

OHIO EDUCATION ASSOCIATION

MANUAL FOR THE

CONDUCT OF LOCAL ASSOCIATION

ELECTIONS

AND THE

RATIFICATION OF COLLECTIVE

BARGAINING AGREEMENTS

A guide to conducting certain local association elections, contract ratification votes, and elections to accept or reject fact-finder's recommendations in accordance with the OEA Constitution and Bylaws, the federal Labor-Management Reporting and Disclosure Act, and the Ohio Public Employees Collective Bargaining Law.

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TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
Positions to be Elected	1
Frequency of Elections	2
Qualifications	2
Notice of Nominations	2
Making Nominations	3
Uncontested Elections	4
The Election Committee	4
Challenges	5
Election Campaigning	5
Notice of Election	6
Preparation of the Ballots	7
Election Procedures	8
a. On-Site Elections	8
b. Mail Ballot Elections	9
c. Online Elections	9
d. Absentee Ballots	10
Observers	10
Challenged Voters	10
Counting the Votes	11
Protests	11
Voting on Fact-finders' Reports and Collective Bargaining Agreements	12
a. Tentative Agreement	12
b. Fact-finder's Report	13
Conclusion	14

APPENDICES

A	Sample Letter Announcing Nominations and Elections	15
B	Sample Ballot	16
C	Elections Checklist – Not using Double Envelope	17
D	Election Checklist – Double Envelope System	22
E	Election Checklist - Mail Ballot	28
F	Conducting Online Elections	34
G	Absentee Ballot Requirements	37
H	Sample Tally Sheet	38
I	OAC 4117-9-05	39

1. INTRODUCTION

The conduct of local association elections and contract ratification votes and related fact-finding elections is more than a matter of common sense. Such elections and votes must conform to the governing documents of the local association, the OEA and the NEA and, as appropriate, the Ohio Public Employees Collective Bargaining Law. Additionally, the OEA voluntarily complies with the requirement of the Labor-Management Reporting and Disclosure Act, which is commonly known as the Landrum-Griffin Act, and related rules and regulations of the U.S. Department of Labor. Accordingly, local OEA affiliates that elect OEA and/or NEA representative assembly delegates and alternates are governed by Landrum-Griffin requirements for those elections as well. **Local association elections that do not involve the election of OEA or NEA representative assembly delegates or alternates are not governed by Landrum-Griffin requirements.**

This OEA manual is compiled from these sources and is designed to provide a concise and authoritative reference for those who are responsible for the proper and orderly conduct of local association elections and contract ratification votes. Following the manual, in Appendices A through G, is a sample combined nominations and election notice, checklists for conducting on-site and mail ballot elections, safeguards for absentee ballot privileges, a sample ballot, a sample tally sheet, and a copy of the Ohio Administrative Rules concerning votes. Thus, each OEA affiliate will have all the tools necessary to conduct a fair and democratic election.

The OEA and NEA are firmly committed to insuring that all internal elections and contract ratification votes are conducted fairly and democratically. This commitment to such democratic principles as open nominations, the secret ballot, and one person-one vote is of considerable importance to the membership and is one of the major advantages setting the Association apart from many other labor organizations.

By strict adherence to the procedures outlined in this manual and careful attention to detail, local association elections and contract ratification votes will be conducted fairly, legally and democratically, thus meeting the expectations of the membership.

2. POSITIONS TO BE ELECTED

Policy-making positions must be elected.

The constitution and bylaws of the local association are the chief guide determining which positions are to be elected rather than appointed within the local association. Section 4117.19 of the Ohio Revised Code, however, requires that the constitution or bylaws of local associations "require the periodic election of officers by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in local elections..."The term "officers" is not defined in the statute, but it is prudent to use the meaning given to the word in federal law. Section 452.17 of the U. S. Department of Labor's regulations concerning the Landrum-Griffin Act defines an "officer" as "any constitutional officer, any person authorized to perform the functions of the president, vice-president, secretary, treasurer or other executive functions of a labor organization, and any member of its executive board or committee."

An officer of a local association as defined above must be elected directly by the membership. Indirect elections are not permitted. For example, a local association president cannot be elected by the Board of Directors of the local association. He or she must be directly elected by the membership. (This requirement does not apply to mid-term vacancies, which may be filled in any manner permitted under a local association's constitution and bylaws). Also, it is improper to give a grievance committee chairperson, who is appointed to the chair, a seat on the local association's Board of Directors. All seats on the Board of Directors must be filled through direct election. If a

local association's Board of Directors or board of governors is made up of committee chairs or building representatives, the committee chairs or building representatives must be elected. Committee chairs can be appointed to an Board of Directors if they are non-voting members of the committee.

3. FREQUENCY OF ELECTIONS

At least every three years, preferably more frequently.

Section 4117.19 of the Revised Code requires that a local association constitution or bylaws must require the "periodic election of officers by secret ballot..." The word "periodic" is not defined. Most local associations elect officers every year or every two years. The Landrum-Griffin Act requires employee organizations subject to its provisions to hold local elections at least every three years, and it is advisable to assume that this three-year limit might be considered the outside limit of "periodic election" under state law.

4. QUALIFICATIONS

Qualifications must be reasonable and uniformly imposed.

Except for requiring that a candidate be a member in good standing, it is not mandatory that a local association establish qualifications for office. If a local's constitution sets qualifications for office, the qualifications must be "reasonable qualifications uniformly imposed." What is reasonable is a matter not susceptible to precise definition.

All qualifications for office must be set forth in the local association's constitution and bylaws. **It is advisable, due to the legal complexities involved, that the OEA Director of Legal Services be consulted if or when a local association seeks to require a qualification, other than membership, to hold association office.**

A qualification of continuous membership in good standing, if set out in a Local Association's constitution and bylaws, is valid only if it is limited to a period of two years or less. It is permissible for a Local Association's constitution and bylaws to reserve a certain number of seats on a Board of Directors for particular representative categories of membership. For example, certain seats can be reserved for building representatives or ESP representatives. However, it is not permissible to reserve any table officer position (ie. president, vice president, secretary or treasurer) to a particular class of membership.

5. NOTICE OF NOMINATIONS

Every member must have a reasonable opportunity to nominate for or seek office.

The first step in the elections process is the holding of nominations. The first step in the holding of nominations is to make the membership aware that nominations are to take place. The notice of nominations must indicate what offices are to be filled, and spell out the process by which a nomination can be made. If nominations are made at a membership meeting, members must be informed of the date, time and place of the meeting. If nominations are made by letter/form, then members must be informed of the deadline for submitting nominations and the name and address of the person to whom the nomination should be submitted.

The notice of nominations must be in conformity with a local association's constitution and bylaws and must be reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice. Posting on bulletin boards,

individual mailing, inclusion in a newsletter are all acceptable means of notification so long as they are reasonably calculated to reach all members in good standing. In order to avoid any misunderstandings, it is suggested that the nomination notice also set out the terms of office, and the date the terms of office commence for each office to be elected.

Local associations may have and can adopt specific procedures for notification of nominations. Any arrangement is permissible so long as it is reasonably calculated to inform all members in good standing sufficient time to nominate the candidates of their choice. What is reasonable may vary depending on the size of the local association, the number of worksites, and the time of year.

To save time and money, the nominations notice can, and frequently is, combined with the notice of elections, described below. If notices are combined, care must be taken to make sure that requirements for both the nominations notice and the elections notice are followed. **See Appendix "A" for a sample letter announcing nominations and elections.**

6. MAKING NOMINATIONS

Open Nominations are required.

Open nominations are guaranteed by OEA Bylaw 9-2. This can be accomplished by holding a nominations meeting open to the membership, or by requesting written declarations of nominations or intent to seek office.

If the method is to hold a nominations meeting, it is customary, though not legally required, that the president relinquish the chair to someone who is not going to be a candidate to conduct the nominations. If nominations are scheduled for a regular or special membership meeting, they may not be cancelled for lack of a quorum, although a local association may withhold conducting other regular business in conformity with its local constitution and bylaws. The Chair opens nominations by stating: "Nominations are now open for the office of _____." It is customary to start with the highest office open for nomination. A person nominating a candidate needs no second. After a person has been nominated, the Chair should state _____ has been nominated for the office of _____, are there any other nominations for _____? The procedure should continue until three consecutive calls for "other nominations" go unanswered. The Chair should then declare the nominations for that office closed and proceed to the next office. No motion is needed to close nominations, and a motion to close nominations is always out of order if another member is seeking the floor for the purpose of making a nomination.

It is also permissible to establish a nominations committee to seek out candidates for office, especially in those situations where members need to be encouraged to run for office. However, even where there is a nominations committee, there is still the need to conduct a nominations process where all members have the right to nominate candidates of their choice.

Provisions for write-in candidates in local association elections are neither required nor prohibited by law or the OEA or NEA Constitutions. The decision to allow write-in candidates is left to the local association. The matter should be set forth in the local association's constitution and bylaws.

7. UNCONTESTED ELECTIONS

An election for a position is not required if only one candidate has been nominated for that position after the open nomination process has been completed.

Unopposed candidates can be declared elected by the election committee or elected by acclamation at the conclusion of the open nominations meeting. The specific process should be set forth in the local association's bylaws.

Again, it is important that the open-nominations process be completed prior to declaring an unopposed candidate elected to the position nominated. Also, please note that if a local association allows write-in candidates, an election must be held even if only one person is nominated.

8. THE ELECTION COMMITTEE

The Election Committee must protect the integrity of the elections and the secrecy of the ballot.

An election committee is a membership committee charged with the responsibility to protect the integrity of an election or vote and ensure that an election is conducted in accordance with the local, state and national association constitutions. The election committee can be a permanent, on-going body charged with the responsibility of conducting all important votes, such as contract ratification or dues increases, as well as the election of officers. It is usually three to five members in size. Like any other committee, it is ordinarily appointed by the local association president with the approval of the local association executive board. There are, however, some important differences. The local president cannot serve on an election committee in an ex officio capacity where he/she is a candidate, nor can any other candidate for office serve on the elections committee. It is advisable to appoint persons to the election committee who are not closely aligned with a particular candidate or faction.

