

456 CMR 14.00: QUESTIONS OF REPRESENTATION

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14.01: Petitions

- (1) All petitions filed under 456 CMR 14.00 shall be in the form prescribed by the Department.
- (2) All petitions filed under 456 CMR 14.00 shall be in writing and shall contain a declaration by the person signing them, under the penalties of perjury, that the contents are true and correct to the best of the signatory's knowledge or belief.

14.02: Petitions by Employers

- (1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by an employer alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit shall contain the following information:
 - (a) The correct name and address of the employer and its designated representative for purposes of collective bargaining;
 - (b) A full description of the bargaining unit involved, specifying the job classifications of the employees of the petitioning employer included therein or excluded therefrom, and the approximate number of employees therein;
 - (c) The name, address and affiliation of the exclusive representative, if any;
 - (d) The date of recognition or certification, if any;
 - (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.02(1)(b);
 - (f) The names and addresses of all employee organizations known to have claimed recognition as representatives of a substantial number of employees described in 456 CMR 14.02(1)(b), giving the date of each claim;
 - (g) The names and addresses of other employee organizations known to the employer to have an interest in representing the employees described in 456 CMR 14.02(1)(b); and
 - (h) Any other relevant facts which may be required in a petition form issued by the Department.
- (2) A petition filed by an employer seeking clarification or amendment of an existing bargaining unit shall contain the following information:
 - (a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses;
 - (b) A complete description of the bargaining unit and, if the bargaining unit is certified by the Department, an identification of the case number(s) in which the existing certification was issued and amended;
 - (c) A full description of the job classifications sought to be included or excluded by the proposed clarification;

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- (d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.02(2)(b) and (c);
- (e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee;
- (f) The number of employees in the present bargaining unit and in the unit proposed by the clarification;
- (g) A statement by the petitioner setting forth reasons why the petitioner seeks clarification of the unit; and
- (h) Any other relevant facts which may be required in a petition form issued by the Department.

(3) All petitions filed pursuant to 456 CMR 14.02 must be served on all incumbent employee organizations or their legal counsel, if any, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.03: Petitions by Employee Organizations

(1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by an employee organization alleging that a substantial number of employees wish to be represented by it shall contain the following information:

- (a) The correct name, address and affiliation of the employee organization;
- (b) The correct name and address of the employer and its designated representative for the purposes of collective bargaining;
- (c) A full description of the bargaining unit claimed to be appropriate, including job titles, and the approximate number of employees therein;
- (d) The name and address of all employee organizations known to represent or known to claim to represent any of the employees in the bargaining unit claimed to be appropriate;
- (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.03(1)(c); and
- (f) Any other relevant facts which may be required in a petition form issued by the Department.

(2) A petition filed by an employee organization seeking clarification or amendment of an existing bargaining unit shall contain the following information:

- (a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses;
- (b) A complete description of the bargaining unit and, if the bargaining unit was certified by the Department, an identification of the case number(s) in which the existing certification was issued and amended;
- (c) A full description of the job classifications sought to be included or excluded by the proposed clarification;
- (d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.03(2)(b) and (c);
- (e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee;
- (f) The number of employees in the existing bargaining unit and in the unit proposed by the clarification;
- (g) A statement by the petitioner setting forth reasons why the petitioner seeks clarification of the unit; and
- (h) Any other relevant facts which may be required in a petition form issued by the Department.

(3) All petitions filed pursuant to this section must be served on the employer and all incumbent employee organizations or their legal counsel, if any, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.04: Petitions by Employees

- (1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by or on behalf of a substantial number of employees in a unit alleging that the exclusive representative no longer represents a majority of the employees in the unit shall contain the following information:
 - (a) The correct name and address of the petitioner;
 - (b) The correct name and address of the employer and its designated representative for the purposes of collective bargaining, if known;
 - (c) A full description of the bargaining unit involved, and the approximate number of employees in the unit;
 - (d) The name, address and affiliation of the recognized or certified representative;
 - (e) The date of recognition or certification;
 - (f) The expiration date of the current collective bargaining agreement covering the employees described in 456 CMR 14.04(1)(c), if any; and
 - (g) Any other relevant facts which may be required in a petition form issued by the Department.
- (2) Individual employees may not file petitions for clarification or amendment of certification.
- (3) All petitions filed pursuant to 456 CMR 14.04 must be served on the employer and all incumbent employee organizations or their legal counsel, if any, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.05: Showing of Interest

