

Elections

Types of Elections

After a Direction of Election or a Consent Agreement, the DLR prepares to conduct a secret ballot election. It directs that an election take place at or near the employees' work locations or by mail ballot.¹

Designation of Organizations on the Ballot

The name of the employee organization(s) on the ballot is the name designated by the employee organization on its Petition unless the employee organization wishes to appear on the ballot with a shortened designation. The shortened designation must not confuse or mislead the voters.

Order of Choices on the Ballot

The parties determine the order of the choices on the ballot. If the parties cannot agree, a coin toss or random drawing decides the placement on the ballot. The incumbent is not entitled to the left side of the ballot or any other preference. The order of the choices on the ballot cannot be litigated.

Form of Ballot

Under DLR letterhead, the ballot sets forth the voters' choices. It also notifies the employee that he/she should not sign the ballot and that any signed ballot or ballot marked to indicate the identity of the voter is void.

Ballots for Professional Employees (Globe Ballots)

[M.G.L. c. 150E, Section 3](#) provides that professional employees have the right to vote to be included in a unit of non-professional employees or to be represented in a separate unit. If there are professional and non-professional employees included in the same unit, a special ballot must be prepared for the professional employees asking them: 1) whether they wish to be included in the unit of non-professional employees; and 2) whether they wish to be represented by [**name of employee organization**] for the purpose of collective bargaining.² If the majority of the professional employees vote to be included with the non-professional employees, their ballots are counted with the non-professionals. If a majority of the professional employees vote not to be included in a

¹ [456 CMR 14.12.](#)

² *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

bargaining unit with non-professional employees, their votes are counted separately.

Withdrawal from Ballot

The DLR permits an employee organization to withdraw in writing from the ballot before the printing of the ballot and the posting of the election notice. Any incumbent employee organization seeking to withdraw from the ballot must give timely notice in writing and disclaim interest in continuing to represent the petitioned-for bargaining unit.³

1) Petitioner

If the Petitioner seeks to withdraw from the ballot and there is no intervenor, the DLR allows the Petitioner's request and cancels the election. However, if the Petitioner withdraws, the DLR does not entertain any petition for the same unit or any part thereof for a period of up to 6 months.⁴ If the Petitioner seeks to withdraw and there are one or more intervenors, in order for the election to be held, one of the intervenors must have either a 30 or 50 percent showing of interest, depending on whether there is an incumbent employee organization, in order to hold an election.⁵ Thus, if the Petitioner withdraws, each intervening organization is given 10 days to submit the needed showing of interest. If one of the intervenors has already submitted a sufficient showing of interest, the case may continue uninterrupted.

2) Intervenor

In determining whether to allow an intervenor to withdraw, the DLR considers whether a late withdrawal will confuse the voters.

Election Hours

When the DLR schedules an on-site election, no ballots are permitted by mail. There are no absentee ballots. The voting hours (during, before, or after working hours) are arranged so that all eligible employees on all shifts and at all locations have an adequate opportunity to vote. If there is **one shift** and all employees work the same hours, the voting time is scheduled to allow employees to vote at the start or close of the workday, or on a lunch break. If there are **two shifts**, the most convenient method is to open the polls over a period that straddle the shifts.

³ [456 CMR 14.12\(1\).](#)

⁴ [456 CMR 14.06 \(2\).](#)

⁵ [456 CMR 14.05\(1\) and \(2\).](#)

Election Date

The DLR schedules elections to maximize employee participation and minimize employer operational problems. The DLR also avoids days preceding or following a holiday. The selected date allows the Employer to post the DLR's Notice of Election, as discussed below, for at least 10 days so that employees have sufficient notice of the time, date, and location of the election.

Eligibility Cut-Off Date

Employees are eligible to vote if they are on the Employer's payroll on the last day of the payroll period immediately preceding the execution of the consent agreement, or the issuance of the direction of election.

