULAR TERM

Rule 2.03 SHALL AND MAY

From here forward in this section on *Definitions*, I've removed those rules that were clearly not definitions, and placed them where they belong. These rules appear to have been randomly and incorrectly listed under *Definitions* during a past editing of the rules.

These rules will be addressed under their new locations.

Formerly Rule 2.05 *Severability* now Rule *1.07*

Formerly Rule 2.06 *Amendments* now Rule 1.05

Formerly Rule 2.07 *Effective Date* now Rule 1.06.

Formerly Rule 2.08 (a) *Public Records.* The definition portion of what defines a public record remains under Rule 2.02 *Definitions* as Rule 2 (j).

Formerly Rule 2.08 (b) and (c) are procedural rules for handling public records and are now Rule 4.07.

Formerly Rule 2.09 *Appearance and Practice Before the Commission* now Rule 4.09.

Formerly Rule 2.10 *Docket* now Rule 3.05.

Formerly Rule 2.11 *Registration Requirements of Employee Organizations* now Rule 5.02.

Formerly Rule 2.11 (A) *Procedure for Registration of Employee Organizations* now Rule 5.03.

Formerly Rule 2.12 *Transcripts of Proceedings* now Rule 4.18.

Formerly Rule 2.13 *Memorandum of Understanding* now Rule 4.19.

Formerly Rule 2.14 *Procedures* renamed *Other Proceedings and* now Rule 4.20.

Formerly Rule 2.15 *Reconsideration* now Rule 4.17

RULE 3

ADMINISTRATION

3.01 DUTIES OF CHAIR~~MAN~~

3.02 ACTING CHAIR~~MAN~~

3.03 EXECUTIVE ~~SECRETARY~~DIRECTOR

The Executive ~~Secretary~~ Director shall be appointed by the Commission ~~from the applicable Civil Service certified eligibility list~~ and shall perform the duties prescribed by these Rules and other duties that the Commission may prescribe.

DHR – Anthony Martinez Recommendation:

DHR Policy - Removing reference to recruitment via CSRs for the unclassified Executive Director position.

Change has been made.

3.04 ACTING EXECUTIVE ~~SECRETARY~~DIRECTOR

3.05~~2.10~~ DOCKET

3.06 ~~05~~OFFICE

RULE 4

MEETINGS AND PROCEDURES

4.01 TYPES OF MEETINGS

4.02 REGULAR MEETINGS

4.03 SPECIAL MEETINGS

A special meeting may be ordered at any time by the Chair~~man~~ by giving written or email notice to all Commissioners ~~delivering personally or by mailing~~ and to all individuals on the Commissions Official Mailing List at least 48 hours before the time of such meeting ~~written notice to each member of the Commission~~. A copy of the notice shall also be posted on the Commission's Official ~~Bulletin Board~~ website. The notice shall specify the time and place of the special meeting and the business to be transacted.

PPOA Recommendation:

Rule 4.03 ERCOM should provide more than 48 hours notice (5 Days Notice would be preferrable) prior to holding any special meetings and the notice should be provided both electronically and posted on a physical bulletin board/area maintained by ERCOM.
We understand your notice concern, however the Brown Act only requires 24 hours notice so ERCOM is being generous with 48 hours. “Special Meetings” usually means there is an emergency of some sort, e.g., an impending strike. It has been ERCOM’s experience that five days would be too many days to wait in these instances when they believe it is necessary to hold a special meeting. I believe PPOA may have withdrawn this suggestion? If we are mistaken, please feel free to sign up to speak if you want to pursue this.

4.04 EXECUTIVE SESSIONS~~MEETINGS~~

During a regular or special meeting, the Commission may hold executive sessions for ~~the~~ any purpose that falls within the exception for open meetings under the Brown Act. of ~~deliberating on a decision to be reached based upon evidence introduced in a Commission proceeding~~

Coalition Recommendation:

Rule 4.04. As the Brown Act has multiple exceptions (often referred to as exemptions), recommends that the proposed new language “the exception for open meetings” read “any of the exceptions or exemptions for open meetings.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 4.04 As the Brown Act has multiple exceptions (known as exemptions), recommends that the proposed new language "the exception for open meetings" read "any of the exceptions or exemptions for open meetings."
This change will be made.

4.05 TELECONFERENCE MEETINGS AND HEARINGS

The Commission, including but not limited to its hearing officers, may hold meetings or hearings via teleconference to the extent allowed by law and, if applicable, by Rule 6.12.

4.0~~6~~5 PUBLIC MEETINGS

4.07~~b.~~ PUBLIC RECORDS

Rule 4.0~~8~~6 AGENDA

a. The Executive ~~Officer~~ Director shall, as directed by the Commission, prepare the agenda for all meetings and post said agenda on the COMMISSION'S OFFICIAL WEBSITE ~~Bulletin Board~~ at least ~~24~~ three days before the time set for the meeting unless otherwise decided by the Commission, provided the notice is in compliance with the Brown Act.
b. In order to be included on a Commission meeting agenda, an item must be submitted to the Executive Director no later than 5:00 PM of the sixth business day preceding the meeting.

~~2~~4.09 APPEARANCES AND PRACTICE BEFORE THE COMMISSION

a. An employee organization may be represented by a person duly designated and authorized by the employee organization; and the County may designate a person authorized to appear on its behalf.
b. In any proceeding under these Rules, any public employee, employee organization or the County may be represented by counsel or any other authorized person.
c. When a person acting in a representative capacity appears in person or signs a paper in practice before the Commission, ~~his~~ that person's personal appearance or signature shall constitute a representation to the Commission that under the provisions of these Rules and the law ~~he is~~ that they are authorized to represent the particular person on whose behalf ~~he~~ they act~~s~~. The Commission may at any time require any person~~s~~ transacting business before the Commission in a representative capacity to show ~~his~~ their authority to act in such capacity.

4.10 TIMELY FILING PRIOR TO COMMISSION MEETINGS

Unless otherwise allowed by the Commission, in order to be placed on a Commission meeting agenda and to have said matter be considered at that meeting, parties shall file with the Commission:

a) Any and all motions and briefs supporting said motions at least twenty (20) days prior to the scheduled Commission meeting.
b) Any and all opposition to motions and briefs supporting said opposition at least ten (10) days prior to the scheduled Commission meeting.
c) Any and all replies or rebuttals to opposition and briefs supporting said replies or rebuttals at least five (5) days prior to the scheduled Commission meeting.

Commissioner Paniccia's Comment:

Before we discuss this rule/timeline, which includes a timeline for a motion to dismiss, we should first discuss whether we want to include a motion to dismiss in the rules, and if so, whether we will limit that motion to procedural grounds. We should jump ahead to discuss Rule 6.04 M*otion to Dismiss* in conjunction with this rule.

In addition, the timelines for these two rules contradict and/or overlap so if we do allow for a motion to dismiss, I suggest:

1. **Rule 4.08 *Agenda*** address only agenda deadlines, which it currently does;
2. **Rule 4.10 *Timely Filing Before the Commission*** address all timelines for motions and/or other pleadings (which would include motions to dismiss);
3. **Rule 6.04 *Motions to Dismiss*** address the grounds for a motion to dismiss.

This will take a significant amount of discussion as this issue received the most input. This rule (or rules) will be written once these decisions have been made.

CEO - Adrianna Guzman Recommendation:

Rule 4.10 Unless otherwise allowed by the Commission, **and excluding motions to dismiss (Rule 6.04) and exceptions/responses to exceptions (Rule 6.15),** in order to be placed on a commission meeting agenda, and to have said matter be considered at that meeting, parties shall file **electronically with the Commission and serve electronically on the opposing party:**

a) Any and all motions, and briefs supporting said motions at least twenty (20) days prior to the scheduled Commission meeting.

b) Any and all oppositions to motions and briefs supporting said opposition at least ten (10) days prior to the scheduled Commission meeting.

c) Any and all replies or rebuttals to opposition and briefs supporting said replies or rebuttals at least five (5) days prior to the scheduled Commission meeting.

NOTE: *The reason for this recommendation is that (1) the County has*

proposed additional time for the respondent to file a motion to dismiss an unfair practice charge, as set forth below in its Recommendation to Rule 4.10; (2) the County has proposed additional procedures/steps for the parties to file exceptions, as well as responses/cross- exceptions to a hearing officer's recommended decision, as set forth below in Rule 6.15; and (3) electronic service is a much more convenient and effective way of ensuring timely service. The respondent on a motion to dismiss should have a reasonable amount of time to have the unfair practice charge reviewed by counsel to determine whether there are grounds for filing a motion to dismiss, and then file the motion. Similarly, both parties in response to a hearing officer's recommended decision should have a reasonable amount of time to review the recommendations, discuss the issues with the client, and determine whether to file exceptions.

PPOA Recommendation:

Rule 4.10 ERCOM should specify that they will not entertain any motions and/or briefs attempting to dismiss matters already provided an official ERCOM case number outside of addressing potential jurisdictional arguments offered by the parties.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 4.10 Recommends that this rule should include timelines for items that parties' want to be agendized but are not motions or briefs, like ULPs or other items.

4.11 CONTINUANCES OF MATTERS BEFORE COMMISSION

a) In general, the Commission will grant one continuance for newly docketed matters that have not been completely briefed.
b) Further requests for a continuance will generally not be granted except upon a showing of good cause, such as pending settlement discussions or contemplation of new counsel.

Coalition Recommendation:

Rule 4.11(a) and (b) Recommending that the requiring of a showing of good cause for all continuances. The informal "one automatic continuation" used by the Commission for years favors the responding party, almost always the County in UFC cases. A case-by-case evaluation of "good cause" is more appropriate. Factors that can influence the assessment of good cause can involve factors such as why a delay is being requested and whether the need for the delay could have been avoided had the requesting party acted with greater diligence, the nature of a unilateral change in working conditions, the impact any delay in bringing a matter to hearing can impact the bargaining agent's relationship with its members, the impact of a delay on the efficacy of any remedy, and the nature of the underlying dispute and whether both parties could reasonably have anticipated involving the Commission in the dispute.

Rules 4.11(a) and (b) could rewritten as one rule stating "Requests for a continuance will generally not be granted except upon a showing of good cause, such as pending settlement

discussions or contemplation of new counsel. Good cause shall not include matters that have not been completely briefed or the failure of any party to adequately prepare for a properly scheduled hearing." This would align Rule 4.11 with the principles proposed for addition to Rule 6.10.

PPOA Recommendation:

Rule 4.11 ERCOM should include language indicating that continuances will not be granted for newly docketed matters if motions and/or briefs have already been submitted on behalf of the Responding Party which already evidence an actively assigned counsel to the matter. Although ERCOM routinely grants continuances for newly docketed matters, oftentimes the County will use the outside counsel assignment process to obtain further time to respond/draft briefs when the outside counsel has already been assigned and is already known to all parties. Rather than explicitly memorializing a "free first continuance" in the language of the Rules, good cause should be required for all continuances as legitimate delay in assigning counsel to new cases can be considered good cause by ERCOM.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 4.11 Recommends requiring a showing of good cause for all continuances. The informal "one automatic continuation" favors the responding party, almost always the County, in UFC cases. A case-by-case evaluation of "good cause" is more appropriate. Factors that can influence the assessment of good cause can involve factors such as why a delay is being requested and whether the need for the delay could have been avoided had the requesting party acted with greater diligence, the nature of a unilateral change in working conditions, the impact any delay in bringing a matter to hearing can impact the bargaining agent's relationship with its members, the effect of a delay on the efficacy of any remedy, and the nature of the underlying dispute and whether both parties could reasonably have anticipated involving the Commission in the dispute.

Rules 4.11(a) and (b) could rewritten as one rule stating that "Requests for a continuance will generally not be granted except upon a showing of good cause, such as pending settlement discussions or contemplation of new counsel, o*r an agreement between the parties.* Good cause shall not include matters that have not been completely briefed or the failure of any party to adequately prepare for a properly scheduled hearing." This would align Rule 4.11 with the principles proposed for addition to Rule 6.10.