- (1) A sufficient showing of interest is the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive representative or have signed a petition seeking decertification of an incumbent employee organization pursuant to 456 CMR 11.13: *Showing of Interest*.
- (2) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees who are not currently represented for purposes of collective bargaining shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Department determines that the petitioner has been designated by at least 30% of the employees involved to act in their interest.
- (3) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees already represented for purposes of collective bargaining and no petition filed under 456 CMR 14.04 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Department determines that the petitioner has been designated by at least 50% of the employees involved to act in their interest.
- (4) No motion to intervene filed under 456 CMR 14.18 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Department determines that the intervenor has been designated by at least 10% of the employees involved to act in their interest. However, any incumbent exclusive representative who files a motion to intervene need not comply with the requirements under 456 CMR 14.05.
- (5) Authorization cards or other written evidence of a "showing of interest" (as defined in 456 CMR 11.13: *Showing of Interest*) must be submitted by the petitioner with the petition, or by the intervenor with any motion to intervene, to enable the Department to make this determination. Such evidence may not be submitted electronically or by facsimile transmission.
- (6) The Department may require the employer to submit a payroll or personnel list to assist in determining whether a sufficient showing of interest has been made. If a payroll or personnel list, or any other information as may be required, is requested by the Department but is not made available by the employer, the showing of interest as submitted shall, if otherwise valid, be accepted as *bona fide*.

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(7) If the Department finds that a sufficient showing of interest has not been submitted, the petitioner or intervenor shall be given written notice by the Department of that finding and shall be allowed seven days to submit a further showing of interest. This seven-day period shall not extend the times for filing a representation petition set out in 456 CMR 14.06. If a sufficient showing of interest is not timely submitted by the petitioner the Department may dismiss the petition. If a sufficient showing of interest is not timely submitted by an intervenor the Department may deny the intervenor either the opportunity to participate in or to challenge a consent election agreement between other parties, and/or the opportunity to appear on an election ballot.

14.06: Bars to Petitions: Elections(1) Contract Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement. No collective bargaining agreement shall operate as a bar for a period of more than three years.

(b) Except for good cause shown, no petition seeking clarification or amendment of an existing bargaining unit shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement, except that a petition to alter the composition or scope of an existing unit by adding or deleting job classifications created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times.

(c) Except for good cause shown, no collective bargaining agreement shall operate as a bar, unless an electronic copy of the agreement has been filed with the Department in accordance with 456 CMR 16.01: *Filing of Contracts*.

(d) Except for good cause shown, no collective bargaining agreement shall operate as a bar unless, the employee organization has filed or amended its Employee Organization Information Report (Department-Form 1), filed pursuant to 456 CMR 16.05(1), to include the effective dates of the agreement.

(e) If a petition is filed challenging the contract bar because of a failure to comply with 456 CMR 14.06(1)(c) or (d), the Department shall provide notice to the incumbent employee organization and the employer notifying them of the pending petition and of their non-compliance. The incumbent employee organization and the employer shall have a period of no more than 30 days to cure this failure to comply. The contract bar shall then attach as if there had been compliance with 456 CMR 14.00.

(2) Withdrawal/Disclaimer Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner withdrew from a prior petition within the preceding six months.

(b) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner disclaimed interest in continued representation of the bargaining unit within the preceding six months.

(c) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in the same or similar bargaining unit or subdivision thereof in which, after the designation of a neutral, but before the verification process, the petitioner withdrew in the preceding six months a petition for written majority authorization filed pursuant to 456 CMR 14.19.

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(3) Election Year/Verification Bar. Except for good cause shown, no election shall be directed by the Department pursuant to M.G.L. c. 150E, § 4 in the same or similar bargaining unit or subdivision thereof within which a valid election has been held in the preceding 12 months or within which a neutral has conducted a written majority authorization verification process in the preceding 12 months pursuant to 456 CMR 14.19.

