

FILING A

UNIT MODIFICATION PETITION

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),¹ State civil service,² the University of California, California State University and Hastings College of the Law,³ cities, counties and special districts,⁴ trial courts,⁵ the Judicial Council,⁶ the Orange County Transportation Authority,⁷ the Bay Area Rapid Transit District,⁸ supervisory employees of the Los Angeles County Metropolitan Transportation Authority,⁹ and family childcare providers.¹⁰ PERB does not administer laws which affect employees of private industry, the federal government, and many public transit districts in California.

¹ 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.

² Ralph C. Dills Act; Government Code section 3512 et seq.

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

⁴ 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.

⁵ 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.

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

⁷ Orange County Transportation Authority Act; Public Utilities Code section 40120 et seq.

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

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

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

Please note that PERB's representation regulations and procedures do not apply to the OCTAA,¹¹ and that PERB has not, as of February 2021, completed rulemaking to apply its representation regulations to JCEERA. In addition, PERB's representation regulations are not applicable in many situations under the MMBA, Trial Court Act and Court Interpreter Act. Before filing a unit modification petition with PERB concerning employees covered under one of these three Acts, contact your employer to ascertain whether local rules provide for a unit modification process. Finally, PERB's unit modification regulations are not applicable to the Early Care Act.¹² The information presented below addresses only situations where PERB's regulations are applicable.

PERB's unit modification regulations (sections 32781 – 32786 (EERA, Dills Act, HEERA and TEERA), 61450 – 61480 (MMBA), 81450 – 81480 (Trial Court Act) and 91450 – 91480 (Court Interpreter Act)) provide a mechanism whereby changes in unit composition or description can be processed and/or approved by PERB via a Board Order. However, an employer and exclusive representative¹³ may mutually agree to modify their unit(s) without filing a petition and obtaining PERB's approval. If no agreement to modify the unit(s) can be reached between the parties, a petition must be filed in order to accomplish a change in the unit description.

WHO MAY FILE A UNIT MODIFICATION PETITION?

An exclusive representative may petition to seek a variety of changes to the unit(s) it represents, including the addition of unrepresented classes, division of an existing unit into two or more units, and consolidation of two or more established units into one appropriate unit. Either an exclusive representative or an employer may file to delete classifications, make technical changes, or determine the designation of a new classification where a dispute exists. In addition, two or more exclusive representatives may jointly file to transfer classifications from one represented unit to another.

Individual employees DO NOT have standing to file unit modification petitions.

¹¹ The Board's authority over this statute extends to adjudicating unfair practice charges; representational disputes are resolved by the State Mediation and Conciliation Service. (See Pub. Util. Code, §§ 40122, 4022.1.)

¹² The Early Care Act does not contemplate unit modification because the only appropriate unit is a statewide unit. (Ed. Code, § 8434, subd. (h).)

¹³ 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.

TYPES OF UNIT MODIFICATION PETITIONS

The various types of petitions which may be filed are discussed below by regulation section number.

32781(a)(1): A proposal by an exclusive representative to add unrepresented classifications or positions to a unit it represents. The Board will require proof of support of persons employed in the classifications or positions proposed to be added under certain circumstances (Regulation 32781(e)), discussed further below.¹⁴

32781(a)(2): A proposal by an exclusive representative to divide a unit it represents into two or more units.

32781(a)(3): A proposal by an exclusive representative to consolidate two or more units which it represents into one unit.

32781(b)(1): A proposal by an exclusive representative, or an employer, or both jointly, to delete classifications or positions from a unit where, by virtue of changes in circumstances, the positions are no longer appropriate to the established unit. Normally, such a petition must allege facts which would show that a relevant change has taken place in the duties of the position(s) at issue. Changes in circumstances does **not** mean a change in the number of employees.

32781(b)(2): A proposal by an exclusive representative, or an employer, or both jointly, to make technical changes to clarify or update the unit description.

32781(b)(3): A proposal by an exclusive representative, or an employer, or both jointly, to resolve a dispute as to unit placement or designation of a new classification or position.

32781(b)(4): A proposal by an exclusive representative, or an employer, or both jointly, to delete classification(s) or position(s), in cases where no changes in circumstances are alleged, on the basis that the classification or position is management, confidential, supervisory, not covered by the Act, or otherwise prohibited by statute from inclusion in the unit. If the petition is not filed jointly, there are time limitations on its filing (see discussion below).

32781(c): A proposal by two or more exclusive representatives to transfer classifications or positions from one represented unit to another. The Board will require

¹⁴ The types of petitions described under PERB Regulation 32781 are also provided for by PERB Regulations 61450, 81450 and 91450.

proof of majority support of persons employed in the affected classifications or positions, to be submitted by the employee organization representing the unit to which the positions would be added if the transfer were approved, if the addition would increase the existing unit size by 10 percent or more (Regulation 32781(e)(1)).

WHEN CAN A UNIT MODIFICATION PETITION BE FILED?

Most unit modification petitions have no time limits for filing. The exceptions are:

- I. Petitions to add or transfer classifications, or consolidate or divide units will be dismissed if filed less than 12 months following certification of the results of a representation election covering any employees proposed to be added or affected by the petition;
2. Unilateral petitions to delete classifications or positions without alleging changes in circumstances (i.e., petitions filed pursuant to regulation 32781(b)(4)(B) or (C)) may only be filed when there is no lawful written agreement or memorandum of understanding (MOU) in effect, or during the "window period" of such agreement or MOU. Window period definitions are found in Regulations 33020 (EERA), 40130 (Dills Act), 51026 (HEERA), 61010 (MMBA), 71026 (TEERA), 81010 (Trial Court Act) and 91010 (Court Interpreter Act).