4.12 DISMISSAL FOR NON APPEARANCE AT COMMISSION OR LACK OF TIMELY COMMUNICATION

4.1307 MINUTES

The Executive ~~Secretary~~ Director shall record, or cause to be recorded, the minutes of all meetings of the Commission. The minutes shall include the time and place of each meeting, the names of the Commissioners present, all official acts of the Commission, and the votes of the Commissioners, except where the act is unanimous. The minutes shall be written and presented for correction and approval at the next regular meeting. When approved by the Commission, the minutes, or a true copy thereof, certified by the Executive ~~Secretary~~ Director, shall constitute the official minutes of the Commission and shall be ~~open to public~~

~~inspection.~~ posted on the COMMISSION'S OFFICIAL WEBSITE. In addition, any interested individual or organization may email the Executive Director to receive a copy of the minutes. Copies of the minutes will be emailed to all certified employee organizations, and to the Director of Personnel for the C~~Copies of the minutes will be emailed to all certified employee organizations, and the Director of Personnel for the County and all individuals on the Commission's Official Mailing List.~~

CEO- Adrianna Guzman Recommendation:

Recommend posting the approved minutes on the Commission's official website after certification is made by the Executive Director and before the next scheduled Commission meeting. This posting would allow for inspection by the general public.

This is already being done so we will change the rule to reflect that. With regard to the Executive Director emailing the minutes to everyone on the mailing list, she does not want to do so as her mailing list has several hundred people who only appear intermittently, if at all. She says any interested parties can download them from the COMMISSION'S OFFICIAL WEBSITE and, if necessary, they can also just ask her to email a copy.

4.14~~08~~ RULES OF ORDER

4.15~~09~~ QUORUM

Two members of the Commission shall constitute a quorum and the concurrence of two members shall be necessary for action, provided that:

a. At meetings held for the exclusive purpose of conducting mediation, fact-finding or arbitration in connection with the resolution of disputes as provided in Sections ~~11 and 13~~ 5.04.230 and 5.04.250 of the Ordinance, one member shall constitute a quorum.
b. When a Commissioner is designated as a hearing officer to conduct proceedings in an unfair employee relations practice charge (consistent with Rule 6.06), one member shall constitute a quorum.

Coalition Recommendation:

Rule 4.15 This Rule contemplates that members of the Commission may conduct mediations, fact-findings, and arbitrations. It is realized that Section 5.04.140 of the Ordinance has the same structure but believes that both Section 5.04.140 of the Ordinance and Rule 4.15 should be changed to eliminate such a structure. Having Commission members conducting mediations, fact-findings, and arbitrations would disqualify those members from later decisions underlying or arising out of such proceedings, an unnecessary price to pay given the availability of hearing officers.

PPOA Recommendation:

Rule 4.15 Allowing one ERCOM commissioner to constitute quorum for purposes of conducting mediation, fact-finding or arbitration and then requiring two ERCOM commissioners for authorizing ERCOM action could potentially limit the ability of ERCOM

commissioners from obtaining a meaningful diversity of opinion for purposes of taking official action. Outside neutral arbitrators/hearing officers should be used for purposes of conducting mediation, fact-finding and/or arbitration.

In the past, there have been vacant ERCOM commissioner seats and if one of the ERCOM commissioners is participating in mediation, fact-finding or arbitration efforts, that commissioner would have to recuse themselves and only one ERCOM commissioner would be able to authorize any relevant action, which falls short of the two commissioner requirement. Additionally, allowing an ERCOM commissioner to act as a hearing officer to conduct proceedings in an unfair employee relations practice charge, and subsequently authorizing one ERCOM commissioner to constitute quorum, eliminates the benefits of having multiple ERCOM commissioners able to provide input before taking final action. Historically, ERCOM commissioners have not been designated as hearing officers for unfair employee relations practice charges and could become involved in adjudicating charges that will force their recusal in related actions in other instances moving forward. To prevent issues related to commissioner recusal and a lack of obtaining sufficient quorum, ERCOM Commissioners should not be personally responsible for completing duties that have ordinarily been performed by neutral third party fact-finders/hearing officers/arbitrators/etc.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 4.15 Recommends that sections (a) and (b) be struck from this section.

This should be discussed in conjunction with Rule 6.06(c), which states: “Unless otherwise designated, the term "hearing officer" in this Rule 6 shall include the Commission, an individual commissioner, or the Commission's designee authorized to conduct a hearing.”

Currently our Ordinance states:

5.04.160 - **Employee relations commission—Powers and duties.**

The commission shall have the following duties and powers:
A. To determine in disputed cases or otherwise to approve appropriate employee representation units;
B. To arrange for and supervise the determination of certified employee representatives for appropriate units by means of elections, or such other method as the commission may approve with mutual consent of the parties involved. The results of such elections or other approved representation determination procedures shall be certified by the commission;
C. To decide contested matters involving certification or decertification of employee organizations;
D. To act upon requests for mediation, fact-finding or arbitration of disputes as provided in Sections 5.04.230 and 5.04.250 of this chapter;
E. To investigate charges of unfair employee relations practices or violations of this chapter, and to take such action as the commission deems necessary to effectuate the policies of this chapter, including, but not limited to, the issuance of cease and desist orders;
F. To establish and maintain an adequate list of impartial mediators and fact-finders, who shall have expertise in the field of employee relations, and to appoint same as provided for in Section 5.04.250 of this chapter;

G. To conduct investigations, hear testimony, and take evidence under oath at hearings on any matter subject to its jurisdiction;
H. To administer oaths and to require the attendance of witnesses and the production of books and papers;
I. To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations;
J. To certify, in appropriate cases, a council of employee organizations as the majority representative of employees in an employee representation unit and to decide issues relating to such certifications;
K. To delegate to one or more commission members, employees or agents the powers or duties it deems proper;
L. To make recommendations concerning any necessary or desirable revisions in this chapter;
M. To take such other actions as the commission deems necessary to effectuate the policies of this chapter.
(Ord. 2013-0035 § 10, 2013; Ord. 9646 § 7(g), 1968.)

4.16~~10~~ SECONDS TO MOTIONS

4.17 RECONSIDERATION BASED ON ADMINISTRATIVE OR MINISTERIAL ERROR

The Commission, on its own motion or in response to a motion from any of the parties, ~~has the authority to~~ may review and reconsider any of its prior decisions, orders or other actions upon a showing of administrative or ministerial error on the part of the Commission provided the Executive Director is notified of a request for review or reconsideration within 90 days of said decision, order or other action.

PPOA Recommendation:

Rule 4.17 ERCOM should include language that requires any party alleging an administrative or ministerial error on the part of the Commission to specifically identify the alleged error, with cites to facts/transcripts/evidence/caselaw, prior to entertaining requests to reconsider and/or review prior ERCOM decisions and orders. ERCOM should also include a deadline for alleging such challenges to any relevant decision and order [within 60 days of ERCOM authorizing a final decision and/or order at a meeting, or, within 60 days from receipt of ERCOM's final written decision and/or order].

ADDA Recommendation:

Rule 4.17 "Within 10 days after the issuance of the Decision and Order by the Commission, any interested party may file a motion for re-hearing or re-consideration **upon the showing of extraordinary circumstances. Extraordinary circumstances requires a showing that new evidence has come to light that was not reasonably available to the party at the time of the hearing, or an intervening change in law.**"

4.182~~.12~~ TRANSCRIPTS OF PROCEEDINGS

An official reporter shall make the only official transcript of proceedings before the Commission. The Executive Director shall make a recording of all public Commission meetings. Should a transcript be requested by the Commission, an official hearing reporter shall make the only official transcript of proceedings before the Commission.

This section has been changed to requesting from the Executive Director so that no one has to request it from the Commission or needs a formal application process. New version reads as:

4.18 TRANSCRIPTS OF PROCEEDINGS
The Executive Director shall make an audio and video recording of all public Commission meetings. Any individual or entity may request an audio recording from the Executive Director at no cost. Any individual or entity may request an official transcript provided they notify the Executive Director at least ten (10) days prior to the Commission meeting. The requesting party is responsible for fees related to the transcript. An official reporter shall make the only official transcript of proceedings before the Commission.

Please sign up to speak on this rule if you want to further pursue this.

Coalition Recommendation:
Rule 4.18 Recommends that this Rule explain the procedures for obtaining audio recordings and transcripts from the Commission. Recommends that the Rule state that requests for recordings or transcripts be made to the Executive Director and that appeals of the Executive Director's decision should be made to the Commission.

PPOA Recommendation:
Rule 4.18 ERCOM should provide instructions for how interested members of the public or involved parties can request transcripts maintained by ERCOM pursuant to Commission Rules [who to contact, where to submit request, if any standardized forms will be required to make the request, etc.].

SEIU - Maria Myers/Katie Engst Recommendation:
Rule 4.18 Recommends that this Rule explain the procedures for obtaining audio recordings and transcripts from the Commission. Recommends that the Rule state that requests for recordings or transcripts be made to the Executive Director and that appeals of the Executive Director's decision should be made to the Commission.

4.1~~6~~19 MEMORANDUM OF UNDERSTANDING

Within sixty (60) days of the signing of a Memorandum of Understanding, the County shall file a copy of such Memorandum of Understanding with the Commission. A copy of any amendment thereto shall also be furnished to the Commission within thirty (30) days after such amendment has been adopted by the parties.

Coalition Recommendation:

Rule 4.19 Recommends that the Rule be amended to require the County to contemporaneously provide copies of MOUs to the relevant labor organization and the Commission.

This would be an obligation for the CEO (not ERCOM) since the CEO is responsible for keeping copies of the MOUs; not ERCOM.

4.202.14 ~~PROCEDURES~~OTHER PROCEEDINGS

A party to a proceeding before the Commission must inform the Commission of any proceeding brought before any court, commission, arbitrator or other public body relating to the subject matter of its case, including the date such action was filed. If such action is initiated at any state in the Employee Relations Commission proceedings subsequent to, prior to, or concurrently with ~~to~~ the filing of a petition or charge, the party must so inform the Commission ~~forthwith~~ in writing within 30 days from the filing date.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 4.20 This rule does not make clear whether this requires an additional filing to the Commission, even where the other proceeding is readily apparent from the face of the filing before the Commission. Seeks clarification on this requirement and on ERCOM's interest in this rule.

RULE 5

~~EMPLOYEE REPRESENTATION UNITS; CERTIFICATION OF EMPLOYEE ORGANIZATIONS~~ REPRESENTATION, CERTIFICATION, DECERTIFICATION, SEVERANCE AND ELECTIONS

5.01 CERTIFIED ORGANIZATIONS – IN GENERAL

Only registered employee organizations that have been certified as majority representatives of appropriate employee representation units as per Rule 5 shall be entitled to negotiate on wages, hours, and other terms and conditions of employment for such units. This shall not preclude other employee organizations or individual employees from consulting with management representatives on employee relations matters of concern to them, however such discussions shall not include entitlement to negotiation on wages, hours, and terms and conditions of employment, which is reserved only for the exclusive representation of a bargaining unit as certified and described in Section 5.04.210 of the Ordinance~~.~~ and as defined in Rule 2.02(c) of these Rules.

CEO - Adrianna Guzman Recommendation:

Rule 5.01 Only registered employee organizations that have been certified as majority representatives of appropriate employee representation units as per Rule 5 shall be entitled to negotiate on wages, hours, and other terms and conditions of employment for such units.

This shall not preclude other employee organizations or individual employees from consulting with management representatives on employee relations matters of concern to them, however such discussions shall not include entitlement to negotiation on wages, hours, and other terms and conditions of employments, which is reserved only for the exclusive representative of a bargaining unit as certified and described in §5.04.210 of the Ordinance **and as defined in Rule 2.02(c) of these Rules**.

NOTE: *The reason for this recommendation is for consistency within the ERCOM rules.*

Change made as requested.

5.02 REGISTRATION REQUIREMENTS OF EMPLOYEE ORGANIZATIONS

a. All ~~Each~~ employee organizations, including both certified and non-certified, ~~representing, or desiring to represent, County employees~~ shall be registered and shall furnish to the Commission the information and material shown below. The Commission shall provide a copy of this information to the ~~Department~~ Director of Personnel.