(4) Certification Year Bar. Except for good cause shown, the Department shall not process a petition for an election in any bargaining unit or subdivision thereof represented by a certified bargaining representative when the Department has issued a certification of representative or certification by written majority authorization within the preceding 12 months.

(5) Recognition Year Bar. Except for good cause shown, no petition for an election shall be processed by the Department pursuant to M.G.L. c. 150E, § 4 in any represented bargaining unit or any subdivision thereof in which a recognition agreement has been executed in accordance with the provisions of 456 CMR 14.06(5) in the preceding 12-month period. For the purpose of 456 CMR 14.06(5) recognition shall not be extended to an employee organization unless:

(a) The employer in good faith believes that the employee organization has been designated as the freely chosen representative of a majority of the employees in an appropriate bargaining unit;

(b) The employer has posted a notice in all conspicuous places where members of the proposed bargaining unit usually congregate and where notices to these employees are usually posted for a period of at least 20 consecutive days advising all persons that it intends to grant such exclusive recognition to the named employee organization without an election in the specified bargaining unit. If the employer customarily communicates to its employees via intranet or email, it has also forwarded a copy of the notice to all affected employees via those methods;

(c) The employer shall not extend recognition to an employee organization if another employee organization has within the 20 day period notified the employer of a claim to represent any of the employees involved in said bargaining unit and has prior to or within such period filed a valid petition for certification which is pending before the Department;

(d) Such recognition is in writing and describes specifically the bargaining unit involved and is signed and dated by the employer's representative and the employee organization's representative;

(e) The employer has verified with the Department that the employee organization has filed an Employee Organization Information Report (Department-Form 1) and an Employee Organization Financial Report (Department-Form 2) pursuant to M.G.L. c. 150E, §§ 13 and 14;

(f) The employer has filed a copy of the recognition agreement required by 456 CMR 14.06(5)(d) with the Department within seven days of its execution by both parties accompanied by a statement attesting to the employer's good faith belief required by 456 CMR 14.06(5)(a), and the dates of compliance with its posting requirements in 456 CMR 14.06(5)(b); and

(g) If a petition is filed challenging the recognition bar because of a failure to comply with 456 CMR 14.06 (5), the Department shall provide notice to the voluntarily recognized employee organization and the employer notifying them of the pending petition and of the non-compliance. The employer shall have a period of no more than 30 days to cure this failure to comply. The recognition bar shall then attach as if there had been compliance with 456 CMR 14.00.

14.07: Employees of the Commonwealth

(1) With respect to employees of the Commonwealth, excepting only employees of community and state colleges and universities, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained, except in extraordinary circumstances where the petition seeks certification in a bargaining unit not in substantial accordance with the provisions of this section. Bargaining units have been established on a state wide basis, with one unit for each of the following occupational groups, excluding in each case all managerial and confidential employees as so defined in M.G.L. c. 150E, § 1.

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NONPROFESSIONAL EMPLOYEES:

UNIT 1: Administrative and Clerical, including all nonprofessional employees whose work involves the keeping or examination of records and accounts or general office work;

UNIT 2: Service, Maintenance and Institutional, excluding building trades and crafts and institutional security;

UNIT 3: Building Trades and Crafts;

UNIT 4: Institutional Security, including correctional officers and other employees whose primary function is the protection of the property of the employer, protection of persons on the employer's premises and enforcement of rules and regulations of the employer against other employees;

UNIT 4A: Department of Correction Captains;

UNIT 5: Law Enforcement, including all employees with power to arrest, whose work involves primarily the enforcement of statutes, ordinances, and regulations, and the preservation of public order; and

UNIT 5A: State police troopers and sergeants.

PROFESSIONAL EMPLOYEES:

UNIT 6: Administrative, including legal, fiscal, research, statistical, analytical and staff services;

UNIT 7: Health Care;

UNIT 8: Social and Rehabilitative;

UNIT 9: Engineering and Science;

UNIT 10: Education; and

UNIT 11: Firefighters.

(2) Notwithstanding any provision of this section, nothing shall prevent the Department from finding appropriate:

- (a) The inclusion of related technical employees in any of the professional units designated 6 through 11, provided that the requirements of M.G.L. c. 150E, § 3 have been met;
- (b) One or more units of supervisory employees;
- (c) Separate units for employees of constitutional officers;
- (d) Separate units for employees of the judiciary;
- (e) Separate units for employees of the General Court; and
- (f) Other units for employees of the Commonwealth specifically established by law.

