



# State Employment Relations Board

Public Employee  
Collective  
Bargaining in Ohio

# Public Sector Representation

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## **PUBLIC EMPLOYEE COLLECTIVE BARGAINING IN OHIO**

This booklet is intended for public employers, public employees, public employee organizations, and anyone with an interest in public employee collective bargaining within the jurisdiction of the Ohio State Employment Relations Board (SERB).

It provides basic information concerning Chapter 4117 of the Ohio Revised Code and the related rules contained in Chapters 4117-1 through 4117-25 of the Ohio Administrative Code.

This information is provided solely as an aid in understanding the concepts and procedures related to the subject matter. It is not an exhaustive treatment of the topic, nor can it be used as the basis for any action or legal position.

For more complete information, refer to the statute and the administrative rules cited above. A booklet containing the text of both, *ORC/OAC 4117*, is available at a nominal cost from the Clerk's Office of the State Employment Relations Board. An annotated edition of the statute and rules as well as other related publications and a reporting service are published by the West Group, Cleveland, Ohio, (800) 362-4500.

# TABLE OF CONTENTS

Ohio’s System of Public Employee Collective Bargaining .....	1
The Role of SERB .....	1
The Representation Process .....	1
The Public Employer/Employee under the Act .....	1
What is a Public Employer? .....	1
What is a Public Employee? .....	1
Confidential Employees .....	2
Management Level Employees .....	2
Supervisors .....	3
Unit Determination .....	3
Determination Factors .....	3
Unit Combinations/Special Considerations .....	3
Professional/Nonprofessional Employee Combinations .....	3
Safety and Fire Unit Restrictions .....	3
County Government .....	4
Colleges and Universities .....	4
Multi-Unit Bargaining .....	4
Request for Recognition .....	4
Filing Procedures .....	4
Proof of Service .....	4
Official Filings .....	4
Substantial Evidence .....	4
Posting of Notice .....	5
Employer Petition for Representation Election .....	5
Filing Objections .....	5
Objections to Recognition .....	6
Other Certification Requirements .....	6
Petition for Representation or Decertification Election .....	6
Restrictions on Filing Election Petitions .....	7
Petition for Representation Election .....	7
Petition for Decertification Election .....	7
After a Petition is Filed .....	8
Employer-Posted Notice of Petition .....	8
Rival Employee Organization Intervention .....	8
Intervention Filing Deadline .....	8
Incumbent Interest Disclaimed .....	8
Employer-Furnished List of Unit Employees .....	8
Consent Election Agreements .....	8

Hearings .....	9
Bargaining Unit Approval and Direction to Election .....	10
Notice of Representation Election .....	10
Election Notice .....	10
Objection to Election Notice .....	10
Access to Employees .....	10
Employee Eligibility .....	10
Eligibility Lists .....	10
Eligibility List Objections .....	11
Balloting .....	11
Secret Ballot Elections .....	11
Ballot Position .....	11
“No Representative” Exception .....	11
Mail-Balloting.....	12
Election Observers and Pre-election Conference .....	13
25-Foot Restriction .....	13
Eligibility Challenges .....	13
After the Election .....	14
Tallying Ballots .....	14
Determining Election Results .....	14
Runoff Elections .....	14
Election Objections .....	15
Proof of Service .....	15
Challenged Ballot/Objection Determination .....	15
Rerun Election .....	15
Election Certification .....	15
Petitions for Amendment of Certification or for Bargaining Unit Clarification .....	16
Amendment of Certification .....	16
Bargaining Unit Clarification .....	17
Petition Filing: General Requirements .....	17
Adding Unit Employees: Special Requirements .....	17
“Deemed-Certified” Units: Special Requirements .....	17
Further Information on Representation .....	18

# **Ohio's System Of Public Employee Collective Bargaining**

The Ohio Public Employees' Collective Bargaining Act was enacted to promote order and stability in public sector labor relations.

Under the Act, each public employee is guaranteed the individual right to choose whether to join and participate in an employee organization. The employees in a bargaining unit have the collective right to determine whether to be represented by an employee organization for collective bargaining purposes.

If a majority of the employees in a unit choose to be represented by an employee organization, that organization becomes the exclusive representative of *all* the employees in the unit.

The public employer and the exclusive representative are required to bargain in good faith with the object of negotiating a written agreement. If an agreement is negotiated, it will govern the wages, hours, and terms and conditions of employment of the unit employees for the length of time the agreement is in effect, which may be up to three years.

## **The Role of SERB**

The three-member State Employment Relations Board and its administrative staff were created by the Ohio Public Employees' Collective Bargaining Act of 1983. Acting as a neutral, the quasi-judicial board determines appropriate bargaining units, conducts representation elections, certifies exclusive bargaining representatives, monitors and enforces statutory dispute settlement procedures, adjudicates unfair labor practice charges, and determines unauthorized strikes.

In representation matters, SERB has the authority to determine the composition of bargaining units, to conduct elections, if necessary, to determine the will of the majority of unit employees, and, if an employee organization is chosen, to certify it as the exclusive representative of the employees in the unit.