The committee may make minor rules regarding such matters as the hours of voting, unless those matters are covered by the local association's constitution or decided by membership vote. Aside from such matters, the committee must be prepared to handle nine basic duties:

- a. To make sure that each nominee has been offered the opportunity to decline the nomination.
- b. To hear and decide any challenge which may be made concerning the eligibility of any nominee.
- c. To make sure that proper notice of the election is given.
- d. To prepare or supervise the preparation of the ballots.
- e. To supervise the issuance and return of the ballots. This usually means either distributing ballots at the meeting and collecting them after they are marked or setting up one or more polling places where members may receive their ballots, mark them, and deposit them in a ballot box. In some local associations, it may mean mailing ballots to the membership and receiving them by return mail.
- f. To count the ballots and certify the results of the election.
- g. To hear and decide any protests which may be filed concerning the conduct of the

election.

- h. To make a report to the membership concerning the results of the election and, subject to membership acceptance, the decisions made on any protests.
- i. To maintain order and decorum during the ballot counting process.

Unless the matter is addressed in the constitution or bylaws of the local association, it may be appropriate for the elections committee to establish a cut-off date for voter eligibility. Such a date is frequently linked to the latest date prior to the election that a person can have dues deducted from his or her paycheck. It is advisable to make this decision early and notify bargaining unit employees of this cut-off date well in advance of the election. It is also permissible to allow persons to vote who sign membership cards immediately prior to the vote. The issue is up to the local association to decide.

9. CHALLENGES

Questions concerning a right to seek or be nominated for office must be resolved quickly.

A "challenge" is a formal objection to someone's right to run for office. It must be raised by a member before the election is actually held. A challenge must be based on some provision of the constitution of the NEA, OEA or the local association. An example of a valid basis for a challenge is that the nominee is not a member or has not been a member for the length of time required by the local association's constitution and bylaws to hold the office for which he/she has been nominated.

Any challenge that is raised must be referred immediately to the election committee. The committee should meet as quickly as possible, offering both the challenger and the affected nominee the opportunity to be heard. The committee also has the absolute right to examine official records affecting the challenge. The committee must then decide the matter and report its decision to the appropriate governing body before the election takes place. The committee's decision is subject to acceptance or rejection by the appropriate governing body. Any appeal of the appropriate governing body's decision cannot be used as a basis for delaying the election.

10. ELECTION CAMPAIGNING

No association funds can be spent to support a candidate.

Candidates must be afforded equal access to union publications.

There are two basic rules to remember about election campaigning. They are:

- a. No association funds can be spent, directly or indirectly, on campaigning for association office. Loaning money to a candidate to help the candidate raise money for his or her campaign is as unlawful as giving the money to the campaign directly. "Association funds" includes supplies, use of equipment, such as copying machines or telephones, or use of association staff. It should also be noted that it is illegal for an employer to give money to a candidate running for office in a local association which is the exclusive representative of employees of the employer.
- b. No publication of any kind which is sponsored by or supported by the association can make any endorsement or otherwise support any candidate for association office. This does not prohibit the publication of biographical information about or campaign

statement by the candidates so long as all candidates are afforded equal access to the publication.

Also, the Landrum-Griffin Act allows any member who has been nominated for office or who announces the intention to run for office, the right to a reasonable number of mailings by the local association to the membership before the election. This mailing is not to be made at the association's expense.

This third rule is occasionally misunderstood. All the association is required to do is address and mail the material. The candidate must prepare the material to be mailed, furnish the envelopes, do the stuffing and sealing and affix the stamps or pay for the metered mail charge. If there is an expense connected with the addressing, it must be borne by the candidate. Board of Directors Policy 400.05 permits membership lists to be used only for official OEA business. A candidate is not entitled to a mailing list for his/her own use.

Any candidate is entitled to inspect the local association membership list. This right is only to ensure that the membership lists are accurate. The candidate is not entitled by law to have or make a copy of any membership list.

No campaign leaflets or signs should be displayed at the polling place itself. A local association can make additional rules concerning campaigning, but any rule must be reasonable and apply equally to all candidates.

11. NOTICE OF ELECTION

Members must be notified in a manner reasonably calculated to reach all members in sufficient time to execute their vote.

OEA and NEA Representative Assembly delegates are subject to specific Landrum-Griffin requirements.

Section 4117.19 (C) (4) of the Revised Code provides that a local association's constitution or bylaws must "require periodic elections of officers by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, such office, and vote in elections..." In all elections except for those concerning OEA or NEA representative assembly delegates and alternates, this means that members must be notified of the time, date and place of the election in a manner reasonably calculated to inform the member. Posting, use of school mail, publication in a newsletter are all appropriate means of notification if they are reasonably calculated to inform the member.

The election of OEA and NEA representative assembly delegates and alternates is controlled by the Landrum-Griffin Act, which specifically requires that the notice of election must be **"mailed to each member at the member's last known address"** at least **fifteen days** before the election date. **Posting or word of mouth is not sufficient.** Publication in the local association newsletter is permitted so long as the newsletter is mailed to the home address of each member. The notice should state the date, time and place of the election, and also list the offices to be voted on, and if possible the list of candidates. If more than two candidates are running for a single office, it is wise to include in the notice the date, time and place of any run-off election which may be necessary.

If a local association's constitution and bylaws provide for officers to be automatic delegates to OEA or NEA representative assemblies, that officer must have actually been elected by the membership in order to participate in the election of OEA or NEA officers. Accordingly, if a local

association officer has been appointed to fill the unexpired term of an elected officer, he or she must be elected as a delegate in order to fully participate in an OEA or NEA representative assembly. In addition, if the person is a delegate to an OEA or NEA representative assembly by virtue of the office he/she holds, that officer must occupy the specific office at the time of the representative assembly. Otherwise, the person must be elected by the membership to serve as a delegate.

See Appendix "A" for a sample notice of nominations and election.

12. PREPARATION OF THE BALLOTS

Include only necessary information. Make instructions clear and simple.

The ballot should be headed "Official Ballot" followed by the name of the local association and the date of the election. The ballot should also include instructions: "Mark an 'X' in the squares next to the names of those for whom you wish to vote," or some similarly simply-worded directions. It is also advisable to add "Do not sign your name" and "do not make any other marks on this ballot."

The various offices to be voted on should be listed one at a time and after designation of each office, the words "vote for one" or "vote for three" or "vote for no more than three" or whatever is appropriate should appear. This should be followed by a listing of the candidates, with a box or circle next to each name.

Put only necessary information on the ballot. Extraneous information is at best confusing and at worst illegal. Do not print anything on the ballot to indicate which candidates are the incumbents. This can be construed as a campaign statement. Also do not print anything on the ballot to indicate the candidate's job title, work location, etc., unless this information is necessary for the voter to know. For example, if a local association allots three seats on the executive board to school support personnel and three to teachers, it may be necessary to add the words school support personnel in parentheses after the name. Absent such a purpose, any similar identification could be construed as a use of the ballot itself for campaign purposes.

The election committee is responsible for seeing that all names are correctly spelled on the ballot. The best way to do this is to contact the candidate personally, and ask for a statement, preferably in writing as to how the candidate's name is to be placed on the ballot.

Robert Louis Stevenson may want to be listed on the ballot as Robert Louis Stevenson, Robert L. Stevenson, R. Louis Stevenson, R. L. Stevenson or Bob Stevenson. He should be given the opportunity to make that decision as well as to give the accurate spelling of his name.

There is no one proper way for names to be ordered on a ballot. Some permissible ways are: 1) in order of nomination, 2) alphabetical, and 3) by drawing lots. As a matter of caution, it is recommended that the method of determining name order be decided before nominations have taken place rather than after, to avoid unnecessary conflict.

The actual printing of the ballots may be done by a commercial printer or an office copying machine, or any other method that will produce clear, easily read ballots. The number of ballots printed should substantially exceed the number actually needed, to take into account the possibility of spoilage during the election itself. **It is the responsibility of the election committee to control the ballots. It should: 1) determine the number of ballots to be printed, 2) make sure that the exact number are in fact printed, and 3) take charge of the**

ballots immediately upon completion of the printing, safeguarding them until the election takes place.

See Appendix "B" for an example of a properly formatted ballot.

13. ELECTION PROCEDURES

The secret ballot must be protected at all times.

Members must be afforded a reasonable opportunity to vote.

The two safeguards for fair and democratic elections are:

- 1) that the election is conducted by **secret ballot**, and
- 2) that all local association members be afforded a **reasonable opportunity to vote**.

The secret ballot requirement rarely causes disagreement. Voting can be done in booths or at isolated tables. Almost any method which allows a voter to mark the ballot without another person observing how he/she marks it is acceptable. After the ballot is marked, the ballot should be deposited by the voter directly into a ballot box or other container where it is mixed with other ballots and the voter's right to secrecy is preserved.

The second requirement can cause problems, especially in larger local associations, or associations with a dispersed membership, or associations with membership working different shifts.

a. On-site elections are preferred.

Whenever possible, it is advisable to set up specific hours for voting. If voting is scheduled at a regular or special membership meeting, it may not be cancelled or postponed due to a lack of a quorum, although other regular business may be suspended in conformity with a local association's constitution and bylaws. However, based on a rule of reasonableness, circumstances such as a snow day or other act of God, may justify the rescheduling of an election. It is essential that a record be kept of which members voted, both to avoid having someone vote twice and to avoid giving ballots to non-members. The best way to do this is to work from a list of members as of the eligibility cut-off date who are current members as of the date of election and have each voter identify him/herself and sign for his/her ballot.

Where local associations have members working more than one shift, the voting hours must be of sufficient time to allow members on all shifts a reasonable opportunity to vote. Where local associations have more than one voting location, great care must be taken to preserve the integrity of the election. This includes the following precautions:

1. Each member should be notified of his/her proper voting location.
2. Each voting location must, at all times, be attended by the election committee member or other member designated by the election committee.
3. The attending election committee member or designee must keep a written list of which members have voted. Preferably, the election committee member or designee should have a list of members for that location that can be checked off after each member votes.
4. Each voting location should have a ballot box prepared by the election committee.

5. At the conclusion of voting, the ballot box should be sealed. Normally, if the box is cardboard, the box is taped and then the names of the election committee member or designee, and any observer is signed across the tape.

After the ballot box is sealed, the box should be immediately transported the place where the ballots are to be counted. Election observers are entitled to keep the ballot box in sight at all times during transportation.

If ballots are to be counted at the location, with the resulting tally telephoned into a central location, then all provisions set forth in Sections 13 through 15 of this manual must be followed at each location.

Many local associations prefer to distribute ballots to eligible voters either personally or through the school mail on election day. This is permissible so long as a double-envelope ballot system is used and the ballot, once complete is cast in the ballot box only by the voter at the designated time for voting.