14.08: Investigation and Hearing

(1) The Department shall investigate a petition filed under M.G.L. c. 150E, § 4 to determine if there is reasonable cause to believe that a substantial question of representation exists. The Department may require any party to state in writing its position on any issue raised by the petition or to provide the Department with position descriptions, affidavits, or other information the Department believes to be relevant to the issues raised by the petition. If the Department, upon investigation, has reasonable cause to believe that a substantial question of representation exists, it shall provide for a hearing and shall serve upon the employer involved, and upon any parties or employee organizations purporting to act as a representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing on the question of representation before the Department at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

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(2) The Department shall investigate a petition seeking clarification or amendment of an existing bargaining unit to determine if there is a sufficient dispute of relevant facts to warrant a hearing. The Department may require any party to state in writing its position on any issue raised by the petition or to provide the Department with position descriptions, affidavits or other information the Department believes is relevant to the issues raised by the petition. If the Department, upon investigation, has reasonable cause to believe there is a sufficient dispute of relevant facts, it shall provide for a hearing and shall serve upon the employer involved, and upon any parties or employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing before the Department at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

(3) For the purpose of informing employees affected by the filing of a petition under 456 CMR 14.00, the employer shall post the notice of hearing and a copy of the petition in all conspicuous places where employees directly affected by the filing of a petition under 456 CMR 14.00 usually congregate and where notices to these employees are usually posted. Such notice shall remain posted until the Department issues a certification or dismisses the petition, or the petitioner withdraws its petition. If the employer customarily communicates to its employees via intranet or email, it shall also forward a copy of the notice and petition to all affected employees via those methods.

(4) The procedures specified in 456 CMR 13.04: *Interlocutory Appeals*, 13.08: *Motions*, 13.09: *Objections*, 13.10: *Witnesses*, 13.11: *Stipulations of Fact*, 13.14: *Subpoenas* and 13.16: *Reopening of Hearings* and the following procedures shall apply to all hearings conducted under 456 CMR 14.08:

(a) Subject to 456 CMR 14.08(4)(c), any party to the proceeding shall have the right to appear in person, by counsel or by other representative, to call, examine, and cross-examine witnesses and to offer documentary or other evidence in to the record;

(b) Any hearing conducted under 456 CMR 14.08 shall be open to the public, except in extraordinary cases as the Department, in its discretion, may determine;

(c) The hearing officer shall have the right to inquire fully into the facts relevant to the issues raised by the petition and shall not be bound by the rules of evidence observed by the courts. The hearing officer shall have the authority to:

1. Administer oaths and affirmations;
2. Issue subpoenas;
3. Rule on motions to revoke or modify subpoenas;
4. Limit examination and cross-examination of each witness to one representative per party;
5. Hold conferences for the settlement or clarification of the issues;
6. Dispose of procedural motions or similar matters;
7. Require parties to identify prospective witnesses at least ten days prior to a scheduled hearing;
8. Call, question and cross-examine witnesses; introduce or require the parties to produce relevant documentary evidence; solicit stipulations from the parties; take administrative notice of evidence in related proceedings before the Department; and to exclude cumulative evidence;
9. Require the parties to submit pre-filed direct testimony;
10. Continue the hearing from day to day or otherwise continue the hearing consistent with any applicable case processing time guidelines.

(d) The parties shall be permitted to make oral arguments at the close of the hearing or may be permitted by the hearing officer to file written briefs within ten days after the close of the hearing. Requests for additional time to file briefs shall be granted only in extraordinary circumstances or to permit the parties an opportunity to obtain the recording of the hearing, provided that the time period for filing briefs, including any extensions that may be permitted, shall not exceed 21 days.

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14.09: Record

The record before the Department in a hearing conducted under 456 CMR 14.08 shall consist of the petition, notice of hearing, motions, rulings, orders, audio recording or stenographic transcription, stipulations, exhibits, documentary evidence, depositions and amendments to any of the foregoing. The Department shall base its decision on any issues raised in petitions filed under 456 CMR 14.00 on this record.