(1) Official name, mailing address (for legal notice) and telephone number.
(2) Names and titles of officers.
(3) Names of local representatives and persons who are authorized to speak on behalf of its members.
(4) Optional designation of a person you desire to receive a copy of notices to your organization.
(5) A written statement that the organization includes employees of the County and has as one of its primary purposes representing such employees in their employment relations with the County and that said organization has no restriction on membership based on ~~race, color, creed, sex, national origin, age or disability~~ race, color, ancestry, national origin, religion, creed, age, mental or physical disability, sex, gender (including pregnancy, childbirth, breastfeeding or related medical condition), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military or veteran status, or any other category defined as discriminatory under federal, state or local law.
(6) A statement whether the organization is a chapter or local of, or affiliated with, a regional, state, national or international organization, and if so, the name and address of each such organization.
(7) ~~Certified~~ A copy~~ies~~ of its constitution and bylaws.

b. No registration of any Employee Organization shall be effective until such time as the provisions of this Rule 5.01 and Rule 5.02 have been complied with.

c. When any of the above information is changed for a Non-Certified Employee Organization, the Non-Certified Employee Organization shall notify the Commission ~~shall be so notified in writing~~ within thirty (30) days of the effective date of such change.

d. Registration of Non-Certified Employee Organization shall be subject to annual review by the Executive Director in accordance with this Rule 5.02 and Rule 5.03.

Coalition Recommendation:

Rule 5.02 Read literally, this Rule requires employee organizations to notify the Commission every time they have a change in officers, representatives, or bylaws. It is likely that few, if any, employee organizations are complying with this requirement and questions whether the Commission really wants the information. Recommends that the Commission, the County, and employee organizations discuss the needs of each with respect to the registration/update process and that the Rule incorporate those shared needs.

PPOA Recommendation:

Rule 5.02 ERCOM requests information regarding changes to the internal governing structure of all employee organizations, including, but not limited to, names and titles of officers and names of local representatives and persons authorized to speak on behalf of its members. ERCOM requests that "When any of the above information is changed, the Commission shall be so notified in writing within thirty (30) days of the effective date of such change." ERCOM should clarify what type of notification is required pursuant to this proposed rule i.e., if ERCOM is included on employee organization weekly emails that provide the information of relevant officers with a link to the employee organization website where representatives' information can be obtained, whether this would be deemed sufficient for satisfying the notice requirement implied from this proposed rule section. ERCOM may not need the identifying information of all representatives and/or officers of an employee organization as this information has not ordinarily been deemed relevant in the past.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 5.02 This rule does not reflect the practice of the Commission. Read literally, this Rule requires employee organizations to notify the Commission every time they have a change in officers, representatives, or bylaws. Recommends that the Commission seek input from stakeholders about the necessity for this requirement.

ERCOM registers both certified and non-certified organizations. This Rule 5.02 has been edited as shown above to reflect that, and also to distinguish between Certified and Non-Certified Employee Organizations in that only Non-Certified Employee Organizations have been subject to annual review.

5.03 PROCEDURE FOR REGISTRATION OF EMPLOYEE ORGANIZATIONS

a. Upon the filing of an Employee Organization Registration, the Commission shall cause a true copy thereof to be posted on the Commission's Official ~~Bulletin Board~~ website and/or docket, and true copies be given to the Director of Personnel and other affected management representatives and each of the employee organizations that appear to be interested in the group of employees for which the Registration is being filed. An accompanying notice shall state the date of filing of each Registration.
b. Consideration of whether such Registration meets the formal requirements of the Ordinance and these Rules will be set as a matter of business on the Commission's agenda at a regularly scheduled meeting promptly following receipt of the Employee Organization Registration.

c. The Commission in its sole discretion may grant the Registration, deny the Registration, or refer the matter to a public hearing under these Rules.

5.04 PETITIONS FOR UNIT DETERMINATION OR CERTIFICATION: FILING

a. A Petition for Certification of a~~n~~ Registered ~~e~~Employee ~~o~~Organization as the majority representative of an appropriate employee representation unit, or for the Determination of an Appropriate Employee Representation Unit, hereinafter called a Petition for Certification, may be filed by an employee organization.
b. Such a petition may also be filed by the Director of Personnel in the event that two or more employee organizations formally claim to represent a majority of the employees in the same or overlapping employee representation units.
c. All petitions shall be in writing on a form provided by the Commission, shall be signed by a duly authorized representative and shall contain a declaration by the person signing under penalty of perjury that its contents are true and correct to the best of his knowledge and belief. The ~~original and eight (8) copies~~ petition shall be filed electronically with the Commission, however the Executive Director may require parties to file hard copies with the Commission.
d. A Petition for Certification may be withdrawn only with the consent of the Commission.

CEO - Adrianna Guzman Recommendation:

Recommendation to add subsection (e) to Rule 5.04 to state as follows:

(e)Upon the filing of a Petition for Certification, the County may file a responding statement supporting or opposing the proposed employee representation unit. Such response shall be filed with the Commission within 20 days following the date of service of the Petition for Certification. Such response shall address the following issues.

1) Does the County reasonably doubt the appropriateness of the unit proposed by the petitioner?

2) If so, what is the County's reason(s) for doubting the appropriateness of proposed unit?

NOTE: *The reason for this recommendation is to allow the County the opportunity to express its doubt as to the appropriateness of a proposed unit at an early stage in the process.*

Rule 5.05 CONTENTS

Rule 5.06 PROOF OF INTEREST AND INTERVENORS

a. Proof of an employee support for a representation petition, including petitions for certification, requests for recognition, severance requests or petitions, and those unit modification petitions for which proof of support is required, shall clearly demonstrate that the employee desires to be represented by the petitioning employee organization for the purpose of meeting and negotiating or meeting and conferring on wages, hours and other terms and conditions of employment.
b. At the time of filing a petition, a petitioning employee organization shall submit to the Commission evidence that at least thirty percent (30%) of the employees in the claimed unit desire petitioner to represent them in their employment relations with the County. If such evidence is not timely submitted, the Commission may dismiss the petition. Such evidence may include copies of currently effective membership cards; a list of employees authorizing payroll deductions for membership dues and/or an authorization card or an authorization statement containing the printed name of authorizing employee and ~~his~~ the employee's signature executed within ninety (90) days preceding the filing date of the petition by the employee organization.
c. An employee organization which submits to the Commission like evidence that at least ten percent (10%) of the employees in the unit claimed to be appropriate desire such organization to represent them for the purpose of such employment relations may intervene in the proceedings, attend and participate in all conferences and any hearing that may be held, and, if approved by the Commission, appear on the ballot of such election as may be ordered by the Commission in the proceedings. Such evidence shall be submitted within ten (10) days after the posting of the Commission's notice of the filing of the original petition; if it is not timely submitted, the Commission may deny the intervention. However, the Commission may in its discretion receive argument from an employee organization on the appropriateness of a claimed unit even though that organization has not qualified as an intervenor.
d. The petitioning employee organization and any intervening employee organization which has complied with the requirements in a. and b. above, as well as the Director of Personnel, may file a Statement of Appearance with the Commission no later than the sixth working day prior to the date set for hearing the petition. The Commission will furnish copies of appearance statements to all parties of interest prior to the hearing in the matter.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 5.06(b) Recommends that the requirements for the proof of support be modified to align with PERB regulations, which require that proof of support be submitted within one year of the date the proof of support was obtained, rather than within 90 days in current ERCOM rule. See PERB Reg. 32700(b).

CEO - Adrianna Guzman Recommendation:

Rule 5.06(b) At the time of filing a petition, a petitioning employee organization shall submit to the Commission .....Such evidence may include copies of currently effective membership carts; a list of employees authorizing payroll deductions for membership dues; authorization cards or an authorization statement containing the printed name of the employee and the employee's signature executed within ninety (90) days preceding the filing date of the petition by the employee organization.

Rule 5.06(d) The petitioning organization and any intervening employee organization which has complied with the requirements in (a) and (b) above, as well as the Director of Personnel, may file a Statement of Appearance with the Commission no later than the sixth working day prior to the date set for hearing the petition.

Rule 5.07 PETITIONS FOR DECERTIFICATION: FILING

a. Proof of employee support for a decertification petition shall clearly demonstrate that the employee no longer desires to be represented by the exclusive representative.
b. A Petition for Decertification alleging that a certified employee organization is no longer the majority representative of the employees in an appropriate employee representation unit may be filed by an employee organization, a single employee, or a group of employees or their representative. The Petition for Decertification shall be in writing and signed, and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of ~~his~~ that person's knowledge and belief. The ~~original and eight (8) copies~~ petition shall be filed with the Commission, however the Executive Director may require parties to file hard copies with the Commission.
c. The Petition for Decertification shall contain:
    (1) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for information.
    (2) The name and address of the certified employee organization.
    (3) The name and address of the County Department, Board, Commission, or other body involved.
    (4) A description of the employee representation unit involved and the approximate number of employees therein.
    (5) The name, address and telephone number of any employee organization, other than the certified employee organization, who to petitioner's best knowledge and belief claims to represent any employees in the employee representation unit.
    (6) The expiration date of any written agreement covering employees in the unit.
    (7) An allegation that the certified employee organization no longer is the majority representative of the employees in such unit.
    (8) Any other relevant facts.
d. At the time of filing a Petition for Decertification, the petitioner shall submit to the Commission evidence that at least thirty percent (30%) of the employees in the unit do not desire to be represented in their employment relations by the certified employee organization. Such statement shall contain the printed name of employee and ~~his~~ the employee's signature executed within ninety (90) days preceding the filing date of the petition. If such evidence is not timely submitted, the Commission may dismiss the petition.

5.08 PETITIONS FOR SEVERANCE: FILING

a. A Petition for Severance requesting the removal of a specific class or classes from an established representation unit may be filed by a single employee or a group of employees. Said employee(s) must be an incumbent(s) in the class or classes for which severance is requested.
b. The Petition for Severance shall be in writing and signed, and shall contain a declaration by the person signing it under penalty of perjury that its contents are true and correct to the best of ~~his~~that person's knowledge and belief. The~~original and eight (8) copies~~ petition shall be filed with the Commission, however the Executive Director may require parties to file ~~eight (8)~~ hard copies ~~at~~ with the Commission.
c. The Petition for Severance shall contain:
    (1) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for information.
    (2) The name and address of the certified employee organization.
    (3) The name and address of the County Department, Board, Commission, or other body involved.
    (4) A list of the class or classes for which severance is requested and the approximate number of employees therein.
    (5) A brief statement setting forth the basis for the severance request.
    (6) The expiration date of any written agreement covering employees in the unit.
d. At the time of filing a Petition for Severance, the petitioner shall submit to the Commission evidence that at least fifty percent (50%) of the employees in the class or classes for which severance is requested support such request. Such statement shall contain the printed name of employee and ~~his~~the employee's signature executed within 90 days preceding the filing date of the petition. If such evidence is not timely submitted, the Commission may dismiss the petition.
e. The certified employee organization and/or the Chief ~~Administrative~~ Executive Officer may file a statement setting forth support of or opposition to the petition.~~.~~ Such response shall be filed with the Commission within ~~ten (10)~~ twenty (20) days after service of the notice of filing.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 5.08(e) Recommends that the timeline for the certified employee organization and/or the Chief Administrative Officer to file statements in response to the petition should be modified to align with PERB regulations, which give parties 20 days to file the response compared to ten days under the current ERCOM rule. *See* PERB Reg. 32783(a).

CEO - Adrianna Guzman Recommendation:

Rule 5.08(e) The certified employee organization and/or the Chief Administrative Officer may file a **responding** statement **supporting or opposing the severance** petition. Such response shall be filed with the Commission within **20** days **following the date of service of the Petition for Severance. Such response shall address the following issues:**

1) **Does the County reasonably doubt the appropriateness of the unit proposed by the petitioner?**

2) **If so, what is the County's reasons for doubting the appropriateness of proposed unit?**

NOTE: *The reason for this recommendation is to allow the County the opportunity to express its doubt as to the appropriateness of a proposed unit at an early stage in the process.*

Timeline changed from 10 to 20 days. Both SEIU and the County requested it.

The remaining part of Rule 5.08(e) may be discussed at meeting.