Voter Eligibility List

Prior to an election, the DLR directs the Employer to provide to the DLR and the labor organizations election an alphabetical list of the names and addresses of employees within the bargaining unit. The list ensures that all the unions have an opportunity to communicate with voters prior to the election. The date for submission of the list is seven days after the execution of the consent agreement or seven days after the issuance of a direction of election. The Employer's failure to timely produce an accurate voter eligibility list may be grounds for setting aside an election.⁶

Pre-Election Disputes Concerning the Eligibility List

If, prior to the election, any party disputes the accuracy of the eligibility list, the DLR contacts the Employer to resolve any disputes. If the disputes cannot be resolved prior to the election, the party disputing the list has the right to file post-election objections based on the eligibility list. If the eligibility list is modified prior to the election, each party is served with the updated list. If there is insufficient time for the parties to agree to add names to the eligibility list, the potentially-eligible voters may appear at the election and vote by challenged ballot. The issue is resolved after the election is concluded.

Election Notice

The Notice of Election informs potential voters of the method, time, date, and location(s) of the election, the conditions under which it is conducted, and a description of the bargaining unit. Notices are posted for as long as

⁶ *City of Springfield*, [14 MLC 1010](#) (1987).

possible, usually ten days preceding the election, to promote maximum communication of this essential information.

Attached to the Notice of Election is a sample ballot showing the question and choice(s). To avoid problems, actual ballots are a different color than the sample. The Employer should post Notices of Election in the normal and usual places where notices or information for employees are posted.

Amended Notice of Election

In case of an error in a Notice of Election, or a modification in the terms and conditions of the election, if time permits, an amended Notice of Election is drafted and posted.

Multiple Polling Sites

In any election where it is necessary to have more than one polling site, the following procedures apply:

- The DLR requests the employer to prepare the eligibility lists with the names and addresses of eligible voters for each specific site. Voters cast their ballots once, in only one of the sites.
- The Notice of Election informs voters at which site they should cast their ballots.
- If voters appear at the wrong location, they are permitted to vote under challenge. The DLR agent challenges the voter because his/her name is not on the eligibility list for that location.

Observers

Each party may pick an observer to the election. The parties should avoid picking a supervisor or manager because they may intimidate the employees. Should a party insist on an observer that may be viewed as intimidating, the election proceeds, but the DLR agent advises the party that its observer may constitute grounds for objections to the election.

DLR Agent Responsibilities

The DLR agent who conducts and oversees the election has the following responsibilities:

- Maintain order and laboratory conditions at the election site.
- Instruct observers.

- Preserve the secrecy of the voting process.
- Attempt voluntary resolution of voting disputes.
- Remove unruly observers and voters.
- Open and close the polls and also change conditions of the election should the need arise.

Pre-Election Conference

The DLR agent usually arrives at least one-half hour prior to the opening of the polls to inspect the polling area to ensure that laboratory conditions are maintained throughout the conduct of the election. The agent also meets with the parties and their observers to check for changes in the voting list, instructs the parties and answers any questions, sets up the voting booths, and seals the ballot box. The agent may ask the parties or their observers whether they anticipate any challenges to the voter eligibility list and may attempt to resolve them before the election.

Setting Up the Election Site

The polling area is set up to protect the secret ballot election objectives. Voting booths are used so that the voter may mark his/her ballot in secrecy. Ideally, the voting area is one where access may easily be controlled. In determining the location of voting booths, check off tables, and entrances and exits from the voting area, the DLR agent tries to avoid any situations where voters who have already voted pass by those waiting to vote. Observers whose function is to identify voters and check their names off on the eligibility list are seated with the DLR agent in an area where the voters must pass in order to vote.

Role of the Observers

DLR agents and the parties' observers wear identifying badges. Each observer is given a copy of the DLR's Observer Instructions, and the agent explains these requirements. Observers are instructed not to communicate directly with voters and not to electioneer in the immediate area of the polls. All challenges are directed to the DLR agents. The observers may bring a list of voters whom they challenge, but this is the only document, other than the DLR's official voting list, that is used to check off voters. The observers are instructed that the voting list **DOES NOT** leave the table at any time and is collected at the conclusion of the election.

Opening the Polls

Prior to the opening of the polls, if the parties cannot agree on an official time piece, the DLR agent selects a clock or watch as the official timepiece. The agent may permit voters to line up in an orderly fashion prior to the opening of the polls. Voters are reminded to have their photo identification ready to show to the DLR agent. At the appointed time, according to the official timepiece, the agent announces that the polls are open and asks all unauthorized persons to leave.

