

# FILING A SEVERANCE REQUEST

UNDER THE

## HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT

Public Employment Relations Board

February 2021



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## **PERB'S JURISDICTION**

The Public Employment Relations Board (PERB) is the neutral State agency responsible for administering and enforcing the laws which govern collective bargaining for employees of public schools (grades K-14),<sup>1</sup> State civil service,<sup>2</sup> the University of California, California State University and Hastings College of the Law,<sup>3</sup> cities, counties and special districts,<sup>4</sup> trial courts,<sup>5</sup> the Judicial Council,<sup>6</sup> the Orange County Transportation Authority,<sup>7</sup> the Bay Area Rapid Transit District,<sup>8</sup> supervisory employees of the Los Angeles County Metropolitan Transportation Authority,<sup>9</sup> and family childcare providers.<sup>10</sup> PERB does not administer laws which affect employees of private industry, the federal government, and many public transit districts in California.

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<sup>1</sup> Educational Employment Relations Act; Government Code section 3540 et seq. The text of the enumerated labor relations statutes is available at [www.perb.ca.gov](http://www.perb.ca.gov).

<sup>2</sup> Ralph C. Dills Act; Government Code section 3512 et seq.

<sup>3</sup> Higher Education Employer-Employee Relations Act; Government Code section 3560 et seq.

<sup>4</sup> Meyers-Milias-Brown Act; Government Code section 3500 et seq. PERB's jurisdiction over the MMBA excludes management employees and peace officers as defined in Section 830.1 of the Penal Code, as well as employees of the City of Los Angeles and County of Los Angeles.

<sup>5</sup> Trial Court Employment Protection and Governance Act; Government Code section 71600 et seq. and Trial Court Interpreter Employment and Labor Relations Act; Government Code section 71800 et seq.

<sup>6</sup> Judicial Council Employer-Employee Relations Act; Government Code section 3524.50 et seq.

<sup>7</sup> Orange County Transportation Authority Act; Public Utilities Code section 40120 et seq.

<sup>8</sup> San Francisco Bay Area Rapid Transit District Act; Public Utilities Code section 28848 et seq.

<sup>9</sup> Transit Employer-Employee Relations Act; Public Utilities Code section 99560 et seq.

<sup>10</sup> Building a Better Early Care and Education System Act; Education Code section 8430 et seq.

## **WHAT IS A SEVERANCE PETITION?**

Under the Higher Education Employer-Employee Relations Act (HEERA), a severance petition or request is a petition by an “employee organization”<sup>11</sup> which seeks to alter an established bargaining unit<sup>12</sup> by removing (or “severing”) a group of employees from the unit in order to establish a new bargaining unit and become the exclusive representative<sup>13</sup> of the proposed new unit.

A severance petition differs from a decertification petition in several respects, but primarily because the severance request seeks to create a new bargaining unit consisting of only some classifications or positions from the established bargaining unit while a decertification petition may only be filed for the entire established unit.<sup>14</sup>

Under HEERA, severance petitions are filed either as a request for recognition (PERB Regulations 51030 through 51095) or as a petition for certification (PERB Regulations 51100 through 51130), pursuant to PERB Regulations 51680 and 51685.

## **WHO MAY FILE A SEVERANCE PETITION?**

A severance petition may only be filed by an “employee organization.” The petitioning employee organization seeks both the granting of the severance and to become the exclusive representative of the new unit.

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<sup>11</sup> An “employee organization” is any organization in which higher education employees participate and which exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment. An academic senate, or similar body, is not considered an employee organization under HEERA. (Gov. Code, § 3562, subd. (g).)

<sup>12</sup> A “bargaining unit” (also known as an “appropriate unit” or “negotiating unit”) is a grouping of positions (based upon similar duties, qualifications, hours, lines of supervision, history of representation and other factors) for the purpose of bargaining with the employer. The unit determination criteria under HEERA are set forth in Government Code section 3579.

<sup>13</sup> The “exclusive representative” is the employee organization that has been recognized by the employer or certified by PERB to represent the employees in the bargaining unit in their employment relations with the employer.

<sup>14</sup> For additional information concerning decertification petitions, see PERB Regulations 32770 through 32776 or obtain a copy of the PERB brochure titled “Filing a Decertification Petition” (PERB-1370) from the PERB website.

## **WHAT IS PROOF OF SUPPORT?**

For a severance petition, “proof of support” is signatures of employees on authorization cards, petitions, membership applications, etc., which clearly state that the employees desire to be represented by the petitioning employee organization for the purpose of meeting and negotiating on wages, hours and other terms and conditions of employment. These signatures must each be dated and cannot be more than a year old at the time the petition is filed. Complete requirements for proof of support are spelled out in PERB Regulation 32700.

The petitioner files the proof of support with PERB (or a mutually agreed upon third party) only, and must file the original documents. All proof of support materials filed with PERB are considered confidential documents; no other party may look at or receive copies of the support materials.

## **WHEN CAN A SEVERANCE PETITION BE FILED?**

Generally, a severance petition may be filed any time there is no collective bargaining agreement in effect, except within one year after an employee organization has been voluntarily recognized or the results of a representation election have been certified. If a valid contract is in effect, no severance petition may be filed during the term of that contract, except during the period less than 120 days but more than 90 days before the contract’s expiration date. (PERB Regulation 51026.)