## **The Representation Process**

The Ohio Public Employees' Collective Bargaining Act guarantees public employees the right to join or refrain from joining any employee organization of their own choosing for the purpose of bargaining collectively with their public employer.

The representation provisions described herein provide practical and workable procedures that assure the Act's promise of a free, democratic choice for public employees.

## **The Public Employer/Employee Under The Act**

### ***What is a Public Employer?***

A public employer is the state or any political subdivision of the state. This includes school districts, state institutions of higher learning, public or special districts, state agencies, authorities, commissions and boards. Also included are counties, municipal corporations with populations of at least 5,000, or townships with populations of at least 5,000 in unincorporated areas. Population data is taken from the most recent federal 10-year census.

### ***What is a Public Employee?***

A public employee is any person employed by a public employer. This definition includes individuals working under a contract between a public employer and private employer over whom the National Labor Relations Board has declined to take jurisdiction because of the private employer's contractual relationship with the public employer.

Excluded from public employee status (for collective bargaining purposes) are:

- Elected officials.
- Employees of any public legislative body whose principal duties are directly related to the function of that body.
- Staff employees of the chief executive of a public employer (the governor, a mayor, a board of county commissioners) whose principal duties are directly related to the performance of the executive function.
- Members of the organized militia while training or on active duty.
- Employees of SERB or the State Personnel Board of Review.
- Confidential employees.
- Management level employees.
- Employees and officers of the courts, assistants to the attorney general, assistant prosecuting attorneys, and employees of the clerks of courts who perform a judicial function.
- Employees of a public official who act in a fiduciary capacity, appointed pursuant to O.R.C. Section 124.11.
- Supervisors.
- Students whose work is primarily for educational training purposes (graduate assistants, associates, residents or interns), or other students who work part-time (less than half a year) in the bargaining unit.
- Employees of county boards of elections.
- Seasonal employees and casual employees as determined by SERB.
- Part-time faculty members of institutions of higher education.
- Employees of the board of directors of the Ohio low-level radioactive waste facility development authority created in O.R.C. Section 3747.05.
- Participants in a work activity, developmental activity, or alternative work activity under O.R.C. Sections 5107.40 to 5107.69 who perform a service for a public employer that the employer needs but is not performed by an employee of the public employer if the participant is not engaged in paid employment or subsidized employment pursuant to the activity.
- Employees included in the career professional service of the department of transportation under O.R.C. Section 5501.20.
- Employees who must be licensed to practice law in this state to perform their duties as employees.

#### ***Confidential Employees***

According to O.R.C. Chapter 4117, a confidential employee is a person who works in a public employer's personnel offices and deals with information to be used by the public employer in collective bargaining or who works in a close continuing relationship with persons directly participating in collective bargaining on behalf of the employer.

#### ***Management Level Employees***

According to O.R.C. Chapter 4117, a management level employee is a person who formulates policy on behalf of the public employer or who directs the implementation of policy. Management level employees

may be required to assist in preparing for collective bargaining negotiations on behalf of the public employer, to administer collective bargaining agreements, or to have a major role in personnel administration.

### *Supervisors*

According to O.R.C. Chapter 4117, a supervisor is a person who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or direct public employees; or to adjust grievances; or to effectively recommend such actions. The exercise of this authority must require the use of independent judgment and not be of a routine or clerical nature. Disputes concerning supervisory status are decided by SERB on a case-by-case basis.

In public school districts, superintendents, assistant superintendents, principals, and assistant principals (with or without certification) are supervisors. Department chairmen or consulting teachers are not supervisors under the Act.

In municipal police and fire departments, only the chief or those individuals authorized to act in place of the chief are usually considered supervisors.

Among faculty members of state institutions of higher education, department or division heads are supervisors.

## **Unit Determination**

### *Determination Factors*

Actual duties, not necessarily job classifications, determine who will be in a particular bargaining unit. While SERB is the final authority in designating the appropriate bargaining unit for purposes of collective bargaining, the Act requires SERB to consider these factors:

- What do the employees want?
- Would employees in the proposed unit share sufficient common interests?
- Would the wages, hours, and other working conditions of employee classifications be similar?
- Would exclusions result in having too many small units and would the number of units overly fragment the public employer's workforce?
- What effect would the proposed unit design have on the efficiency of the public employer's operations?
- Does the proposed unit fit the public employer's administrative structure and is it reasonable in light of the employer's collective bargaining history?

### *Unit Combinations/Special Considerations*

**Professional/nonprofessional employee combinations.** Professional and nonprofessional employees can be included in the same unit if a majority of professional employees and a majority of nonprofessional employees vote for inclusion during a SERB-conducted election. "Professional employee" is defined in O.R.C. Section 4117.01(J).

**Safety and fire unit restrictions.** In municipal police departments, county sheriffs' departments, and township or district police departments, rank and file members of the department may not be included in the same unit with members who are ranked sergeant or above. Members of police or fire departments or the State Highway Patrol must maintain units separate from other department employees. Other separate classifications include penal or mental institution guards, correction officers, special police personnel, psychiatric attendants, correctional youth leaders, and employees who enforce rules against other employees.