14.10: Disposition of Petitions

The Department shall proceed, within a reasonable time after the introduction of evidence, or after oral argument or the submission of briefs, or further hearing, as it may determine, to dismiss the petition, or to direct an election by secret ballot among the employees in a bargaining unit determined by it to be appropriate, or to make other disposition of the matter.

14.11: Consent Election Agreements

Where a petition has been duly filed, the employer, employee organization or person or persons representing a substantial number of employees involved and any intervenor which has submitted the required showing of interest may, subject to the approval of the Department, enter into a stipulation to waive the hearing and to conduct a consent election. Such stipulation shall include a description of the appropriate unit, the time and place for holding the election, and the payroll or the personnel list to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the supervision of the Department or its agents.

14.12: Elections

When the Department determines that an election by secret ballot shall be conducted, or when it approves an agreement for a consent election, it shall direct that such election be conducted upon such terms as it may specify, including an election conducted by mail, an election conducted in person, or any other means ordered by the Department.

(1) Unless otherwise directed by the Department, all elections shall be by secret ballot; provided, however, that no employee organization shall appear on the ballot unless the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14 pursuant to the provisions of 456 CMR 16.05: *Compliance with M.G.L. c. 150E, §§ 13 and 14*. Whenever two or more employee organizations are included as choices in an election, a participant may, upon its request, have its name removed from the ballot; provided, however, that such employee organization gives timely notice in writing to all parties and to the Department disclaiming any representational interest among the employees in the unit and provided that the ballots have not been printed, or Department notices of the election posted, prior to the Department's receipt of the employee organization's written request to remove its name from the ballot.

(2) Any party may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded by the Department. If the number of challenged ballots is sufficient to determine the outcome of the election, then within seven days after the tally of ballots has been furnished, each party must file with the Department a short statement of its position concerning the eligibility of each challenged voter. Such statement shall include a recitation of the facts, if any, alleged by the party to be determinative of the challenged voter's eligibility. The Department may require the parties to submit further evidence or argument to determine whether a hearing is warranted.

(3) At the conclusion of the election, the Department shall furnish to the parties a tally of ballots. Within seven days after the tally of the ballots has been furnished, any party may file with the Department objections to the conduct of the election or to conduct affecting the result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of persons involved, and the date, place, time and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of

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objections and any other submissions which the Department may permit, the Department shall determine whether any of the objections merit further proceedings, and may dismiss some or all of the objections if the Department does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered with the conduct of the election or with the results of the election. If the Department determines that probable cause exists to believe that conduct interfering with either the conduct of the election or the results of the election occurred, it shall conduct such further investigation and/or hearing as it shall deem appropriate, or, if no material facts are disputed, it may issue a decision on the objections without further fact-finding proceedings.

(4) If no timely objections are filed, and the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the Department shall immediately certify the result of the election.

(5) The record in any hearing conducted pursuant to 456 CMR 14.12 shall include the statement of objections or the statement concerning the eligibility of challenged voters, the responses thereto, and the tally of ballots, in addition to the applicable material specified in 456 CMR 14.09.

14.13: Runoff Elections

(1) The Department may conduct a runoff election when a valid election results in no choice receiving a majority of the valid ballots cast. No runoff election shall be conducted while objections to the election are pending. If all eligible voters cast valid ballots in an election involving two or more employee organizations and 50% voted for one employee organization while 50% voted for another employee organization, the Department shall conduct a runoff election between the two employee organizations which each received 50% of the votes. If all eligible voters cast ballots in a runoff election involving two or more employee organizations, the Department may decline to conduct a second runoff election absent evidence that a further runoff election would be likely to produce a different result than the prior election.

(2) Employees who were eligible to vote in the election shall be eligible to vote in a runoff election unless the Department determines otherwise.

(3) The ballot in a runoff election shall provide for a selection between the choices receiving the largest and second largest number of votes in the prior valid election.

