REPRESENTATION ELECTIONS

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.

REPRESENTATION ELECTIONS

The purpose of a representation election is to allow employees to determine via secret ballot which employee organization, if any, shall be certified to represent them in their employment relations with the employer.

Types of Elections

One common type of representation election conducted by PERB is a decertification election, in which a group of employees is seeking to remove the current exclusive representative or, often, a competing employee organization seeks to replace it. Other types of representation elections include initial elections (held when employees currently have no recognized or certified representative) and severance elections.

Qualifying for a Representation Election

A representation election is conducted by PERB only after the specific requirements for filing the decertification or other representation petition have been met. These requirements are spelled out in PERB regulations (California Code of Regulations, title 8, section 31001 et seq.). Forms and PERB's regulations are available on PERB's website at **www.perb.ca.gov**. Information regarding the filing of decertification and other petitions is also available on the PERB website and from PERB regional offices.

Setting Up the Provisions of the Election

Once PERB has determined that an election must be conducted, a Board agent will contact the parties to schedule a meeting or a conference call for the purpose of obtaining input regarding the mechanics of the upcoming election. Many of PERB's election procedures are spelled out in its regulations at sections 32720 through 32754.[1] "Parties" to the election is defined in Regulation 32721.

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[1] Though Regulations 32720 through 32754 are not applicable to elections conducted under the Meyers-Milias-Brown Act, the Trial Court Employment Protection and Governance Act, and the Trial Court Interpreter Employment and Labor Relations Act, equivalent provisions can be found in Chapters 5, 7 and 8, respectively, of PERB's regulations.

With respect to the Building a Better Early Care and Education System Act (Early Care Act), which applies to family childcare providers, the statute sets forth specific election procedures; PERB's regulations apply where they are not inconsistent with the statute. (Educ. Code, § 8434, subd. (b).)

The goal of the election meeting is to arrive at a consensus on election mechanics so that PERB can approve a **Consent Election Agreement**, a sample of which is also included in this brochure (Attachment A). When the parties and PERB are unable to agree on the mechanics of the election, the Board agent will make the decision as to the manner in which the election will be conducted, and PERB will then issue a **Directed Election Order**.

To maximize voter opportunity, PERB conducts mailed ballot elections. In a mailed ballot election, PERB obtains mailing labels and/or home address information from the employer and sends a ballot to the home address of each eligible voter. Voters then cast their ballots and return them to PERB via first class mail. (PERB pays the postage.) In the mailed ballot election process, a mailing date and deadline for receipt of voted ballots must be selected. Other election mechanics decisions that must be made include:

(1) Choosing a **cut-off date for voter eligibility**, and, in some cases, determining other voter eligibility requirements. (See Regulation 32728).

(2) Choosing the deadline date by which **election notices** must be posted by the employer. (See Regulation 32724(b) and (c).)

(3) Deciding upon the **voter list** format and deadline for receipt by PERB. (See Regulation 32726.)

(4) Determining a date, time and location for the **ballot count**.

(5) Selecting the order in which the choices on the **ballot** will be listed.

The Board agent may also request the parties to provide a **description of the voting unit** (i.e., what employee classifications are included in the unit and which positions are excluded from the unit). Additionally, the Board agent may ask each employee organization appearing on the ballot to describe how it wishes its name to appear on the ballot.

The Election Process

Notices and Mailed Ballots. Prior to the mailing of the ballots, the employer will be requested to post notices (provided by PERB) informing employees in the voting unit of the time, place, and manner of the election. (See Regulation 32724 (b) and (c).) After the notice to employees is posted, PERB will mail out the ballots to the addresses provided by the employer on the date specified in either the Consent Election Agreement or the Directed Election Order. (See Regulation 32722.)

Challenges. During the election process, any party may challenge for good cause the eligibility of a voter. (See Regulation 32732.) If challenged ballots are sufficient in number to affect the outcome of the election, they will be resolved by PERB. (See Regulations 32732(c), 32735 and 32746.)

Observers. The PERB election supervisor will allow each interested party to designate observer(s) to witness the counting of ballots.

After the Election

Tally of Ballots. Upon completion of the voting, and at the time and place specified in the Consent Election Agreement or Directed Election Order, PERB will count the ballots and issue an official tally of ballots to the parties. (See Regulation 32734.)

Runoff Election. If no choice on the ballot receives a majority of the valid votes cast, a runoff election will be scheduled. (See Regulation 32736.)

Objections To The Election. Within 10 days following the service of the tally of ballots, any party to the election may file objections to the election. Filing requirements, permissible grounds for objections and procedures for resolving objections are spelled out in Regulations 32738 through 32744.

Certification. A certification of results of the election (if "no representation" received a majority of votes cast) or a certification of an exclusive representative will be issued by PERB effective the eleventh day after service of the tally of ballots if the election has determined a winner and if no timely objections have been filed.

For More Information

If you have questions or need additional information about representation elections, please contact the Board agent who is handling your case or contact a PERB regional office.