5.09 CONTRACT BAR: TIME TO FILE

5.10 NOTICE OF FILING

a. Upon the filing of a Petition for Severance, a Petition for Certification or a Petition for Decertification, the Commission shall cause a true copy thereof to be posted on the Commission's Official ~~Bulletin Board~~ website and/or docket, and true copies to be given to the Director of Personnel and other affected management representatives and each of the employee organizations that appear to be interested in the unit for which the petition is filed. An accompanying notice shall state the date of filing of each petition.
b. Consideration of whether a petition meets the formal requirements of the Ordinance and of these Rules and whether a question concerning representation (QCR) exists ~~the proof of interest of the petitioner is sufficient~~ will be set as a matter of business on the Commission's agenda at a regularly scheduled Commission meeting promptly following the last date set for receipt of such proof of interest. The determination whether such proof is satisfactory shall be handled administratively by the Commission and shall not be subject to question thereafter.
c. If the Commission determines that a petition is sufficient as to form and that the proof of interest of the petitioner is also sufficient, the Commission may set the matter for public hearing. The Commission, however, reserves the right to make such other disposition of a Petition for Severance as it~~s~~ deems appropriate following a review of any statements submitted pursuant to Rule 5.04.1(e). If a public hearing is ordered by the Commission, at least ten (10) days prior written notice of the time and place of such hearing, the interested parties who may appear and the matters to be determined shall be given by the Commission to the Director of Personnel, affected management representatives, and each of the interested employee organizations.
d. During the period of ten (10) days preceding such hearing, the department head of each department with employees in the classes contained in the petition shall post in conspicuous places in the department copies of notices provided by the Commission noting the petition and the hearing ordered by the Commission.

Coalition of Unions Recommendation:

Rule 5.10(b) To ensure that the proposed new language referring to a Question Concerning Representation does not provide for a higher initial threshold for certification petitions than the existing "proof of interest is sufficient" standard.

CEO - Adrianna Guzman Recommendation:

Rule 5.10(c) The Commission, however, reserves the right to make such other disposition of a Petition for Severance as it deems appropriate following a review of any statements submitted pursuant to Rule 5.08(e). **If the Commission orders a public hearing, the Commission will provide at least ten (10) days prior written notice to the Director of Personnel, affected management representatives, and each of the interested employee organizations of the time and place of such hearing, the interested parties who may appear, and the matters to be determined.**

NOTE: *The reason for this recommendation is replace passive voice with active voice, and to clarify the process for the public hearing.*

5.11 HEARINGS

5.12 ELECTIONS: GENERAL

a. All elections ordered by the Commission shall be by secret ballot and shall be conducted under supervision of the Commission.
b. Eligible voters shall be those employees in the unit who were employed during the payroll period immediately preceding the date the order for an election was issued by the Commission (unless the parties mutually agree to another date, and such date is confirmed by the Commission), including those who did not work during such period because of illness, vacation or authorized leave of absence and who are employed by the County in the same unit on the date of the election.
c. The Director of Personnel shall provide to the Commission employee lists equal in number to the number of employee organizations on the ballot plus two. The list shall contain the names in alphabetical order of all the employees in the unit who are eligible to vote; employee numbers; job titles; and departments. The Commission shall distribute a copy of the list to each employee organization on the ballot at least fifteen (15) days before the election. When necessary, the Executive ~~Secretary~~ Director will endeavor to seek the parties'' agreement on the contents of the eligibility list. This list shall then become the official eligibility list. Where no agreement is reached on one or more of the employees listed, such employee will be advised of the right to cast a challenged ballot.
d. Every ballot in an initial election shall contain a choice of "None of the above representatives" and "No representation" in addition to the names of the employee organizations which the Commission has directed to be placed on the ballot.
e. The Commission may conduct an election in whole or in part by mail ballot if, in the Commission's sole discretion, the mail ballot procedure is deemed more appropriate. If an election by mail ballot is ordered, the Commission will at that time establish rules and procedures to guard against fraud, mistake, ineligible voting, and the like.
f. No election shall be conducted in any employee representation unit or any subdivisions thereof within which in the preceding twelve (12) month period an

election had been held; except upon consent of the parties and upon order of the Commission after a showing of good cause.

This rule will be rewritten to allow for electronic voting after the Executive Director has had sufficient time to explore how she will go about making this change, and how it might affect our rules.

5.13 NOTICE OF ELECTION

5.14 ADMINISTRATION

a. All elections shall be conducted under the Commission~~'~~'s Rules and under the Supervision of the Commission. The Commission will utilize to the greatest extent it deems feasible the services of the California Public Employment Relations Board (PERB) or other existing agencies of state or local government to administer elections as the Commission''s election agents.
b. The Commission or its election agent shall appoint one Election Officer to conduct voting at each voting place. The Commission may also appoint one or more aides to assist the Election Officers in ~~his~~ their duties.
c. The duties of ~~the~~ Election Officers and ~~his~~ their aides shall include:
1) Officially opening and closing the voting place.
2) Identifying and determining eligibility of each voter.
3) Challenging or receiving challenges of eligibility from observers.
4) Tallying the ballots.
5) Maintaining the efficient and orderly operation of the voting place.
d. ~~The~~ Election Officers and ~~his~~ their aides shall wear identification badges at all times during their presence at the voting place.

PPOA Recommendation:

Rule 5.14 ERCOM states that it will utilize the services of PERB or other existing agencies for assistance in administering representation elections. To the extent that PERB is utilized for these purposes, ERCOM should clarify whether PERB's Rules and Regulations regarding election administration will take precedent over ERCOM's Rules if PERB oversees or assists with relevant election efforts.

5.15 OBSERVERS

Employee organizations who are parties to an election may each designate an observer or, with the approval of the Commission, a larger number at each voting place to observe that ballots are properly cast and votes properly counted. County management may have observers at each voting place who do not exceed in number the total number of employee organization observers authorized for such voting place. Names of observers shall be presented to the Election Officer at least three (3) days before the election. Observers shall be subject to such reasonable limitations as the Election Officer may prescribe. They shall

wear identification badges and shall refrain from electioneering or attempting in any way to influence any voter at or near the voting place.

PPOA Recommendation:

Rule 5.15 To the extent that any electronic election ballot services may be utilized in the future, ERCOM should provide adequate measures for ballot observers to participate in relevant electronic ballot submitting efforts/be present in areas where electronic ballot submission instrumentalities are utilized.

5.16 VOTING PROCEDURE

5.17 CHALLENGES

a. An authorized observer, the Commission or the Commission's Election Officer, prior to the time the voter casts ~~his~~a ballot, may challenge for good cause the eligibility of any person to vote in the election. Challenges made after the ballot has been placed in the ballot box will not be considered. A person challenged as an ineligible voter shall be permitted to vote in secret.
b. At the time the Election Officer gives the challenged voter a ballot, ~~he~~ they shall also hand ~~him~~ the voter an envelope on the stub of which is written the work "“challenged,"” the voters name, ~~his~~ and employee number, the challenger's name, and the reason for the challenge. The voter shall then take this envelope and ~~his~~ ballot to the voting area. After marking the ballot, ~~he~~ the voter shall place the ballot in the envelope and seal the envelope before leaving the voting area. ~~s~~Such sealed envelope shall then be delivered to the Election Officer or ~~his~~ their designated aide who shall place the sealed envelope in the ballot box.
c. When the ballots are counted, the challenged ballots shall be separated and shall not be counted. In situations where the number of challenged ballots is not sufficient to affect the outcome of the election, the challenges will not be considered. If the number of challenged ballots is sufficient to affect the outcome of the election, the Commission'’s election representative shall review the information furnished by the Election Officer or ~~his~~ their aide, along with any other pertinent information, and make a report to the Commission. The Commission shall overrule or sustain the challenges.
d. If a challenge is sustained, the ballot so challenged will not be opened. If a challenge is overruled, the Commission shall direct that the challenged ballot be opened and counted with the unchallenged ballots and that a revised Tally of Ballots be prepared.
e. Prior to the counting of ballots, any challenger may withdraw ~~his~~ their challenge. If a challenge is so withdrawn, the ballot shall be removed from the challenge envelope and mixed with the other unchallenged ballots in the ballot box.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 5.17 Recommends these changes:

- In subsection (a), the last sentence should be edited to read “A person challenged as an ineligible voter shall be permitted to ~~vote in secret~~ **cast a challenged ballot**.” *See* PERB Reg. 32732(a).

- Although the rules provide for mail ballot elections, they do not include any procedure for challenging voters in those elections. We suggest adopting language that is similar to PERB Regulation 32732(b) into a new subsection: *In a mailed ballot election, the Election Officer, Commission, 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*.

5.18 COUNTING BALLOTS

a. Only ~~the~~ Election Officers or ~~his~~ their aides shall handle ballots. All ballots counted and uncounted shall be kept in view of the observers at all times and until the Tally of Ballots is finally signed.
b. The Election Officer shall open the ballot box, remove and spread open the ballots stacking them in one pile regardless of marking. If more than one Election Officer or aide is participating in the count, each official may open ballots. Each official, however, shall stack ~~his~~ their ballots in one pile regardless of marking. The Election Officer shall then take each stack of opened ballots and combine them into one pile. The Election Officer shall then sort the ballots into piles according to the preferences shown on the ballot, and . ~~He~~ shall then count and tally the ballots cast for each choice in lots of 50, laying the ballots face up so that observers may inspect the marks. As the count of each 50 is finished, the observers shall be asked if they wish a recount. Each lot of 50 shall be bound with a rubber band or gummed paper with the contents indicated on the back of the package. Separate piles for each marking shall be maintained. The count shall continue in this manner until the ballots are exhausted.
c. The validity of a ballot may be challenged on the grounds that it is torn, defaced, marked in an ambiguous fashion, or is otherwise defective. The Commission's election representative will determine whether the objective intent of the voter in marking the ballot can be reasonably determined and, if so, determine it. If such intent cannot be reasonably determined or if the ballot directly or indirectly identifies the voter, the ballot shall be declared void and it shall be preserved.
d. When the count is completed, the Election Officer shall total ~~his~~ the record sheet. The bundles of ballots shall then be checked with the totals. If there is agreement, the Election Officer shall enter the final count on the Tally of Ballots, sign it, and have it signed by the observers. Upon completion of the vote count, all voted, void and unused ballots shall be sealed in separate envelopes on the outside of each of which is noted the contents of that envelope. In two other envelopes, an election official shall seal all tally sheets and the roster of voters. These envelopes and the official Tally of Ballots shall be delivered without delay by the Election Officer to the Commission.
e. The Commission or its duly authorized representatives shall count the mail-in ballots. The name on the stub of each envelope shall be checked against a roster of eligible voters. The stub shall then be removed and destroyed. Next, the ballots shall be removed from the envelopes and mixed together before counting. The counting will take place in the manner specified hereinabove. The final count shall be entered on a special Tally of Mail-In Ballots.
f. After counting the ballots submitted by mail, the Commission or its duly authorized representatives shall take the Tallies of Ballots submitted by all voting places along

with the Tally of Mail-In Ballots and compute the total number of votes for each employee organization and the "None of the above representatives" alternatives. Each party to the election, including the affected County management representatives, may designate one observer to attend the count of mail-in-ballots and the final computation of results. The names of these observers shall be presented to the Commission at least three (3) days in advance of the election.

PPOA Recommendation:

Rule 5.18 To the extent that any electronic election ballot services may be utilized in the future, ERCOM should provide adequate measures for ballot observers to participate in relevant electronic ballot counting efforts/be present in areas where electronic ballot counting instrumentalities are utilized.

5.19 RUN-OFF ELECTIONS

5.20 REPORT OF RESULTS

5.21 OBJECTIONS

a. Within ~~seven (7)~~ten (10) days after a report of the ballot count has been furnished, any party to the election may file with the Commission objections to the election or conduct affecting the results of the election or the report of the count. The grounds for valid objections shall include, but are not limited to, prohibited election procedures, false statements calculated to mislead voters, electioneering at or near voting places, or intimidation or coercion of voters. The objections shall be in writing, shall contain a brief statement of the facts upon which objections are based and shall be signed. A true copy shall be served on all other interested parties. ~~The original and five (5)~~ copies and ~~(with~~ a separate statement that such copies have been served on the other parties~~)~~ shall be filed with the Commission.
b. The Commission may ~~direct~~ conduct a hearing or otherwise investigate ~~and~~ in order to make ~~its~~ a determination respecting the objections. The Commission may also ask the Executive Director or a hearing officer to conduct an investigation.~~.~~

PPOA Recommendation:

Rule 5.21 ERCOM should clarify in section (b) of this rule whether the Commissioners personally may adjudicate a hearing or otherwise investigate and make its determination respecting the objections or if ERCOM can designate a neutral third party to perform these duties.
Some clarifying edits to (b) have been added.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 5.21 Recommends that the deadline to file objections following an election conform with the deadline under the PERB regulations, ten days after the service of the tally of ballots. *See* PERB Reg. 32738(a).

