

Article 63 - Representation Proceedings

Section 63.1 Petition Filing

A petition for election of a collective bargaining representative and a petition for an election to decertify a collective bargaining representative may be filed by an independent support provider or group of independent direct support providers, or any labor organization purporting to act in their behalf.

Section 63.2 Contract Bar

If a collective bargaining agreement is in effect which covers the independent direct support providers covered by the petition, a petition shall normally be considered timely only if filed during the period 150 to 120 days prior to the date the General Assembly convenes in regular session for the year during which the collective bargaining agreement expires or if filed after the expiration date of the agreement if a successor agreement has not become effective. A petitioner filing a petition at any other time shall justify why the normal time period should be waived.

Section 63.3 Petition for Election of Collective Bargaining Representative

A petition for election of a collective bargaining representative, when filed by an labor organization, employee(s) or individuals shall be filed with the Board on a form provided by the Board and shall contain the following information:

- (A) The name and address of the petitioner;
- (B) The name and address of the State;
- (C) The general nature of the State's operation and the approximate total number of independent direct support providers;
- (D) A detailed description of the types, classifications or groups of independent direct support providers in the bargaining unit thought to be appropriate and the total number of such independent direct support providers in the bargaining unit;
- (E) An allegation that not less than 30 percent of the independent direct support providers of the appropriate bargaining unit desire to be represented for collective bargaining by the petitioner or some other representative. In the event there is a labor organization which has been certified or is being currently recognized as the bargaining representative, the date and result of the last election, and the name and address of the currently-recognized or certified bargaining representative, must be set forth. A copy of the collective bargaining contract, if one exists, should be included with the petition; and
- (F) A request that the Board determine whether a question of representation exists, and, if so, that the Board conduct an election by secret ballot and certify the results to the parties.

The petition shall be signed and verified before any person authorized to administer an oath. The petition, or supporting signature cards requesting representation by a collective bargaining representative, shall be signed by not less than 30 percent of the persons in the proposed bargaining unit. The signature cards shall be solely for the Board's use in determining whether there is sufficient interest as required by statute.

Section 63.4 Petition for Decertification of Collective Bargaining Representative

A petition for an election to decertify a collective bargaining representative, where the petitioner is not seeking the election of another labor organization as bargaining representative, shall be filed with the Board on a form provided by the Board, together with the collective bargaining contract, if one exists, and shall contain the following information:

- (A) The name and address of the petitioner;
- (B) The name and address of the currently-certified or currently-recognized bargaining representative;
- (C) The name and address of the State;
- (D) The general nature of the State's operation and the approximate total number of independent direct support providers;
- (E) The types, classifications or groups of independent direct support providers which constitute the appropriate bargaining unit; and the total number of independent direct support providers in the bargaining unit.
- (F) An allegation that not less than 30 percent of the independent direct support providers in the bargaining unit assert that the labor organization currently certified as bargaining agent is no longer supported by a majority of the independent direct support providers in the bargaining unit; and
- (G) A request that the Board determine whether a question of representation exists, and, if so, that the Board conduct an election by secret ballot and certify the result to the parties.

The petition shall be signed and verified before any person authorized to administer an oath.

Section 63.5 Decertification Petition; Showing of Interest

The decertification petition, or supporting signature cards indicating the independent direct support providers no longer desire to be represented by the incumbent bargaining representative, shall be signed by at least 30 percent of the independent direct support providers in the established bargaining unit.

Section 63.6 Sufficiency of Showing of Interest

- (A) The determination whether a showing of interest requirement to support a petition for election of collective bargaining representative, a petition for decertification of collective bargaining representative, or a petition for intervention in a representation proceeding has been satisfied shall be made administratively by the Board. The Board shall not disclose the identities of independent direct support providers whose signature cards or petitions are filed in support of the petition.
- (B) If the Board finds a sufficient showing of interest has not been made, the petitioner shall be given notice by the Board of such finding and shall be allowed a reasonable amount of time, but not less than 10 days, to submit a further showing of interest. If sufficient showing of interest is not made in the specified time, the Board will dismiss the petition.

Section 63.7 Notice of Petition

Upon the filing of a valid petition for election of a collective bargaining representative or a petition for decertification of a collective bargaining representative, the Board shall provide copies to the other parties designated in the petition.

Section 63.8 Response to Election Petition

- (A) Upon receipt of a valid petition for election of collective bargaining representative, or a petition to decertify a collective bargaining representative, the Board shall request the State to file with the Board within a specified time, but not less than seven days, a list of the names of the independent direct support providers proposed by the petitioner who have been paid for providing for providing home and community based services to service recipients within the previous 180 days. This list will be used by the Board in determining whether a sufficient showing of interest has been made by the petitioner.
- (B) Upon receipt of a valid petition for election of collective bargaining representative, where there is no incumbent bargaining representative, the Board shall request the State to notify the Board within a specified time, but not less than 15 days, whether the State believes there is a question of representation. If the State takes the position there is a question of representation, the State shall specify its reasons for that position.
- (C) Upon receipt of a valid petition for election of collective bargaining representative, where there is an incumbent bargaining representative, or a petition for an election to decertify a collective bargaining representative, the Board shall request the State and the incumbent bargaining representative to notify the Board within a specified time, but not less than 15 days, whether any collective bargaining agreement is in effect which would bar an election or whether any questions of representation exist, which questions shall be specified.

Section 63.9 Posting of Petition

Upon receipt of a petition from the Board, the State shall immediately provide copies of the petition by posting it on the Vermont Department of Disabilities, Aging and Independent Living website, and the State shall request that the petition be posted on the website of the payroll processor for independent direct support providers. The Board also shall post the petition on its website.

