

Technical Amendment
March 28, 2023

803 KAR 3:060. Procedures for electing and certifying exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighter personnel, firefighters, or corrections personnel employed by urban-county governments.

RELATES TO: KRS 67A.6905, 67C.408

STATUTORY AUTHORITY: KRS 67A.6905(3), 67C.408(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 67A.6905(3) requires the Education and Labor Cabinet to promulgate administrative regulations governing elections for exclusive representatives of police officers and firefighter personnel, firefighters, or corrections personnel employed by urban-county governments. KRS 67C.408(3) requires the Cabinet to promulgate administrative regulations governing elections for exclusive representatives of police officers employed by consolidated local governments. This administrative regulation establishes procedures for electing and certifying exclusive representatives of police officers employed by urban-county or consolidated local governments and firefighter personnel, firefighters, or corrections personnel employed by urban-county governments.

Section 1. Definitions.

- (1) "Appropriate Collective Bargaining Unit" means a group of police officers, firefighter personnel, firefighters, or corrections personnel, as determined by the Cabinet considering the factors outlined in KRS 67A.6905(2) and KRS 67C.408(2), which is the subject of a petition for election.
- (2) "Commissioner" is defined in KRS 67A.6901(1) and 67C.400(5).
- (3) "Cross petition for election" means a petition authorized by KRS 67A.6905(1) or 67C.408(1) seeking to intervene in a pending petition to elect an exclusive representative of an appropriate collective bargaining unit.
- (4) "Cross petitioner" means a person, organization, or employer, authorized by KRS 67A.6905(1) and 67C.408(1) to request an election for an exclusive representative of an appropriate collective bargaining unit, who files a cross petition for election.
- (5) "Cabinet" is defined in KRS 67A.6901(3) and 67C.400(1).
- (6) "Exclusive representative" is defined in KRS 67A.6901(4) and 67C.400(3).
- (7) "Labor Organization" is defined in KRS 67A.6901(7) and 67C.400(2).
- (8) "Notice of Election" means a notice prepared by the Cabinet containing the details of an election for an exclusive representative, including the appropriate collective bargaining unit; voting eligibility criteria; date, hours, method, and location of the election; sample ballot; and effect of the vote.
- (9) "Petition for election" means a petition authorized by KRS 67A.6905(1) or 67C.408(1) requesting an election for an exclusive representative of an appropriate collective bargaining unit.
- (10) "Petitioner" means a person, group, organization, or employer, authorized by KRS 67A.6905(1) and 67C.408(1) to request an election for an exclusive representative of an appropriate collective bargaining unit, who files a petition for election.

Section 2. Petition for Election.

- (1) An original and three (3) copies of a petition for election shall be filed with the Cabinet and shall include the following:
 - (a) The petitioner's name, address, and affiliation, if any, along with the name and telephone number of the petitioner's principal representative;

(b) The name and address of the urban-county or consolidated local government employer, if the employer is not the petitioner, along with the name and telephone number of the employer's principal representative;

(c) A description of the claimed appropriate collective bargaining unit specifying the following:

1. The classifications of employees included and excluded;
2. The approximate number of employees;
3. The interests the employees have in common regarding wages, hours, and other working conditions; and
4. The history of collective bargaining among employees;

(d) The name and address of any known labor organization that represents police officers, firefighter personnel, firefighters, or corrections personnel in the claimed appropriate collective bargaining unit;

(e) A clear and concise statement setting forth the issues raised by the petition, including the proof required by KRS 67A.6905(1)(a) through (b) or 67C.408(1)(a) through (b);

(f) Any other relevant facts; and

(g) The petitioner's signature and a declaration, under penalty of perjury, by the person signing the petition that the contents of the petition are true and correct to the best of the person's knowledge.

(2) The party filing a petition, cross petition, or other document permitted or required by this administrative regulation shall serve a copy on all affected parties.

(3) Within five (5) days of the date a petition for election is filed, the Cabinet shall notify in writing any affected party identified in the petition.

Section 3. Cross Petition for Election.

(1) A cross petition for election shall be filed within fifteen (15) days of the date the petition for election is filed with the Cabinet.

(2) A cross petition for election shall be in the same form and contain the same information required of a petition for election outlined in Section 2 of this administrative regulation.

(3) Within five (5) days of the date a cross petition for election is filed, the Cabinet shall notify in writing any affected party identified in the cross petition for election.

Section 4. Duty to Furnish Information and Cooperate.

(1) After a petition and any cross petition are filed, the Cabinet may direct the petitioner, cross petitioner, or any other affected party to submit additional information the Cabinet deems relevant to an investigation of the issues raised by the petition or cross petition, as required by KRS 67A.6905(1) and 67C.408(1).

(2) In determining the appropriate collective bargaining unit, as required by KRS 67A.6905(2) and 67C.408(2), the Cabinet may direct the urban-county or consolidated local government employer to furnish a current, alphabetized list of employees and job classifications included or excluded from the appropriate collective bargaining unit claimed in the petition.

