

IMPACT OF COVID-19 ON LOCAL GOVERNANCE MEETINGS

Prepared by the PSEA Legal Division

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As PSEA, its local associations, and its members encounter and address COVID-19 pandemic issues across the state, we are aware of the potential impact of the pandemic on the organization's governance and operations. This memo will address any impact on the functioning of PSEA-affiliated local associations' governance during this crisis.

With spring approaching, local associations normally hold general membership meetings to elect local officers and delegates to the PSEA and NEA conventions. While continuity in governance is critical, the health of our members is paramount and as such may require the postponement of such meetings.

As local associations determine whether to postpone meetings, they will need to consider the ramifications of delaying elections. Local associations will need to review their constitutions and bylaws (CBLs) along with any elections policies or procedures that the local has adopted.

As well, local associations will need to consider federal law requirements relating to the election of delegates to the PSEA House of Delegates and the NEA Representative Assembly. As a labor organization that has members employed in the private sector, PSEA and NEA are subject to the federal Labor Management Reporting and Disclosure Act ("LMRDA"). The LMRDA provides that union members must be able to elect their representatives and requires that such elections include open nominations and voting by secret ballot and be held no less than once every three years. PSEA advises local associations that they should follow those same federal law requirements with respect to the election of their officers.

In determining how best to handle rescheduled elections, we suggest that local leaders consider the issues outlined below.

- **Timeframe for holding elections:** Most local CBLs provide that the local elections be conducted at a general membership meeting. Many of those CBLs provide that the election meeting should be held within a specified time frame (for example, in the month of May, or in "spring").

It may be impossible for a local association to reschedule a general membership meeting within the timeframe set forth in the CBL. In that case, the local association should make a reasonable effort to reschedule the meeting in a way that maximizes members' ability to participate in the

elections. This includes providing sufficient notice and considering workdays and hours and the impact of summer vacations.

At a minimum, federal law requires that unions provide notice of an election at least fifteen days in advance. The local association should also examine its requirements for quorum - the minimum number of members who must be present at a meeting in order for actions to be taken - which may be set forth in in the local's CBL. For example, some CBLs provide that the members present at any meeting shall constitute a quorum. Absent specific language, a quorum is generally a majority of the entire membership.¹

Locals' CBLs usually provide that either the president, executive committee, or representative council is authorized to schedule general membership meetings, including meetings at which elections will take place. A decision to reschedule a meeting and election should be made by the same party with the authority to call the meeting in the first instance.

- **Offices and terms to be elected:** A local CBL should indicate both the date on which the new officer terms commence and the duration of the terms. For example, the elected officers may take office immediately, or may take office on a specific date (for example, September 1st). Under federal law, a term may not exceed three years.

Some local associations elect their entire slate of officers at one time, and others have staggered elections for local officers. (For example, "The President and Secretary shall be elected in the spring of odd-numbered years, and the Vice President, Treasurer, and Parliamentarian shall be elected in the spring of even-numbered years").

If possible, a local should make reasonable efforts to reschedule its election meeting prior to the date when any new terms of office are scheduled to commence. This avoids the problem of having vacancies in offices, which would need to be filled. As noted above, a local should also consider the availability of its membership when it reschedules elections.

For example, if there is a strong likelihood that many members will be unable to attend a meeting over the summer months, rescheduling elections during that time would disenfranchise a large portion of the membership. In those circumstances, a local may justifiably delay elections until the beginning of the new school year.

- **Procedure and timeline for elections:** The procedure for receiving nominations and conducting elections will be specific to a local association's CBL, as well as any elections procedures or policies that have been adopted by the local's Representative Council.

For example, a local CBL may provide that nominations are made at one meeting with elections to occur at a subsequent meeting, that nominations must be submitted in writing by a date certain, or that nominations shall be made from the floor of the elections meeting.

¹ Robert's Rules of Order (Revised), p. 346 (11th ed.).

In circumstances in which nominations are received in advance of an election meeting that is rescheduled, a local association may consider extending the nominations period or otherwise adjusting the timelines for the elections process.

If a local has an elections committee, the CBL likely gives that committee the authority to establish elections policies and procedures. A local elections committee should be involved in any decisions about how best to reschedule an election.

- **Virtual meetings and electronic voting:** *Local associations must comply with federal law regarding elections of delegates to PSEA and NEA conventions. They should contact their UniServ and region attorney to discuss the cautions and considerations related to digital meetings and elections.*

Local associations may convene *general membership meetings* using videoconferencing or other electronic means, if authorized by their CBLs, adopted procedures, and practices; however, it is difficult to conduct an *election* via online voting given federal election law requirements. Even if the local is not electing delegates to PSEA or NEA conventions, their constitutions and bylaws will require that local officers be elected by open nomination and secret ballot. Even assuming this could occur using an electronic platform, such platforms come with logistical complexities and expenses.

PSEA strongly advises that locals not conduct virtual meetings or use any atypical method of electing officers prior to discussing with the UniServ and region attorney.

- **Filling vacancies:** It may be impossible for a local association to reschedule elections before the new terms of office begin. In those circumstances, locals will need to review language in their CBLs for filling vacancies in offices.

Some locals' CBLs provide that officer vacancies are filled by appointment until an election may be held to fill the remainder of the term. In other cases, a CBL may provide that a vacancy is filled by appointment through the remainder of a term.

PSEA advises that, in order to comply with the legal requirement that union officers be *elected*, a local association must hold an election to fill a vacancy where the vacancy resulted from the postponement of an election. In other words, a union office should not be held by an appointee for an entire term.

- **Elections for delegates to region, state, and national conventions:** Local associations typically elect delegates to the region and PSEA Houses of Delegates and the NEA Representative Assembly at the same time they elect officers, for terms that commence *after* these spring conventions are held (for example, a two-year term commencing September 1st following the election). If a local association is electing delegates to serve at upcoming spring/summer conventions, postponement of the election will likely result in their ineligibility to serve.

COVID-19 has presented new and unanticipated challenges that may make it impossible for local associations to technically comply with all provisions of their CBLs that relate to general membership meetings and elections. In such circumstances, local associations should take reasonable steps and make a good faith effort to reschedule elections in a way that protect members' rights to nominate candidates, run for office, and vote in officer elections.

PSEA stands ready to assist locals with these issues, and local leaders should contact their UniServ Representatives with any questions about their CBL or elections procedures.

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