5.22 FILING OF STIPULATIONS

5.23 CONTENTS OF STIPULATION

5.24 ACTION ON STIPULATION

5.25 CERTIFICATION FOLLOWING CARD COUNT

a. ~~Although the~~The Commission's policy will normally be to ~~order a secret ballot election to determine whether an employee organization represents a majority of employee in an appropriate employee representation unit, the Commission may investigate questions concerning representation by means of informal hearings. It may determine majority representation status on the basis of an authorization card check or similar basis; but~~ grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, provided that another labor organization has not previously been lawfully recognized as the exclusive or majority representative of all or part of the same unit; however the County management or any employee organization party to a representation proceeding shall be entitled as a matter of right to a secret ballot election upon written request therefor provided that the employee organization has qualified as a petitioner or intervenor under the Ordinance and these Rules.
b. ~~In the event all parties agree to a card check or similar method of ascertaining majority representation status, the Commission may, but need not, use that method to determine the wishes of employees~~. The Commission may investigate questions of representation by means of an informal hearing, and may also, on its own motion, conduct an election in lieu of a signed petition, authorization cards, or union membership cards.
c. Upon completion of its investigation, the Commission shall make a determination of the appropriate employee representation unit and, if appropriate, shall certify the name of the employee organization, if any, that has been designated as their representative by a majority of the employees in the appropriate employee representation unit.

PPOA Recommendation:

Rule 5.25 ERCOM should clarify in section (b) of this rule whether the Commissioners personally may investigate questions of representation, whether any informal hearing conducted pursuant to this rule will be conducted in a regular meeting, special meeting, executive session or within some other setting, and whether ERCOM can designate a neutral third party to perform any/all of these duties, including conducting an election on ERCOM's behalf in lieu of a signed petition/union cards.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 5.25

- The language in subsection (a) is unreasonable and contrary to the MMBA. Government Code section 3507.1(c) states "A public agency *shall* grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative of all or part of the same unit." As written, Rule 5.25 expresses that the process under the MMBA will "normally" be the policy of the Commission, but permits County management or any employee organization party to request a secret ballot election. **This rule would undermine the purpose of the MMBA provision, which requires an employer to recognize an employee organization without an election**. Recommends that the language at the end of subsection (a) starting with "however, the County management or any employee organization…" be deleted.
- Similarly, the language in subsection (b) is unreasonable and contrary to the MMBA, for the reasons stated above. Recommends that the deletion of this subsection in its entirety.

5.26 CERTIFICATION FOLLOWING ELECTION

5.27 NOTICE OF CERTIFICATION

If the Commission certifies an employee organization pursuant to Rule 5.25~~5.30~~, or if following an election the Commission acts to certify an employee organization pursuant to Rule 5.26~~5.31~~, the Commission promptly shall notify in writing the employee organization certified, all other affected employee organizations, the Director of Personnel, the members of the Board of Supervisors and all County Departments, Boards, Commissions or other management units which have employees within the affected employee representation units.

5.28 APPEALS

5.29 CERTIFICATION LIFE AND AMENDMENTS TO A CERTIFICATION

5.30 WAIVER OF TIME REQUIREMENTS

RULE 6

UNFAIR EMPLOYEE RELATIONS PRACTICES

6.01 FILING

6.02 CONTENTS OF CHARGE

6.03 SERVICE OF CHARGE

Upon filing a charge, the charging party shall be responsible for service of a copy thereof, within three (3) days, upon the party against whom such charge is made. Proof of service satisfactory to the Commission shall be furnished.

6.04 MOTION TO DISMISS

a) Any motion to dismiss shall be limited to whether a charging party has established a prima facie case, including a lack of jurisdiction, improper venue, insufficient service of process, or other procedural grounds.
b) A motion to dismiss an unfair practice charge may be filed by respondent no later than twenty (20) days after being served with the unfair practice charge or the right to file said motion shall be deemed waived.
c) Any opposition to the respondent's motion to dismiss may be filed by the charging party no later than twenty (20) days of having received the respondent's motion to dismiss or the right to file said opposition shall be deemed waived.
d) Any further pre-hearing motions and/or accompanying briefs will be allowed only on order from the Commission, either sua sponte or after one or both parties have sought from the Commission and been granted permission to file.

Jeri Weinstein, Executive Director Recommendation

Jeri Weinstein recommends changing the timelines in this Rule 6.04, and instead to rewrite using the following language/conditions for a motion to dismiss:

For the initial appearance by the parties to argue the matter before the Commission, any motions to dismiss based on procedural grounds, including but not limited to, failure to state a claim upon which relief can be granted, timeliness, and appropriateness of venue, shall initially be presented verbally to the Commission. Should the Commission decide that further consideration is necessary, the Commission may, at its discretion, allow and/or direct the filing of written motions, points and authorities, briefs or any other documents that will assist the Commission in determining the proper course of action for the matter that has been filed.

CEO – Jeff Hickman Recommendation 2021:

Rule 6.04 Recommends that valid arguments relating to whether the Union has made a prima facie case for a UFC or met the procedural requirements are not a vehicle to argue substantive matters of fact outside of the hearing.

The CEO supports the addition of a rule that will codify the Motion to Dismiss. CEO believes it is important for the County to have the opportunity to makes its case for a matter not being moved to hearing, in front of the Commission, prior to the Commission ruling on the submission and whether or not a valid Prima Facie case has been submitted. The CEO believes the motions should relate to whether or not the Union has made a prima facie case for a UFC and/or met the procedural requirements and they are not a vehicle to argue substantive matters of fact outside of hearing.

Related to the Motion to Dismiss we submit that the Union should not be entitled to a continuance to file a written response to the Motion to Dismiss. The request for hearing is where they should articulate their case with enough specificity to properly allege a prima facie case and meet the procedural requirements. Allowing the Union a response to the Motion to Dismiss effectively allows the Union two chances to file documents for consideration, while only allowing the County a single opportunity for written submission.

As for timelines for the filing, we are flexible and will work with our hired counsel to make sure whatever deadline is set by the rules is met. A motion filing schedule or timeline would be welcome by us, even if it holds our feet to the fire, we would gladly trade concrete deadlines for codifying the right to file motions and have them considered.

Coalition Recommendation:

Rule 6.04. Supports the addition of a Rule governing the procedures for and standards of evaluating motions to dismiss, and generally agrees with the proposed text for Rule 6.04. However, it is believed that Subsection (b) should be amended to comport with the standards for motions to dismiss described in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Doing so would require that Rule 6.04(b) be rephrased to read “Any motion to dismiss shall be limited to whether, assuming the facts alleged in the complaint are true, the charging party has established plausible grounds for relief.”

PPOA Recommendation:

Rule 6.04 A continuance should not be granted as a matter of course solely to provide additional time for a responding party to draft a motion to dismiss an unfair practice charge and if any continuances are granted, this continuance should not impact the 21 days deadline provided by this proposed rule for purposes of filing any proposed motion to dismiss. ERCOM should include language that requires parties to meet and confer within this 21 day time period to attempt to resolve any pleading issues or any other issues related to the filing of an unfair labor practice charge. Parties responding to motions to dismiss should be provided the option to respond orally and/or in writing and any failure to provide written objections should not be treated as a party waiving their right to respond orally to any motion to dismiss. In addition, consistent with CCU/ALADS’ comment to this proposed rule, it is believed that Subsection (b) should be amended to comport with the standards for motions to dismiss described in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Doing so would require that Rule 6.04(b) be rephrased to read “Any motion to dismiss shall be

limited to whether, assuming the facts alleged in the complaint are true, the charging party has established plausible grounds for relief." Motions to dismiss should not be utilized as a vehicle to dispute contested facts that are alleged in a charging party's unfair practice charge. The standard applied by courts to demurrers should also apply to relevant motions to dismiss.

CEO - Adrianna Guzman Recommendation:

Rule 6.04(a) A motion to dismiss an unfair practice charge may be filed by respondent no later **than ~~21~~ 60 Days after** being served with the unfair practice charge, or the right to file said motion sh~~all~~ be deemed waived.

NOTE: *We recommend this change because 21 days following the service of an unfair practice charge is too short a time period for the respondent to have the unfair practice charge reviewed by counsel, and a determination made as to whether there are grounds to dismiss or even grounds to pursue settlement. Since the unfair practice charge is usually served on an individual within the County Department at issue, the person receiving the charge may not be familiar enough with the County's ERO, the MMBA, or ERCOM's rules to know whether a motion to dismiss is warranted. Extending this time period does not prejudice the charging party, since the charging party has 180 days to file its unfair practice charge, and ERCOM has broad remedial authority*.

Rule 6.04(b) Any motion to dismiss shall be limited to whether a charging party has established a prima facie case, lack of jurisdiction, improper venue, insufficient service of process, or other procedural grounds, **including statute of limitations.**

NOTE: We recommend this change because it confirms that a failure to timely file an unfair practice charge is grounds for filing a motion to dismiss.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.04 This rule creates a new procedure, the Motion to Dismiss. Objects to the creation of this new procedure, because the current practice maintains the rights of the responding party. The Commission regularly asks the charging party to either amend a filing, or orders the parties to brief a more complicated argument when the respondent opposes charging party's filing for any of the reasons identified in the proposed rule change. Adding motion practice without adding any meaningful rights to the parties only delays, and is by nature inefficient.

In any event, if the Commission adds this rule, it must include standards by which it will evaluate motions to dismiss. Subsection (b) should be amended to reflect the standards for motions to dismiss described in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Doing so would require that Rule 6.04(b) be rephrased to read "Any motion to dismiss shall be limited to whether, assuming the facts alleged in the complaint are true, the charging party has established plausible grounds for relief."

6.05 PRELIMINARY INVESTIGATION OF CHARGE

a. Upon the filing of a charge in accordance with these Rules, the Executive ~~Officer~~ Director shall expeditiously conduct an investigation, which may, so far as practicable, include communication with affected parties, and report thereon to the Commission. The report shall remain confidential.
b. The charging party must provide the Executive ~~Officer~~ Director with facts sufficient to give reasonable cause to believe that an unfair practice may have occurred.

Suggested rewrite of Rule 6.05 Preliminary Investigation of Charge is as follows:

6.05 Preliminary Investigation of Unfair Practice Charge

a) Upon the filing of an unfair practice charge, in accordance with these Rules, the Executive Director shall ~~review the charge and~~ expeditiously investigate ~~the~~ any and all allegations~~, if an investigation is deemed necessary. The investigative process may require communication with all parties, facilitation of alternate resolution processes such as mediation or conciliation, research into past ERCOM or PERB decisions, and/or any investigative strategies necessary to provide the Commission with a full, fair, and neutral assessment of the facts. The Executive Director~~ by conducting a full, fair and neutral assessment of the facts, including, but not limited to, communicating with the party or parties who filed the charge and with the respondent(s). The Executive Director shall ~~will~~ provide a confidential report to the Commission. ~~, with recommendations pertaining to the Unfair Practice Charge filing to the Commission, and this report shall remain confidential.~~

~~a)~~b) The Charging Party shall provide the Executive Director with sufficient facts to determine reasonable cause exists delineating a prima facie case for an Unfair Practice Charge.

c) The Executive Director may propose or facilitate mediation, conciliation or other processes that may potentially resolve the matter.

Coalition Recommendation:

Rule 6.05. Recommends that the Subsection (a) should be amended to require that if the Executive Director communicates with any of the parties in the course of a preliminary investigation, the Director should communicate with all of the parties to obtain their perspective on the matter.

PPOA Recommendation:

Rule 6.05 Any preliminary investigation of an unfair practice charge completed by the Executive Director which encompasses communicating with affected parties should necessitate communicating with all affected parties, including both charging party and responding party.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.05 Recommends that subsection (a) be amended to require that if the Executive Director communicates with any of the parties in the course of a preliminary investigation, the Director should communicate with all the parties to obtain their perspective on the matter.

6.065 COMMISSION ACTION

The Commission shall review the unfair practice charge and preliminary investigation report.

a. At its next regular meeting, it may, on its own motion or in response to a motion from any of the parties:
   (1) Direct that there be further investigation;
   (2) Dismiss the charge in whole or in part;
   (3) Process the charge as filed, or amended, by directing the issuance of a notice of hearing; or
   (4) Take such other action as it deems appropriate.
b. The Notice of Hearing shall have a copy of the charge attached and shall be served upon those parties named in the charge or otherwise admitted by the consent of the Commission or its designee. The notice shall designate the place of hearing at a time not less than ten (10) days from issuance thereof. It shall further specify before whom the hearing will be conducted.
c. Unless otherwise designated, the term "hearing officer" in this Rule 6 shall include the Commission, an individual commissioner, or the Commission's designee authorized to conduct a hearing.