**County government.** Boards of county commissioners, as well as other elected county officials such as sheriffs, engineers, treasurers, and auditors, are public employers. The Act prohibits bargaining units that contain employees within the jurisdiction of more than one elected county office holder, unless the office holder and the board of county commissioners agree to a unit.

**Colleges and universities.** No bargaining unit can contain employees of more than one institution of higher education, nor can a unit be inconsistent with an institution's accreditation standards. A bargaining unit can include employees of all branches and campuses located within Ohio.

**Multi-unit bargaining.** Restrictions on bargaining-unit composition sometimes result in an employer bargaining with two or more employee units. The Act allows public employers and employee organizations to bargain more than one unit contract at the same time and to include those contracts in one written agreement.

Under the Act, public employers are not required to bargain with anyone except the exclusive representative of their employees. Employees can demonstrate majority support for an exclusive representative by one of these procedures:

1. **A request for recognition.** If a majority of employees in a proposed unit express support for a particular employee organization to function as their exclusive representative, the employee organization may request the public employer and SERB to recognize it as the exclusive representative. A request that does not provide substantial evidence of majority support will be dismissed by SERB.
2. **Petitioning SERB for a representation election.** Employees in a proposed unit may cast a secret ballot in a SERB-conducted election indicating their preference for a particular representative or no representative. A simple majority of the total votes cast for any choice prevails.

## **Request For Recognition**

### ***Filing Procedures***

Employee organizations may seek certification as the exclusive representative of a proposed bargaining unit with a *Request for Recognition* (Form ERB 1007), which is available from SERB or its website. This self-explanatory form must be completed fully, filed at SERB's Columbus office and served upon the employer. SERB will not accept a *Request for Recognition* without proof of service upon the employer.

### ***Proof of Service***

Proof of service is a signed statement that a request for recognition has been provided to the employer. Proof of service must include the address to which the document was delivered, how it was delivered, the date of delivery, and a signed acknowledgment by a recipient. Service may be made by mail or personal delivery to a recipient's principal office or personal residence. Service by mail is complete upon mailing.

### ***Official Filings***

Filing is complete only when received by SERB. Documents must be filed at SERB's Columbus office. Filing may be by mail or personal delivery. Officially filed documents are evidenced by a SERB time stamp. SERB is open to receive filings from 8:30 a.m. to 5 p.m., Monday through Friday.

### ***Substantial Evidence***

Only the exact documentation described in Ohio Administrative Code Chapter 4117-3 is acceptable as substantial evidence of majority support for a Request for Recognition. Substantial evidence must comply *exactly* with one of these:

1. Original signed statements of employees (not photocopies), with *each signature* dated not more than one year prior to the date of filing. Statements (including, but not limited to, authorization cards or

petitions) must clearly authorize the employee organization to represent the employees for purposes of collective bargaining.

2. Dues deduction authorizations or dues deduction lists showing named employees have paid membership dues to the employee organization. Authorizations or lists must be in effect as of the payroll period immediately preceding the filing of the Request for Recognition.

3. Current cash dues receipts showing that named employees have paid membership dues to the employee organization.

SERB will request from an employer an alphabetized, numbered payroll list of employees in the proposed unit. Evidence supplied in support of a Request for Recognition will be checked against this list. SERB may request any other information necessary to determine substantial evidence.

### ***Posting of Notice***

After a public employer receives the Request for Recognition, that employer must post a notice to employees indicating the Request for Recognition has been filed. A *Notice to Employees of Request for Recognition* (Form ERB 1008) is available from SERB or its website.

This notice must be posted in each facility where employees in the proposed unit work. The posted notice must be no smaller than 8 1/2 by 11 inches, must be filed at SERB's Columbus office, and must contain:

1. A description of the proposed bargaining unit indicating proposed included and excluded unit classifications.
2. The name of the employee organization requesting recognition.
3. The date the employer received the Request for Recognition.
4. A statement advising employees that any objection(s) to certification must be filed at SERB's Columbus office within 21 days of an employer's receipt of a Request for Recognition.

Postings must remain for 21 days in locations where employees can reasonably be expected to review them. An employer must reasonably ensure that notices are not altered, defaced, or covered. Upon posting, the employer must submit to SERB a statement certifying posting, together with a copy of the notice and Request for Recognition. A *Certificate of Posting* (Form ERB 1001) is available from SERB or its website.

### ***Employer Petition for Representation Election***

A public employer may respond to a Request for Recognition by filing with SERB a *Petition for Representation Election—Employer* (Form ERB 1024), which is available from SERB or its website. This self-explanatory form must be completed *fully* and filed (with one copy) at SERB's Columbus office within 21 days of the employer's receipt of a Request for Recognition. Petitions will be accepted by hand or mail delivery at SERB's Columbus office and must contain proof of service. SERB will investigate the petition to determine whether a question of representation exists. A hearing may be required to make this determination.

### ***Filing Objections***

The 21-day posting of a notice gives interested parties, including employees, the opportunity to object to certification pursuant to the Request for Recognition.