WHAT IS PROOF OF SUPPORT?

When an employee organization requests the addition of classifications or positions to its established unit, and the addition of the positions would increase the existing unit size by 10 percent or more, PERB **will** require proof of majority support of persons employed in the classifications or positions to be added. PERB will also require proof of at least 30 percent support among the affected employees if a pending representation petition by another employee organization overlaps the positions at issue in the unit modification petition.

"Proof of support" is signatures of employees on original authorization cards, original membership applications, original dues deduction authorizations, or original petitions, etc. (PERB Regulation 32700(d)(1-3), which clearly state the desire of the employees to be represented by the named employee organization for purposes of collective negotiations (PERB Regulation 32700(a)(1). These signatures cannot be more than one year old at the time the unit modification petition is filed. (PERB Regulation 32700(b).) If the signature is not dated, then the party claiming support has the burden of establishing by other means that the proof of support was valid when the petition was submitted. (*Ibid.*)

In addition, for unit modification petitions involving unrepresented employees, proof of support can be demonstrated electronically. (PERB Regulation 32700(d)(4).) If an employee organization seeks to demonstrate proof of support in this manner, it must establish by sworn declaration that for each employee listed, the employee organization has records showing that the listed employees desired to be represented by that organization. (*Ibid.*) Valid records upon which an electronic showing of proof of support can be based are: original proof of support documentation, records of electronic signatures compliant with the California Uniform Electronic Transactions Act, codified at Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the California Civil Code, and records showing that the employee organization obtained proof of support via a process that otherwise qualifies under PERB's Regulations as receipt of a valid electronic signature. (PERB Regulation 32700(d)(4)(A-C).)

Complete requirements for proof of support are spelled out in **PERB Regulation 32700**.

The exclusive representative files the proof of support with PERB only. 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. (PERB Regulation 32700(e).)

FILING THE UNIT MODIFICATION PETITION

Unit modification petitions should be filed in accordance with PERB Regulation 32110.¹⁵

The petition may be filed on a PERB Unit Modification Petition form (PERB-1405). Copies of this form may be obtained from the PERB Web site or any of PERB's regional offices.

The Unit Modification Petition form must contain the following information, and be signed by an authorized agent of the petitioner:

1. Name, address and telephone number of the exclusive representative(s) affected by the petition;

¹⁵ 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, which is the office that serves the county in which the employer's principal office is located. (See PERB Regulations 32075 and 32135.)

2. Name, address and telephone number of the employer, and of the employer's agent to be contacted;
3. a brief description of the established unit;
4. approximate number of employees in the established unit and the approximate number involved in the modification request;
5. effective and expiration dates of the current agreement or MOU, if any, covering employees in the established unit;
6. the name and address of any other employee organization known to have an interest in representing any of the employees covered by the petition; and
7. description of the modification requested and statement of reasons for the request. The statement of reasons should allege facts which, if true, would justify approval of the modification sought. If the petition is filed pursuant to regulation 32781(b)(1), the statement **must** include alleged facts in support of the claim of changes in circumstances (see discussion on page 2 of this brochure).

A copy of the petition must be served upon all interested parties. A proof of service form must be completed and accompany the petition. Proof of service forms are available on the PERB Web site and at each of PERB's regional offices.

Only PERB receives the proof of support; other parties must be served with the petition and proof of service.

INVESTIGATION OF THE PETITION

Once a unit modification petition is filed, a Board agent will be assigned to review the proposed change in unit determination and determine its validity. If proof of support is required, the parties will be notified, the employer will be asked to provide a list of the affected employees and a determination concerning the sufficiency or insufficiency of the support will be issued by the regional office. A statement of position (if other than a joint petition is filed) will be requested from the other party pursuant to Regulation 32783. The statement will normally be due within 20 days of the date the petition was filed or, in cases where proof of support is required, within 20 days of the determination of sufficient support. If the responding party opposes the unit modification, the Board agent will contact all parties regarding further processing of the petition. In any disputed case, the Board agent will conduct further investigations, including informal settlement conferences and/or a formal hearing, in order to determine whether the unit modification requested should be granted. PERB must dismiss any petition which is improperly or

untimely filed, or if proof of support submitted falls short of the required level of support (PERB Regulation 32786(b)). If PERB determines that the unit modification is appropriate and grants the request, or if the Board agent determines there are sufficient facts stated to support a joint or undisputed modification request, a Unit Modification Order will be issued by the regional office.

APPEAL OF A DISMISSAL

Any administrative determination or proposed decision issued by a Board agent concerning a requested unit modification may be appealed to the Board itself.¹⁶ The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal. Service and proof of service of the appeal are required on all parties and on the regional office which issued the dismissal.

ASSISTANCE

If you have procedural questions regarding the preparation of a unit modification petition, please contact the appropriate PERB regional office. If you require legal assistance or any 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 unit modification petition and should not be exclusively relied upon in lieu of PERB regulations, case law and/or legal advice.

PERB's statutes and regulations are available on the PERB website, found at www.perb.ca.gov. The statutes PERB administers can also be found at the State law library, county law libraries, and University of California law school libraries.

The applicable statute and regulations should be consulted prior to any filing to assure that all procedural requirements are met.

¹⁶ An appeal must be filed within 20 days following the date of service of the decision if the decision results from a formal hearing (Regulation 32300) or within 10 days following the date of service of an administrative determination (Regulation 32360).