CEO - Adrianna Guzman Recommendation:

Rule 6.06 The Commission shall review the unfair practice charge**, any motion to dismiss,** and preliminary investigation report.
NOTE: *We recommend this change because it confirms that in reviewing an unfair practice charge, the Commission will consider a respondent's motion to dismiss.*

DHR – Anthony Martinez Recommendation:

Rule 6.06 Mediation: We previously discussed the idea of referring some UFCs to mediation for possible resolution as opposed to a hearing. However, I do not see anything specific under Rule 6.06 that would allow the Commission or the Executive Director to take such action. Perhaps that is something we should consider including amongst the list of options available to the Commission for responding to a UFC. If that is something the Commission is interested in entertaining, we would be more than happy to further discuss how such a process might be implemented.
We have added subsection (c) to the rule before this one – Rule 6.05 - in response to your comment.

6.076 ANSWER TO CHARGE

a. A respondent shall file its answer to the charge with the Commission an original and three (3) copies of its answer to the charge within seven (7) twenty (20) days after

service of the Notice of Hearing or at a later time set by the Commission or the Executive Director. At the same time, respondent shall serve a copy of the answer on the other parties to the proceeding and furnish proof of service to the Commission. If a hearing is set fewer than 20 days after the charge is served, the answer shall be filed no later than **ten (10) days prior to** the date of hearing stated in the notice of hearing or as otherwise directed by the Executive Director. Amended charges 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 charge.

~~b.A Motion for Bill of Particulars may be filed with the hearing officer and concurrently with the charging party no later than five (5) days following service upon respondent of the Notice of Hearing.~~

~~c.The ruling upon the Motion for Bill of Particulars may be made with or without a hearing, at the discretion of the hearing officer.~~

~~d.Should a Motion for Bill of Particulars be granted in whole, or in part, such ruling shall specify the time requirements for filing the Bill of Particulars and for filing the answer to the charge. If the Motion is denied, the ruling shall specify the time requirement for filing an answer to the charge.~~

~~e.The respondent shall specifically admit or deny each of the allegations in the charge, unless the respondent is without knowledge, in which case the respondent shall so state, and such statement shall operate as a denial.~~

~~.f.If a timely answer is not filed, all allegations of the charge shall be deemed admitted.~~

~~g.If any allegation in the charge is not denied in the answer, that allegation shall be deemed admitted.~~

~~e.The answer may include a specific, detailed statement of any affirmative defense.~~

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 unfair practice charge;
    (2) The name of the charging party;
    (3) The name, address, telephone number, email address, and any affiliation of the respondent;
    (4) The name, address, telephone number, email address, and capacity of any agent of the respondent to be contacted;
    (5) A specific admission or denial of each allegation contained in the unfair practice charge. 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 Commission 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.

DHR – Anthony Martinez Recommendation:

Rule 6.07

- Can we include some clarifying language that lays out how referrals to arbitration are to be processed, *i.e.*, will the case be remanded to arbitration per the applicable MOU? If so, does that trigger a responsibility on the part of the moving part to file a Request for Arbitration, so that the matter can be appropriately processed by the Commission and assigned its own case number?
- Also, does the filing of UFC toll the time under an MOU by which the parties have to file a Request for Arbitration with ERCOM?
- If we could add some additional language that speaks to the fact that the rights of the parties shall be preserved despite the decision to refer the matter to arbitration, that would be useful when going before a neutral and explaining the decision of the Commission to refer the matter to arbitration does not reflect the views of the Commission regarding the merits of the case or any procedural defenses.
- Will the Commission hear/entertain arguments related to substantive arbitrability? If not, would parties have to file a writ to challenge a decision by the Commission to refer the matter to arbitration?
- Would it then be appropriate to eliminate Section 6.07 in its entirety and allow the parties to act independently in deciding whether to submit the case to arbitration without any instruction from the Commission on this issue?

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.07(a)

- Opposes the proposed increase to the timeline to file an answer to the charge. Permitting the answer to be filed on the date of hearing would prejudice the charging party.
- Subsection (c): Opposed to the change in language for this rule. Previously, respondent's failure to answer the charge resulted in the admission of the material facts. We do not support a change that now gives the Board discretion to impose this sanction. This change also strays from PERB regulations: PERB Regulation 32644, subdivision (c) provides: "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." ERCOM's rule already decreases the penalty that PERB would have imputed, with waiver of a hearing altogether.

6.08~~7~~ DEFERRAL TO ARBITRATION

a. If the subject matter of an unfair employee relations practice charge involves the interpretation of memorandum of understanding provisions, the Commission~~, on the motion of any party to the charge or on its own motion, may defer further processing of~~ shall place the charge in abeyance until the grievance procedure has been exhausted and the arbitrator's award has been received. An assertion that the claim

is untimely or otherwise barred because the party seeking arbitration has failed to satisfy the procedural prerequisites to arbitration shall not be a basis for refusing to submit the dispute to arbitration. All procedural defenses shall be presented to the arbitrator for resolution.

b. Upon receipt of the arbitrator's award, the charging party shall transmit a copy of the award to the Commission within 30 days and shall advise the Commission in writing that it wishes either to proceed with the unfair employee relations practice charge or to withdraw it. A copy of such notice shall be served simultaneously on the respondent and proof thereof filed with the Commission.
c. If the charging party advises the Commission that it wishes to further process the unfair employee relations practice charge, or upon the Commission's own motion, the Commission shall review the award of the arbitrator. If in the opinion of the Commission the arbitrator's award is not repugnant to the Employee Relations Ordinance, the Commission shall then dismiss the charge without further processing.

Coalition Recommendation:

Rule 6.08. Disagrees with the change from “may” to “shall” with respect to the deferral to arbitration. Believes that the Commission should retain the discretion to not defer to arbitration in appropriate circumstances. Such circumstances could include the need for expeditious resolution of the underlying disputes and the Commission’s assessment of whether deferral would completely resolve the underlying disputes.

CEO - Adrianna Guzman Recommendation:

Rule 6.08 In order to revive an unfair practice charge that has been held in abeyance, recommend that the charging party be required to show that the arbitration award is “repugnant”[2] to the Employee Relations Ordinance. Recommend that the parties be allowed to file and cross-serve electronically their written briefs on whether the arbitration award is “repugnant” to the Employee Relations Ordinance no later than thirty (30) days after the arbitration award is transmitted to the Commission.

PPOA Recommendation:

Rule 6.08 If the parties dispute whether the subject matter of an unfair employee relations practice charge involves the interpretation of MOU provisions and is subject to applicable grievance procedures, ERCOM should have the discretion to place the charge in abeyance until the grievance procedure has been exhausted and the award has been received. The proposed rule provides that ERCOM “shall” place the charge in abeyance instead of “may” place the charge in abeyance, thereby eliminating ERCOM’s discretion to act as the situation may require.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.08 Generally, concerned that this rule about pre-arbitration deferral does not track the deferral policies that are followed by the NLRB and PERB. PERB may defer an unfair practice charge to arbitration if the respondent carries its burden to establish that: (1) the dispute arises within a stable collective bargaining relationship; (2) the respondent is willing to waive procedural defenses and to arbitrate the merits of the dispute; (3) the contract and its meaning lie at the center of the dispute; and (4) no recognized exception to deferral applies.” *Oxnard Union High School District* (2022) PERB Dec. No. 2803, p. 53. Similarly, the NLRB, under its *Collyer* deferral policy, requires that (1) the grievance be cognizable

under the grievance procedure; (2) the grievance procedure culminates in binding arbitration; and (3) the charged party waives all timeliness defenses to the grievance. *See Collyer Insulated Wire*, 192 NLRB 837 (1971); *United Technologies Corp*., 268 NLRB 557 (1984).

Here, two concerns with this rule. First, it requires non-discretionary deferral without any requirement that the respondent waive procedural defenses to arbitration. The proposed language on this issue is confusing: "As assertion that the claim is untimely or otherwise barred because the party seeking arbitration has failed to satisfy the procedural prerequisites to arbitration shall not be a basis for refusing to submit the dispute to arbitration." Recommends that this language be replaced with more straightforward language: "The party seeking deferral to arbitration must waive all procedural defenses to arbitrability and must agree to arbitrate the merits of the dispute."

Second, the rule is overbroad. It requires only that the "subject matter of an unfair employee relations practice charge *involves the interpretation of memorandum of understanding provisions*. . . ." The threshold should not be so low. Under this standard, for example, a charge that alleges an unlawful unilateral change could be subject to deferral because it could require the Commission to determine whether the employer's conduct constituted a change from negotiated language. Recommends that ERCOM adopt the PERB standard: that "the contract and its meaning lie at the center of the dispute."

6.0906.1 REQUESTS FOR INTERVENTION

Requests to intervene in a proceeding pursuant to Rule 6 shall be filed to writing with the hearing officer. Such request shall set forth the basis of the intervention and shall be served on all other parties to the proceeding. The hearing officer shall notice a hearing on the request, make a determination as to the merit and timeliness of the request and rule promptly thereon.

CEO - Adrianna Guzman Recommendation:

Rule 6.09 As to an individual who wishes to intervene in a proceeding under Rule 6, recommend requiring the individual must first (1) file electronically a motion to intervene within sixty (60) days of service of the Notice of Hearing, and (2) concurrently serve electronically the motion on all interested parties.

NOTE: *We recommend this change because it provides each party to the hearing with sufficient notice to anticipate the potential for the intervenor's participation in the hearing, and allows the parties to prepare its position in support or opposition to the proposed intervenor.*

6.1006.2 SCHEDULING OF HEARINGS

a. The hearing officer shall arrange with the Commission office and the parties a mutually satisfactory date and time for a hearing. In the absence of such an

arrangement, the hearing officer shall have the authority to set the date and time for the hearing.

b. Requests for continuance or cancellation of a hearing shall be made in writing to the hearing officer no later than fifteen (15) days prior to such hearing. Such request shall state the grounds for the request and the position of each party regarding the request. A copy of the request shall be served on each party to the proceedings and proof thereof filed with the Commission. The hearing officer shall expeditiously rule on the request and communicate his ruling to the parties.
c. Continuances shall be granted for good cause only, and if the request is made to the Commission or the Executive Director, then it shall be in compliance with Rule 4.11. Good cause shall not include the failure of any party to adequately prepare for a properly scheduled hearing. In granting a continuance, the Commission, the Executive Director, or the Hearing Officer may consider a stipulation of the parties to that effect. If the continuance is not requested within fifteen (15) days of a scheduled hearing, the party or parties requesting the continuance shall be responsible for the payment of any cancellation fees incurred from the hearing officer or hearing reporter.
d. Rulings of the hearing officer concerning all scheduling matters are final and not appealable to the Commission.
e. Ordinarily, ~~A~~a charge shall not be continued beyond 180 days from the date of filing with the Employee Relations Commission, except by mutual agreement of the parties to the ~~action~~matter. ~~Any other such matters will be automatically dismissed~~.
f. In the event of any continuance not satisfying this rule, the affected party or parties may be ordered to show cause as to why the matter should not be dismissed.

Coalition Recommendation:

Rule 6.10 The proposal for Rule 6.10(f) provides for the possibility of dismissal of the complaint if a request for a continuance does not comply with the balance of Rule 6.10. Disagrees with this rule change, and believes that remedial questions regarding improper continuance requests should be left to the hearing officer. However, if the "dismissal" possibility is retained, the Rule should also call for the equivalent of a default judgment if the responding party made the improper continuance request.

PPOA Recommendation:

Rule 6.10 ERCOM proposes in section (f) that: "In the event of any continuance not satisfying this rule, the affected party or parties may be ordered to show cause as to why the matter should not be dismissed." Any failed continuance request should not be deemed grounds for dismissing a charge outright. If dismissal is imposed, the final action should be treated as a procedural default. In addition, "ordinarily" should be removed from the beginning of section (e) of this proposed rule as it implicates that extraordinary cases are somehow subject to different rules and there is no baseline for what is deemed to be an ordinary vs. extraordinary case. Good cause for continuance or agreement by the parties should sufficiently encompass any extraordinary cases meriting continuance.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.10

- Subsection (c): Opposes the requirement that parties pay for cancelation fees incurred by last-minute cancelation. There are many reasons that a hearing could be continued at the last-minute, including illness. Recommends that the

Commission retain the discretion to order that a party must pay for the cancelation fees when a hearing is canceled without good cause.