## **FILING THE SEVERANCE PETITION**

Under HEERA, a severance petition may be filed either with the employer as a request for recognition, or directly with PERB as a petition for certification. A copy is concurrently filed with either the higher education employer (if a petition for certification is filed) or with PERB (if filed as a request for recognition) and served on the exclusive representative of the established unit. If filed as a request for recognition, the petition must be accompanied by proof of majority support. If filed as a petition for certification, the petition must be accompanied by proof of at least 30% support.

A severance petition must be filed on the HEERA Representation Petition form (PERB-4105). Copies of this form may be obtained from the PERB website.

The HEERA Representation Petition form requires the following information:

1. The name, address, telephone number and agent's name for both the employer and the petitioning employee organization;

2. a description of the proposed unit and number of employees in the unit;
3. whether or not a contract exists and, if so, its effective and expiration dates;
4. the type of the petition, and date filed with the employer (if applicable).

A copy of the petition must be served on all interested parties. A proof of service form must be completed and filed with PERB. Proof of service forms are available on the PERB website.

The petition and completed proof of service form should be electronically filed in accordance with PERB Regulations 32110.<sup>15</sup> Proof of support must be filed by mail or in person at the appropriate PERB regional office. Only PERB (or the agreed upon third party) receives the proof of support; other parties must be served with the petition form and proof of service.

### **INVESTIGATION OF THE PETITION**

Once the severance petition is filed, a Board agent will be assigned to review the petition and determine its validity. The employer and the exclusive representative will be requested to file responses either supporting or opposing the severance request. If the exclusive representative states that it does not oppose granting the severance, and if a request for recognition was timely and adequately supported, the employer may either grant recognition to the petitioner or dispute the appropriateness of the proposed unit.

If the petition was filed as a petition for certification, voluntary recognition cannot be granted. If the employer or exclusive representative disputes the appropriateness of the proposed unit, a Board agent will conduct further investigations to determine whether the unit proposed by the severance petition should be granted. This process may include informal settlement conferences or a formal hearing.

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<sup>15</sup> Electronic filing is optional for an “unrepresented individual,” defined as “an individual natural person not represented by an attorney or a union representative.” (PERB Regulation 32110(b).) For all other parties, electronic filing is mandatory. (PERB Regulation 32110(a).) Representation petitions that are not electronically filed should be submitted by mail or in person to the appropriate PERB regional office. For representation matters relating to the University of California or Hastings College of the Law, the appropriate office is the San Francisco Regional Office. For representation matters relating to the California State University, the appropriate office is the Los Angeles Regional Office. (PERB Regulation 32115.)

If filed as a request for recognition, the party filing the severance petition may request a Board investigation within 90 days of the date the employer decision was filed or due to be filed, if the employer decision is not filed, does not grant recognition or does not request further action by PERB (regulation 51090). A severance filed as a petition for certification does not require a separate request for Board investigation.

### **ELECTION**

If the proposed new unit is agreed to or found to be appropriate, and voluntary recognition cannot be granted, PERB will conduct an election in the unit to determine which employee organization, if any, shall become the exclusive representative of the new unit. The ballot in the election would include three choices: the name of the incumbent exclusive representative,<sup>16</sup> the name of the employee organization which filed the severance petition, “no representation,” and the name of any employee organization which filed a valid ballot intervention pursuant to regulation 51310.<sup>17</sup> A majority of the valid votes cast determines the outcome of the election. Additional information concerning the conduct of representation elections is available by obtaining a copy of the PERB brochure titled “Representation Elections” (PERB-1002) from the PERB website.

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<sup>16</sup> The incumbent is entitled to appear on the ballot unless the organization specifically disclaims interest in representing the new, severed unit and waived its right to be listed on the ballot. In such a case, unless more than one other employee organization has qualified to appear on a ballot, the employer would be required to recognize the petitioner.

<sup>17</sup> If PERB orders an election as a result of a severance petition, notice of intent to conduct an election would be provided to interested parties and any other employee organization would have 15 workdays in which to file a ballot intervention, which would require proof of support of at least 10 percent of the employees in the unit found to be appropriate. An employee organization other than the petitioner might also qualify to appear on the ballot as the result of filing an “intervention” on the original severance petition (if filed as a request for recognition), provided such intervention was both timely filed and adequately supported. Interventions may be filed with proof of support of 30 percent of the unit claimed to be appropriate, and may only be filed during the 15 workdays time period following the posting of notice of the request for recognition (except that the time for filing may be less where a MOU is in effect).

## **APPEAL OF A DISMISSAL**

If the unit is not found to be appropriate and the severance request is denied or if the petition is dismissed following a Board investigation for lack of adequate support or as untimely, a written appeal may be filed with the Board itself.<sup>18</sup>

## **ASSISTANCE**

If you have procedural questions regarding the preparation of a severance petition, please contact the appropriate PERB regional office. If you require legal assistance or advice, please contact your legal representative or the nearest County Bar Association for attorney referral services.

This booklet is meant to provide a GENERAL overview regarding the filing of a severance request or petition and should not be exclusively relied upon in lieu of PERB regulations, case law and/or legal advice.

The statutes PERB administers are contained in the Government Code, the Public Utilities Code, and the Education Code. (See footnotes 1 through 10.) Code volumes can be found at the State law library, county law libraries, and University of California law school libraries. A complete copy of PERB's regulations (California Code of Regulations, title 8, section 31001 et seq.), as well as the statutes administered by PERB, are available on the PERB [website](#).

The statute and PERB's current regulations should always be consulted prior to any filing to ensure that all procedural requirements are met.

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<sup>18</sup> An appeal must be filed within 20 days after service of a proposed decision following a formal hearing (PERB Regulation 32300) or within 10 days after service of an administrative determination (PERB Regulation 32360).