(3) All affected parties shall cooperate with the Cabinet and each other in every aspect of the election process. This obligation includes submitting all required and requested information, making a good faith effort to agree on procedural matters, and participating fully in conferences. Failure to cooperate may result in the Cabinet taking appropriate action, including dismissing a petition or denying intervention.

Section 5. Election Determination and Notification.

(1) Within forty-five (45) days of the date a petition for election is filed, the Cabinet shall evaluate the petition and any cross petition to determine whether it meets the

requirements of Section 2(1) of this administrative regulation. The Cabinet may extend the time for evaluation up to thirty (30) days if it requests additional information from the petitioner, cross petitioner, or any other affected party, as outlined in Section 4 of this administrative regulation.

(2) If the Cabinet determines that a petition is valid, it shall establish the appropriate collective bargaining unit, including voter eligibility, and notify in writing all affected parties that an election shall be held. If the Cabinet determines that a petition is invalid, the petition shall be dismissed.

(3) If the Cabinet determines that a cross petition for election is valid, it shall notify in writing all affected parties that the cross petitioner shall be allowed to intervene. If the Cabinet determines that a cross petition is invalid, the cross petition shall be dismissed, and the cross petitioner shall not be allowed to intervene.

(4) Parties shall make a good faith effort to enter into agreements on the procedural conduct of the election, including the date, hours, method, and location. If the parties cannot agree, the Cabinet shall determine the details of the election.

(5) Within fifteen (15) days of the date the Cabinet notifies the parties in writing whether the petition and any cross petition are valid, it shall issue a notice of election.

(6) At least ten (10) days prior to the date of the election, the affected urban-county or consolidated local government employer shall either post the notice of election in a conspicuous place available to all affected employees or distribute the notice to all affected employees in a manner by which employment notices are normally distributed.

Section 6. Election Procedures.

(1) The Cabinet shall supervise all elections.

(2) Voting shall be by secret ballot.

(3) The cost of printing and mailing ballots, if any, shall be borne equally by those whose names appear on the ballot.

(4) The petitioner shall appear first on the ballot. Cross petitioners shall appear in rank according to the date and time the Cabinet receives each cross petition. "No representative" or "none" shall be last on the ballot.

(5) If there is no pending cross petition, a petitioner may withdraw its request for an election at any time by filing a notice in writing with the Cabinet. If there is a valid cross petition, an election shall be held; however, either the petitioner or cross petitioner may remove its name from the ballot at any time prior to the date the election is held.

(6) Parties may choose equal numbers of observers to represent them at all polling locations, if elections are held on site, and at the ballot counting, subject to the Cabinet's approval. Observers for the employer shall not be supervisors of any employees in the affected collective bargaining unit.

(a) Each party shall file a written list of its proposed observers with the Cabinet at least ten (10) days prior to an election.

(b) Written objections to observers, stating specific reasons, shall be filed with the Cabinet within five (5) days after service of the list.

(c) The Cabinet's decisions on observers are final and binding.

(7) If the election is conducted on site, the following procedures shall apply:

(a) Polling locations shall be clearly marked. A private area or booth shall be available at each location for voters to mark their ballots in secret.

(b) The parties shall not distribute or post campaign literature within twenty-five (25) feet of the entrance of any polling site during polling hours.

(c) Cameras, video equipment, and similar means of surveillance shall be prohibited within the actual polling area while employees are voting.

(d) The Cabinet representative shall examine the ballot boxes in the presence of the authorized observers immediately prior to opening the polls. When the polls are

opened, each ballot box shall be sealed, except for one (1) opening on the top for voters to insert their ballots.

(e) Employees shall present appropriate identification to the Cabinet representative to vote. A voter shall make a cross or check in the circle or block on the ballot corresponding to the voter's choice. If the voter inadvertently spoils a ballot, he or she may return the ballot to the Cabinet representative, who shall give the voter another ballot. The spoiled ballot shall be placed in a spoiled ballot envelope; the Cabinet representative shall seal the envelope; the authorized observers shall initial the envelope; and the Cabinet representative shall deposit the envelope in the ballot box.

(f) A voter shall fold his or her ballot so that no part of its face is exposed and, after leaving the voting area or booth, shall deposit the ballot in the ballot box.

(g) The Cabinet representative may privately assist any voter who, due to physical or other disability, is unable to mark his or her ballot.

(h) The Cabinet representative or any authorized observer may challenge, for good cause, the eligibility of any voter. The observer shall state the reason for the challenge. The Cabinet representative shall challenge any voter whose name does not appear on the eligibility list. A challenged voter shall be permitted to vote in secret. The Cabinet representative shall place the challenged voter's ballot in a challenged ballot envelope, seal the envelope, and mark the voter's name and the reason for the challenge on the outside of the envelope. The authorized observers shall initial the envelope, and the Cabinet representative shall deposit the envelope in the ballot box.

(i) If the Cabinet representative stops the election for any reason, he or she shall completely seal the ballot boxes in the presence of the authorized observers. The ballot boxes shall remain in the custody of the Cabinet representative until voting resumes.

(j) Upon conclusion of the voting, the Cabinet representative shall completely seal the ballot boxes, which shall be initialed by the authorized observers, and bring them to a predetermined location. All ballot boxes shall be opened when they are going to be counted, and the ballots shall be commingled for tallying.