Late Opening of the Polls

If the polls open later than the scheduled polling time, the DLR agent notes the time and whether any voters have left the polling area due to the delay. The agent should write a statement explaining the reason(s) for the late opening of the polls and have the observers sign it. Unless the parties stipulate in writing, the DLR agent does not extend the closing time because the polls opened late.

Electioneering

The DLR agent removes all campaign literature from the polling area. No electioneering is permitted in the voting area during voting hours, including conversations between voters or between the observers and the voters. Observers may not wear any kind of button or insignia that relates to the election.

Conduct of the Polling

As voters approach the check off table, the DLR agent, not the observers, ask the voter for his or her name and for identification. The observers are entitled to inspect identifying material. If there is no question of eligibility, the observers for each party may check off the voter's name on their copies of the eligibility list. The DLR agent then hands the voter a ballot and instructs them on voting procedures.

Spoiled Ballots

If a voter marks his/her ballot in error, the ballot contains instructions that the voter return the ballot to the DLR agent for a new ballot. The DLR agent destroys the "spoiled" ballot in the presence of the observers.

Challenged Ballots

The DLR agent or an observer for any party may challenge the eligibility of any voter. All challenges are directed to the DLR agent.⁷

DLR Challenges

The DLR agent challenges any voter whose name does not appear on the eligibility list but who appears at the polls to vote.⁸ The parties may not ask the DLR agent to make challenges on their behalf.

Party Challenges and Standard for Eligibility

Observers seeking to challenge the eligibility of a voter must do so at the time the person's name is announced and the voter receives a ballot. No challenge is accepted after the ballot is cast, or once the polls are closed.⁹ The reason for the challenge is stated when the challenge is made and marked on the challenged ballot envelope by the DLR agent. A party who fails to make challenges at the proper time cannot remedy its oversight by raising the challenge as an objection to the election.

An employee who has a reasonable expectation of continued employment on the eligibility cutoff date set forth in the consent election agreement or direction of election is eligible to vote. This includes employees who were ill, on vacation, or temporarily laid off. Employees who have quit or been discharged for cause prior to the election date are not eligible to vote.

Challenge Ballot Procedure

When an Observer challenges a voter, the DLR agent notes on the challenge ballot envelope the job title, work location, and reason for the challenge. The name of the challenged voter is noted on the DLR's official copy of the eligibility list. The agent informs the voter that: 1) one or more of the parties to the election has challenged his/her eligibility; 2) his/her ballot is placed in an envelope having a perforated stub; 3) if counting the challenged ballots is necessary to determine the outcome of the election, the information on the stub is used to determine eligibility; 4) if it is found that the voter is not eligible, the ballot is destroyed unopened. The DLR agent then gives the voter a ballot and a challenge envelope and directs the voter to go to the voting booth, mark his/her ballot, fold the ballot, insert it in the long part of the envelope, seal the envelope, and drop it in the ballot box.

⁷ [456 CMR 14.12\(2\)](#).

⁸ *Town of Whitman*, [16 MLC 1248](#) (1989).

⁹ *City of Springfield*, [24 MLC 109](#) (1998).

Security of the Ballots

All ballots remain in the DLR agent's possession at all times. Only DLR agents may handle blank ballots. All voters must place their ballot in the ballot box themselves. When there is more than one polling time or more than one polling site, the DLR agent secures the ballots by: 1) sealing the ballot box with tape and having each of the parties present sign across the tape; 2) sealing the blank ballots in the election envelope; and 3) taking the sealed ballot box and sealed election envelope and maintaining it in his/her possession at all times.

Language Problems During Voting

If voters need translation services, the DLR agent instructs the translator to read only the information on the ballot, and, if necessary, the Notice of Election to the voter. However, the translator is not permitted to accompany the voter to the voting booth or to mark the ballot for the voter.

Disabled Voters

If a voter is disabled and unable to vote without assistance, the voter is permitted to have someone accompany them to the voting booth and assist them if necessary. If a disabled voter needs assistance and does not have someone to accompany them to the voting booth, the DLR agent may assist the disabled voter after notifying the observers. However, neither the parties nor their observers are allowed to assist a voter to mark the ballot.