- Subsection (f): The proposal for Rule 6.10(f) provides for the possibility of dismissal of the complaint if a request for a continuance does not comply with the balance of Rule.
  6.10. Does not support this rule change, and believes that remedial questions about improper continuance requests should be left to the hearing officer. But if the "dismissal" possibility is retained, the Rule should also call for the equivalent of a default judgment if the responding party made the improper continuance request.

CEO - Adrianna Guzman Recommendation:

Rule 6.10(e)… the application shall name and identify the witness or the documents sought and the reason therefor. Suggest adding:

"Applications for subpoenas for the production of documents shall include a "Declaration of Materiality," signed under penalty of perjury by either the requesting party or the party's representative that describes the requested items/records sought, and explains why the requested items are relevant to the issues involved in the case. Hearing officers, at their discretion, shall issue such subpoenas on a form provided by the Commission. If the subpoena seeks records of a non-party, the party seeking the records must comply with the consumer or employee notice requirements set forth in Code of Civil Procedure sections 1985.3 and 1985.6."

Rule 6.10(g) The hearing officer, upon failure of any party to comply with a subpoena, may disregard all related evidence offered by such party…Suggest adding:

"but only after ruling on any objections and privileges asserted by the subpoenaed party and only after giving the subpoenaed party the opportunity to comply with the hearing officer's ruling. The hearing officer, however, shall have no authority to order the production of records otherwise privileged from disclosure absent compliance with requirements for disclosure under State regulations or laws, e.g., Evidence Code section 1043 and Welfare and Institutions Code sections 827 and 10850."

NOTE: *The reasons for these changes is as follows: (1) it is consistent with subpoenas issued by PERB in which a party seeking to compel the production of documents or things at hearing must identify the records sought and specify the material relevance of the documents sought, and do so under penalty of perjury; (2) it ensures third party privacy rights, and allows those third parties whose records are sought to (a) be notified that their records are sought; and (b) allows them sufficient time to file a motion to quash such production; (3) it confirms that a party receiving a subpoena maintains the right to assert any applicable privileges; and (4) it acknowledges that some records may not be produced absent strict compliance with certain procedural safeguards.*

6.1107 HEARINGS

a. Hearings shall be limited to argument and evidence on issues of fact or law material to the proceedings.
b. Parties, including intervenors, may appear at a hearing in person, by counsel or by other representatives; may call, examine and cross-examine witnesses; and may introduce into the record documentary or other evidence.
c. The technical rules of evidence prevailing in the courts shall not be controlling.
d. The hearing officer may direct or permit the filing or briefs and/or proposed findings, conclusions and order.
e. Any party may file with the hearing officer a written application for the issuance of a subpoena requiring the attendance of a witness or the production of books or documents. The application shall name and identify the witness or the documents sought and the reason therefor. ~~The h~~Hearing officers, at ~~his~~ their discretion, shall issue such subpoenas on a form provided by the Commission. The person served with a subpoena or any party to the action may file with the hearing officer a motion to revoke or modify the subpoena. If any party files with the hearing officer such a motion, it shall also be served on the other parties named in the charge. The hearing officer shall rule on such motion.
f. In the event an unusually large number of subpoenas are issued for employees from a work area, the loss of which employees may cause a serious impact on County operations, the hearing officer may designate an orderly schedule of appearances so as not to cause a negative impact on County operations.
g. The hearing officer, upon failure of any party to comply with a subpoena, may disregard all related evidence offered by such party.
h. All witnesses shall appear in person and shall be examined under oath or affirmation. The hearing officer shall have the authority to administer oaths and affirmations.
i. Within five (5) days after receipt of the Notice of Hearing, any party may request the hearing officer to withdraw by filing an affidavit with the Commission setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the Commission, such affidavit is filed with due diligence and if upon due inquiry is found sufficient, ~~they~~ the Commission shall disqualify ~~him~~ the hearing officer and he the hearing officer shall be withdrawn from the proceeding. If the Commission does not disqualify ~~him~~the hearing officer, ~~they~~ the Commission shall so rule and the hearing shall proceed.
j. An official hearing reporter shall make the only official transcript of such proceedings. The parties may make their own arrangements with the official reporter for copies of such transcript.

DHR – Anthony Martinez Recommendation:

Rule 6.11

- Does this rule contemplate the filing of motions in connection with the hearing, *e.g.*, Motion in Limine; Motion to Quash; Motion to Compel; Motion for Summary Judgment, etc.?
- In response to a subpoena, does the filing of an MTQ stay the requirement to produce the requested witness or documents by the date set forth therein? Also, when would the Hearing Officer be expected to adjudicate that the MTQ?

PPOA Recommendation:

Rule 6.11 ERCOM should include language that indicates that subpoenas authorized pursuant to any Commission matter/hearing/inquiry shall have the full force and effect of the law and that any involved respondent should work with the charging party to ensure that any relevant employee witnesses are made available to participate upon request and that they will suffer no adverse employment actions based on their requested participation. Charging parties and respondents should be encouraged to communicate about all relevant subpoena efforts which may impact workplace operations and Respondent employers who retain control over any subpoenaed employee witnesses should not undermine subpoena efforts by charging parties by describing certain charging party subpoena requests as voluntary and/or optional. When subpoenas are deemed necessary, ERCOM should also include a specified deadline for submitting subpoena requests [at least 14 days prior to commencement of hearing].

Suggest: If a party fails to comply with a subpoena, the hearing officer *may* draw an inference.

6.1207.1 LOCATION OF HEARINGS

Hearings shall be held at the Los Angeles County Hall of Administration ~~Civic Center complex,~~ unless otherwise agreed to by ~~the Commission at the request of either party~~ by the hearing officer and all parties appearing in the proceedings.

CEO - Adrianna Guzman Recommendation:

Rule 6.12 Recommend adding “or the Executive Director on behalf of the Commission” so that Rule 6.12 would read: Hearings shall be held at the Los Angeles County Hall of Administration, unless otherwise agreed to by the Commission, **or the Executive Director on behalf of the Commission**, and all parties involved.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.12 Recommends that the addition of language that permits hearings to be held virtually.

DHR – Anthony Martinez Recommendation:

Rule 6.12 Can we revise the rule to allow for hearings to be conducted virtually at the discretion of the hearing officer?

We have changed the language in 4.05 to allow for teleconferencing because it is already our practice to allow for this, however this Rule 6.12 additionally requires that the hearing officer and the parties involved must agree to teleconferencing.

6.1308 SUBSTITUTION OF HEARING OFFICER

6.1409 AMENDMENTS AND WITHDRAWAL OF CHARGES

a. The Commission, the Executive Director or the hearing officer may permit an amendment to the charge or answer at any time on such terms as may be deemed just and consistent with due process.
b. Any party requesting to withdraw a charge shall notify the Executive Director. If a charge has already been placed on the agenda of a prior commission meeting, then the Executive Director shall place the request to withdraw the charge on the next commission meeting agenda and the charge will not be considered to have been withdrawn until the Commission votes to withdraw it.

DHR – Anthony Martinez Recommendation:

Rule 6.14

- The Commission should retain exclusive jurisdiction to decide whether additional charges should be certified for hearing as it is the body responsible for determining if such issues should be referred to a hearing at the outset and the Hearing Officer takes direction from the Commission.

6.1510 REPORT OF INDIVIDUAL HEARING OFFICER

a. Within thirty (30) days following the close of a hearing, the hearing officer shall prepare a report containing recommended findings of fact, conclusions and final order and ~~his~~ their reasons therefor. This report shall be served on all parties involved and filed with the Commission.
b. Within ~~ten (10)~~ twenty (20) days after service of this report, a party may file with the Commission exceptions thereto. A copy of the exceptions shall be served on each party to the proceedings and proof thereof filed with the Commission. The exceptions shall:
    (1) Set forth specifically the questions of fact, law or policy to which exceptions are taken;
    (2) Designate by citation of page the portions of the record relied upon; and
    (3) State the grounds for the exceptions and include citation of authorities, if any.
c. Within ~~ten (10)~~ twenty (20) days following service of exceptions, a statement in opposition thereto, along with any cross-exceptions, may be filed with the Commission and a copy served on each party to the proceedings and proof thereof filed with the Commission.

CEO - Adrianna Guzman Recommendation:

Rule 6.15(b) Within ~~ten (10~~**) twenty (20)** days after service of this report, a party may file with the Commission exceptions thereto. . . .

Rule 6.10(c) Within ten (10) **twenty (20)** days following service of exceptions, a statement in opposition thereto, **along with any cross-exceptions,** may be filed with the Commission and a copy served on each party to the proceedings and proof thereof filed with the Commission.

NOTE: *We recommend these change because a party receiving the hearing officer's recommended decision will need time to (1) evaluate the report with their counsel; (2) consider whether to file exceptions to the report; (3) review the records from the hearing; and (4) prepare the report. Doing all that within ten days*

is too short a period of time. In addition, should one party file exceptions, the other party should have the opportunity to file cross-exceptions with its statement in opposition. Sometimes a party may object to certain parts of the recommended decision but is willing to accept them, despite its objections, to put the matter to rest and obtain labor peace. However, that party does not obtain the labor peace it desired if the other party files exceptions. In that situation, the party who refrained from initially filing exceptions should be allowed to put its exceptions forward when its files its statement in opposition. Such a practice is consistent with PERB regulations.

Subsections (b) and (c) will be changed from ten (10) days to twenty (20) days unless there are any objections discussed at the meeting.

6.1611 DECISION AND ORDER OF THE COMMISSION

a. Where a hearing officer has been appointed, the Commission may adopt, modify or reverse the report, or any part thereof. If the Commission accepts the findings of fact contained in such report, it need not read the record of the hearing. If the Commission declines to accept such findings, it must read the record. The Commission shall issue within a reasonable period of time its Decision and Order.
b. Where the hearing was conducted by the Commission as a whole, the Commission shall issue within a reasonable period of time its Decision and Order.
c. Where the offending party in an unfair practice proceeding customarily and regularly communicates with public employees by email, intranet, websites, or other electronic means, it shall be required to use those same media to post notice of the hearing officer's and Commission's decision and remedial order. Any posting of electronic means shall be in addition to whatever other traditional physical posting requirements are being used, if any.

~~*PPOA Recommendation:*~~

~~Rule 6.16 ERCOM should require any employer respondents directed to provide electronic and physical notice postings to confer with charging parties to determine what electronic means are utilized to communicate with the impacted employees. If impacted employees are contacted via multiple electronic means, postings should be provided pursuant to all of the electronic means utilized. Section (c) of this proposed rule should also be changed to state that the hearing officer's "AND" Commission's decision will be posted as appropriate, rather than "OR."~~

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.16 Recommends that the Commission insert language to create a mechanism for ensuring compliance with Commission orders. The Union also recommends that the Commission adopt language that is similar to PERB Regulation §32980 (a) ("Compliance"), which states that "The Board itself may, based on a recommendation of the General Counsel, authorize the General Counsel to seek court enforcement of a final Board order."

We do not have the authority that PERB does. We have no General Counsel.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.16(c) Recommends that the phrase "or Commission's" should be changed to "and Commission's."

This change has been made.

6.17~~12~~ APPEALS

Within ~~ten (10)~~ twenty (20) days after the issuance of the Decision and Order by the Commission, any interested party may file a motion for rehearing or reconsideration, setting forth the specific grounds therefor. The motion shall be accompanied by ~~five (5) copies and~~ a separate statement that it has been served on all parties appearing in the proceedings. Any of such parties may file a ~~written~~ response to such motion within five (5) days of receipt of a copy thereof. The Commission may, but need not, hold a hearing on such motion. Thereafter, the Commission shall in writing affirm, modify or set aside its previous determination and that action shall be considered final.

ADDA – Dick Shinee Recommendation:

Rule 6.17 Within 10 days after the issuance of the Decision and Order by the Commission, any interested party may file a motion for re-hearing or re-consideration upon the showing of extraordinary circumstances. Extraordinary circumstances requires a showing that new evidence has come to light that was not reasonably available to the party at the time of the hearing, or an intervening change in law.

