

The Public Employment Relations Board (“PERB”) received 57 sets of comments in response to its Notice of Revised Rulemaking (“NRR”). The NRR proposed changes to PERB’s rules of procedure governing matters brought pursuant to the New York State Employment Relations Act (“SERA”), as amended by the Farm Laborers’ Fair Labor Practices Act (“FLFLPA”).

Many of the comments received were duplicative, and some raised issues that were addressed in PERB’s assessment of public comment received in response to the Notice of Proposed Rulemaking (“NPR”) published on April 30, 2025. Other comments took issue with PERB’s assessment in response to the NPR; PERB does not view it as necessary to expand on its prior assessment of public comment. Yet other comments suggested changes which PERB believes would be inconsistent with the purposes and goals of the statute.

The NRR proposed changes to sections 251.13, 263.9, 263.19, 263.20, 263.24, 263.30, and 263.54. Comments were not received on each section proposed to be revised. This assessment discusses only the sections where comments were received.

§ 263.19 Petition; filing.

Comment: Service requirements should be strengthened, not repealed.

Response: PERB has not made any changes in response to this comment. The elimination of the service requirement in section 263.19 is necessary because PERB has removed the requirement that a *petitioner* serve a copy of the petition at the time they file with PERB. PERB has found that the existing rule, requiring the petitioner to serve a copy of the petition, has caused confusion about the date when the employer’s response is due. PERB itself will continue to serve a copy of the petition on the employer, and the employer’s time to respond will start to

run upon receipt of the petition from PERB.

§ 263.24 Statement of position and offer of proof in certification cases.

Comment: Rule improperly shifts burden regarding the “peak employment” to employers. Union should be required to submit some evidence in support of its claim of peak season.

Response: PERB has not made any changes in response to this comment. The employer is the party in the best position to know whether it is at peak employment. As such, PERB views it as appropriate to require the employer to provide proof if it disputes that it is at least 50 percent of peak employment when the petition is filed.

Comment: Peak season should be defined differently; 50% of peak season is not sufficient.

Response: PERB has not made any changes in response to this comment. A requirement that an employer be at least at 50 percent of peak employment is consistent with other states’ farm regulations; a higher or more precise definition would require petitioners to know in great detail the hiring patterns of the employer, information that a petitioner employee organization or employee is unlikely to know.

Comment: Where the statement of position or offer of proof provides any question as to the existence of majority support for the union, PERB should investigate.

Response: PERB has not made any changes in response to this comment. As has been explained in numerous board decisions, a hearing is only appropriate when there are disputed issues of material fact. Simple allegations that there is not majority support for the union are insufficient to raise a material issue of disputed fact.

Comment: Employees should receive notice whenever a union files a petition on their behalf and have an opportunity to challenge any card that may have been submitted under their name.

Response: PERB has not made any changes in response to this comment. To our knowledge, such a requirement does not exist in any procedures governing similar labor relations representation situations. The communications between a union and its members are confidential and up to the union and its members.

Comment: Employer should be presented with some evidence that purports to support union's majority – union should be required to submit affidavits detailing when and how it obtained card signatures and what steps it took to ensure that employees were aware of the meaning of the cards.

Response: PERB has not made any changes in response to this comment. The dues deduction authorization cards that PERB has received have been clear on their face that the signee is designating the union as their bargaining representative. Absent evidence that employees could not read the card, PERB views it as unnecessary to impose further requirements regarding their collection.

Comment: Employers should be permitted to submit employee lists, payroll records, and other evidence under seal or *ex parte*.

Response: PERB has not made any changes in response to this comment. To accomplish its goals, and consistent with the purposes of the statute, the union needs this information to accomplish its goals.

Comment: Offer of proof requirement should also apply to union.

Response: PERB has not made any changes in response to this comment. At the time of submission of the petition, the union would not have knowledge of what issues the employer is going to raise and what might be disputed. A union would not, without that knowledge, be able to submit an offer of proof as to the witnesses it would call and evidence it would introduce at a hearing.

Comment: Petition should be accompanied by at least one declaration or affidavit from a current employee.

Response: PERB has not made any changes in response to this comment. To our knowledge, such a requirement does not exist in any procedures governing similar labor relations representation situations. Further, such a requirement could put a “target” on the employee’s back and result in improper retaliation from unscrupulous employers. For that reason, such a requirement could chill employees from exercising their statutory rights. Such a requirement thus would be inconsistent with the goals and purposes of the statute.