Two types of solutions to voting problems are not permitted. First, **there can be no proxy voting**. Every member has only one vote and no member can authorize another to cast his or her ballot. Second, at times a local association may want to make it easy to vote by having a member or building representative collect marked ballots at a work site for later deposit in the ballot box. This is not permitted because it destroys the secrecy of the ballot. The voter must place his or her ballot directly into the ballot box. It cannot be handed to another person for later delivery.

See Appendix "C" for an on-site election checklist.

See Appendix "D" for an on-site election using the double-envelope system.

- b. Mail ballot elections may be necessary.

Voting by mail should only be done when it is necessary to provide all local association members with the reasonable opportunity to vote. Voting by mail should be avoided whenever possible because membership mailing lists are almost always inaccurate and mail delivery is sometimes slow.

The mail ballot cannot be made available to only those members who are not able to vote in an on-site election. Balloting by mail must be done by all members or by none.

If elections need to be conducted by mail, see **Appendix "E"** for recommended procedures.

- c. Online elections may be conducted under extreme circumstances.

An online election can only held if the principles of a fair election are followed. Furthermore, NEA has provided guidance that online elections should not be held for NEA and OEA delegates to the Representative Assembly because the online format may not comply with the requirements of Landrum-Griffin Act. If you have specific questions about a vendor offering online elections, contact the OEA Elections and Conference Coordinator and refer to "Guidance for the Conduct of Online Elections" in **Appendix "F"** of this manual.

- d. Absentee ballots are permitted but discouraged.

Local associations may allow for absentee balloting. Provisions and restrictions for absentee balloting must be set forth in the local association's constitution and bylaws. If absentee balloting is allowed, provisions should include the following minimum requirements set forth in **Appendix "G"**.

14. OBSERVERS

Observers are a safeguard for fair elections.

Observers cannot campaign as they carry out their functions.

Each candidate is entitled to have an observer of his or her own choosing at the polls and at the counting of the ballots. The candidate may not serve as an observer during the period when voting is actually taking place; this may be construed as campaigning. The candidate may be present during the counting of the ballots.

The observers are there only to observe. They may not wear insignia in support of or against a candidate. They may not pass out leaflets. They may not discuss the election with persons coming to vote.

In addition to supervising the actual voting and counting of the ballots, observers have the right to inspect the ballot box up to the time that voting is to take place.

They have the right to stay in the room where voting is taking place throughout the hours established for voting. They have the right to observe the counting closely enough to verify the accuracy of the tally. They have the right to challenge any voter whom they think does not have the right to vote. Observers have the right to take any notes they wish and they can make their own list of those who voted. Additionally, observers have the right to call to the attention of the election committee any violation of proper procedure. They have the right to keep the ballot box under actual observation until it is opened. Finally, they have the right to examine, but not to handle, any suspect ballot and maintain their own tabulation of the ballot count.

15. CHALLENGED VOTERS

Questions concerning a voter's right to vote should be resolved in a way which allows the vote to be cast, then put aside in secrecy, to be resolved if the questioned vote will affect the outcome of the election.

Occasionally, a person will attempt to vote and a question of eligibility arises. Sometimes, the person has forgotten his/her identification and is unrecognized by anyone on the elections committee or any of the observers. At other times, the person's name may not appear on the membership list. If the person's identity or membership cannot be resolved to the satisfaction of the elections committee, the person should be allowed to mark a ballot (in secrecy), which is then sealed in an envelope with the person's name on the outside. The envelope should then be placed in the ballot box or in a separate container until the challenge is resolved.

16. COUNTING THE VOTES

Count the vote when the intention of the voter can be ascertained.

Count the vote using tools which ensure an accurate count.

Preserve all records of the election and ballots for a period of one year.

The election committee should first attempt to resolve challenged ballots. Each challenged ballot must be taken up separately. Without opening the envelope, the election committee must make a decision as to whether or not the ballot should be counted. If the committee decides to count the ballot, the envelope should be opened and the unexamined ballot deposited in the ballot box. If the committee decides to not count the ballot, the ballot should remain sealed in its envelope. The committee's reasons for not counting the ballot should be written on the envelope. The envelope, with the ballot inside, should be kept as part of the records of the elections.

In counting votes, it is best to have two committee members examine the actual ballots, with one of the two calling off the names of those who received votes on a particular ballot. Two other committee members should keep separate records of the votes by making a mark after each name on a list of the candidates that is called a tally sheet. **An example of a tally sheet is attached as Appendix "G"**. Periodic checks should be made of the two tally sheets to make sure their counts agree.

Questions are frequently raised as the ballots are being counted concerning the validity of particular ballots. The following rules apply:

- a. Such deviations from the instructions on the ballot as making a check mark instead of an "X" does not void the ballot. If the intent of the voter is clear, count the vote.
- b. If the voter has signed his/her name to the ballot, void the entire ballot.
- c. If a ballot is partly spoiled, the entire ballot is not voided. For example, if the voter voted for two candidates for president, the ballot is void for that office. But if the same voter voted for only one candidate for secretary-treasurer, the vote for that office should be counted.
- d. Keep a record of the number of totally void or totally blank ballots.

Determination of the election shall be based on the number of valid ballots cast.

The final election results should be placed in written form and signed by the members of the election committee. The committee may ask the observers to sign the report, but this is not required and the observers are free to refuse to sign.

All ballots and records of the election must be kept for a period of one year. The OEA should be promptly notified in writing of the election results. A copy of a sample ballot should be included for elections concerning OEA and NEA representative assembly delegates and alternates.

17. PROTESTS

Local associations should establish fair and expedient local procedures for resolving disputes which may arise concerning the conduct of an election.

An election should only be overturned when a proven election irregularity is such that it would affect the outcome of the election.

Occasionally, complaints can arise concerning the conduct of a local association election. These complaints are traditionally called election protests. **It is recommended that local associations establish local procedures to hear and resolve such protests.** Such procedures should set forth time limits for filing protests. A ten-day time limit is considered reasonable. Such procedures should also establish the body that hears the protest. This body can be the election committee, an officer or group of officers, or the membership body. Any procedure should offer to the protester and the affected candidates the opportunity to be heard and present their position. Only irregularities which affect the outcome of an election are grounds for voiding the election results and holding a second election.

Protests not resolved at the local association level may be appealed to the OEA Secretary Treasurer and the matter will be investigated in accordance with Board of Directors Policy **1200.04**

18. VOTING ON FACT-FINDER'S REPORTS AND COLLECTIVE BARGAINING AGREEMENTS

Local associations have flexibility to determine their procedure for the ratification of collective bargaining agreements.

Such procedure should be set forth in the local association's constitution or bylaws.

a. Voting on a tentative agreement.

When a local association successfully negotiates a tentative collective bargaining agreement, the agreement must be properly ratified. Neither federal nor state law mandates how a tentatively agreed-to contract must be ratified. Ratification votes are usually held at a special membership meeting. Local associations should limit the voting only to OEA members who are in the affected bargaining unit. Non-members and fair share fee payers should not be permitted to vote. Voting by secret ballot, by roll call, by show of hands, or by acclamation are appropriate means of ratification. A specific method of ratification may be set forth in the local association's constitution or bylaws. At a minimum, proper parliamentary procedure should be followed to determine the will of the membership.

Whenever a vote is to be conducted to ratify a collective bargaining agreement, notice must be provided to all members of the date, time and place of the vote. The notice does **not** have to be mailed to each member's house. Often this is too time consuming and expensive. Nevertheless, the notice must be reasonably calculated to inform all members. Posting on bulletin boards and handing out flyers may in certain circumstances be an appropriate means of notification. It is often wise to alert members in advance, through newsletters or orally at meetings, that short notice may be given for a contract ratification vote, and that member should take care to be apprised of events.

Members should be notified of the contents of the tentative bargaining agreement in its entirety. Obviously, if it is possible to make copies of the tentative agreement, this is preferred. However, in some cases such copies cannot be provided. When it is not practical to make such copies, a summary of the tentative agreement is also an appropriate method of providing information, as is an oral explanation of the agreement by the negotiators at a membership meeting. Persons conducting a ratification meeting should make sure that information about the tentative agreement should comment on each subject addressed by the tentative agreement, even if that comment is

"no change". Intentional omission of such information is not permitted. Local associations through policy or bylaws can establish what information must be provided to the membership prior to a ratification vote.

Any ratification vote should take place at the end of the ratification meeting, or after members have had time to read the agreement, a summary, or listen to an explanation. It is advisable that members be allowed to ask questions about the agreement.

When the vote is to be taken, the choice must be clear to ACCEPT or REJECT the tentative agreement. If the vote is by ballot, the ballot must provide two choices, to ACCEPT the tentative agreement or to REJECT the tentative agreement. There can be no middle ground. For example, it is not possible to vote for Article One but against Article Two. It is also not possible to vote for the tentative agreement with a contingency, such as accepting the agreement if management raises its wage offer by one-half percent.

Similarly, if a vote is taken by motion, the motion must be clearly worded to ACCEPT or REJECT the tentative agreement. Any other motion dealing with how to act on a tentative agreement is out of order.

Any vote should be accurately recorded and certified in the minutes of the meeting.

Upon ratification of the agreement, a copy of the signed agreement should be sent to OEA Research, Division of Organizational Administration and a second copy mailed to the State Employment Relations Board.

b. Voting on a fact-finder's report.

Votes on fact-finder's reports are subject to technical statutory requirements. Contact your labor relations consultant before beginning the fact-finding process.

Fact-finding is a mechanism established by the Ohio Public Employees Collective Bargaining Law for resolving disagreements between unions and employers who have not been able to reach tentative agreement during collective bargaining. The fact-finding process operates under strict timelines. These timelines are set forth in Revised Code Section 4117.14 and Administrative Rule 4117-9-05. The requirements and timelines for fact-finding can be confusing and complicated; in addition, the entire statutory procedure can be changed through a mutually agreed to alternative dispute (MAD) resolution mechanism. Thus it is recommended that your labor relations consultant is contacted before the local becomes involved in the fact-finding process.

Ohio Revised Code Section 4117.14 requires that local associations hold a **secret ballot** election to accept or reject the fact-finder's report and recommendation within seven days from the day that the report and recommendation is served. Administrative Code Section 4117-9-05 (M) requires local associations to take specific actions to comply with the Revised Code.