Closing the Polls

The DLR agent notifies the observers a few minutes prior to the close of the polls of the amount of time remaining for voting and that all persons currently in line will have the opportunity to vote. The agent closes the polls early if all eligible voters have cast a ballot and the parties consent in writing. The agent closes the polls by announcing, "The polls are closed." A late start for the election does not extend the time for voting, unless the parties stipulate in writing to extend the hours of the election. After the agent announces the end of the polling time, the DLR agent does the following:

- If the ballots are not counted on-site, secure and seal the ballot box in the presence of the observers.
- Ask the observers to sign the Certification of Conduct of Election.

- Attempt to get a written agreement from the parties resolving any challenges prior to opening the ballot box. A party may withdraw any challenge before the ballots are counted.
- Explain the ballot tabulation procedure.

Ballot Tabulation

After all attempts to resolve the challenges have been exhausted, the tallying process begins.

1) Preparation for Ballot Tabulation

If the election has been run at multiple polling sites or times, the DLR agent does not begin the ballot tabulation until all ballot boxes have arrived. The agent has all parties inspect the tape covering the ballot box to ensure that the seals are not broken. After inspection, the agent opens the ballot boxes and separates the challenged ballot envelopes from the other ballots. Any resolved challenges are opened and intermingled with the other ballots.

2) Observers

Each party is permitted one observer at the count. The DLR agent allows spectators to observe the tabulation of the ballots from a reasonable distance.

3) Tabulation Process

For elections with over 50 voters, the ballots are arranged in blocks of 50 ballots each and numbered sequentially. The DLR agent recounts the ballots in the block to ensure that there are 50. After a block is counted, each ballot is turned over, examined by the agent, and called for one of the choices on the ballot, or called "blank" or "void." The intent of the voter must be clearly evident.

4) Tabulation in Special Elections

In a Globe ballot election for professional employees, the self-determination question is counted first. Ballots with two questions are separated from those with a single question. If the DLR simultaneously conducts an election for two separate bargaining units, the ballots for each unit are different colors. The DLR agent sorts the ballots by color, with the ballots face down, and then counts them.

5) Protested Ballots

Only the DLR agent calls the ballot. If the DLR agent cannot identify or determine the voter's intent, the agent declares the ballot void. As the call is made, the agent lays the ballot on the count table face up and allows sufficient time for the observers to see how it is marked. If an observer believes that the DLR incorrectly interpreted the voter's intent, the observer may protest. The back of the ballot will then be "stamped" or marked with the following information:

- The name of the party protesting the ballot.
- The reason for the protest.
- The choice for which the ballot was called.
- The choice for which the protesting party wants the ballot called.
- The number of the block of ballots from which the ballot came, if applicable.

The protested ballot is then set aside. The DLR agent marks the tally sheet with the choice called by the agent and a notation that the ballot is protested.

6) Post-Tabulation Process

After the tabulation process has been completed, each party's chief representative signs the Official Tally of Ballots. The DLR agent retains the original and provides a copy to each party. To be certified as the exclusive bargaining representative, an employee organization must receive a majority of the valid votes cast in an election. If the results of the election are determinative and not affected by challenged or protested ballots, the ballots are sealed in an envelope containing the case name and number, the date of the election, and the tally. If challenges and protests are sufficient to affect the outcome of the election, these ballots are segregated and placed in a sealed envelope along with all copies of the eligibility list used at the election.

Mail-Ballot Elections

In many cases, the DLR determines that a mail ballot election is more appropriate than an on-site election. The procedures in a mail ballot election differ from an on-site election.

1) Mailing Process

a) Ballot and Instructions

Each envelope includes a ballot, a ballot envelope, a return envelope and voter instructions. The label on the reverse side of the return envelope also contains a code to help identify the voter and expedite the verification process.

b) Mailing Period

At least 2 ½ weeks are allotted for the voters to receive and return their ballots. This permits an adequate time for delivery and return of initial, as well as secondary ballots.

2) Election Questions

At least one DLR employee is available to answer phone calls about the election at the time designated on the Notice of Election.

3) Mail Related Problems

a) Failure to Receive a Ballot

Employees who call the DLR to report that they have not received a ballot are placed on color coded lists (with corresponding mailing labels). The callers' names, addresses, and I.D. #'s (if applicable) are recorded. Different color codes are used to distinguish between: 1) employees who are on the eligibility list but who did not receive a ballot; 2) employees whose ballot was destroyed; and 3) individuals who are not on the eligibility list, but who believe that they are eligible to vote.

b) Undeliverable Ballots

Each day a DLR agent picks up ballots that have been returned to the post office and marked "undeliverable" due to a change of address or name, or where the address is incorrect. A list of undeliverable ballots is compiled and given to the parties to correct or amend. New ballots are sent immediately to those individuals whose ballots have been returned.