14.14: Re-run Elections

(1) The Department may declare an election invalid and may order another election providing for a selection from the choices afforded in the previous ballot in the following situations:

- (a) The ballot provided for a choice among two or more employee organizations and "no employee organization" and the votes are equally divided among the several choices;
- (b) The number of ballots cast for one choice in an election is equal to the number cast for another choice, but less than the number cast for the third choice (which did not receive a majority of valid votes cast);
- (c) A runoff ballot provided for a choice between two employee organizations and the votes are equally divided (*See* 456 CMR 14.13(1)); or
- (d) The Department concludes that the results of the prior election are invalid due to objectionable conduct of the election or objectionable conduct affecting the results of the election.

(2) Upon the conclusion of either a re-run or a runoff election, the provisions of 456 CMR 14.12 shall govern, insofar as applicable.

14.15: Reinvestigation of Certification

For good cause shown, the Department may reinvestigate any matter concerning any certification issued by it and, after appropriate hearing, may amend, revise or revoke such certification.

14.16: Revocation of Certification

An employee organization currently certified to represent a bargaining unit may request that the Department revoke its certification by filing a written request accompanied by a statement that the employee organization disclaims all interest in continued representation of the bargaining unit. A copy of the request shall be served in accordance with the requirements of 456 CMR 12.02: *Service, When Required*.

14.17: Deferral to AFL-CIO No Raiding Procedure

In any petition filed under 456 CMR 14.03 by an employee organization affiliated with the AFL-CIO seeking to represent a bargaining unit represented at the time of filing by another employee organization affiliated with the AFL-CIO, any party may request that the Department defer processing the case for 30 days to permit the employee organizations to use the settlement provisions of the AFL-CIO no-raiding procedure. Such a request must be filed with the Department within ten days following receipt of notice that the petition has been filed, or at least three days prior to the date of the scheduled hearing on the petition, whichever is earlier. Upon written request by any party the Department may extend the 30-day deferral period. Copies of any request shall be served upon all parties to the case and in accordance with 456 CMR 12.02: *Service: When Required*.

14.18: Intervention

(1) Any employee organization, including the incumbent exclusive representative, if any, wishing to appear on any ballot or be deemed a necessary party to any agreement for consent election shall file a motion to intervene setting out the same information as required in a petition filed pursuant to 456 CMR 14.03. Except for good cause shown, all motions to intervene filed under 456 CMR 14.18 must be filed within 30 days of the date of the Department's Notice of Hearing. Any incumbent exclusive representative who does not file a motion to intervene in accordance with 456 CMR 14.18 shall be deemed to have disclaimed interest in representing the employees in the petitioned-for bargaining unit and shall not appear on any ballot or be deemed a necessary party to any agreement for consent election.

(2) Any motion filed under 456 CMR 14.18 must be accompanied by the showing of interest required in 456 CMR 14.05, except that any incumbent exclusive representative who files a motion to intervene need not comply with the requirements under 456 CMR 14.05.

(3) Any party filing a motion to intervene under 456 CMR 14.18 shall serve a copy of its motion on each of the parties named in the original petition and any other intervenors, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.19: Certification by Written Majority Authorization

(1) In initiating a Petition for Certification by Written Majority Authorization, the employee organization shall file with the Department a petition, on a form approved by the Department, containing the following information:

- (a) The correct name, address, and affiliation of the employee organization and the name and address of its representative designated for the purpose of collective bargaining;
- (b) The correct name and address of the employer and, where known, the name and address of its representative designated for the purpose of collective bargaining;
- (c) A full description of the bargaining unit claimed to be appropriate, including job titles, the approximate number of employees, and whether the petitioned-for bargaining unit contains professional employees, non-professional employees, or both (the petitioning employee organization shall indicate which employees it believes are professional employees);
- (d) A statement that the bargaining unit claimed to be appropriate complies with all the provisions of M.G.L. 150E, § 3 and 456 CMR 14.07;
- (e) A statement that the employee organization has received written majority authorization evidence, as described in 456 CMR 14.19(2) and (3), from a majority of the employees in the proposed appropriate bargaining unit;

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- (f) A statement that no other employee organization has been and currently is lawfully recognized as the exclusive representative of the employees in the appropriate bargaining unit;
- (g) A statement that the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14; and
- (h) Any other relevant facts that may be required by the Department.

(2) Written majority authorization evidence may include authorization cards, petitions, or other written evidence that the Department finds suitable, which demonstrates that the majority of employees in an appropriate bargaining unit wish to be represented by an employee organization for the purposes of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within 12 months prior to the date on which the written majority authorization evidence is proffered to the Department or an outside neutral to establish proof of majority and exclusive representative status.