A local association immediately upon receipt of the fact-finder's report must "make available, by posting or by other method reasonably calculated to inform the members" a copy of the complete fact-finder's report and a notice of the date(s), time(s) and place(s) where members can vote to accept or reject the fact-finder's recommendations. Non-members and fair share fee payers are not entitled to participate in the voting. **This election must be conducted by secret ballot.** The ballot must contain a choice to "approve" and a choice to "reject" the fact-finder's recommendations. The actual words "approve" or "reject" must appear on the ballot. Voting by proxy is not permitted. Ballots must be tallied immediately upon conclusion of the voting. Written

verification of the vote tally must be served upon the State Employment Relations Board no later than twenty-four hours after the tally of the ballots and in no event later than twenty-four hours after the expiration of the seven-day voting period. A copy of the written verification must be served on the employer.

For your reference, a copy of Administrative Rule 4117-9-05 (M) is attached as Appendix "H" and should be directly referred to when conducting votes on fact-finder's recommendations.

The penalty for failure to comply with these rules is substantial. Failure to conduct a vote will lead to an automatic acceptance of the fact-finder's recommendations. A failure to provide SERB with written verification of the ballot tally within the required time limits will lead to an automatic acceptance of the fact-finder's recommendations. A failure to serve a copy of the written verification on the employer will lead to an automatic acceptance of the fact-finder's recommendations.

A three-fifths vote of the total membership is required to reject a fact-finder's report. When both the local association and the employer fail to reject the fact-finder's recommendations, the recommendations are deemed accepted and must be incorporated into the collective bargaining agreement.

19. CONCLUSION

This manual is intended to provide concrete guidelines to assist local leaders in administering internal election and contract ratification processes. Of necessity, this manual cannot anticipate every problem. If a problem arises which this manual does not clearly address, you should contact your OEA labor relations consultant for assistance.

APPENDIX A

SAMPLE LETTER ANNOUNCING NOMINATIONS AND ELECTION

Dear Association Member:

The annual association election will be conducted:

DATE: May 1 and 2, 1988

TIMES: 3:00 p.m. to 5:00 p.m. each day

SITES: All elementary, middle school, & high school buildings

The following positions are open for nomination:

President - 2-year term

Vice-President - 2-year term (term commences on _____)

OEA RA Delegate - 2-year term (2 positions) (Term commences on _____)

OEA RA Alternate - 2-year term (2 positions) (Term commences on _____)

Board of Director, Representing Third World Persons - 2-year term (Term commences on _____)

Board of Director at-large - 2-year term (Term commences on _____)

You may nominate yourself or another member by placing the name and position nominated for in writing and mailing to Sally Smith, Election Chairperson, 12345 River Street, Anywhere, Anystate 11111. Nominations must be received no later than March 1, 1988. Open nominations will also be conducted at the general membership meeting held on February 15, 1988, 3:30 p.m., in the High School Auditorium.

I personally encourage you to run for office or to nominate another member. Only through our volunteer efforts, each taking a turn, will we be able to continue building a strong, active, and successful local association. We've come a long way, but we've a long way to go and we need everyone to pitch in and help.

Sincerely yours,

Vivian Anyone
President

APPENDIX C

ELECTION CHECKLIST - ON-SITE ELECTION NOT USING DOUBLE ENVELOPE SYSTEM

THIS CHECKLIST AND SAMPLE ELECTION PROCEDURE IS FOR AN ELECTION THAT WILL BE CONDUCTED AT A GENERAL MEMBERSHIP MEETING OR A SINGLE LOCATION. THE SAME CONCEPT WOULD APPLY IF THE ELECTION WAS CONDUCTED AT SEVERAL CENTRAL LOCATIONS. IF NOT ELECTING AN OEA OR NEA DELEGATE, THE NOTIFICATION BY U.S. MAIL MAY BE ELIMINATED.

(Sample Timeline)

_____ Develop a comprehensive timeline to include your specific dates.

December 1 Appoint Election Committee (also Nominations Committee if desired)

January 15 Construct an election timeline. Review timeline with president.

February 1 Provide notice of nominations and elections in manner reasonably calculated to reach all members. This notice should include:

- Date, time and location of election
- List of positions to be elected
- Nominations information
- Absentee ballot provisions (optional)

Exception: For OEA and NEA Representative Assembly elections only, the notice of election must be sent by regular U. S. mail to the last known home address of each member at least fifteen days prior to the date of election.

March 1 Close of nominations

March 7 Briefing meeting with candidates

March 15 Voter eligibility cut-off (must be a member by this date)

April 1 Announce candidates & election details in local newsletter.

April 7 Ballots, and all election materials printed April 14.
Organize all election materials

April 15 (Optional) Distribute biographical statements to eligible voters

April 30 (Optional) Deadline for return of absentee ballots

May 1 Election conducted at general membership meeting

May 1 Count ballots

May 6 Report election results in local newsletter

May 7 Send election results to OEA Central Office

NOMINATIONS

- _____ A. The election committee should be responsible for the nominations process.
- _____ B. Typical methods of nomination include:
 - _____ 1. At a membership meeting.
 - _____ 2. By petition. (There is no need to require a specific nomination form. Be cautious about requiring too many signatures or instituting other requirements.)
 - _____ 3. By written notification.
 - _____ 4. Combination of the above.
- _____ C. Notification of nomination needs to be made reasonably available to all members. Typical methods of notification include:
 - _____ 1. Posting of notice on bulletin board in all work sites.
 - _____ 2. Placement in local newsletter.
 - _____ 3. Announcement at meeting(s). (If this is the only option used, the meeting announcement would need to be distributed to all members, along with a statement that nomination information would be disseminated at the meeting. This option should be used in conjunction with one of the other methods.)
 - _____ 4. Mailing to each member at home. (Since notice of the election needs to be sent to the home address of each member through the U. S. mail if electing OEA or NEA RA delegates, the notification of nominations could be included with this mailing.)
 - _____ 5. Combination of the above.
- _____ D. The nomination information provided to members must include:
 - _____ 1. Positions to be elected.
 - _____ 2. Specific method of nominating and being nominated.
 - _____ 3. Date, time, and place for submitting nominations.
- _____ E. A member nominated for a position should not be considered an official candidate until he/she has accepted the nomination. It is recommended that this acceptance or rejection should be in writing.
- _____ F. It is critical that no nominations be accepted after the nomination deadline has passed, otherwise, an opposing candidate who was timely nominated would have a valid objection to the election.

- _____ G. Once the nomination information has been provided to the members, a nomination committee can begin soliciting candidates.

ELECTION PROCEDURE

- _____ A. Construct an election timeline. This should be as detailed as possible. At the same time, it is helpful to decide who will do what and when.

- _____ B. Review the timeline with the president. This is not required, but it may prove helpful to have the president or someone else review your election plans.

- _____ C. Provide the following information in a manner reasonably calculated to reach all members.

- _____ 1. List of positions to be filled by election.
- _____ 2. Date, time, and location of the election
- _____ 3. (Optional) Explanation of absentee ballot procedures.

Exception: For OEA and NEA Representative Assembly delegate elections only, the notice of election must be sent by regular U. S. mail to the last known address of each member at least fifteen days prior to the date of election.

Note: Appendix A contains a combined notice of nominations and elections to reduce paperwork and costs.

- _____ D. In addition, it may be helpful to provide this information in a local newsletter or post a notice on bulletin boards.

- _____ E. Prepare a list of all work sites and the election official(s) who will be responsible for conducting the election at that site as well as the election times. The rule of thumb is that all eligible voters must have a reasonable opportunity to vote.

- _____ F. It is usually helpful to meet with the candidates and review the election procedures and to answer questions.

- _____ G. Construct the voter eligibility list which, at a minimum, must include the names and home addresses of those who were active or life OEA/NEA members as of the eligibility cut-off date. Any members on leave or layoff are not eligible unless they have continued their membership and are paying dues. It is most helpful if this list is in alphabetical order and includes the assigned work site of each member.

- _____ H. Once the list is prepared, it may be a good idea to inform the candidates that they have a right to review (not copy) the list. Their review of the list may help catch any errors. Also, an opportunity to review the list prior to the election may help prevent complaints after the election.

- _____ I. Prepare all election materials in advance:
 - _____ 1. Instructions for election officials
 - _____ 2. Ballots
 - _____ 3. Biographical information (optional)
 - _____ 4. Tally sheet for counting ballots
- _____ J. (Optional) Distribute biographical information at least several days prior to the date of the election. This may be accomplished through a local newsletter or by having building representatives distribute this information.
- _____ K. Train election officials and provide them with all needed election materials (ballots, tally sheets, voter eligibility list, etc.).
- _____ L. The process for voting is as follows:
 - _____ 1. The polls will open on time and will close on time. Voters standing in line as the polls close will be allowed to vote. A voter joining the line after the scheduled closing will not be allowed to vote.
 - _____ 2. Each voter shall have his/her name checked off the eligibility list and will then be handed a ballot.
 - _____ 3. The voter will then mark the ballot and place it in the locked ballot box.
 - _____ 4. A voter whose name is not on the eligibility list, but who insists he/she is an eligible voter shall be provided a ballot and a blank envelope. The outside of the envelope will be marked by the election official with the person's name, the statement "CHALLENGED BALLOT" and the reason for the challenge. The person will mark the ballot, seal it in the envelope, and place the envelope in the ballot box. All such challenges will be resolved prior to counting the ballots.
- _____ M. At the close of the election, the ballots will be counted.

COUNTING AND TALLYING THE BALLOTS

- _____ A. The counting should be done openly and any member is allowed to observe the counting process. At least two members of the local election committee should conduct the counting and tallying process.
- _____ B. If any absentee ballots have been received, check the names against the eligibility list. If eligible, open the envelope and place the ballot in the ballot box. If for some reason the absentee ballot is ineligible, set it aside as a challenged ballot. **CHALLENGED BALLOTS ARE NOT TO BE COUNTED AND ARE NOT TO BE OPENED.**
- _____ C. Unlock and empty the ballot box.

- _____ D. The status of any challenged ballots must be resolved. If it is ruled that a challenged ballot is actually a valid ballot (don't bend or change the rules), then open the envelope and add the person's ballot to the rest of the ballots. If it is determined that a challenged ballot is not an eligible ballot, set it aside and write the reason for the challenge on the envelope. **CHALLENGED BALLOTS ARE NOT TO BE COUNTED AND ARE NOT TO BE OPENED.**

- _____ E. Count the ballots by using the tally sheet which the election committee prepared in advance.

