

FILING A SEVERANCE REQUEST

UNDER THE

**HIGHER EDUCATION EMPLOYER-EMPLOYEE
RELATIONS ACT**

Public Employment Relations Board

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Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, CA 95814-3198
(916) 322-3198

Los Angeles Regional Office
3530 Wilshire Blvd, Suite 1435
Los Angeles, CA 90010-2334
(213) 736-3127

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
(510) 622-1016

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 Authority⁷; supervisory employees of the Los Angeles County Metropolitan Transportation Authority⁸; 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 SEVERANCE PETITION?

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.

Under the Higher Education Employer-Employee Relations Act (HEERA), a severance petition or request is a proposal by an “employee organization”¹⁰ which seeks to alter an established bargaining unit¹¹ by removing (or “severing”) a group of employees from the unit in order to establish a new bargaining unit. By its severance petition, the employee organization seeks at the same time to become the exclusive representative¹² of the proposed new unit.

A severance petition differs from a decertification petition¹³ in several respects, but primarily because the severance request seeks to create a new bargaining unit consisting of certain classifications or positions in the established bargaining unit while a decertification petition may only be filed for the entire established unit.

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. A severance petition must be

¹⁰ 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).)

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 HEERA are set forth in Government Code section 3579.

¹² 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.

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.

accompanied by sufficient “proof of support” of employees in the petitioned-for unit,¹⁴ clearly stating that employees WISH TO BE REPRESENTED BY THE PETITIONING EMPLOYEE ORGANIZATION.

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 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 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 memorandum of understanding (MOU or contract) in effect, except that no severance petition may be filed for a period of one year after an employee organization has been voluntarily 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 a certain period, referred to as the “window period,” before the expiration of the contract. The HEERA window period is defined in Regulation 51026, and provides that petitions may be filed not more than 120 days and not less than 90 days prior to the expiration date of the contract.

FILING THE SEVERANCE PETITION

Under HEERA, a severance petition may be filed either with the employer as a request for recognition, or directly with PERB¹⁵ as a petition for certification. Copies are concurrently filed with either the higher education employer (if a petition for certification is filed) or the appropriate PERB regional office (if filed as a request for recognition) and served on the exclusive representative of the established unit. The

¹⁴ As discussed above and below, severance petitions under HEERA may be filed either as a request for recognition (requiring majority support) or as a petition for certification (requiring at least 30% support).

¹⁵ HEERA representation petitions relating to the University of California or Hastings College of the Law must be filed in the San Francisco regional office. HEERA representation petitions relating to the California State University must be filed in the Los Angeles regional office. (PERB Regulation 32123.)

severance petition (or copy) which is filed with PERB must be accompanied by the requisite proof of support (unless the proof of support is being submitted to a mutually agreed upon third party).

A severance petition must be filed on the HEERA Representation Petition form (PERB-4105). Copies of this form may be obtained from the PERB Web site and any of PERB's regional offices.

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 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 (or the agreed upon third party) is to receive 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. S/he will contact all parties regarding the processing of the petition. Both the employer and exclusive representative will be requested to file responses either supporting or opposing the proposed severance. 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 grant recognition to the petitioner or dispute the appropriateness of the proposed unit. Voluntary recognition may not be granted if the petition was filed as a petition for certification. If the appropriateness of the proposed unit is disputed by either the employer or exclusive representative, a Board agent will conduct further investigations, including informal settlement conferences and/or a formal hearing, in order to determine whether the unit proposed by the severance petition should be granted. 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

Where 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 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 51310.¹⁷ 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 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. An original and 5 copies of the appeal must be filed in the headquarters office.¹⁸ 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.

¹⁶ The incumbent's name would not appear on the ballot only if the organization specifically declined interest in representing the new, severed unit and waived its right to be listed on the ballot. In such a circumstance, and where there are no valid interventions on the petition or ballot, recognition must be granted to a majority petitioner.

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 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% 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).

¹⁸An 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).

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 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 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.