Comment: If union petitions to represent a unit of H-2A employees, union should be required to submit its petition at least 30 days before the end of the H-2A contract term of employment.

Response: PERB has not made any changes in response to this comment. PERB does not see the need for such a rule.

Comment: Individuals who have left the country should not be considered “employees,” and cards signed in a foreign country should not be counted.

Response: PERB has not made any changes in response to this comment. These present legal issues that are not properly covered in PERB’s rules of procedure. Further, the location of the employee or locale where signed have no bearing on whether the person is an employee.

Comment: This rule cloaks union-filed certification petitions with a presumption of truth while subjecting respondent employers to complex procedural requirements under threat of automatic certification for non-compliance.

Response: PERB has not made any changes in response to this comment. The procedures are consistent with the purpose and goals of the statute and labor relations procedures generally.

Comments: Rules are complex and may not be easily understood by family farmers who have no prior experience with SERA or PERB.

Response: PERB has not made any changes in response to this comment. While PERB recognizes that regulatory language may not be familiar to some readers, it has attempted to make the rules as reader-friendly as possible.

§ 263.30. [Life of Certification] Petitions for Decertification.

Comment: Insulation period unlikely to work in practice where farm is often dependent on temporary and migrant workers (including H-2A workers, who may leave the country before an open period occurs).

Response: PERB has not made any changes in response to this comment. An insulation period is necessary to allow the parties to begin to establish a bargaining relationship, free from the threat of a decertification petition. As explained in response to comments received on the NPR, an insulation period is well-established in labor relations law. This is true for both the private and the public sector, and the insulation period under SERA/FLFLPA has been recognized by our predecessor board. *See the discussion of insulated periods in Porpiglia Farms, Inc (Bell)*, 58 PERB ¶ 3402 (2025); *Cherry Lawn Fruit Farms, LLC (Estrame)*, 58 PERB 3407 (2025).

Comment: Peak employment period typically coincides with farm's peak season, limits employees' ability to exercise their rights, and places undue pressure on farm during its busiest season.

Response: PERB has not made any changes in response to this comment. A requirement that the employer be at least at 50 percent of peak employment is necessary to ensure that representation decisions are not made by an unrepresentative segment of the employer's employees.

Comment: Composition of workforce may change from year to year. Fixed insulation period that carries over from one season to another risks locking in representation decisions that no longer reflect wishes of current workforce.

Response: PERB has not made any changes in response to this comment. A change in the composition of employees in the unit is not a valid basis, standing alone, to file a decertification process, and an insulated period is necessary to give the employer and employee organization the opportunity to bargain.

Comment: Decertification process is materially different from the certification process, in that certification may happen on the basis of card check, but decertification requires an election.

Response: PERB has not made any changes in response to this comment. As discussed in PERB's assessment of public comment received in response to the NPR, card check certification is required in certain circumstances by SERA/FLFLPA. By contrast, the requirements for decertification are not set forth in the statute.

Comment: Blocking charges should not cause insulation period to be extended or decertification petition to be dismissed because employees' statutory rights should not be nullified by procedural maneuvering.

Response: PERB has not made any changes in response to this comment. As discussed in PERB's assessment of public comment received in response to the NPR, PERB believes that not having a "blocking charge" rule would allow a violating employer to benefit from malfeasance by failing to bargain in good faith or through conduct that interferes with employees' free choice in an election.

Comment: 30-day window to file decertification petition limits employee agency and awareness and limits employees' ability to exercise their statutory rights.

Response: PERB has not made any changes in response to this comment. PERB believes the proposed time frame is reasonable.

Comment: Employees seeking to decertify should not face barriers and insurmountable procedural hurdles, especially those based on the alleged and unproven misconduct of their employer.

Response: PERB has not made any changes in response to this comment. As discussed above and in PERB's assessment of public comment received in response to the NPR, PERB believes that not having a "blocking charge" rule would allow a violating employer to benefit from malfeasance by failing to bargain in good faith or through conduct that interferes with employees' free choice in an election.

Comment: Section 263.30 (d) is ambiguous that could be measured by multiple dates (i.e. first call to discuss bargaining, the exchange of first proposals, first bargaining session, etc). The rule is also ambiguous in that it allows for "tolling" during periods when actual bargaining is not happening. As a result, employees will not know how to measure the one-year insulated period.

Response: PERB has not made any changes in response to this comment. These provisions will prevent an employer from avoiding their statutory bargaining obligations by stalling and other dilatory tactics and should not be ambiguous.