- _____ F. When counting ballots, if a mark is outside the box, if there is an erasure, or if the ballot contains some other discrepancy, the local elections committee must make a judgment as to how or whether to count it. The rule of thumb is to count it if the intent of the voter is apparent and to not count it if the intent is unclear.

- _____ G. Announce the results to the membership.

- _____ H. Forward the election results to the OEA Central Office:

Ohio Education Association
225 East Broad Street, Box 2550
Columbus, OH 43216

- _____ I. Keep the ballots, unopened challenged ballots, tally sheets, and copies of all other election materials for at least one year.

APPENDIX D

ELECTION CHECKLIST - ON-SITE ELECTION CONDUCTED AT ALL WORK SITES USING DOUBLE ENVELOPE SYSTEM

THIS CHECKLIST AND SAMPLE ELECTION PROCEDURE IS FOR AN ELECTION THAT WILL BE CONDUCTED AT EVERY WORK SITE USING THE DOUBLE ENVELOPE SYSTEM. THE EXAMPLE ALSO ASSUMES THAT OEA OR NEA RA DELEGATES WILL BE ELECTED WHICH NECESSITATES ADHERENCE TO THE VARIOUS FEDERAL REQUIREMENTS IN CONDUCTING THE ELECTION. IF NOT ELECTING AN OEA OR NEA RA DELEGATE, THE NOTIFICATION BY U. S. MAIL MAY BE ELIMINATED.

(Sample Timeline)

_____ Develop a comprehensive timeline to include your specific dates.

December 1 Appoint Election Committee (also Nominations Committee if desired)

January 15 Construct an election timeline. Review timeline with president

February 1 Provide notice of nominations and elections in manner reasonably calculated to reach all members. This notice should include:

- Date, time, and location of election
- List of positions to be elected
- Nominations information
- Absentee ballot provisions (optional)

Exception: For OEA and NEA Representative Assembly elections only, the notice of election must be sent by regular U. S. mail to the last known home address of each member at least fifteen days prior to the date of election.

March 1 Close of nominations

March 7 Briefing meeting with candidates

March 15 Voter eligibility cut-off (must be a member by this date)

April 1 Announce candidates & election details in local newsletter.

April 7 Ballots, envelopes, biographical information (optional), and all election materials printed April 14 Assemble & package election materials.

April 15 (Optional) Distribute biographical statements to eligible voters

April 25-26 Train election officials & distribute election materials

April 30 (Optional) Deadline for return of absentee ballots

May 1-2 Election at each work site

- May 2 Count ballots
- May 6 Report election results in local newsletter
- May 7 Send election results to OEA Central Office

NOMINATIONS

- _____ A. The elections committee should be responsible for the nominations process.
- _____ B. Typical methods of nomination include:
 - _____ 1. At a membership meeting.
 - _____ 2. By petition. (There is no need to require a specific nomination form. Be cautious about requiring too many signatures or instituting other requirements.)
 - _____ 3. By written notification.
 - _____ 4. Combination of the above.
- _____ C. Notification of nomination needs to be made reasonably available to all members. Typical methods of notification include:
 - _____ 1. Posting of notice on bulletin board in all work sites.
 - _____ 2. Placement in local newsletter.
 - _____ 3. Announcement at meeting(s). (If this is the only option used, the meeting announcement would need to be distributed to all members, along with a statement that nomination information would be disseminated at the meeting. This option should be used in conjunction with one of the other methods.)
 - _____ 4. Mailing to each member at home. (Since notice of the election needs to be sent to the home address of each member through the U. S. mail if electing OEA or NEA RA delegates, the notification of nominations could be included with this mailing.)
 - _____ 5. Combination of the above.
- _____ D. The nomination information provided to members must include:
 - _____ 1. Positions to be elected.
 - _____ 2. Specific method of nominating and being nominated.
 - _____ 3. Date, time, and place for submitting nominations.
- _____ E. A member nominated for a position should not be considered an official candidate until he/she has accepted the nomination. It is recommended that this acceptance or rejection should be in writing.

- _____ F. It is critical that no nominations be accepted after the nomination deadline has passed, otherwise, an opposing candidate who was timely nominated would have a valid objection to the election.
- _____ G. Once the nomination information has been provided to the members, a nominations committee can begin soliciting candidates.

ELECTION PROCEDURE

- _____ A. Construct an election timeline. This should be as detailed as possible. At the same time, it is helpful to decide who will do what and when.
- _____ B. Review the timeline with the president. This is not required, but it may prove helpful to have the president or someone else officially review your election plans.
- _____ C. Provide the following information in a manner reasonably calculated to reach all members.
 - _____ 1. List of positions to be filled by election.
 - _____ 2. Date(s), time(s), & location of election.
 - _____ 3. (Optional) Explanation of absentee ballot procedure.

Exception: For OEA and NEA Representative Assembly delegate elections only, the notice of election must be sent by regular U. S. mail to the last known address of each member at least fifteen days prior to the date of election.

Note: Appendix A contains a combined notice of nominations and elections to reduce paperwork and costs.

- _____ D. In addition, it may be helpful to provide this information in a local newsletter or post a notice on bulletin boards.
- _____ E. Prepare a list of all work sites and the election official(s) who will be responsible for conducting the election at that site as well as the election times. The rule of thumb is that all eligible voters must have a reasonable opportunity to vote.
- _____ F. It is usually helpful to meet with the candidates and review the election procedures and to answer questions.
- _____ G. Construct the voter eligibility list which, at a minimum, must include the names and home addresses of those who were active or life OEA/NEA members as of the eligibility cut-off date. Any members on leave or layoff are not eligible unless they have continued their membership and are paying dues. It is most helpful if this list is in alphabetical order and includes the assigned work site of each member.
- _____ H. Once the list is prepared, it may be a good idea to inform the candidates that they have a right to review (not copy) the list. Their review of the list may help catch any errors. Also, an opportunity to review the list prior to the election may help prevent complaints after the election.

- _____ I. Prepare all election material in advance.
 - _____ 1. Instructions for election officials
 - _____ 2. Ballots
 - _____ 3. Secret ballot envelope
 - _____ 4. Outside envelope
 - _____ 5. Biographical information (optional)
 - _____ 6. Tally sheet for counting ballots
- _____ J. (Optional) Distribute biographical information at least several days prior to the date of election. This may be accomplished through a local newsletter or by having building representatives distribute this information.
- _____ K. Assemble and package material for distribution to the election official(s) at each site.
- _____ L. Train election officials and provide them with all needed election materials. Especially for large locals, two training sessions will help insure that all election officials have an opportunity to be trained and to receive the election materials for their work site. These sessions should be scheduled a few days prior to the election in case it is necessary to deliver materials to election officials who did not attend the training session(s).
- _____ M. Ballots and election materials are distributed to all eligible voters at each site by the election official(s). It is critical that every eligible voter receive a ballot and the related materials. As the "double envelope" system is being used, it is permissible to place the balloting materials in school mail boxes. It is still best to personally deliver this material to each voter.
- _____ N. It may be helpful to provide each election official with the names of eligible voters at his/her work site to help insure that all eligible voters receive the election materials.
- _____ O. The double envelope system eliminates the need to have voters sign for their ballot materials, eliminates the need for ballot numbering, and eliminates the need for strict accountability of ballots. Using the system, the voter:
 - 1. Marks the ballot.
 - 2. Places the ballot in an envelope which is marked "SECRET BALLOT" on the outside.
 - 3. Places the "SECRET BALLOT" envelope in an "outside envelope" and signs the outside envelope. The outside envelope should contain a place for the signature as well as a note that if the envelope is not signed, the ballot will not be counted. It is also helpful if there is a line for the voter to print his/her name. The printed name will speed up the counting process wherein the signature is checked

against the voter eligibility list.

4. Places this "outside envelope" in the ballot box during the voting period. There is no need to have the election official check off the name of those who are casting their ballots.

- _____ P. Ballots are cast during the announced voting times. The election official should be present during voting.
- _____ Q. Ballots must be cast in a locked and secure ballot box. During times when balloting is not actually taking place, the ballot box may be placed in a secure location (locked in a room, car, locker, etc.) and does not need to be in the physical presence of the election official except during voting times. It is permissible for the election official to take the ballot box home for safekeeping.
- _____ R. Election officials should not be provided with a key to the ballot box. The keys should remain in the possession of someone who is not a candidate and who is not an election official -- perhaps the election chairperson.
- _____ S. The election official transports the ballot box to the location designated for the counting of the ballots.

COUNTING AND TALLYING THE BALLOTS

- _____ A. The counting should be done openly and any member is allowed to observe the counting process. At least two members of the local election committee should conduct the counting and tallying process.
- _____ B. Review the voter eligibility list and cross off all names of individuals who were not association members as of the time the ballots were cast, even though they may have been members as of the original eligibility date. To be an eligible voter, an individual must have been a member as of the initial eligibility date and be a member at the time of the election.
- _____ C. Any ballot that is challenged shall be set aside and the reason for the challenge will be written on the envelope.
- _____ D. Any absentee ballots timely received should be added to one of the ballot boxes. Any untimely ballot should be set aside and marked as a challenged ballot with the reason for the challenge written on the outside of the envelope.
- _____ E. Unlock and empty all ballot boxes.
- _____ F. Alphabetize the envelopes by last name.
- _____ G. Check the signature on the outside envelope against the list of eligible voters.
 - _____ 1. If the name on the outside of the envelope matches a name on the eligible voter list, place a check by that name on the list and place all such envelopes together.

- _____ 2. If the signature on the outside envelope is illegible or the name does not appear on the voter eligibility list, set all such envelopes aside as challenged ballots. THESE BALLOTS ARE NOT TO BE COUNTED AND ARE NOT TO BE OPENED.
3. If the signature check reveals two or more envelopes from the same individual, set ALL the envelopes from that individual aside as challenged ballots. THESE BALLOTS ARE NOT TO BE COUNTED AND ARE NOT TO BE OPENED.
- _____ H. Only when all envelopes have been checked against the eligibility list may the count continue. At this time, open the outside envelopes of the VALID ballots, placing the outside envelopes in one pile and the UNOPENED secret ballot envelopes in a separate pile.
- _____ I. Only when all outside envelopes have been separated from the secret ballot envelopes may the count continue. At this time, set the outside envelopes aside (DO NOT THROW THEM AWAY).
- _____ J. Open the secret ballot envelopes, placing the ballots in one pile and the secret ballot envelopes in a separate pile. The empty secret ballot envelopes may be thrown away at the end of the count.
- _____ K. Count the ballots by using the tabulation sheet which the election committee prepared in advance.
- _____ L. When counting ballots, if a mark is outside the box, if there is an erasure, or if the ballot contains some other discrepancy, the local elections committee must make a judgment as to how or whether to count it. The rule of thumb is to count it if the intent of the voter is apparent and to not count it if the intent is unclear.
- _____ M. Announce the results to the membership.
- _____ N. Forward the election results to the OEA Central Office:

Ohio Education Association
225 East Broad Street, Box 2550
Columbus, OH 43216
- _____ O. Keep the ballots, the outside envelopes, tally sheets, and copies of all other election materials for at least one year.