(k) Ballots shall be tallied in accordance with the procedure established in Section 7 of this administrative regulation.

(8) If the election is conducted by mail, the following procedures shall apply:

(a) The Cabinet shall mail a packet containing a ballot; a ballot envelope; a pre-printed employee identification label with signature line; a pre-addressed, stamped, return envelope; and instructions to each eligible voter.

(b) The instructions shall advise the voter to mark the ballot without identifying himself or herself; place the ballot in the ballot envelope; seal the ballot envelope and place it in the return envelope; seal the return envelope; place the preprinted employee identification code label with signature line across the seal; sign the label; and mail the envelope. The instructions shall also advise the voter of the date by which ballots shall be received in order to be counted.

(c) Mail ballots shall remain unopened in their return envelopes until the date set for tallying. On the date set for tallying, the Cabinet representative and the authorized observers may challenge any ballots prior to the opening of the return envelopes. The voter's name, signature, and employee identification code on the label covering the outside envelope seal shall be used to determine if the voter is an eligible employee. Challenged ballots shall be handled in accordance with Section 7 (3) of this administrative regulation.

(d) All ballots that have not been challenged shall be removed from their return envelopes and commingled prior to tallying. The ballots shall be tallied in accordance with Section 7 of this administrative regulation.

Section 7. Tallying Ballots.

- (1) After all elections, the Cabinet shall tally ballots in the presence of authorized observers.
- (2) Ballots which are defaced, torn, or marked in such a manner that they do not indicate the voter's clear intent shall be void and not counted.
- (3) Challenged ballots shall be handled as follows:
 - (a) The Cabinet representative shall impound the challenged ballots, which shall be considered only if they could be determinative of the outcome of the election.
 - (b) If challenged ballots could affect the outcome of the election, the Cabinet representative shall examine each challenged ballot, consult the established eligibility criteria, and decide whether the ballot is legitimate and shall be counted.
- (4) Representation shall be determined by the majority of the valid ballots cast.
- (5) If there are only two (2) choices on the ballot (one (1) labor organization and "no representation"), each of which receives fifty (50) percent of the vote, the Cabinet shall certify that a majority of the eligible employees have not manifested a desire to be represented by the labor organization.
- (6) If there are three (3) or more choices on the ballot (two (2) or more labor organizations and "no representation") and no choice receives a majority of the valid ballots cast, the Cabinet shall conduct a runoff election between the two (2) choices that received the most votes, as provided in KRS 67A.6905(3), 67C.408(3), and Section 8 of this administrative regulation.
- (7) The Cabinet shall preserve and protect all ballots and election records for at least sixty (60) days from the date results of the election have been certified.

Section 8. Runoff Election.

- (1) A runoff election prescribed in KRS 67A.6905(3) or 67C.408(3) shall not be held until the Cabinet or commissioner has ruled on any challenges to ballots and objections to the election.
- (2) In order to vote in a runoff election an employee shall have been eligible to vote in the original election and still be in the appropriate collective bargaining unit on the date of the runoff election.
- (3) The parties shall follow the procedures in a runoff election established for elections in Section 6 of this administrative regulation.

Section 9. Certification of Election Results. If challenged ballots are insufficient in number to affect the results, no runoff election is to be held, and no timely objections are filed as provided in Section 10 of this administrative regulation, the Cabinet shall promptly certify the results of the election and notify all affected parties in writing.

Section 10. Objections to Election.

- (1) Within five (5) days after receiving the vote tally, any party to the election may file objections to the conduct of the election.
 - (a) Objections shall be in writing and contain a brief statement of facts upon which the objections are based.
 - (b) An original of the objections, containing the declaration required by Section 2(1)(g) of this administrative regulation, and three (3) copies shall be filed with the commissioner.
 - (c) The party filing objections shall serve a copy of the objections upon each of the other parties at the same time it files with the commissioner.
- (2) Within ten (10) days after the objections are filed, the objecting party shall submit to the commissioner, with copies served upon all parties, a statement of material facts and issues, including a summary of evidence supporting the objections.
- (3) Within ten (10) days of the date the statement of material facts and issues is filed with the commissioner, an affected party may file a response.

(4) The commissioner or designated representative shall promptly investigate the allegations, conduct a conference with all affected parties, and issue a report within thirty (30) days of receiving the statement of material facts and issues.

(a) If the commissioner finds reasonable cause to believe that the election was not fairly and freely chosen by a majority of the employees in the appropriate collective bargaining unit, he or she shall order a new election and any other corrective action necessary to insure the fairness of the election process.

(b) If the commissioner determines, upon investigation, that the election was freely and fairly chosen by a majority of the employees in the appropriate collective bargaining unit, he or she shall certify the results of the election.

(c) The commissioner's findings regarding the objections are final and binding.

(32 Ky.R. 439; 629; eff. 11-4-05; 33 Ky.R. 2205; 2950; eff. 4-6-07; Crt eff. 2-26-2020; TAm eff. 3-28-2023.)