FILING A REQUEST FOR RECOGNITION

UNDER THE

EDUCATIONAL EMPLOYMENT RELATIONS ACT

Public Employment Relations

Board January 2020

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] and the Orange County Transportation Authority[7]; supervisory employees of the Los Angeles County Metropolitan Transportation Authority[8]; and family childcare providers.[9] PERB does not administer laws which affect employees of private industry, the federal government, and many public transit districts in California.

WHAT IS A REQUEST FOR RECOGNITION?

Under the Educational Employment Relations Act (EERA), the filing of a request for

---

[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] Transit Employer-Employee Relations Act (TEERA); Public Utilities Code section 99560 et seq.

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

recognition initiates the process by which an "employee organization"[10] formally begins its effort to establish an appropriate bargaining unit[11] and, at the same time, seeks to become the exclusive representative[12] of the proposed new unit.

A request for recognition is filed only when there is no established bargaining unit for the employees in question and/or no recognized or certified employee organization. If a bargaining unit has already been formed and has an exclusive representative, a decertification petition[13] may be filed by an employee organization seeking to replace the incumbent or a severance request[14] may be filed if the employee organization also seeks to alter the established bargaining unit.

An "intervention" on a request for recognition is a petition by a competing employee organization which seeks either the same unit of employees or a unit which overlaps that sought in the request for recognition.

Under EERA, requests for recognition and interventions are filed pursuant to PERB Regulations 33050 through 33237.

---

[10] An "employee organization" is any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. (Gov. Code, § 3540.1, subd. (d).)

[11] 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 EERA are set forth in Government Code section 3545.

[12] The "exclusive representative" is an 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.

[13] 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.

[14] For additional information concerning severance requests, see PERB Regulations 33700 and 33710 or obtain a copy of the PERB brochure titled "Filing a Severance Request under the Educational Employment Relations Act" (PERB-2270) from the PERB Web site or any PERB regional office.

WHEN CAN A REQUEST FOR RECOGNITION/INTERVENTION BE FILED?

Generally, a request for recognition may be filed at any time since there is, by definition, no collective bargaining agreement (contract) in effect, except that no request for recognition may be filed for a period of one year after the results of a representation election for a unit including any of the employees sought in the request have been certified.

An intervention may only be filed during the 15 workdays following the posting of notice of the request for recognition or an amended request for recognition.

FILING THE REQUEST FOR RECOGNITION/INTERVENTION

Under EERA, both a request for recognition and an intervention are filed with the employer. A copy is concurrently filed with the appropriate PERB regional office.[15] The copy of the request for recognition which is filed with PERB must be accompanied by either majority proof of support (for a request for recognition) or proof of 30 percent support (for an intervention).

Both a request for recognition and an intervention must be filed on an EERA Representation Petition form (PERB-2110). Copies of this form may be obtained from the PERB Web site or any of PERB's regional offices.

The EERA 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. the type of petition and date filed with the employer.

4. the name(s) of any other employee organization(s) known to have an interest in representing any of the employees covered by the petition.

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

---

[15] EERA petitions must be filed in the regional office which serves the county in which the principal office of the employer is located. (See PERB Regulation 32075.)

A copy of the request, proof of employee support and the completed proof of service form must be filed with the appropriate PERB regional office (either mailed or delivered personally after serving the original on the school district). Only PERB receives the proof of support; other parties must be served with the petition form and proof of service.

WHO MAY FILE A REQUEST FOR RECOGNITION/INTERVENTION?

A request for recognition or an intervention may be filed ONLY by an employee organization. The petitioning employee organization seeks both the establishment of the proposed unit and to become the exclusive representative of the new unit. A request for recognition must be accompanied by "proof of support" of at least a majority of employees in the requested unit, clearly stating that employees WISH TO BE REPRESENTED FOR PURPOSES OF COLLECTIVE BARGAINING BY THE PETITIONING EMPLOYEE ORGANIZATION.
An intervention must be accompanied by "proof of support" of at least 30 percent of the employees in the unit claimed as appropriate.

WHAT IS PROOF OF SUPPORT?

For a request for recognition or an intervention, "proof of support" is signatures of employees on authorization cards, petitions, membership applications, etc., which clearly state the desire of the employees to be represented for purposes of collective negotiations by the named employee organization. These signatures must each be dated and cannot be more than a year old at the time the request 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.

INVESTIGATION OF THE REQUEST

When a request for recognition or an intervention is filed, a Board agent will contact all parties regarding the processing of the petition. The initial role of PERB in these cases is limited to making a determination as to the sufficiency of the proof of support submitted and reminding the employer of its duties (e.g., posting notice of the request or intervention). If the appropriateness of a proposed unit is disputed by the employer or an intervening employee organization, and if either the employer or a petitioner requests a Board investigation, a Board agent will conduct further

investigations, including informal settlement conferences and/or a formal hearing, in order to determine whether any proposed unit should be granted.

A petitioning employee organization may file a request for Board investigation if the employer has not granted recognition or requested further action by PERB. Such a petition may be filed within 90 days of the date the employer decision was filed or due to be filed, whichever occurs first (regulation 33230).

ELECTION

Where the proposed unit is agreed to or deemed appropriate, and there is more than one petitioning organization, 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 the following choices: The name of the employee organization which filed the request for recognition, the name(s) of any employee organization(s) which successfully intervened[16] and "no representation." 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 Web site or any PERB regional office.

APPEAL OF A DISMISSAL

If the unit is not found to be appropriate or if a request for recognition or intervention is dismissed following a Board investigation for lack of adequate support or as untimely, a written appeal may be filed with the Board itself. An original and 5 copies of the appeal must be filed in the headquarters office.[17] The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is

[16] Additional employee organizations might qualify to appear on the ballot as a result of filing "interventions" on the request for recognition provided such interventions were both timely filed and adequately supported (to be included on the ballot, an intervenor would be required to demonstrate support of at least 30% of the unit found to be appropriate). Interventions may be filed at any time during the 15 workdays following the posting of notice of the initial request. An intervention may also seek a different unit.

[17] 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).

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 written decision.

ASSISTANCE

If you have procedural questions regarding the preparation of a request for recognition or intervention, 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 request for recognition or intervention 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, are available on the PERB website (www.perb.ca.gov).

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