Comment: Section 263.30 (e) provides for dismissal of a decertification petition based on filing of an unfair labor practice charge. Petition should not be dismissed based on allegations alone, but should be held in abeyance.

Response: PERB has not made any changes in response to this comment. It does not matter if the petition is dismissed or held in abeyance; the petition can be refiled after the ULP is resolved. PERB does not have to continue to process the matter if it is dismissed and is more administratively efficient.

Comment: “Blocking” charge must be timely, recent, and relevant. Any blocking doctrine should require sworn, specific evidence and be time-limited.

Response: PERB has not made any changes in response to this comment. PERB has revised its rules regarding the filing of unfair labor practice charges to require greater specificity, which will deter the filing of frivolous charges. Further, PERB prioritizes charges that are serving to block a decertification election, lessening the concerns about a charge blocking an election for a prolonged period of time.

Comment: Window between 90 and 60 days before expiration of the contract is not appropriate in seasonal context, where workers subject to a contract that expires during the winter months will not be working together at a time when they can organize a decertification petition and election.

Response: PERB has not made any changes in response to this comment. The revised rule provides that, in the event that the expiration date falls outside a period of peak employment,

the petition may be filed during the next period when the employer is at least at 50% of peak employment.

Comment: Contract bar should not extend beyond three years – employees should have the opportunity to file a decertification petition at any time after three years for any contract that extends beyond three years.

Response: PERB has not made any changes in response to this comment. There is an open period after three years but it is not unlimited; this is consistent with the contract bar procedures PERB utilizes under similar statutes that it administers. It provides an opportunity for employees to change the manner of their representation while also ensuring labor stability. In practice, it is very unlikely that contracts will extend beyond three years (the impasse arbitrator may only impose a contract for two years).

Comment: SERA/FLFLPA does not permit insulation periods.

Response: PERB has not made any changes in response to this comment. As discussed in PERB’s assessment of public comment in response to the NPR, the existence of an insulation period under SERA has been recognized under our predecessor board. *See the discussion of insulated periods in Porpiglia Farms, Inc (Bell)*, 58 PERB ¶ 3402 (2025); *Cherry Lawn Fruit Farms, LLC (Estrame)*, 58 PERB 3407 (2025).

Comment: Allowing employees to file for decertification at the “next period” of 50% employment is not clear – does not state whether there is time limit on “next period”, what the time period would be, whether it is the entirety of the time, whether employer is obligated to provide information about peak employment.

Response: PERB has not made any changes in response to this comment. PERB believes this is clear; the filing can be made at the next time that there is at least 50% employment.

§ 263.54 Subpoenas.

Comment: Allowing Hearing Officer (“HO”) to draw adverse inference raises concerns because most farmers are unfamiliar with unionization procedures and PERB litigation practices, and rules do not sufficiently ensure that employers are informed of their obligations and rights before facing such consequences.

Response: PERB has not made any changes in response to this comment. Allowing a HO to draw an adverse inference from a failure to comply with a subpoena is consistent with court practice. *See, eg, Bishop v Leahey*, 194 AD3d 1250, 1252 (3d Dept 2021).

Comment: Scope of information subject to subpoena should be limited; permitting broad subpoenas for full books and records exceeds what is necessary for representation.

Response: PERB has not made any changes in response to this comment. PERB’s subpoena rules require a showing that the documents requested are relevant. The reference in the rule to “books, papers, documents or other objects” is simply illustrative of the type of documents that might be ordered produced.

General comments:

Comment: Card check process raises serious risks of coercion and fraud. PERB should require additional safeguards such as verification, notarization, witness signatures, and mandating that employees receive a copy of any card they sign in their native language.

Response: PERB has not made any changes in response to this comment. SERA/FLFLPA provides the circumstances under which the HO will consider allegations of fraud (clear and convincing evidence). Requiring additional verifications is not practicable in organizing circumstances.

Comment: Employee data protection must be strengthened, and the rules should clearly limit how employee information may be used.

Response: PERB has not made any changes in response to this comment. PERB is not aware of any issue that exists in this regard.

Comment: Increased regulations are hurting agriculture, and rights and provisions should not apply to employees who are not American citizens.

Response: PERB has not made any changes in response to this comment. SERA/FLFLPA contain a broad definition of “employee,” and there is no indication that such definition was intended to apply only to American citizens. *See Porpiglia Farms*, 57 PERB ¶ 3402 (2024), for a discussion of the applicability of FLFLPA to workers present in the U.S. on H-2A visas.