Employers and employee organizations objecting to the Request for Recognition must file their objections at SERB's Columbus office and serve them upon both the employer and the requesting employee organization no later than 21 days following the employer's receipt of the Request for Recognition.

Employees filing substantial evidence indicating that they do not wish to be represented by the employee organization are not required to notify their employer or the employee organization. Such evidence, including original, dated signatures and the SERB case number, should be filed with SERB no later than 21 days following the employer's receipt of the Request for Recognition.

If no Petition for Representation Election or objections are filed in response to a proper Request for Recognition, and if employees' substantial evidence does not raise a question as to the employee organization's majority support, SERB will certify the employee organization as the exclusive representative, provided that SERB determines the unit to be appropriate.

### ***Objections to Recognition***

An objection to recognition may be raised with SERB on one of these grounds:

1. An employer may file at SERB's Columbus office a Petition for Representation Election-Employer. In this case, SERB will determine whether a question of majority representation exists that would warrant a representation election.
2. Any employee may file at SERB's Columbus office substantial evidence (a signed and dated statement) that he or she does not wish to be represented by the employee organization filing the Request for Recognition. Statements or petitions signed and individually dated by more than one employee are acceptable. The combined statements must show that at least 50% of the employees in the proposed bargaining unit do not wish to be represented by the requesting employee organization.
3. Another employee organization may submit substantial evidence that at least 10 percent of the bargaining-unit employees prefer to be represented by that employee organization rather than the employee organization named in the Request for Recognition. Substantial evidence must meet the standards described on page 5. The substantial evidence must clearly state that signing employees desire to be represented for the purposes of collective bargaining by the employee organization filing the objection.
4. Any person may file at SERB's Columbus office substantial evidence that a proposed unit is not appropriate. Substantial evidence here must consist of a clear, concise statement as to why the unit is not appropriate under the provisions of O.R.C. Section 4117.06(D).

Full evaluation of objections may require a hearing. If SERB determines, based on objections, that a doubt of majority support among the proposed unit's employees exists, SERB may direct the case to election or it may dismiss the request.

### ***Other Certification Requirements***

Regardless of objections, SERB is the final authority in determining certification of an exclusive representative. SERB will not certify an exclusive representative if a proposed bargaining unit is inappropriate, if evidence submitted in support of the Request for Recognition is not substantial, or if any other requirements for certification have not been met.

## **Petition For Representation Or Decertification Election**

SERB is authorized to conduct secret ballot elections in response to petitions for representation or decertification election. Petitions may be filed under one of these circumstances:

1. At least 30 percent of public employees in an unrepresented unit, or an employee organization acting on their behalf, express an interest in representation.
2. At least 30 percent of public employees in a represented unit, or an employee organization acting on their behalf, allege that a majority of unit employees desire to be represented by the petitioning employee organization rather than by the incumbent employee organization.

3. A public employer files a Petition for Representation Election in response to receipt of a Request for Recognition. This petition states an employer's doubt that majority support exists in a bargaining unit for the employee organization named in the request for recognition.
4. A majority of the employees in a represented unit allege that a majority of unit employees no longer wish to be represented by the incumbent employee organization or by any other organization. If election results confirm the allegation, SERB will decertify the employee organization and revoke its status as exclusive bargaining-unit representative.

### ***Restrictions On Filing Election Petitions***

For bargaining units already represented, a petition for election can be filed no less than one year from the date of SERB certification, and only during the period from 120 days to 90 days before the expiration date of a collective bargaining agreement, or during the period from the expiration date of the agreement until a new written agreement is concluded. For this purpose, extensions of the agreement do not affect the original expiration date.

No election can be conducted for any appropriate bargaining unit in which SERB has conducted an election in the preceding 12 months or during the term of any lawful collective bargaining agreement between a public employer and an exclusive representative.

### ***Petition For Representation Election***

Employees, through an employee organization of their choice, may seek representation with a *Petition for Representation Election-Employee Organization* (Form ERB 1010), which is available from SERB or its website. This self-explanatory form must be completed *fully*. In addition to the form, petitioners must file at SERB's Columbus office a showing of interest demonstrating that at least 30 percent of employees in the proposed unit wish to be represented by the petitioning employee organization. The showing of interest must comply exactly with one of these:

1. Original signed statements of employees (not photocopies), with *each signature* dated not more than one year prior to the date of filing. Statements (including, but not limited to, authorization cards or petitions) must clearly authorize the employee organization to represent the employees for purposes of collective bargaining.
2. Dues deduction authorizations or dues deduction lists showing named employees have paid membership dues to the employee organization. Authorizations or lists must be in effect as of the payroll period immediately preceding the filing of the petition.
3. Current cash dues receipts showing that named employees have paid membership dues to the employee organization.