(3) Any written majority authority evidence shall not be filed electronically or by facsimile transmission and shall:

- (a) Contain a legible employee signature;
- (b) Be dated by the employee;
- (c) Be an original document rather than a photocopy or some other replication;
- (d) Contain a certification from the employee that the designation is his or her free act and deed and given without consideration; further, in proposed units which contain both professional and non-professional employees, the professional employees' designation shall indicate that the professional employee wishes to be included in a bargaining unit with non-professional employees;
- (e) Include the name of the employee organization seeking majority status;
- (f) Include a statement in which the employee designates the aforementioned employee organization as its representative for the purposes of collective bargaining; and
- (g) Include other evidence approved by the Department.

The Department, any outside neutral, and any petitioning employee organization shall maintain the confidentiality of the written majority authorization evidence. The written majority authorization evidence shall not be furnished to any of the parties.

(4) The Petition for Certification by Written Majority Authorization must be served on the employer in accordance with the requirements of 456 CMR 12.02: *Service: When Required*; in addition, the Department shall make the employer aware of such petition when the Department requests the names and addresses of the members of the proposed bargaining unit for purposes of verification.

(5) Upon filing and docketing of a Petition for Certification by Written Majority Authorization, the Department shall prepare and serve a notice upon the parties that shall include information about the petitioner and the petitioned-for bargaining unit. The notice shall also advise the parties that they may agree upon a neutral to conduct the verification by a confidential inspection of the written majority authorization evidence, including ruling on any challenges to the validity of the evidence or to the inclusion or exclusion of a position in the unit. Upon receipt of the Department's notice, the employer shall post a notice in all conspicuous places where members of the proposed bargaining unit usually congregate and where notices to these employees are usually posted, advising all persons that the named employee organization has filed a Petition for Certification by Written Majority Authorization of the specified bargaining unit. Such notice to employees shall remain posted until the Department issues a certification or dismisses the petition, or the employee organization withdraws its petition. If the employer customarily communicates to its employees via intranet or email, it shall also forward a copy of the notice and petition to all affected employee via those methods.

(6) Within ten days from the date of notice from the Department, the employee organization shall notify the Department whether the employee organization and the employer have agreed upon a neutral. If the employee organization fails to provide this notice to the Department, the Department shall act as the neutral. If the parties agree upon a neutral other than the Department (outside neutral), the employee organization shall notify the Department of the outside neutral's name, address, phone and fax numbers, and e-mail address.

14.19: continued

(7) Immediately upon selection of the neutral or the designation of the Department as the neutral, and in no event later than three days from selection or designation, the employer shall provide the neutral with a list containing the full names and titles of the employees in the proposed bargaining unit. If the employer does not supply this information to the neutral within the specified time frame, the neutral shall conduct the confidential inspection of the written majority authorization evidence based upon information provided by the employee organization. The employee organization shall provide this information to the neutral within two days from the date that the employer's information was due.

(8) Employees eligible for inclusion on the list referred to in 456 CMR 14.19(7) shall be employees who were employed on the filing date of the Petition for Certification by Written Majority Authorization. Any challenges to the inclusion or exclusion of a name on the list, and/or to the inclusion or exclusion of a title or position in the unit, shall be filed by the employee organization or the employer with the neutral within three days of the presentation of the list to the neutral.

(9) Any challenges to the validity of the written majority authorization evidence shall be filed with the neutral immediately upon the neutral's selection or designation and in no event later than three days from the selection or designation.

(10) As part of the verification process detailed in 456 CMR 14.19(11) and (12), the neutral shall determine whether a majority of employees on the list referred to in 456 CMR 14.19(7) have submitted valid written majority authorization evidence and whether there are a sufficient number of challenges referred to in 456 CMR 14.19(8) and (9) to affect the result of the written majority authorization verification process. If the number of challenges referred to in 456 CMR 14.19(8) and (9) is insufficient to potentially affect the result, then the neutral shall dismiss the challenges. If the number of challenges referred to in 456 CMR 14.19(8) and (9) is sufficient to potentially affect the result, the neutral shall investigate and resolve the challenges. The challenging party shall bear the burden of proving the validity of a challenge.