SEIU - Maria Myers/Katie Engst Recommendation:

Rule 6.17 Supports increasing this timeline to 20 days, for the reasons described above.

Timeline changed. If anyone wants to address this further, please sign up to speak.

6.18~~13~~ WAIVER OF TIME REQUIREMENTS

RULE 7

~~IMPASSES;~~ RESOLUTION OF DISPUTES PURSUANT TO SECTION~~S~~ ~~11~~ 5.04.230 (GRIEVANCES) AND ~~13~~ 5.04.250 (IMPASSES) OF THE ORDINANCE

7.01 SCOPE

7.02 POLICY

7.03 NOTICE OF IMPASSE

7.04 INVESTIGATION

The Commission, or its Executive ~~Secretary~~Director, as the Commission may direct, shall as promptly as practical investigate and determine if an impasse does in fact exist.

CEO - Adrianna Guzman Recommendation:

Rule 7.04 Recommend that a determination regarding impasse be made no later than thirty (30) calendar days of the filing date of the written notice of impasse.

7.05 MEDIATION

a. If the Commission finds that an impasse exists, it may, upon its own motion or when requested by either party in interest, appoint a mediator from its register of mediators.
b. The function of a mediator shall be to assist the parties in a dispute to arrive at a voluntary agreement. The mediator may hold separate or joint meetings with the parties or their representatives and such meetings shall be private and nonpublic in nature. Any information disclosed by the parties to the mediator, in the performance of his duties, shall not be divulged. All material received or prepared by the mediator while serving in such capacity shall be classified as confidential.
c. The mediator shall report in writing to the Commission the results of ~~his~~ the mediation efforts, as follows:
    (1) A statement of the dates and duration of the meetings held.
    (2) A brief description of the unresolved issues which existed at the beginning of the mediation effort.
    (3) A brief statement of the issues resolved through mediation and the terms of the agreement reached.
    (4) A statement of resolved issues, if any.
    (5) A recommendation as to whether or not the Commission should invoke fact-finding with recommendations for settlement of the unresolved issues.

CEO - Adrianna Guzman Recommendation:

Rule 7.05(a) Recommend adding that the parties may mutually agree[3] upon a mediator.

7.06 FACT-FINDING

a. Fact-finding may be requested by either party or instituted by the Commission. A request for fact-finding must be filed with the Commission not sooner than thirty (30) days, but not more than forty-five (45) days, following the appointment of a mediator pursuant to the parties' agreement to mediate or to the mediation process required by these rules. If the dispute was not submitted to mediation, either party may request that the parties' differences be submitted to a factfinding panel not later than thirty (30) days following a notice of impasse being filed with the Commission.
b. The function of a fact-finder shall be to meet with the parties involved in the impasse to investigate, inquire or to conduct a hearing to determine the facts relating to the issues in dispute. Such a hearing shall not be public unless all parties and the fact-finder~~ing~~ agree to have it public. The fact-finder may issue subpoenas to compel the attendance of witnesses and the production of books and papers relating to any

matter under inquiry, investigation or hearing. The provisions in Rule ~~6.07 e. and f~~.6.11 e, f and g shall apply.

c. ~~He~~ The fact-finder may administer oaths and affirmations. At the conclusion of a hearing, the fact-finder may allow the parties to simultaneously submit closing briefs within a specified period of time. Within fifteen (15) days after receipt of the official transcript of the proceedings or of the parties' closing briefs, whichever is later, the fact-finder shall electronically file an ~~original and five (5) copies of his~~ a report and recommendations with the Commission.
d. Upon receipt of the report and recommendations, the Commission shall ~~promptly~~ transmit copies ~~therof~~thereof to the parties in interest within five (5) days. The parties to the impasse shall file with the Commission a written notification of acceptance or rejection, in whole or in part, and the reasons therefor within fifteen (15) days after receipt of the fact-finder's report and recommendations. The Commission may, in its discretion, publish the findings of fact and recommendations for public information.
e. The parties may mutually agree to waive the time limits set forth above, but failure of a third party to act timely shall not stay the time limits.

Coalition Recommendation:

Rule 7.06(a) As drafted, Rule 7.06(a) keys the time frame for requests for fact-finding to the appointment of a mediator. As the length of the mediation is variable, it is believed that the more appropriate time frame should be measured from the conclusion of mediation.

PPOA Recommendation:

Rule 7.06 Proposed section (a) provides a 45-day deadline from appointment of mediator or from conclusion of mediation to request fact-finding. This section should be changed to reflect 45-days only from conclusion of mediation as appointment of a mediator does not guarantee expeditious mediation dates able to satisfy this 45-day deadline.

CEO - Adrianna Guzman Recommendation:

7.06 Fact-Finding

a. Fact-finding may be requested by either party or instituted by the Commission. A request for fact-finding must be filed with the Commission not sooner than thirty (30) [**calendar**] days, but not more than forty-five (45) [**calendar**] days, following the appointment of a mediator pursuant to the parties' agreement to mediate or to the mediation process required by these rules. If the dispute was not submitted to mediation, either party may request that the parties' differences be submitted to a [**three-member**] fact-finding panel not later than thirty (30) [**calendar**] days following of [sic] a written notice of impasse being filed [**electronically**] with the Commission [**and served electronically on the other party involved**].

Rule 7.06(a) Recommend inserting "calendar," "electronically," "three-member" and "served electronically on the other party involved" as indicated in **bold font** above.

Recommend that each involved party shall select one individual to serve on the fact-finding panel, and each party is responsible for that panel member's fees, if any.

Recommend that the parties shall mutually agree on the neutral chairperson of the fact-finding panel, the parties may consult with the Executive Director on the selection of the

neutral chairperson, and the parties shall be responsible for an equal share of the neutral chairperson's fees.

NOTE: *We recommend these changes because they are, with one exception, consistent with the express terms of the MMBA. The MMBA provides for a three-member fact- finding panel, with a neutral selected by the parties, and each party selecting their own panel member. The MMBA also sets forth deadlines by which a factfinding request can be made. However, both the current rule and the proposed rule differ from the MMBA in that it also allows the employer and the Commission to request factfinding; under the MMBA, only the exclusive representative can request factfinding.*

Rule 7.06(b) The function of ~~a fact-finder~~ **the fact-finding panel** shall be to meet with the parties involved in the impasse to investigate, inquire or to conduct a hearing to determine the facts relating to the issues in dispute. Such a hearing shall not be public ~~**unless all parties and the fact-finder agree to have it public**~~. The **fact-finding panel** may issue subpoenas to compel the attendance of witnesses and the production of books and papers relating to any matter under inquiry, investigation or hearing. (Provisions in Rule 6.10 e, f and g apply.)

NOTE: *We recommend the changes concerning the fact-finding panel because they are consistent with the authority the MMBA vests in the fact-finding panel. We recommend the change that eliminates the opening of the fact-finding hearing to the public because the fact-finding process is a continuation of the bargaining process, which is not open to the public.*

CEO - Adrianna Guzman Recommendation:

Rule 7.06(c) **The neutral fact-finder may administer oaths and affirmations. In arriving at their findings and recommendations, the fact-finding panel shall consider, weigh, and be guided by all the following criteria:**

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the County's financial ability.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the fact-finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies or other County departments.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other

excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations."

If the dispute is not settled within 30 days after the appointment of the fact-finding panel, or, upon agreement by both parties within a longer period, the fact-finding panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The fact-finders selected by the parties may file dissenting and/or concurring opinions, which shall be attached to the advisory report.

NOTE: *We recommend these changes because they are consistent with the express terms of the MMBA. The MMBA provides for a three-member fact-finding panel, with a neutral selected. The MMBA vests the fact-finding panel with the authority to make recommendations; each panel member has a voice and can submit, not just closing briefs, but their own dissenting and/or concurring opinion, which becomes part of the overall advisory report.*

Rule 7.06(d) **The neutral fact-finder shall submit, in writing, any findings of fact and recommended terms of settlement, along with any dissenting and/or concurring opinions, which shall be attached to and be part of the findings of fact, to the Commission and to the parties before they are made available to the public. The Commission shall make these findings and recommendations publicly available within 10 days after their receipt.**

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 15 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Rule 7.06(c), the County may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of the County's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the Board of Supervisors of its annual budget, or as otherwise required by law. Where the impasse concerns operational issues, the Department Head or their designee shall preside over the public hearing concerning the impasse.

NOTE: *We recommend these changes because they are consistent with the express terms of the MMBA. The MMBA mandates that the advisory report be made publicly available. It also allows for the County to hold a public hearing regarding the impasse before it can implement its last, best and final offer.*

7.07 ARBITRATION

a. A request for arbitration shall be filed on the form provided by ERCOM, either by the Executive Director or on the ERCOM website ~~Commission~~, and shall include:
    1) The language of the agreement authorizing arbitration.
    2) A brief statement of the issue(s) in dispute, properly referenced, with the language of the references cited attached.
b. Arbitration shall be governed by the appropriate sections of the California Code of Civil Procedure.
c. The Commission may exercise its authority to issue standing orders with regard to requests for arbitration.

~~c. The Commission may exercise its authority to decide threshold issues in arbitration rather than refer such procedural issues to an arbitrator. The Commission may hear argument from the parties at its regularly scheduled meeting and may determine whether additional information is required or decide the matter at the conclusion of oral argument.~~
~~d. Requests for arbitration will not be continued beyond 180 days from the date of filing with the Commission, except for good cause being shown or by mutual agreement of the parties. Any other such matters will automatically be dismissed.~~
~~e. The arbitrator shall render his award within thirty (30) days after the close of the hearing (or the receipt of briefs, if any are required). In the event additional time is needed, the arbitrator must obtain the parties' approval of an extension of time.~~
~~f. Within thirty (30) days after receipt of the arbitrator's award, the parties to the dispute shall file with the Commission a written notification of the acceptance or rejection, in whole or in part, and the reasons therefor.~~

DHR – Anthony Martinez Recommendation:

Rule 7.07

- What kind of standing orders are contemplated under Rule 7.07(c)?
- Is the Commission willing to maintain a panel of arbitrators that are under contract with the County to provide arbitration services at a specified rate?
- Is the Commission willing to adopt a rule that demands that the party filing the Request for Arbitration file an update with the Commission regarding the status of the case after a certain period, *e.g.*, twenty-four (24) months?

PPOA Recommendation:

Rule 7.07 ERCOM's proposed rule eliminates the 30-day deadline for arbitrators to render any award. While arbitrators typically take longer than 30 days to provide decisions and face little to no consequences for any delays in rendering their decisions, language should still be included in the ERCOM Rules that provides some sort of limit on the amount of time provided to neutral hearing officers to produce decisions for ERCOM to review. 60 Days may be more reasonable and keeps language in place that protects the desire of ERCOM to expeditiously resolve all matters before them.

CEO - Adrianna Guzman Recommendation:

Rule 7.07(b) Arbitration shall be governed by the appropriate sections of the California Code of Civil Procedure**, including Section 1284, and Sections 1285-1287. Only if the parties mutually agree to conduct formal discovery under the California Civil Discovery Act, then the parties may conduct discovery under Code of Civil Procedure section 1016, *et. seq*.**

Rule 7.07(c) Recommend a standing order that requires the parties in the arbitration to first litigate any issue relating to procedural prerequisites to arbitration, and for the arbitrator to issue a written decision on the procedural issue(s). Also recommend that, **only** in the event that the arbitrator finds and rules that the charging party has satisfied the procedural prerequisites for arbitration, then the parties may proceed to litigate the merits of the grievance, and that the proceeding on the merits must be held by a **different** arbitrator.

> NOTE: *We recommend these changes because it ensures that an arbitrator's decision on the procedural issues put before them (e.g., timeliness, arbitrability, etc.) is not influenced by any financial interest the arbitrator may have or may appear to have in having the hearing proceed on the merits. By having one arbitrator rule on procedures and another rule on the merits, even the appearance of impropriety is avoided.*

7.08 SELECTION

7.09 WAIVER OF TIME REQUIREMENTS

~~**RULE 8. RECISION OF AGENCY SHOP ELECTIONS**~~

~~8.01 Petitions~~

~~8.02 Time to File~~

~~8.03 Notice of Filing~~

~~8.04 Commission Action~~

~~8.05 Results of Election~~