### ***Petition For Decertification Election***

Employees in units whose representative was certified by SERB after April 1, 1984, may seek decertification by filing a *Petition for Decertification Election* (Form ERB 1011), which is available from SERB or its website. This self-explanatory form must be completed *fully*. In addition to the form, petitioners must file at SERB's Columbus office a showing of interest demonstrating that at least a majority of the employees in the unit no longer wish to be represented by the incumbent employee organization. Showing of interest must comply *exactly* with the following:

Original signed statements of employees (not photocopies), with *each signature* dated not more than one year prior to the date of filing. Statements must clearly indicate the desire of the employee not to be represented by the named incumbent employee organization for the purposes of collective bargaining, and in the case of an individual petitioner filing on behalf of a group of employees, the statement must clearly indicate that the employee authorizes the individual petitioner to act as his or her agent in filing the Petition for Decertification Election.

### ***After A Petition Is Filed***

Once a petition for a representation or decertification election has been filed, SERB will conduct an investigation. If SERB determines there is not reasonable cause to believe that a question of representation exists, it will dismiss the petition and notify all parties.

### ***Employer-Posted Notice of Petition***

After a petition for representation or decertification election is received, the employer must post a SERB-issued *Notice to Employees* (Form ERB 2012), which is available from SERB or its website, stating a petition has been filed and explaining employee rights under the Public Employees' Collective Bargaining Act.

Notices must be posted in locations where employees can reasonably be expected to review them. The posting must remain until an election or until SERB has otherwise disposed of the petition. Employers must reasonably ensure notices are not altered, defaced, or covered.

### ***Rival Employee Organization Intervention***

A rival employee organization can ask to become a party to the case by means of an "intervenor's motion" provided it has the support of at least 10 percent of employees in the proposed bargaining unit. Showing of interest filed in support of a motion to intervene must comply *exactly* with these:

1. Original signed statements of employees (not photocopies), with *each signature* dated not more than one year prior to the date of filing. Statements (including, but not limited to, authorization cards or petitions) must clearly authorize the employee organization to represent the employees for purposes of collective bargaining.
2. Dues deduction authorizations or dues deduction lists showing that named employees have paid membership dues to the employee organization. Authorizations or lists must be in effect as of the payroll period immediately preceding the filing of the petition.
3. Current cash dues receipts showing that named employees have paid membership dues to the employee organization.

### ***Intervention Filing Deadline***

Intervention will be permitted only if the motion to intervene is filed at SERB's Columbus office with proof of service upon all other parties by the date specified in the official *Notice to Employees* issued by SERB.

### ***Incumbent Interest Disclaimed***

When a rival employee organization files a Petition for Representation Election, or when a Petition for Decertification Election has been filed, an incumbent employee organization will be treated as a party to the election unless interest in the unit is disclaimed and the disclaimer is granted by SERB.

### ***Employer-Furnished List of Unit Employees***

No later than 10 days after receiving a petition for representation or decertification election, an employer must file at SERB's Columbus office and serve upon all other parties alphabetized, numbered payroll list of all employees in the proposed unit. The list is to be compiled from the pay period ending just prior to petition filing. This list must be accompanied by proof that it has been served upon the other parties.

Proof of service must meet standards as described on page 4. The employer may also be required to provide any other information SERB deems necessary to conduct a thorough petition investigation.

### ***Consent Election Agreements***

Once the intervention period following posting of the *Notice to Employees* has passed, a SERB agent will contact all parties to the proposed election to determine if they are in agreement concerning all elements of

the election. If there is agreement among the parties, the SERB agent will work with the parties to draft a consent election agreement.

A Consent Election Agreement is effective only if signed by all concerned parties and must contain:

1. A statement that parties waive their right to hearing.
2. A description of the bargaining unit, listing included and excluded classifications.
3. The proposed date(s), time(s), and place(s) OR polling period of election.
4. The date determining which employees will be eligible to vote. Only persons employed as of a stated date and in classifications included in the voting unit are eligible to vote. The agreed eligibility date is worked out among parties with the assistance of a SERB agent. If parties are unable to agree on an eligibility date, SERB will establish the date pursuant to O.A.C. Rule 4117-5-03(A).

If the consent election agreement is approved by SERB, a SERB agent will conduct the election during the polling period OR at the date(s), time(s), and place(s) proposed in the agreement.

### *Hearings*

If parties cannot reach agreement, SERB may direct a matter to hearing to resolve disputed issues. Upon receiving notice of hearing, an employer must immediately post that notice in a place where employees can reasonably be expected to review it. The notice is to remain posted until the hearing is concluded. The employer must reasonably ensure that the notice is not altered, defaced, or covered.

Prior to hearing, parties must submit written statements of all issues to be raised. A party that fails to submit this statement may be denied an opportunity to present evidence at the hearing. If SERB finds that a question of representation exists, it may direct an election to resolve the question.

# **Bargaining Unit Approval and Direction To Election**

Before an election can be conducted, SERB must approve the bargaining unit(s). Upon approval, whether as a result of a consent election agreement or as the result of a hearing to resolve disputed issues, SERB will direct an election.

## **Notice of Representation Election**

### *Election Notice*

After unit determination issues have been resolved and the election has been directed, SERB issues to all parties a *Notice of Representation Election via e-mail*. It contains:

1. A description of the bargaining unit.
2. The polling period (mail ballot) or dates, times, and places of the election (on-site).
3. The employment date used to determine voter eligibility.
4. A sample ballot.
5. The tallying of ballots date.

