

FILING A SEVERANCE REQUEST
UNDER THE
EDUCATIONAL EMPLOYMENT RELATIONS ACT

Public Employment Relations Board

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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 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. 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; 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; 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; 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; 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 REQUEST?

Under the Educational Employment Relations Act (EERA), a severance request is a petition by an “employee organization”¹¹ which seeks to alter an established bargaining unit¹² by removing (or “severing”) a group of employees from the unit in order to establish a new bargaining unit, and become the exclusive representative¹³ of the proposed new unit.

A severance request differs from a decertification petition in several respects, primarily because the severance request seeks to create a new bargaining unit consisting of only some classifications or positions from the established unit, while a decertification petition may only be filed for the entire established unit.¹⁴

Under EERA, severance requests are filed pursuant to PERB regulations concerning the filing of requests for recognition (Regulations 33050 through 33237) and Regulations 33700 and 33710.

WHO MAY FILE A SEVERANCE REQUEST?

A severance request 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.

¹¹ 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. (Government Code section 3540.1(d)).

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 EERA are set forth in Government Code section 3545.

¹³ 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.

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 website or any PERB regional office.

WHAT IS PROOF OF SUPPORT?

For a severance request, “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 employment. 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.

WHEN CAN A SEVERANCE REQUEST BE FILED?

Generally, a severance request may be filed any time there is no collective bargaining agreement (contract) in effect, except within one year after either an employee organization has been voluntarily recognized or the results of a representation election have been certified. If a valid contract is in effect, no severance request may be filed during the term of that contract, except during the period less than 120 days but more than 90 days before the contract’s expiration date.

FILING THE SEVERANCE REQUEST

Under EERA, a severance request is filed with the employer as a request for recognition. A copy is concurrently filed with PERB and served on the exclusive representative of the established unit. The copy filed with PERB must be accompanied by proof of majority support.

A severance request must be filed on an EERA Representation Petition form (PERB-2110). Copies of this form may be obtained from the PERB website.

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. whether or not a contract exists and, if so, its effective and expiration dates;

4. the type of petition and date filed with the employer.

A copy of the request 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 at on the PERB website.

The copy of the request and completed proof of service form should be electronically filed in accordance with PERB Regulations 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 REQUEST

Once the severance request is filed, a Board agent will be assigned to review the request and determine its validity. The employer and the exclusive representative will be asked to file responses either supporting or opposing the request. If the exclusive representative states that it does not oppose granting the severance, and if the request was timely and adequately supported, the employer may grant voluntary recognition to the petitioner, request an election, or dispute the appropriateness of the proposed unit. If the employer or the exclusive representative disputes the appropriateness of the proposed unit, and if either the employer or petitioner requests a Board investigation, a Board agent will conduct further investigations to determine whether the unit proposed by the severance request should be granted. This process may include informal settlement conferences or a formal hearing.

If the employer has not granted recognition or requested further action by PERB, the party filing the severance request may request a Board investigation. Such a request must be filed within 90 days after the employer decision was filed or was due, whichever occurs first. (PERB Regulation 33230.)

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).

ELECTION

If the proposed unit is agreed to or deemed appropriate but voluntary recognition cannot be granted by the employer, 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 three choices: the name of the incumbent exclusive representative,¹⁶ the name of the employee organization which filed the severance request, and “no representation.”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 website.

APPEAL OF A DISMISSAL

If the unit is not found to be appropriate and the severance request is denied or if the request is dismissed following a Board investigation 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 request, please contact the appropriate PERB regional office. If you require legal assistance or advice, please contact your legal representative or the nearest County Bar Association for attorney referral services.

¹⁶ The incumbent is entitled to appear on the ballot unless the organization specifically disclaims interest in representing the new, severed unit and waived its right to be listed on the ballot. In such a case, unless more than one other employee organization has qualified to appear on a ballot, the employer would be required to recognize the petitioner.

¹⁷ Additional employee organizations might qualify to appear on the ballot as a result of filing “interventions” on the severance request 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 severance request (unless the close of a window period allows for fewer days). An intervention may also seek a different unit.

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).

This booklet is meant to provide a GENERAL overview regarding the filing of a severance request 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.