Comment: Making rules that exceed those of other states and countries will drive jobs and production to those other areas.

Response: PERB has not made any changes in response to this comment. The decision to allow collective bargaining rights was made by the Legislature. PERB’s rules simply effectuate this decision.

Comment: All workers should not be put into one union because they do not share a community of interest.

Response: PERB has not made any changes in response to this comment. A community of interest analysis is a case-by-case, fact-based determination, and domestic/H-2A or full-time/seasonal employees will not be placed in the same unit if they lack a community of interest.

Comment: Employees should receive notice whenever a union files a petition on their behalf and have an opportunity to challenge any card that may have been submitted under their name.

Response: PERB has not made any changes in response to this comment. To our knowledge, such a requirement does not exist in any procedures governing similar labor relations representation situations. The communications between a union and its members are confidential and up to the union and its members.

Comment: Limiting Board review of certifications in rule 263.67 (a) undermines due process, despite high stakes and high potential for error.

Response: PERB has not made any changes in response to this comment. As explained in PERB's assessment of public comment received in response to the NPR, the current provision was adopted several years ago and is consistent with the legislative intent to achieve prompt certification of a bargaining unit based on card check. Court review remains available under Article 78 of the CPLR.

Comments: Addition in rule 263.36 does not go far enough in deterring frivolous unfair labor practice charge filings. The burden of proof should be placed on the union, and a four-month statute of limitations should be imposed.

Response: PERB has not made any changes in response to this comment. The burden of proof in an unfair labor practice proceeding already is on the charging party, and PERB believes requiring a summary of the proof to be offered will deter frivolous charges. As explained in PERB's assessment of public comment received in response to the NPR, PERB does not see it as necessary to impose a statute of limitations at this time and notes that the unfair labor practice charges it has received thus far under FLFLPA have been timely filed. Nevertheless, PERB

notes that a defense of laches or other equitable defenses may be available to a respondent.

PERB will continue to evaluate this issue.

Comment: Unions should not be able to invoke the impasse arbitration procedures when there is a decertification petition pending.

Response: PERB has not made any changes in response to this comment. As explained in PERB's assessment of public comment received in response to the NPR, the PERB board explained in *Porpiglia Farms, Inc*, 58 PERB ¶ 3401 (2025), that it has been a long-standing policy under SERA that the obligation to bargain continues when a decertification petition has been filed. Because mediation and impasse arbitration are a continuation of the bargaining process, it is proper that those obligations continue as well.

Comment: Employees should receive notice and an opportunity to participate in any compulsory arbitration.

Response: PERB has not made any changes in response to this comment. At the time the impasse arbitration process starts, the employee organization is the certified representative of employees in the bargaining unit. As such, they represent the employees at the arbitration.

Comment: PERB has no way to know if submitted cards were actually signed by employees of the farm, and union can submit fraudulent cards.

Response: PERB has not made any changes in response to this comment. The statute provides the circumstances under which PERB will investigate claims of fraudulent cards (when there is "clear and convincing evidence"). PERB has been administering FLFLPA for over 5 years and has yet to see a claim that employees did not, in fact, sign cards.

Comment: Rules lack clarity as to key terms such as "working days" and "good cause" under rule 253.9 (c).

Response: PERB has not made any changes in response to this comment. “Working days” and “good cause” are well-established legal terms.

Comment: It is unclear why revised rules continue to reference Civil Service Law (“CSL”) section 205.

Response: PERB has not made any changes in response to this comment. The reference to CSL section 205 is in brackets and is therefore to be deleted in the final rule.

Comment: Rules need to provide that there is full evidentiary hearing where there is any evidence or allegations of misconduct.

Response: PERB has not made any changes in response to this comment. As the board and PERB’s administrative law judges have explained in numerous decisions, an evidentiary hearing is only held where there are material issues of disputed fact. Such a hearing is not appropriate based on bare allegations of misconduct.

Comment: Card check elections should be the exception, not the rule, or rules need to provide for full evidentiary hearings regarding challenges to the method of collecting cards.

Response: PERB has not made any changes in response to this comment. In passing FLFLPA, the legislature made a clear choice that card check was an acceptable, if not preferred, method of certification.

Comment: Rules should explicitly recognize exclusion of unpaid immediate family members working out of familial obligation from the definition of “employee” and PERB’s authority to exclude supervisory employees from rank-and-file units.

Response: PERB has not made any changes in response to this comment. PERB does not see a need to replicate these statutory provisions in its rules.