APPENDIX E

ELECTION CHECKLIST - MAIL BALLOT ELECTION

THIS CHECKLIST AND SAMPLE ELECTION PROCEDURE IS FOR AN ELECTION THAT WILL BE CONDUCTED BY U. S. MAIL. THE EXAMPLE ALSO ASSUMES THAT OEA OR NEA RA DELEGATES WILL BE ELECTED WHICH NECESSITATES ADHERENCE TO THE VARIOUS FEDERAL REQUIREMENTS IN CONDUCTING THE ELECTION.

(Sample Timeline)

_____ Develop a comprehensive timeline to include your specific dates.

December 1 Appoint Election Committee

January 15 Construct an election timeline. Review timeline with president

February 1 Distribute election and nomination information through local newsletter to all members:

- Date ballots will be mailed and return date
- List of positions to be elected
- Nomination information

March 1 Close of nominations

March 1 Voter eligibility cut-off (must be a member by this date)

March 7 Briefing meeting with candidates

March 7 Voter eligibility list prepared

March 25 Ballots, envelopes, and all election materials printed, and two (2) sets of address labels prepared

April 7 Mail ballots to eligible voters

May 1 All returned ballots must be postmarked by this date

May 5 Count ballots

May 8 Report election results in local newsletter

May 10 Send election results to OEA Central Office

NOMINATIONS

_____ A. The election committee should be responsible for the nomination process.

_____ B. Typical methods of nomination include:

- _____ 1. At a membership meeting.
- _____ 2. By petition. (There is no need to require a specific nomination form. Be cautious about requiring too many signatures or instituting other requirements.)
- _____ 3. By written notification.
- _____ 4. Combination of the above.
- _____ C. Notification of nomination needs to be made reasonably available to all members. Typical methods of notification include:
 - _____ 1. Posting of notice on bulletin board in all work sites.
 - _____ 2. Placement in local newsletter.
 - _____ 3. Announcement at meeting(s). (If this is the only option used, the meeting announcement would need to be distributed to all members, along with a statement that nomination information would be disseminated at the meeting. This option should be used in conjunction with one of the other methods.)
 - _____ 4. Mailing to each member at home.
 - _____ 5. Combination of the above.
- _____ D. The nomination information provided to members must include:
 - _____ 1. Positions to be elected.
 - _____ 2. Specific method of nominating and being nominated.
 - _____ 3. Date, time, and place for submitting nominations.
- _____ E. A member nominated for a position should not be considered an official candidate until he/she has accepted the nomination. It is recommended that this acceptance or rejection should be in writing.
- _____ F. It is critical that no nominations be accepted after the nomination deadline has passed; otherwise, an opposing candidate who was timely nominated would have a valid objection to the election.
- _____ G. Once the nomination information has been provided to the members, the nomination committee can begin soliciting candidates.

ELECTION PROCEDURE

- _____ A. Construct an election timeline. This should be as detailed as possible. At the same time, it is helpful to decide who will do what and when.
- _____ B. Review the timeline with president. This is not required, but it may prove helpful to have the president or someone else officially review your election plans.

- _____ C. Provide to all active and life OEA/NEA members, the following information (see Appendix A for a sample letter which will need to be modified slightly for a mail ballot election):
 - _____ 1. List of positions to be filled by election.
 - _____ 2. Date ballots will be mailed and date of return.
 - _____ 3. Nomination information:
 - _____ a. Explanation of how to be nominated.
 - _____ b. Date, time, & place to submit nominations.
 - _____ 4. Due date for receipt of biographical information (optional).
- _____ D. In addition, it may be helpful to post the above information on bulletin boards at each work location.
- _____ E. It is usually helpful to meet with the candidates and review the election procedures and to answer questions.
- _____ F. Construct the voter eligibility list which, at a minimum, must include the names and home addresses of those who were active or life OEA/NEA members as of the eligibility cut-off date. Any members on leave or layoff are not eligible unless they have continued their membership and are paying dues. It is most helpful if this list is in alphabetical order and includes the assigned work site of each member.
- _____ G. Once the list is prepared, it may be a good idea to inform the candidates that they have a right to review (not copy) the list. Their review of the list may help catch any errors. Also, an opportunity to review the list prior to the election may help prevent complaints after the election.
- _____ H. Mail the election material to each voter at his/her last known home address. This mailing should include:
 - _____ 1. Ballot
 - _____ 2. Secret ballot envelope
 - _____ 3. Return envelope (postage prepaid)
 - _____ 4. Biographical information (optional)
 - _____ 5. Instructions
- _____ I. Details of the mailing:
 - _____ 1. Instructions:
 - _____ a. Mark the ballot.

- _____ b. Seal the ballot inside the "Secret Ballot" envelope.
- _____ c. Seal the "Secret Ballot" envelope inside the return envelope.
- _____ d. Sign the back of the return envelope. Do not remove the return address label from the front of the envelope. You must return your ballot in the envelopes provided, or your ballot will not be counted.
- _____ e. The return envelope must be returned by U.S. mail and postmarked no later than _____.

_____ 2. The usual size of the "secret ballot" envelope is 3-7/8 x 8-7/8 and the words "SECRET BALLOT" are printed in large letters on the front of the envelope.

_____ 3. The usual size of the return envelope is 4-1/8 x 9-3/8. The front of the envelope is pre-addressed back to the local association. The back of the envelope has a signature line and statement:

This is to certify that I marked the enclosed ballot.

Signature _____

Further, it is advisable to place the voter's address label in the upper left corner of the front of the envelope. This will greatly aid in checking the return envelopes against the eligibility list since it is difficult to read many signatures.

_____ J. The return envelopes should be addressed to a neutral address, not to the local association office or to someone's home. The best way is to have them returned to a post office box requiring two keys to open. One of these keys should be held by the election committee chair and the second by another committee member.

_____ K. The recommended time between the mailing of the ballots and the opening of the box is twenty days. If this amount of time is allowed, it is not necessary to do a separate "Election Notice" fifteen days in advance; the ballot itself constitutes notice.

_____ L. It is a good idea to rent a post office box for the return of the ballots and place the post office box address on the return envelope. This will allow all of the ballots to be obtained from the post office at one time and will eliminate any potential charges that ballots were lost as they were delivered daily.

_____ M. If the returned ballots are not to be counted immediately upon picking them up from the post office, it is a requirement that they be placed in a locked and secure ballot box until they are counted.

COUNTING AND TALLYING THE BALLOTS

_____ A. The counting should be done openly and any member is allowed to observe the counting process. At least two members of the local election committee should conduct the counting and tallying process.

_____ B. Review the voter eligibility list and cross off all names of individuals who were not

association members as of the time the ballots were cast, even though they may have been members as of the original eligibility date. To be an eligible voter, an individual must have been a member as of the original eligibility date. To be an eligible voter, an individual must have been a member as of the initial eligibility date and be a member at the time of the election.

- _____ C. Alphabetize the returned envelopes by last name.
- _____ D. Check the signature on the outside envelopes against the list of eligible voters.
 - _____ 1. If the name on the outside of the envelope matches a name on the eligible voter list, place a check by that name on the list and place all such envelopes together.
 - _____ 2. Any ballot that is challenged shall be set aside and the reason for the challenge shall be written on the envelope.
 - _____ 3. If the signature on the outside envelope is illegible or the name does not appear on the voter eligibility list, set all such envelopes aside as challenged ballots. THESE BALLOTS ARE NOT TO BE COUNTED AND ARE NOT TO BE OPENED.
 - _____ 4. If the signature check reveals two or more envelopes from the same individual, set ALL the envelopes from that individual aside as challenged ballots. THESE BALLOTS ARE NOT TO BE COUNTED AND ARE NOT TO BE OPENED.
- _____ E. Only when all envelopes have been checked against the eligibility list may the count continue. At this time, open the outside envelopes of the VALID ballots, placing the outside envelopes in one pile and the unopened secret ballot enveloped in a separate pile.
- _____ F. Only when all outside envelopes have been separated from the secret ballot envelopes may the count continue. At this time, set the outside envelopes aside (DO NOT THROW THEM AWAY).
- _____ G. Open the secret ballot envelopes, placing the ballots in one pile and the secret ballot envelopes in a separate pile. The empty secret ballot envelopes may be thrown away at the end of the count.
- _____ H. Count the ballots by using the tabulation sheet which the election committee prepared in advance.
- _____ I. When counting ballots, if a mark is outside the box, if there is an erasure, or if the ballot contains some other discrepancy, the local elections committee must make a judgment as to how or whether to count it. The rule of thumb is to count it if the intent of the voter is apparent and to not count it if the intent is unclear.
- _____ J. Announce the results to the membership.
- _____ K. Forward the election results to the OEA Central Office:

Ohio Education Association
225 East Broad Street, Box 2550
Columbus, OH 43216

- _____ L. Keep the ballots, the outside envelopes, tally sheets, and copies of all other election materials for at least one year.

APPENDIX F

CONDUCTING ONLINE ELECTIONS

The conduct of elections for local, OEA, and NEA offices must comply with the following principles of a fair election:

- The integrity of a secret ballot
- One-member one-vote
- The right of any candidate to have an observer at the polls and at the counting of the ballots
- Preservation of all election records including ballots for one year

Adherence to these principles while conducting online elections can present challenges.

Two significant challenges are the tension between maintaining the secrecy of the ballot while ensuring that each eligible member's vote is accurately cast, and ensuring observability for a voting technology that does not necessarily generate "ballots" that can be observed at the "polls" and at their "counting," as the LMRDA provides. Because the technology in this field is evolving, it is difficult to identify definitive solutions that are most likely to permit voting that is in conformance with the proper conduct of a fair election.

1. Guidance for preserving ballot secrecy:

The requirement of a secret ballot in union officer elections is to be interpreted strictly. Ballot secrecy requires that no person, including an independent third party, have access to information allowing such person to learn how a particular member cast his or her vote at any time. Moreover, a member's vote must remain secret after the ballot is cast.