The notice must be posted by the employer within three days of receipt and no later than 10 days before the election.

An employer must reasonably ensure that notices are not altered, defaced, or covered. The notice must remain conspicuously posted until voting is complete.

### *Objection to Election Notice*

Parties objecting to the form or content of an election notice may file a written objection with SERB. Objections will be accepted until three days before an election.

### *Access to Employees*

No party shall have an advantage over another in gaining access to employees during organizational or campaign activity. The employer or employee organization(s) may hold meetings to discuss representation or election issues, but attendance must be voluntary and available to all employees in the voting unit. An employer who holds such a meeting during work time must provide the employee organization(s) with equal access to all employees in the voting unit during work time.

If a party believes that fair access has been violated, it may raise the issue in a post-election objection or it may file an unfair labor practice charge (see the SERB brochure *Unfair Labor Practices*).

## **Employee Eligibility**

### *Eligibility Lists*

Before an election, employees eligible to vote within particular classifications must be identified. Accordingly, the employer must submit an election eligibility list to SERB and to all other parties involved. A list must be alphabetized, numbered, and include employees' home addresses. SERB may also require an employer to arrange a list according to voting sites or in any other appropriate manner. For mail-ballot elections, when the Employer submits the eligibility list, it must also submit mailing labels to SERB for all individuals on the list.

An eligibility list must be filed and served by the earlier of two dates:

1. Ten days after SERB issues a direction to election; or
2. Ten days before an election begins.

If an employer fails to file an eligibility list, SERB may compile a list from any available sources.

### ***Eligibility List Objections***

If all parties agree on inaccuracies in the eligibility list, they may jointly agree, in writing, to additions to or deletions from the list at any time prior to or during the pre-election conference (on-site election) or prior to the mailing of the ballot kits (mail-ballot election). If there is disagreement concerning the eligibility list, a party may file an objection concerning the inaccuracies it finds. Objections must be filed prior to the election. Failure to file with SERB a written objection to the form or content of the election eligibility list prior to the start of the election constitutes a waiver of the objection if the objecting party knew or should have known of the defect prior to the election.

## **Balloting**

### ***Secret Ballot Elections***

Elections are by secret ballot. Proxy votes are prohibited. For on-site elections, mail votes are prohibited. All elections are conducted by SERB agents.

### ***Ballot Position***

Employee organizations that have qualified for the ballot are given their choice of ballot position based on the order in which they filed their petitions or interventions. Incumbent organizations, however, are always given first choice of ballot position.

### ***“No Representative” Exception***

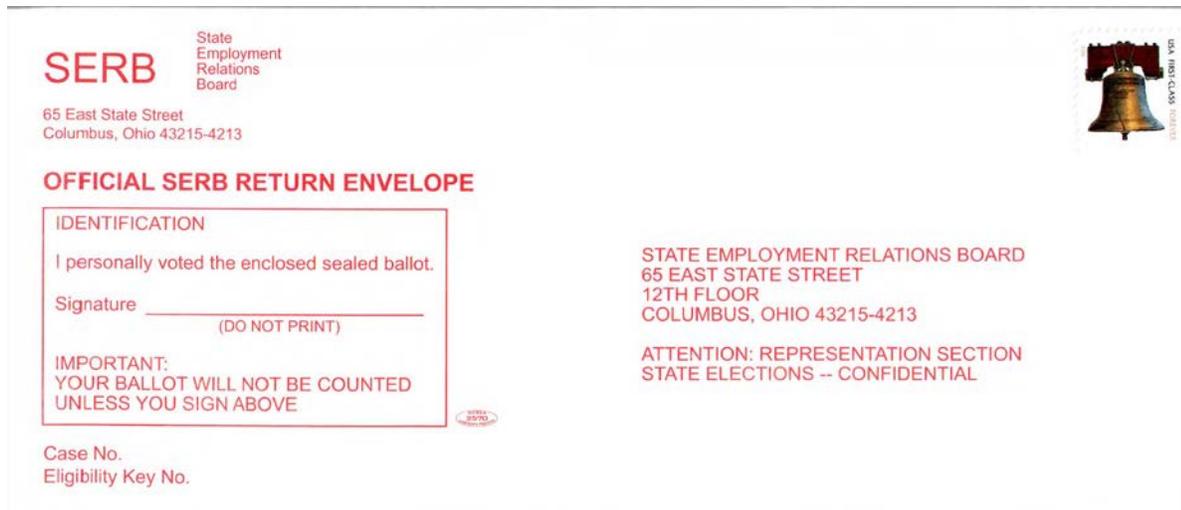
In representation elections the balloting choice “no representative” must appear on every SERB ballot, with the exception of ballots used in a runoff election. “No Representative” appears in a runoff election only if it was among the top two vote-getting choices in the original election.

# MAIL-BALLOTING: Election Process

On January 14, 2010, SERB instituted elections via mail-ballot.