(11) If an outside neutral conducts the verification of written majority authorization evidence, the outside neutral shall, within 20 days of the neutral's selection, report in writing, on a form prescribed by the Department and in compliance with the Department's procedures, the results of the confidential inspection to the parties and the Department. Along with the report of the inspection, the outside neutral shall provide to the Department all documentation that the outside neutral relied upon in conducting the confidential inspection, including, but not limited to, evidence of written majority authorization and resolution of challenges. Upon receipt of the outside neutral's written report and valid evidence of written majority authorization demonstrating that the petitioning employee organization has majority support in an appropriate, currently unrepresented bargaining unit, the Department shall, in writing, certify the petitioning employee organization as the exclusive representative of the employees in that bargaining unit. If the requisite majority support is not shown, the Department shall, in writing, decline to issue a certification and dismiss the petition.

(12) If the Department acts as the neutral and conducts the verification of written majority authorization evidence, the Department shall report the results of the confidential inspection to the parties in writing within 30 days of the date of its selection or designation as the neutral. Within this same time frame, provided that the valid evidence of written majority authorization demonstrates that the petitioning employee organization has majority support in an appropriate, currently unrepresented bargaining unit, the Department shall, in writing, certify the petitioning organization as the exclusive representative of the employees in that bargaining unit. If the requisite majority support is not shown, the Department shall, in writing, decline to issue a certification and dismiss the petition.

(13) In no event shall the Department issue a certification as described in 456 CMR 14.19(11) and (12) until the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14.

(14) In no event shall the verification process detailed in 456 CMR 14.19(11) and (12) last longer than 30 days after the selection or designation of the neutral absent exceptional cause. Exceptional cause may include, but is not limited to:

14.19: continued

- (a) Resolving challenges as described in 456 CMR 14.19(8) and (9); and
- (b) Allowing the petitioning employee organization not more than seven days to comply with M.G.L. c. 150E, §§ 13 and 14.

(15) Within seven days after the Department certifies the bargaining unit, the employer may seek review of any previous challenges the neutral had dismissed as non-outcome determinative. The employer may obtain such review by filing a request to reinvestigate the certification pursuant to the procedure outlined in 456 CMR 14.15.

14.20: Bars to Petitions for Certification by Written Majority Authorization

(1) Withdrawal Bar. Except for good cause shown, no Petition for Certification by Written Majority Authorization shall be entertained in a same or similar bargaining unit within which, after the selection or designation of a neutral, but before the verification process, the petitioner withdrew from a prior Petition for Certification by Written Majority Authorization, or withdrew a petition filed under the provisions of M.G.L. c. 150E, § 4, within the preceding six months.

(2) Verification/Election Year Bar. Except for good cause shown, no Petition for Certification by Written Majority Authorization shall be entertained in a same or similar bargaining unit within which a neutral has conducted a written majority authorization verification process in the preceding 12 months, or within which a valid election has been held in the preceding 12 months.

(3) Certification Year Bar. Except for good cause shown, no Petition for Certification by Written Majority Authorization shall be entertained in a same or similar bargaining unit represented by a bargaining representative certified through the written majority authorization process or a valid election process in which the Department has issued a certification within the preceding 12 months.

14.21: Intervention in Written Majority Authorization Cases

Intervention shall not be permitted in written majority authorization cases. Before the Department issues a certification, Petitions for Certification by Written Majority Authorization shall be dismissed and the Department shall investigate questions of representation pursuant to M.G.L. c. 150E, § 4 under the following circumstances:

- (a) If an employee organization files a representation petition for the same or a similar bargaining unit to the one described in a pending Petition for Certification by Written Majority Authorization;
- (b) If an employee organization files a Petition for Certification by Written Majority Authorization for the same or a similar bargaining unit to the one described in a pending representation petition; or
- (c) If an employee organization files a Petition for Certification by Written Majority Authorization for the same or a similar bargaining unit to the one described in a pending Petition for Certification by Written Majority Authorization.

REGULATORY AUTHORITY

456 CMR 14.00: M.G.L. c. 23, §§ 90, 9T(c), (d); c. 150E, §§ 2 through 5, 13 and 14.