It should be noted that online survey services such as Jot Form, Google Forms, and SurveyMonkey each collect data such as email and IP addresses that can be connected to the content of a member's vote. For that reason, those services are not appropriate for a secret ballot election.

One way to help to insure that ballot secrecy is maintained in an electronic voting system is to avoid creating a connection between a voter's identity and the vote cast, i.e., voters' names would never be entered into the system as part of the voting credentials (the term "credentials" in this guidance includes the multiple codes used for various purposes in electronic voting systems, including access codes, log-in codes, confirmation codes, etc.). In this way a voter's identity could never be linked to his or her vote using information in the system. This can be accomplished by determining voter eligibility prior to mailing the voting credentials and by randomly assigning the credentials to each eligible voter. Once this initial eligibility determination is made and the credentials mailed (or emailed), there can be no mechanism to void or prevent the casting of ballots by any members who were determined to be eligible.

Such a system, however, can present logistical challenges. For example, a local may need to provide replacement credentials to members who have not received or have lost their voting credentials or issue such credentials to newly eligible members. If duplicate credentials or other processes are used to resolve these logistical challenges, all material must be secured when not in use and observers must be given the opportunity to observe the processes employed when using the materials.

Online voting systems should employ proper safeguards to prevent a voter from being able to

provide visual proof of the content of his/her vote in order to prevent secrecy violations in the form of coercion or vote buying/selling. For example, the system must not display the voter credential and the content of the vote in such a way that it permits the voter to capture and share the image, nor should lists matching voter credentials and the content of the vote be publicly available.

To the extent that technology is developed for public elections that allows for the inclusion of voter-identifying information in a manner that protects vote secrecy, that technology may also be appropriate for use in union elections.

2. Guidance for preserving observer rights:

To conduct a fair election, adequate safeguards to insure a fair election must be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.” This requirement provides for the essential monitoring that votes were cast by eligible union members and that those votes were accurately tallied. In the context of electronic voting systems, in which the “polls” and “tally” are not visible, assuring the integrity of such systems presents challenges.

Procedures in the context of electronic voting, which permit observation and protect the security of the vote from its casting to its counting, must include:

- The opportunity to view the list of members and make eligibility challenges prior to the distribution of voter credentials.
- The opportunity to observe the preparation and distribution of voting credentials to be used by members. Observers must be allowed to view the process, but must not be allowed to see the specific voting credentials that are sent to individual members, which must be kept secret
- The opportunity to observe any later distribution of credentials to members who did not receive or who lost credentials. Again, observers must be allowed to view the process, but must not be allowed to see what specific voting credentials are sent to individual members, which must be kept secret.
- The use of technology that protects the integrity of the vote from the point when it is cast by the voter through the voting process, such as client-side encryption technology, that runs on the voter’s computer or in conjunction with any computer-telephone integration, rather than on the election server.
- The opportunity to observe any steps necessary for the counting of the votes, and any other steps necessary to audit that process.
- The use of technology that provides a secure method of independent vote verification that allows the voter or an observer to confirm that the vote was recorded and counted accurately. Safeguards should be employed, however, to prevent such features from presenting secrecy lapses and opportunities for voter coercion. Safeguards that could preserve this aspect of observability without compromising vote secrecy may include:
 - Allowing each member to view a printed ballot version of his or her electronic vote, which contains a credential known only to the voter and which is stored in a supervised, secure, observable location. These printed ballots could also be tallied in a supervised, secure, observable location to verify the accuracy of the electronic vote count.
 - Allowing each member to confirm the accuracy or integrity of his or her vote by inspecting a non-public list of the electronic votes alongside the credential known only to the voter, stored in a supervised, secure, observable location.
 - Allowing each member to confirm the accuracy or integrity of his or her vote by inspecting a posted list that pairs representations of votes (e.g., as hashes or

codes that would allow a voter to know that the vote has not been changed but would not reveal the vote choice itself) alongside voter credentials, or representations of voter credentials.

- The electronic voting system should contain mechanisms by which observers can verify, prior to an election, that the system is working properly.

The electronic voting system should include hash chains on the activity logs and the ballot box.

The electronic voting system should be audited by an authorized independent party periodically.

For any electronic voting system, there should be a document or documents that specify the security policy for all systems that will come into contact with the voter or vote information. Further, every role and its corresponding access should be clearly specified, using mathematical descriptions where applicable. The security policy should also include a risk assessment, threat analysis, and modifications made to mitigate such risks/threats.

3. Guidance for preserving records:

The electronic votes and any paper versions of the electronic votes, and all other paper and electronic records pertaining to the election, including eligibility lists, the voting credentials, the log files, the time stamped software code used to run the electronic voting system, and the ballot tally results, must be preserved for one year.

4. Guidance for preserving right to vote:

An alternative voting method must be provided, upon request, to any member who does not have access to the electronic voting system.

Remote voting must be implemented in a manner that does not create barriers for individuals with accessibility needs.

When selecting an online voting vendor, those members responsible for conducting the local election should inquire about how the vendor provides for a secret ballot, election observers, preservation of records, and accessibility as described above.

The source for this guidance is from the US Department of Labor Office of Labor-Management Standards (OLMS) Compliance Tip – “Electing Union Officers Using Remote Electronic Voting Systems” at

<https://www.dol.gov/olms/regs/compliance/catips/2016/CompTip_RemoteElecVote.htm>

APPENDIX G

ABSENTEE BALLOT REQUIREMENTS

The purpose of an absentee ballot is to enable a person to vote who knows significantly ahead of time that he/she will not be able to vote on site. Strict adherence to this principle is essential to avoid charges that absentee ballots are being doled out in a partisan manner. If the local association desires to issue absentee ballots, the local association must.

1. Notify members of their right to an absentee ballot. The following paragraph is suggested language which may be added to the sample election and nominations notice found in Appendix A.

"This is an on-site election. However, if it is impossible for you to vote on site during either day of the election, you may request an absentee ballot. To do so, send your request, specifically stating your reason for not being able to vote on-site, to (election chairperson)

(name)

(address)

no later than _____ (date).

You will receive an absentee ballot which must be returned no later than _____ (date).

2. Establish the date upon which absentee ballots must be received. This date must be prior to the election date.
3. Require that requests for absentee ballots be made in writing, and state the specific reason for the request.

It should be noted that absentee ballots should not be provided to persons who become ill or injured just prior to the election. Such practice can lead to charges that the ballots are being doled out in a partisan manner.

If it appears to the election committee that a person is not eligible for an absentee ballot, the election committee should:

1. Send an absentee ballot to the individual.
2. In writing, explain the committee's concern and ask that any necessary clarification be provided by a given date prior to the election. Explain that the ballot may be challenged and set aside when the ballots are counted.

APPENDIX H

TALLY SHEET NO. _____

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	TOTAL
PRES.																										
REAGAN																										
CARTER																										
Void/Write-In																										
VOID																										
VICE-PRES.																										
FORD																										
NIXON																										
Void/Write-In																										
VOID																										
SEC/TREAS																										
JOHNSON																										
KENNEDY																										
Void/Write-In																										
VOID																										
OEA-RA																										
EISENHOWER																										
TRUMAN																										
ROOSEVELT																										
HOOVER																										
Void/Write-In																										
VOID																										

(Separate ballots into stacks of 25 and use one tally sheet for each stack, then compile all tally sheets.)

EACH SHOULD TALLY TO 25

(This tally sheet has proven to be a most effective and accurate means in tabulating results – especially in large locals.

APPENDIX I

OHIO ADMINISTRATIVE RULES 4117-9-05

4117-9-05 - Fact-finding

When the statutory procedures of division (C)(2) to (C)(6) of section 4117.14 of the Revised Code apply, fact-finding shall be conducted in accordance with these terms:

A. Subsequent to receipt of a notice to negotiate, the board shall send to the parties a list of five fact-finders from the board's register of neutrals. A second list shall be issued only pursuant to a written statement showing good cause.

B. Not later than thirty-five days prior to the expiration of the negotiation period, the parties shall submit in writing to the board a mutually selected fact-finding panel of one or three members. The names of mutually selected alternates to the preferred panel also shall be submitted in writing to the board at this time. Such selections shall be made by alternate striking of the names, unless the parties mutually agree to another means of selection. If the parties cannot agree to the number of members on the panel, the board shall appoint a one-member panel.

C. The parties may mutually select any fact-finder from the SERB register of neutrals instead of selecting from the list provided by the board. However, selection of a fact-finder not listed on the register shall constitute a mutually agreed-upon dispute settlement procedure and preclude appointment or payment of the fact-finding panel by SERB.

D. Upon receipt of notice of the fact-finding panel selected by the parties and no later than thirty days prior to the expiration of the negotiation period, the board shall appoint a fact-finding panel consisting of one or three members. If the parties have not submitted a selected fact-finding panel to the board within the time designated in these rules, the board shall, in its sole discretion, no later than thirty days prior to the expiration of the negotiation period, appoint a fact-finding panel consisting of one member.

E. In those cases where selected fact-finders are unavailable, the board shall appoint a fact-finder at its discretion.

F. Pursuant to division (C)(3)(a) of section 4117.14 of the Revised Code, upon notice of appointment of the fact-finding panel and prior to the hearing, each party shall submit to the fact-finding panel and serve on the other party a written statement. A failure to submit such a written statement to the fact-finder and the other party prior to the day of the hearing shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing. The statement shall include:

- (1) The name of the party and the name, address, and telephone number of the principal representative of the party;
- (2) A description of the bargaining unit including the approximate number of employees;
- (3) A copy of the current collective bargaining agreement, if any; and
- (4) A statement defining all unresolved issues and summarizing the position of the party with regard to each unresolved issue.

G. The parties may mutually agree to an extension of the statutory fact-finding timelines at any time subsequent to the appointment of the fact-finding panel. An extension must be in writing, specific as to duration, signed by both parties, and submitted to the panel and filed with the board within five days of its execution. An extension may be continued, provided the original extension

procedures are followed. The fact-finding panel has no authority to extend the statutory timelines absent mutual agreement of the parties.

H. The fact-finding panel must hold an evidential hearing except that the parties may stipulate facts and waive hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the board to issue subpoena to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Costs associated with a meeting room shall be the obligation of the parties.