## Mail-Ballot Kits

At least three days prior to the commencement of the polling period, a mail-ballot kit will be sent to each eligible voter. The kit will contain a ballot, a ballot envelope, a pre-addressed, stamped return envelope, and instructions. Each voter is assigned an eligibility key number that is known only by the SERB agent and remains confidential.



The image shows the front of an official SERB return envelope. At the top left is the SERB logo (State Employment Relations Board) and address: 65 East State Street, Columbus, Ohio 43215-4213. At the top right is a small image of the Liberty Bell with the text 'USA FIRST CLASS' and 'SERB'. The main heading is 'OFFICIAL SERB RETURN ENVELOPE'. Below this is a box for 'IDENTIFICATION' containing the statement 'I personally voted the enclosed sealed ballot.', a signature line with '(DO NOT PRINT)' below it, and a warning: 'IMPORTANT: YOUR BALLOT WILL NOT BE COUNTED UNLESS YOU SIGN ABOVE'. To the right of this box is the return address: 'STATE EMPLOYMENT RELATIONS BOARD, 65 EAST STATE STREET, 12TH FLOOR, COLUMBUS, OHIO 43215-4213' and 'ATTENTION: REPRESENTATION SECTION, STATE ELECTIONS -- CONFIDENTIAL'. At the bottom left are fields for 'Case No.' and 'Eligibility Key No.'.

NOTE: Although a signature is required on the return envelope, it will never be associated with the actual ballot.

## Polling Period

The polling period lasts fourteen days. Ballots may be mailed to SERB or delivered in person to the SERB offices. Upon receipt, SERB return envelopes are time-stamped, immediately given to the SERB agent in charge of the election, logged and verified, placed in a secured ballot box, and remain sealed until the time ballots are to be counted.

Ballots returned to SERB postmarked prior to the first day of the polling period will be valid and counted in the election. Ballots returned to SERB postmarked after the final day of the polling period will be challenged by SERB; only if all parties agree to waive the challenge will the ballot be counted in the election. Ballots returned unsigned will be challenged by SERB; only if all parties agree to waive the challenge will the ballot be counted in the election.

Employees who have not received a ballot may contact the SERB agent in charge of the election via phone or email to provide an updated address and/or obtain a duplicate mail-ballot kit. If a duplicate mail-ballot kit is issued, it will be assigned a different eligibility key number and all party representatives will be informed. Should a kit be returned by the post office, the SERB agent will contact the Employer's representative to verify if another address is on file. SERB will only issue a duplicate kit for an address provided by the Employer or the actual employee.

## **ON-SITE: Election Process**

### **Election Observers and Pre-election Conference**

Parties may have an equal number of observers at a polling site. The selection and number of observers is subject to SERB agent approval.

Observers must be non-supervisory, non-managerial employees of the employer. Unit employees may serve as observers. Observers will participate without loss of pay.

Parties must file observer/alternate observer lists with SERB. Copies must be served upon the other parties no later than 10 days before an election.

A SERB agent will conduct a pre-election conference between principal party representatives and their observers. An employer is required to release observers from work with no loss in pay for this conference. During the conference, the SERB agent explains party responsibilities and reviews election procedures. At this time, parties may review or amend the voter eligibility list. All parties must agree to any list changes.

#### ***25-Foot Restriction***

The polling site entrance is determined solely by the SERB agent. During polling, only employees in the process of voting, designated observers, and SERB agents may come within 25 feet of the entrance. Distribution or posting of campaign literature within this area is prohibited.

#### ***Eligibility Challenges***

An employee believing he or she has the right to vote in an election, but whose right is disputed by an observer or a SERB agent, is permitted to cast a challenged ballot. A SERB agent will explain this procedure on site.

## **After the Election**

### ***Tallying Ballots***

The tallying of ballots is open to the public. If an on-site election's counting is to be done off-site, observers and one representative of each party may observe the sealing of the ballot box. All mail-ballot elections are conducted at SERB's offices in Columbus, Ohio. Only a SERB agent may move the ballot box. At the tally, a SERB agent will attempt to resolve challenged ballots before counting ballots. SERB agents count ballots publicly and in the presence of party representatives and observers. Upon completion, each party receives a written tally. If a party is not in attendance, a copy of the written tally will be e-mailed to the party representative on file.

### ***Determining Election Results***

In order to prevail in a SERB-conducted election, a choice on the ballot must receive a majority of the valid ballots cast, except:

1. In a representation election in which only the petitioning employee organization and "no representative" appear on the ballot, "no representative" prevails in the event of a tie vote.
2. In a decertification election in which only the incumbent employee organization and "no representative" appear on the ballot, the incumbent employee organization prevails in the event of a tie vote.
3. In a runoff election between two employee organizations, the incumbent employee organization prevails in the event of a tie vote.

### ***Runoff Elections***

When there are three or more ballot choices and no choice receives more than 50 percent of the valid ballots cast, SERB will direct a runoff election. The two choices receiving the highest number and the second highest number of votes in the original election will appear on the runoff ballot. Runoff election eligibility is limited to employees who were eligible to vote in the first election and remain eligible on the runoff date (unless SERB directs otherwise).