4) Prior to the Mail Mailing Period Closing

Before the mail period closes, a DLR agent contacts the parties and informs them of their opportunity to have an observer at the count and

to inform them of the time and date on which the agent will pick up the ballots at the post office, so that the parties may accompany the agent if they so desire. In addition, the DLR agent explains how the ballots are verified, sorted, and counted. The parties submit the names of the observers to the DLR agent in writing.

5) Ballot Tabulation

- Sorting

Using a numerical code, the ballots are sorted at the counting tables.

- Verification

Each envelope is checked for a signature that matches the name on the label. Any challenged vote is set aside. Every color coded ballot is automatically challenged by the DLR agent. In the event both the original and duplicate ballots are received, only the ballot the DLR sent first is counted. If two ballots are returned in one envelope, both ballots are challenged. If the parties agree, one is counted, provided the secrecy of the ballot is maintained. Duplicate ballots that are not counted are not entered in the tally as challenged or voided ballots, but preserved for display to the parties as duplicates. The stubs of the envelope or postmark are returned and attached to the duplicate ballot. All envelopes without signatures are void. An envelope with a signature different from the mailing label is acceptable provided the name is not substantially different (i.e., Jack Douglas, signed, although label reads John Douglas). Any ballot that identifies the voter is void.

- Tabulation Process

The verified envelopes are mixed after the DLR agent tears off the signature and label sections. The envelopes are slit and the ballots are placed faced down in blocks of 50. DLR agents call and tabulate the ballots. The intent of the voter must be clearly evident. The parties may protest any ballot where the intent is unclear. If the DLR agent cannot identify the intent of the voter, the agent declares the ballot void. The tallies are placed on sheets in the blocks of 50. The DLR agent announces the result when the tabulation process is completed.

Post-Election Procedures

There are three kinds of post-election issues that may determine the outcome of the election: 1) protested ballots; 2) challenged ballots; and 3) objections to the conduct of the election or to campaign conduct affecting the outcome of the election.

1) Protested Ballots

If the parties are unable to resolve protested ballots before the ballot count and those votes determine the election outcome, the DLR schedules a conference with the parties as soon as possible after the election. At the conference, the protested ballots are numbered with copies given to all of the parties. The parties are allowed seven days to submit a statement of position about the protested ballots. If objections and challenges are also pending, the time for submission of the parties' positions is extended until the close of the investigation into those matters. After the DLR receives the parties' positions, the DLR decides whether any of the protested ballots are counted.

2) Challenged Ballots

If the number of challenged ballots is sufficient to determine the outcome of the election, within seven days after the tally of the ballots, each party must file a position statement with the DLR concerning the eligibility of each challenged voter.¹⁰ The DLR reviews the consent agreement or direction of election, the notice of election, and the parties' position statements to decide whether to reject the challenged ballots or schedule a hearing. If any challenge presents no factual dispute, is frivolous, or has already been determined by the DLR, the challenge is denied without a hearing, and the ballot counted if required to determine the outcome of the election. If the challenge is clearly valid, as determined by the election documents or prior decision, the challenge is allowed without a hearing and the ballot is destroyed unopened.

Objections to the Election

Objections are complaints by one or more of the parties that a DLR agent or one of the other parties to the election engaged in conduct that prevented a fair election. Within seven days after the tally of the ballots, any party to an election may file objections to the conduct of the election or to conduct affecting the result of the election.¹¹ The objections must include a statement that describes the objectionable conduct, including the nature of the conduct, the identity of persons involved, and the date,

¹⁰ [456 CMR 14.12\(2\)](#).

¹¹ [456 CMR 14.12\(3\)](#).

time, and place of the alleged conduct.¹² Requests to amend objections must conform to the evidence and may not raise additional allegations. If another party objects to a requested amendment, the DLR rules on whether to allow the amendment.

