

FILING A

DECERTIFICATION 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 Authority⁹; 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 (EERA); 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 (Dills); Government Code section 3512 et seq.

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

⁴ Meyers-Milias-Brown Act (MMBA); 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 (Trial Court Act); Government Code section 71600 et seq. and Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act); Government Code section 71800 et seq.

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

⁷ Orange County Transportation Authority Act (OCTAA); 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 (TEERA); Public Utilities Code section 99560 et seq.

¹⁰ Building a Better Early Care and Education System Act (Early Care 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 yet completed rulemaking to apply its representation regulations to JCEERA. In addition, PERB's representation regulations and procedures are not applicable in many situations under the MMBA, Trial Court Act and Court Interpreter Act. Before filing a decertification petition with PERB concerning employees covered under one of these three Acts, please check with your employer to ascertain whether local rules providing for a decertification process exist. The information presented below addresses only situations where PERB's regulations are applicable.

WHAT IS A DECERTIFICATION PETITION?

A decertification petition is the vehicle whereby a group of employees in an established bargaining unit or an employee organization may bring about an election which allows employees to vote to either remove or replace their incumbent "exclusive representative."¹²

There are two different kinds of decertification petitions:

- 1) A petition may be filed by a group of employees seeking to remove the incumbent exclusive representative. This type of petition must be accompanied by signatures (called "proof of support") of at least 30 percent of the employees in the unit. This proof of support must clearly state that employees **NO LONGER DESIRE TO BE REPRESENTED BY THE INCUMBENT EXCLUSIVE REPRESENTATIVE**. If the petition qualifies for an election (see other filing requirements discussed below), the two ballot choices in the election would be the exclusive representative and "no representation." In the election, the ballot entry which receives a simple majority of the valid votes cast is declared the winner.
- 2) A petition may also be filed by another employee organization which seeks to replace the incumbent by becoming the new exclusive representative of employees in the unit. This type of petition must be accompanied by at least 30 percent proof of support, which clearly states that employees **WISH TO BE REPRESENTED BY THE PETITIONING EMPLOYEE ORGANIZATION FOR THE PURPOSE OF MEETING AND NEGOTIATING ON WAGES, HOURS,**

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 "exclusive representative" is the employee organization that has been recognized or certified to represent the employees in the bargaining unit in their employment relations with the employer.

AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT. The ballot in the election would contain the names of both the incumbent exclusive representative and the petitioning employee organization, and also include the choice of “no representation.” Again, a simple majority determines the outcome.

Decertification petition requirements are detailed in PERB Regulations 32770 through 32776.¹³ For the MMBA, Trial Court Act and Court Interpreter Act, PERB’s decertification regulations are found at sections 61350 through 61380, 81350 through 81380 and 91350 through 91380, respectively.

WHAT IS PROOF OF SUPPORT?

“Proof of support” is signatures of employees on authorization cards, petitions, membership applications, etc., which clearly state the intent of the employees either to: (1) remove their current exclusive representative or (2) demonstrate their support for a petitioning employee organization. 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 and, for the MMBA, Trial Court Act and Court Interpreter Act, Regulations 61020, 81020 and 91020.

Proof of support should be filed with PERB only, and the petitioner must file the **original** documents. All proof of support materials filed with PERB are confidential documents; no other party may look at or receive copies of the support materials.

WHEN CAN A DECERTIFICATION PETITION BE FILED?

Generally, a decertification petition may be filed any time there is no collective bargaining agreement in effect, except within one year after an employee organization has been recognized or after the results of a representation election have been certified. If a valid contract is in effect, no decertification petition may be filed during the term of that contract, except during a certain period, referred to as the “window period,” before the expiration of the contract. 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).

FILING THE DECERTIFICATION PETITION

The appropriate location for the filing of a decertification petition is one of the three PERB regional offices. EERA, MMBA, TEERA, Trial Court Act and Court Interpreter Act petitions must be filed in the regional office which serves the county in which the

¹³ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the regulations is available on PERB’s website.

principal office of the employer is located. (See PERB Regulations 32075 and 32115.) University of California and Hastings College of the Law petitions must be filed in the San Francisco Regional Office. (PERB Regulation 32115(d) .) California State University petitions must be filed in the Los Angeles Regional Office. (PERB Regulation 32115(e).) State of California petitions must be filed in the Sacramento Regional Office. (PERB Regulation 32115(c).)

Copies of the PERB Decertification Petition Form (PERB-1305) may be obtained from the PERB's website.¹⁴

The decertification petition form must contain the following information:

1. the name, address and telephone number of the employer, exclusive representative, and the agent of the group of employees or employee organization filing the petition;
2. a description of the established unit and approximate number of employees in the unit;
3. the date of recognition or certification of the incumbent and whether or not a contract exists;
4. the purpose of the decertification petition: i.e., because the employees desire no representation or because they wish to be represented by the petitioning employee organization.

A copy of the petition must be served on all interested parties. A proof of service form must be completed filed with PERB. (See PERB Regulation 32140.) Proof of Service forms are available on the PERB website.

The completed decertification petition form and completed proof of service form should be electronically filed in accordance with PERB Regulation 32110.¹⁵ Other parties must

¹⁴ Use of the PERB form is not required under the MMBA, TEERA, Trial Court Act and Court Interpreter Act.

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).

be served with the petition and proof of service; however, only PERB is to receive the proof of support.

INVESTIGATION OF THE PETITION

Once the Decertification Petition is filed, a Board agent will be assigned to review the petition and determine its validity. The Board agent will contact all parties regarding the next case-processing steps. . If the petition is deemed timely and adequately supported by employees in the claimed unit, an election may be scheduled. If the petition is declared invalid, a written administrative determination will be issued containing the reason(s) for the dismissal.

APPEAL OF A DISMISSAL

If a petition is dismissed following a Board investigation, a written appeal may be filed with the Board itself. 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).

ASSISTANCE

If you have procedural questions regarding the preparation of a decertification 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 decertification 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](#). 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 PERB regulations should always be consulted prior to any filing to ensure that all requirements are met.