## **Election Objections**

Parties may file objections to election conduct or to conduct affecting the results of the election. Objections must contain a brief statement of the charge and supporting evidence. Objections without supporting evidence may be dismissed. Objections must be filed with SERB and other parties to an election within 10 days of receipt of the tally of ballots. Parties must file a written response to objections within 10 days of receipt of objections.

### ***Proof of Service***

Objections that do not contain proof of service will not be accepted by SERB. Proof of service is a signed statement by the objecting party that the objection has been delivered to the required parties. It must include the recipient's name, address, e-mail address, and the date and method of delivery. An acknowledgement of receipt signed by the recipient is also acceptable.

Service may be made by e-mail, mail, personal delivery to the recipient's principal office or residence. Service by mail is complete upon mailing.

### ***Challenged Ballot/Objection Determination***

If election objections are filed or challenged ballots are sufficient in number to affect an election's result, SERB will investigate.

Parties to the election must file position statements on challenged ballots within 10 days of tally receipt.

Challenges or objections may be directed to hearing.

In its final determination, SERB may dismiss the objections or challenges. It may also direct the counting of some or all challenged ballots. If SERB finds that objectionable conduct has cast doubt on the election's validity, it may set aside the election and direct a rerun election.

### ***Rerun Election***

Rules governing rerun elections are the same as for any election. Only employees who were eligible to vote in the first election and who remain eligible on the date of the rerun election are eligible to vote (unless SERB directs otherwise).

## **Election Certification**

Upon determination of election results, SERB will issue to each party a certification of the results. If an employee organization prevails in the election, it will be certified by SERB as the exclusive representative of the bargaining unit employees. Certification is immediate upon the SERB decision.

An organization may also be certified if SERB determines that a free and untrammelled election is impossible due to an employer's unfair labor practices, and that the employee organization at one time had a majority of support in the employee unit.

# **Petitions for Amendment of Certification or for Bargaining Unit Clarification**

## *Amendment of Certification*

Job classifications may be abolished or added after the original certification. The parties may desire to amend certification with a *Petition for Amendment of Certification* (Form ERB 1019), which is available from SERB or its website. This self-explanatory form must be completed *fully*. SERB has the final authority to amend certification. (See “*Deemed-Certified*” Units: *Special Requirements* at the end of this section.)

### ***Bargaining Unit Clarification***

Parties may question whether the current job duties of a certain employee indicate the position should be included in or excluded from the bargaining unit. In this case, parties may file at SERB's Columbus office a *Petition for Clarification of Bargaining Unit* (Form ERB 1020), which is available from SERB or its website. SERB must determine whether the current job duties of the position fall within the included or excluded categories.

Unlike a Petition for Amendment of Certification, a Petition for Clarification of Bargaining Unit does not request a change in certification or unit composition. Its intent is to decide the question based upon the unit description as originally certified. SERB is the final authority in the addition or deletion of bargaining-unit employees based upon unit description.

#### ***Petition Filing: General Requirements***

Only an exclusive representative or an employer may file a Petition for Amendment of Certification or a Petition for Clarification of Bargaining Unit. An original and one copy of the signed petition must be filed at SERB's Columbus office. A petition is invalid unless it contains proof of service.

#### ***Adding Unit Employees: Special Requirements***

If parties file a petition to amend certification to add employees to a unit, the addition may be permitted only if the number of employees to be added is substantially smaller than the number of employees in an existing unit. Whether the number is substantially smaller is usually determined on a percentage basis.

#### ***"Deemed-Certified" Units: Special Requirements***

The Public Employees' Collective Bargaining Act recognizes the validity of the bargaining relationships established by mutual agreement of parties prior to the April 1, 1984 implementation of the Act. These units are "deemed certified" and do not require SERB certification.

SERB will not alter the composition of a deemed-certified unit pursuant to a unilateral filing of a Petition for Amendment of Certification by either the employer or the exclusive representative that is opposed by the other party. SERB will amend the composition of a deemed-certified unit if the exclusive representative files a Petition for Amendment of Certification that is unopposed by the employer. SERB will clarify the composition of a deemed-certified unit upon the filing of a Petition for Clarification of Bargaining Unit by either the employer or the exclusive representative.

## **Further Information On Representation**

For more information or assistance concerning representation matters, contact:

Representation Section  
State Employment Relations Board  
65 East State Street, Suite 1200  
Columbus, Ohio 43215-4213  
Telephone: (614) 644-8573

Forms may be obtained through SERB's website at *www.serb.state.oh.us*.

SERB's offices are open 8:30 a.m. to 5 p.m., Monday through Friday.

***An Equal Opportunity Employer***

# State Employment Relations Board



**Representation Section  
65 East State Street, 12th Floor  
Columbus, Ohio 43215-4213  
(614) 644-8573**

Angela Phelps-White.....Administrator  
Tonya D. Jones.....Labor Relations Specialist  
Licia M. Sapp.....Labor Relations Specialist

**Visit SERB on the web at [www.serb.state.oh.us](http://www.serb.state.oh.us)**