1) Objections Investigation and/or Hearing

After the DLR receives objections and the other parties' responses to the objections, the DLR determines whether the objections merit further proceedings.¹³ The DLR may dismiss some or all of the objections if it does not find probable cause to believe that the alleged conduct occurred or that the alleged conduct materially interfered either with the conduct of the election or with the results of the election.¹⁴ If the DLR concludes that probable cause exists, it investigates further or schedules a hearing to take place before a DLR agent. In addition to the documents identified in [456 CMR 14.08](#) and [14.09](#), the record in an objections hearing, should the DLR order that one occur, is the statement of objections or the statement concerning the eligibility of challenged voters, the responses and the tally of ballots.¹⁵ If there are undisputed material facts, the DLR may issue a decision without further fact-finding.¹⁶

If, after hearing, the DLR finds that the objections have merit, it sets aside the results of the election and directs that the election be re-run. However, if the DLR concludes that the objections are without merit, it issues a Certification of the Results of the Election.

The DLR's objections and challenges decision is administrative and not subject to appeal to the CERB or to the courts.

See the Summary of Law Section III(E)(5)(d) of the [Guide to Massachusetts Public Employee Collective Bargaining Law](#) for objectionable conduct examples.

Runoff Elections

When there are three or more choices on the ballot and none of the choices on the ballot receives a majority of the valid votes cast, a runoff election is required. The DLR does not conduct a runoff election while

¹² [456 CMR 14.12\(3\)](#).

¹³ [456 CMR 14.12\(3\)](#).

¹⁴ [456 CMR 14.12\(3\)](#).

¹⁵ [456 CMR 14.12 \(5\)](#).

¹⁶ [456 CMR 14.12\(3\)](#).

objections to the election are pending.¹⁷ The DLR does not conduct a second runoff election absent evidence that it would produce different results.¹⁸

1) Voter Eligibility

Unless the DLR determines otherwise, employees who were eligible to vote in the initial election are eligible to vote in the runoff election.¹⁹

2) Ballots

The two choices on the ballot that received the highest total of votes in the original election are on the run-off election ballot, whether those choices were employee organizations or no union.²⁰

3) Scheduling

A runoff election is held as soon as possible after the first election, but is not scheduled during the seven-day period during which a party may file objections to the conduct of the election. Usually, runoff elections are conducted at the same location and during the same hours as the original election.

Re-Run Elections

The DLR conducts a Re-Run Election in each of the following circumstances:

- There were two or more employee organization choices on the ballot and the votes were equally divided among the employee organizations.
- The number of ballots cast for one choice equals the number for another choice but less than the number for a third choice (which did not receive a majority of valid votes cast).
- The DLR set aside an election because of objectionable conduct.²¹

1) Eligibility Cut- Off Date

¹⁷ [456 CMR 14.13\(1\).](#)

¹⁸ [456 CMR 14.13\(1\).](#)

¹⁹ [456 CMR 14.13\(2\).](#)

²⁰ [456 CMR 14.12\(3\).](#)

²¹ [456 CMR 14.14\(1\).](#)

The eligibility cut-off date for the re-run election is specified in the Direction of Election and is usually the last day of the payroll period that precedes the Direction of Election issuance date.

2) Voter Eligibility

A new eligibility list is required for the re-run election.

3) Election Notice

If a re-run election is the result of objectionable conduct by one of the parties, the DLR has discretion on whether to state this fact in the Notice of Election.

4) Run-off and Re-run Elections Procedures

Any employee organization on the ballot of a re-run election must receive a majority of the votes cast to be certified. A re-run election may result in a subsequent runoff election.

Election and tabulation procedures for a re-run election are the same as for any other election. Objections are filed, following the same standards and procedures for a regular election.

Certification

When a labor organization wins an election, the DLR certifies that it is the exclusive bargaining representative of the unit.

Reinvestigation of Certification

The DLR retains the right for good cause shown to reinvestigate any matter concerning any certification it issues and after an appropriate hearing, may amend, revise, or revoke such certification.²²

Revocation of Certification

The DLR revokes a labor organization's certification if it loses a decertification election.

The DLR also revokes a labor organization's certification if the labor organization requests this in writing accompanied by a statement that the labor organization disclaims all interest in continued representation of the

²² [456 CMR 14.15.](#)

bargaining unit. A copy of the request must be served on the employer of the bargaining unit.²³

²³ [456 CMR 14.16.](#)