PUBLIC EMPLOYMENT RELATIONS BOARD

CONSENT ELECTION AGREEMENT

Name of Employer:

Case Number:

Pursuant to the [APPLICABLE STATUTE], and subject to the approval of the Public Employment Relations Board, the undersigned parties hereby agree as follows:

1. Jurisdiction. The employer is an employer within the meaning of the Act; and each employee organization named on the ballot is an employee organization within the meaning of the Act; and the employees described in the voting unit are employees within the meaning of the Act.

2. Election. An election by secret ballot shall be held under the supervision of PERB, among the employees of the employer named above in the unit defined below, and in the manner described below, to determine which employee organization, if any, shall be certified to represent such employees pursuant to the Act. The election shall be held in accordance with applicable provisions of the Government Code, and PERB regulations and procedures.

3. Voter Eligibility. Unless otherwise indicated below, the eligible voters shall be those employees within the unit described below who were employed on the eligibility cutoff date indicated below, and who are still employed on the date they cast their ballots in the election, i.e., the date the voted ballot is received by PERB. Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

4. Voter Lists. By the date indicated below and in the format described below, the employer shall file with the regional office a list of eligible voters. Service and proof of service of the list pursuant to PERB regulations 32726 and 32140 are required.

5. Notice of Election. PERB shall serve Notices of Election on the employer and on each party to the election. The Notice shall contain a sample ballot, a description of the voting unit and information regarding the balloting process. By the date indicated below, the employer shall post such Notice of Election conspicuously on all employee bulletin boards in each facility of the employer in which members of the

voting unit are employed. Any additional Notice requirements are described in item 14 below.

6. Challenges. A Board agent or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Mailed ballot challenges shall be made prior to the tally of the ballots.

7. Tally of Ballots. At the time and place indicated below, ballots shall be co-mingled and tabulated by PERB's designated agent. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots. At the conclusion of the counting, PERB's designated agent shall serve a Tally of Ballots on each party.

8. Objections and Post Election Procedure. Pursuant to PERB regulation 32738, objections to the conduct of the election may be filed with the regional office within ten calendar days following the service of the Tally of Ballots. Service and proof of service pursuant to regulation 32140 are required. Post election procedures shall conform with PERB regulations and procedures.

9. Runoff Election. In the event a runoff election is necessary, it shall be conducted at the direction of PERB.

10. Wording on Ballot. The choices on the ballot shall appear in the wording and order enumerated below.

    FIRST: [***]
    SECOND: [***]
    THIRD: [***]

11. Cutoff Date for Voter Eligibility: [***]

12. Description of the Balloting Process: All eligible voters shall vote by **mailed ballot**. On [***], PERB will mail a ballot to the home address of each eligible voter. Along with the ballot, the eligible voter will also receive a Secret Ballot Envelope, a postage-paid return envelope addressed to PERB, and instructions for casting the ballot. Ballots must be received by PERB not later than [***], in order to be counted in the official tally of ballots.

    Employees will be informed by the Notices of Election that if they believe they are eligible to vote in the election and they do not receive a ballot by [***], they may contact PERB and request a duplicate ballot. PERB will accept employee requests for duplicate ballots on [***] only. Requests may be made only by telephone and

between the hours of 8:30 a.m. and 4:00 p.m.; the telephone number will be displayed on the Notices of Election. PERB will accept collect calls for this purpose. PERB will accept a request for a ballot only from the voter himself/herself.

Any employee who timely contacts PERB and requests a ballot will be issued a duplicate ballot if the employee's name can be found on the list of eligible voters. If the employee's name is not on the voter list and the employee expresses the belief that s/he is eligible to vote, the employee will be issued a challenged ballot. In order to be counted, a duplicate ballot must be accompanied by a sworn statement signed by the eligible voter to the effect that the duplicate ballot is the only valid ballot cast by the employee in the election. PERB will include such a prepared statement for signature with each duplicate ballot packet of materials issued to an eligible voter.

13. Voter List Format and Filing Deadline:

Not later than [***], the employer shall file with PERB:

1. An alphabetical list of all eligible voters including their job titles, work locations and home addresses.

2. One set of home address labels in alphabetical order.

Copies of the list shall be served concurrently on [***]; proof of service must be concurrently filed with PERB.

14. Notices of Election: Shall be posted by the employer no later than [***].

15. Date, Time and Location of Counting of Ballots: [***]

16. The Voting Unit: [***]

Shall Include: [***]

Shall Exclude: [***]

17. Waiver. All parties to this agreement hereby expressly waive all rights to a hearing, decision or direction of election by PERB prior to this election, unless otherwise provided for herein.

18. Each signatory to this Agreement hereby declares under penalty of perjury that s/he is a duly authorized agent empowered to enter into this Consent Election Agreement.

19. Approval of this Consent Election Agreement should not be interpreted to mean the Board would find the unit described herein to be an appropriate unit in a disputed case.

_____	_____
(Name of Party)	(Name of Party)
By _____	By _____
_____	_____
(Title) (Date)	(Title) (Date)
_____	_____
(Name of Party)	(Name of Party)
By _____	By _____
_____	_____
(Title) (Date)	(Title) (Date)

_____ Date approved: _____

Regional Attorney
Public Employment Relations Board