FILING A SEVERANCE PETITION

UNDER THE

RALPH C. DILLS ACT

Public Employment Relations Board

February 2021

For assistance or to contact a PERB regional office, please visit www.perb.ca.gov, where you'll find office locations, phone numbers, and additional information about PERB procedures.

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.

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[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 (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 (Court Interpreter 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 (TEERA); Public Utilities Code section 99560 et seq.

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

WHAT IS A SEVERANCE PETITION?

Under the Dills Act, a severance petition is a petition by an "employee organization"[11] which seeks to alter an established bargaining unit[12] by removing (or "severing") a group of employees from the unit in order to establish a new bargaining unit, and become the exclusive representative[13] of the proposed new unit.

A severance petition differs from a decertification petition in several respects, but primarily because the severance petition 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.[14]

PERB Regulations 40200 through 40260 address severance petition requirements under the Dills Act.

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.

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

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[11] An "employee organization" is any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state (Government Code section 3513(a)).

[12] A "bargaining 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 the Dills Act are set forth in Government Code section 3521.

[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.

[14] 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 Web site or any PERB regional office.

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 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 memorandum of understanding (MOU or contract) 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 severance petition may be filed during the term of that contract, except during the period less than 242 days but more than 212 days prior to the contract's expiration date.

FILING THE SEVERANCE PETITION

Under the Dills Act, a severance petition is filed directly with PERB's Sacramento Regional Office Copies are concurrently served on the employer and on the exclusive representative of the established unit. The severance petition filed with PERB must be accompanied by proof of majority support.

A severance petition must be filed on a Dills Severance Petition form (PERB-3105). Copies of this form may be obtained from the PERB website.

The Dills Severance Petition form requires the following information:

1. The name, address, telephone number and agent's name for the employer, exclusive representative 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 title and number of the established unit.

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 executed petition form and completed proof of service form should be electronically filed in accordance with PERB Regulation 32110.[15] Proof of support must be filed by mail or in person at the appropriate PERB regional office. Only PERB 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 petition. If neither opposes the proposed severance, and if the request was timely and adequately supported, an election will be conducted in the severed unit. If the employer or the 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.

ELECTION

If the proposed new unit is agreed to or found to be appropriate, 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 as choices the name of the incumbent exclusive representative,[16] 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 40310.[17] A majority of the valid votes cast determines the outcome of the election. Additional information concerning the conduct of representation elections is

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[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).

[16] The incumbent's name would not appear on the ballot only if the organization specifically disclaims interest in representing the new, severed unit and waived its right to be listed on the ballot.

[17] 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

available by obtaining a copy of the PERB brochure titled “Representation Elections” (PERB-1002) from the PERB Web site or any PERB regional office.

APPEAL OF A DISMISSAL

If the unit is not found to be appropriate and the severance petition is denied or if the petition is dismissed for lack of adequate support or as untimely, a written appeal may be filed with the Board itself.[18]

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 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 severance 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 9.) 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, may be purchased from PERB, and are also 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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organization would have 20 days in which to file a ballot intervention, which would require proof of support of at least 30% of the employees in the unit found to be appropriate.

[18] 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).