I. Fact-finding hearings are to be held in private.

J. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

K. The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

L. No later than fourteen days after the appointment of the fact-finding panel, unless the parties mutually agree in writing to an extension, the fact-finding panel, acting by a majority of its members, shall serve on the parties and the board written findings of fact, written recommendations on the unresolved issues, and a separate summary of each recommendation. Any subsequent change or adjustment by the fact-finding panel in the fact-finding report must be based upon error omission and must be submitted by the fact-finding panel to the board for consideration and imposition of new time periods.

M. Immediately upon receipt, the exclusive representative shall make available, by posting or by other method reasonably calculated to inform the members of the employee organization in the unit, the findings, recommendations and summaries of the fact-finding panel together with a notice of the dates, times, and places where the employee organization's members in the unit may vote to approve or reject the recommendations of the fact-finding panel. A secret ballot election shall be conducted by the exclusive representative at the dates, times, and places set forth in the notice. Such election shall be conducted not later than seven days after the findings, recommendations and summaries of the fact-finding panel are served pursuant to paragraph (C) of rule 4117-1-02 of the Administrative Code. Each member of the employee organization in the unit shall at the time and place of election be issued a ballot containing a choice of "approve" and a choice of "reject" the recommendations of the fact-finding panel. There shall be no voting by proxy. The ballots shall

be tallied immediately upon the conclusion of the election. Written verification of the date of the election, the vote tally, and the number of members of the employee organization in the unit shall be served upon the board and served upon the employer within twenty-four hours after the tally of ballots, but in no event later than twenty-four hours after the expiration of the seven-day voting period. The written verification must contain proof of service upon the employer pursuant to rule 4117-1-02 of the Administrative Code. Failure to serve upon the board and the employer the required voting information within twenty-four hours of the expiration of the seven-day voting period shall constitute failure to reject the recommendations, and the recommendations shall be deemed accepted as the resolution of issues submitted to fact-finding. Oral notification to the board or the employer shall not constitute timely compliance with this rule.

N. Immediately upon receipt, the employer's representative shall make available to the appropriate legislative body the findings, recommendations, and summaries of the fact-finding panel. Not later than seven days after the findings, recommendations, and summaries of the fact-finding panel are served pursuant to paragraph (C) of rule 4117-1-02 of the Administrative Code, the legislative body shall meet and vote to accept or reject the recommendations of the fact-finding panel. Written verification of the date of the vote, the vote tally, and the number of members of the legislative body shall be served upon the board and the exclusive representative within twenty-four hours after the vote count but in no event later than twenty-four hours after the expiration the seven-day voting period. The written verification must contain proof of service upon the employee organization pursuant to rule 4117-1-02 of the Administrative code.

Failure to serve upon the board and the employee organization the required information within twenty-four hours of the expiration of the seven-day voting period shall constitute failure to reject the recommendations, and the recommendations shall be deemed accepted as the resolution of issues submitted to fact-finding. Oral notification to the board or the employee organization shall not constitute timely compliance with this rule.

O. If neither party rejects by a three-fifths vote the recommendations of the fact-finding panel, not later than seven days after the recommendations are sent, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted to the fact-finding panel and a collective bargaining agreement shall be executed, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement.

P. If the recommendations of the panel are rejected by a three-fifths vote of either party and the rejection information required by paragraph (M) or (N) or the rule is timely served upon the board and the other party, the board shall post a copy of the fact-finding report and the notice of rejection in its Columbus offices and shall mail copies to the press, with recipients determined at the board's discretion. A board-provided notice of the rejection and a copy of the fact-finding report shall be posted by the employer and the employee organization in conspicuous locations where employees will be reasonably apprised of the contents. The "date of publication" is the date the board mails the notice and report to the press. A notice of rejection shall remain posted for a period of thirty days or until settlement occurs, whichever is earlier.

Q. The board shall pay one-half of the cost of the fact-finding panel and the parties shall each pay one-half of the remaining cost.

HISTORY: Eff. 5-18-87 (1986-87 OMR 1306) 6-24-84, 3-26-84

CROSS REFERENCES

RC 4117.02, State employment relations board

RC 4117.14, Negotiation, termination or modification of agreement procedures

NOTES ON DECISIONS AND OPINIONS

SERB 88-002 (3-14-88), In re Erie County Care Facility. A public employer has seven days after a fact-finder's report is served to reject it under RC 4117.14 and OAC 4117-9-05, not seven days from the time the report is actually received.

SERB 86-030 (8-7-86), In re Miami University. Once the votes of union members on a fact-finder's report have been tallied, the election is over and further voting foreclosed: a union that permits another member to cast a ballot afterward, changing the result of the election, does not thereby commit an unfair labor practice, but the ballot is invalid and will be disregarded.

SERB 85-058 (10-31-85), In re Stark County Engineer. The state employment relations board does not apply time lines rigidly unless required to do so by law, but where a party received a fact-finder's report only one day before expiration of the authorized seven-day response period, the party does not move for an extension in a timely fashion by merely sending a letter to a member of the board's staff after the seventh day has passed.

SERB 85-042 (9-17-85), In re Lima. An employee organization does not commit an unfair labor practice by publishing recommendations of the fact finder before a city council has an opportunity to consider and act on them.

SERB 85-042 (9-17-85), In re Lima. OAC 4117-9-05 imposes no duty on an employee representative to conduct a ratification election once the employer has voted to reject the recommendations of the fact-finder.

SERB 85-004 (2-6-85), In re Columbus. An appointment of fact-finders under RC 4117.14 and OAC 4117-9-05 is compulsory and self-executing, requiring no order by the state employment relations board where no other procedures have been agreed to by the parties.

SERB 85-002 (1-25-85), In re Lima. Certification of the rejection of a fact-finder's report to the state employment relations board is timely under OAC 4117-9-05 when done within twenty-four hours of the end of the seven days allowed for holding the vote.

4117-9-06 Final offer settlement procedure; conciliation

Members of a police or fire department, members of the state highway patrol, deputy sheriffs, dispatchers employed by a police or fire or sheriff's department or the state highway patrol or civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire, sheriff's department, or emergency medical or rescue personnel and units, an exclusive nurse's unit, employees of the state school for the deaf or the state school for the blind, employees of any public employee retirement system, correction officers, guards at penal or mental institutions, special policemen or policewomen appointed in accordance with sections 5991.14 and 5123.13 of the Revised Code, psychiatric attendants employed at mental health forensic facilities, or youth leaders employed at juvenile correctional facilities are prohibited from striking. Unless the parties are subject to a mutually agreed-upon dispute settlement procedure in compliance with paragraph (C) of rule 4117-9-03 of the Administrative Code, these conciliation procedures shall apply:

A. If the parties are unable to reach an agreement within seven days after the publication of the findings and recommendations of the fact-finding panel, then the board shall issue to the parties an

order pursuant to division (D)(1) of section 4117.14 of the Revised Code requiring the parties to engage in settlement by conciliation by a conciliator selected by the parties in accordance with paragraph (B) of this rule. The board may delegate to the bureau of mediation or the executive director responsibility for ordering conciliation when no substantive issues have been raised and when these conditions have been met:

- (1) The fact-finding report was rejected timely by at least one party by a three-fifths majority of the individuals who were eligible to vote;
- (2) The vote on the fact-finding report was served timely upon SERB and the other party;
- (3) Publication of the fact-finding report did occur in which the effective date of publication is stated on the board-issued notice of rejection of the fact-finding report; and
- (4) At least seven days have passed since the effective date of publication of the fact-finding report, and the parties have not reached a settlement.

Concurrent with its order, the board shall provide to the parties a list of five neutrals from which the conciliator will be selected.

B. The parties shall within five days of the issuance of the list notify the board in writing of their mutually selected conciliator and of any mutually selected alternates to the preferred conciliator. When selected conciliators are unavailable, the board shall appoint a conciliator chosen at its discretion.

C. The parties shall within five days of the issuance of the list notify the board in writing of their mutually selected conciliator and of any mutually selected alternates to the preferred conciliator. When selected conciliators are unavailable, the board shall appoint a conciliator chosen at its discretion.

D. If the board has not received written notification of a mutually selected conciliator within five days after issuance of the conciliation order and list of conciliators, on the sixth day after issuance of the order and list, the board shall appoint a conciliator at its discretion. Oral notification to a SERB bureau of mediation staff member within five days of issuance of the order and list will be sufficient if written confirmation is served upon the board within the five-day period.

E. Upon notice of the conciliator's appointment, each party shall submit to the conciliator and serve on the other party a written statement. A failure to submit such a written statement to the conciliator and the other party prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing. The statement shall include:

- (1) The name of the party and the name, address and telephone number of the principal representative of the party;
- (2) A description of the bargaining unit including the approximate number of employees;
- (3) A copy of the current collective bargaining agreement, if any;
- (4) A report defining all unresolved issues, stating the party's final offer as to each unresolved issue, and summarizing the position of the party with regard to each unresolved issue. If, after submission of the parties' reports, mediation efforts result in a change in a final offer, a party may, with the permission of the conciliator, submit a revised final offer to the conciliator.

F. The conciliator shall hold a hearing within thirty days of the effective date of the board's order to conciliate, or as soon thereafter as practicable. For purposes of the hearing, the conciliator shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and

request the board to issue subpoena to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the conciliator. A conciliator may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. The conciliator shall make provisions allowing for a written record of the hearing.

G. Conciliation hearings are to be held in private.

H. The conciliator shall take the following into consideration in resolving the dispute between the parties:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulations of the parties; and
- (6) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution procedures in the public service or in private employment.

I. The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award.

J. The parties shall bear equally the cost of conciliation.

HISTORY: Eff. 5-18-87 (1986-87 OMR 1307) 6-24-84, 3-26-84

CROSS REFERENCES

RC 4117.02. State employment relations board

RC 4117.14. Negotiation, termination or modification of agreement: procedures

4117-9-07 Filing of collective bargaining agreement

A. One executed copy of any collective bargaining agreement shall be filed with the board by the employer within thirty days of execution.

B. For the purpose of this rule, the term "collective bargaining agreement" includes contract, memorandum of understanding, extension, amendment, modification, reopener, settlement, or other addendum entered into between an employee organization and employer.

C. All wage information shall be submitted with the collective bargaining agreement. Any amendments or renegotiation of wage information shall be filed by the employer upon execution of the amendment or renegotiated provision.

HISTORY: Eff. 5-18-87 (1986-87 OMR 1308) 6-24-84, 3-26-84

CROSS REFERENCES

RC 4117.02. State employment relations board

RC 4117.14. Negotiation, termination or modification of agreement: procedures.