Section 63.10 Intervenors

Upon the filing of a petition for election of a collective bargaining representative, a labor organization wishing to appear on the election ballot may petition to intervene upon filing a petition signed by independent direct support providers or supported by signature cards signed by 10 percent of the independent direct support providers in the proposed bargaining unit and otherwise containing the information set forth in Section 63.3. Such petition shall be filed with the Board within 10 days of the date the State posted the notice of petition pursuant to Section 63.9. An incumbent bargaining representative shall not be required to file a petition to intervene in response to a petition filed to decertify it as bargaining representative but shall appear on the election ballot unless it disclaims any interest in remaining the representative of independent direct support providers or does not respond to the petition.

Section 63.11 Investigation

The Board shall cause any election petition to be investigated as provided by statute.

Section 63.12 Notice of Election

If the Board, after investigation and any necessary hearing, determines that a representation election is appropriate, the Board shall issue a Notice of Election. Such notice shall include, but not be limited to, a description of the appropriate bargaining unit; a sample ballot; the details of a mail ballot election; and voting instructions. These notices shall be communicated immediately by the State pursuant to order of the Board to ensure that all independent direct support providers have sufficient warning of the details of the election.

Section 63.13 Content of Ballots

In situations where there is no incumbent bargaining representative, independent direct support providers voting in an election vote on the question of representation. They vote on whether they desire to be represented by a particular labor organization. On the question of representation, there may be more than one labor organization included on the ballot. When petitions are filed to decertify the incumbent bargaining representative or replace the incumbent bargaining representative with another labor organization as bargaining representative, independent direct support providers in an election vote on the question of representation.

Section 63.14 Mail Ballot; Elections

Any election shall be conducted by mail ballot pursuant to 21 V.S.A. Section 1635(b).

Section 63.15 Voter Eligibility List

After the issuance of a Notice of Election, the Board shall require the State to file with the Board, by a specified date prior to the election, a list of the names and mailing addresses of the eligible independent direct support providers in the bargaining unit who have been paid for providing home-based and community-based services to service recipients within the previous 180 days. The State shall provide a copy of this list to the other party or parties at the time the list is provided to the Board, and the Board shall give the parties an opportunity to file any objections to this list by a specified date prior to the election. If objections are not filed, the Board will consider that list final and no additions or deletions will thereafter be permitted unless agreed to by the parties. At the time the voter eligibility list is filed, the State also shall post copies of the list providing the names, but excluding the mailing addresses, of independent direct support providers eligible to vote in the election as ordered by the Board.

Section 63.16 Observers

Each party to an election shall be permitted to have one observer of its own selection at the counting of the ballots.

Section 63.17 Spoiled Ballots

A ballot marked in an election so that the choice is indeterminable shall be considered a spoiled ballot which expresses no choice, does not contribute to the results of the election and shall not be considered a vote cast.

Section 63.18 Challenging Voters

Any prospective voter may be challenged at the time and place designated for the counting of ballots for cause except for questions of eligibility which shall be raised as set forth in Section 63.15. The Board agent conducting the election shall rule on the challenges and the agent's decision shall be final.

Section 63.19 Majority Vote Requirement

A labor organization must receive a majority of valid votes cast in an election to become certified or remain certified as exclusive bargaining representative.

Section 63.20 Runoff Election

A runoff election shall be conducted by the Board when an election, in which the ballot provides for no less than three choices (i.e., at least two representatives and "neither"), results in no choice receiving a majority of the valid votes cast. The Board shall not conduct a runoff election when only two choices appear on the ballot and the result is a tie. In that case, the Board will issue an order providing the labor organization is not certified or is decertified as bargaining representative, as applicable. In a runoff election, the Board shall issue a Notice of Election as set forth in Section 63.12 and shall require the State to file a voter eligibility list as set forth in Section 63.15. The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast.

Section 63.21 Objection to Election Conduct

Any interested party may file with the Board, within 10 days of the election, an objection to the conduct of the election.

- A. Contents of the objection: The objection shall set forth the following:
 - (1) The results of the election;
 - (2) Factual allegations to support the objection to the conduct of the election, including the names or identities of the persons or organizations charged and the independent direct support providers affected; and
 - (3) A request that the Board investigate the objection. The complainant may also request the Board to set aside the election.
- B. Service of copy: The Board shall forthwith send by certified or registered mail a copy of the objection to each person or organization named in the objection, and to all other persons who appear to the Board to have an interest in the subject matter of the objection, including all parties involved in the election.
- C. Answer: In the discretion of the Board, one or more of the persons or organizations named in the objection may be directed to file an answer to the objection, within such time as may be established by the Board.
- D. Investigation: The Board may delegate to an agent the authority to conduct an investigation with respect to the objection.

Section 63.22 Order Certifying Results of Election

Subsequent to expiration of the period for objecting to the conduct of the election, and if the Board has not set aside the election as a result of any objection filed, the Board shall issue an order of certification, non-certification or decertification of the bargaining representative, as applicable.

Section 63.23 Affiliation of Independent Labor organization; Amendment of Certification

A request for amendment of certification may be filed with the Board in the event that an independent labor organization serving as existing bargaining representative of independent direct support providers affiliates with another labor organization. The Board may find appropriate an amendment of certification, recognizing the affiliation, if the following requirements are met: 1) there is a guarantee of continuity of representation, 2) sufficient democratic standards were met to determine whether support existed among independent direct support providers for affiliation, and 3) the originally certified organization does not remain a presently, functioning viable entity after the affiliation.