

# RULES AND REGULATIONS OF THE PENNSYLVANIA LABOR RELATIONS BOARD

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## PRIVATE AND PUBLIC EMPLOYES

### GENERAL PROVISIONS

#### §91.1. Records and dockets.

The official dockets and original papers pertaining to proceedings before the Labor Relations Board shall be kept at the principal office of the Board in Harrisburg.

#### §91.2. Appearances.

(a) An attorney or other representative desiring to participate in any proceeding before the Labor Relations Board (Board) or a designated agent of the Board, and who wishes to be served with papers, shall file an appearance either by letter, or by a form provided by the Board or by oral request at the hearing.

(b) A person who has been employed by the Board is not permitted to appear as attorney or representative for a party in a case which was pending before the Board during the period of his employment.

#### §91.3. Joinder of parties.

(a) A proceeding will not be dismissed because of nonjoinder or misjoinder of parties.

(b) Upon motion of a party or upon motion of the Labor Relations Board, or its trial examiner, parties may be added, dropped or substituted at any stage of the proceedings, upon terms as may be deemed proper. The motions shall be made at or prior to the first hearing in a proceeding unless sufficient cause is shown why it could not have been made at that time. Failure to so move will be deemed a waiver of objections to a nonjoinder or misjoinder.

(c) Persons alleged to have engaged in an unfair labor practice may be joined as parties, whether jointly, severally, or in the alternative, and a decision may be rendered against one or more of them upon all of the evidence, without regard to the party by or against whom the evidence has been introduced.

#### §91.4. Consolidation or severance.

(a) Two or more proceedings may be consolidated by the Labor Relations Board in its discretion.

(b) A proceeding may be severed by the Labor Relations Board in its discretion.

#### §91.5. Construction and amendment.

This chapter sets forth rules for the efficient operation of the Labor Relations Board and the orderly administration of the acts. They are to be liberally construed for the accomplishment of these purposes and may be waived or suspended by the Labor Relations Board at any time and in any proceeding unless the action results in depriving a party of substantial rights.

## PRIVATE EMPLOYEES

### GENERAL PROVISIONS

#### §93.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

**ACT** - The Pennsylvania Labor Relations Act, as amended (43 P.S. §§211.1-211.39) and the other acts as are administered in part.

**BOARD** - The Labor Relations Board.

**CHARGE** - A charge of unfair labor practices filed under the act.

**PARTY** - The employer, person or organization filing a charge or petition, or otherwise named in a charge or petition; another person or organization designated in the notice of hearing and served therewith; and another person or organization whose intervention has been permitted by the Board or trial examiner, except as limited by the Board or trial examiner in granting the permission.

**PERSON, EMPLOYER, EMPLOYEE, REPRESENTATIVE, LABOR ORGANIZATION, UNFAIR LABOR PRACTICE, AND LABOR DISPUTE** - These terms have the meanings set forth in the acts.

**PETITION** - A petition for investigation and certification of a collective bargaining representative filed under the act.

**TRIAL EXAMINER** - A person appointed or designated by the Board to conduct a hearing.

### PREHEARING PROVISIONS

#### §93.11. Institution of proceedings.

(a) Charges and petitions instituting proceedings before the Board may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in Philadelphia\* or Pittsburgh. Charge and petition forms are available at Board offices.

\* Please note that rules have not been formally amended to reflect that there is no longer an office in Philadelphia.

(b) Charges and petitions may be filed by a person entitled to do so under the act, shall be in writing, shall contain pertinent information required by the act, and shall be verified by the person filing the charges and petitions.

(c) In actions before the Board, the first paper filed on behalf of each party shall contain an address at which service of complaints, orders and other processes and papers of the Board may be made. Thereafter, a party may file with the Board a suggestion, which shall form part of the record in the case, setting forth a new address at which the service may be made. If he does not do so, notice sent to him by registered mail at his last address of record shall be equivalent to service.

#### §93.12. Service and filing of papers.

(a) Service of papers by a party on other parties shall be made personally, or by registered or certified mail, or by leaving a copy thereof with the person then in charge at the principal office or place of business of the person to be served. Where an attorney or representative has entered his appearance under §91.2(a) (relating to appearances), complaints, orders and other processes and papers shall be served on the attorney or representative and need not be served on the party.

(b) When the acts, or this chapter or an order of the Board requires the filing of a motion, brief, exception or other paper in a proceeding, the document shall be received by the Board or the officer or agent designated by the Board to receive the document before the close of business of the last day of the time limit, if any, for the filing. Exceptions to this requirement will be at the discretion of the Board.

(c) Papers, pleadings, briefs or other documents filed with the Board shall be legibly typed, printed or otherwise legibly duplicated.

(d) An original and three copies of the papers, pleadings, briefs or other documents to be filed with the Board shall be submitted to the Board unless otherwise specified.

### **§93.13. Consent elections.**

(a) Petitions for consent election may be filed by an employer, individual, group of employees or labor organization entitled so to do under the act.

(b) Petitions for consent election shall be signed and verified by parties thereto and shall include a description of the appropriate unit, a suggested time and place of holding the election and a list of employees with occupations or classifications. A list of employees agreed upon as eligible to vote shall be signed and dated by the parties. Forms are available at Board offices.

(c) During the conduct of a representation hearing the parties thereto may enter into a stipulation for consent election upon forms provided by the trial examiner or by stipulation entered into the record.

### **§93.14. Complaints.**

(a) After a charge has been filed, if it appears to the Board that formal proceedings in respect thereto should be instituted, the Board will issue and cause to be served upon the parties a complaint in the name of the Board, stating the alleged unfair labor practices, and containing a notice of hearing before a trial examiner at a place therein fixed and at a time not less than 5 days after the service of the complaint.

(b) In the discretion of the Board, upon due notice to the parties, a complaint may be amended, in such manner as the Board may deem proper, at any time before the issuance of a final decision and order if no new cause of action is added after the statute of limitations has run.

(c) A complaint, or amended complaint, or any part thereof, may be dismissed by the Board on its own motion or a charge may be withdrawn upon the motion of an interested party, if deemed appropriate by the Board, at any time before the issuance of a final decision and order, upon due notice to the parties.

### **§93.15. Answers.**

(a) The Board recognizes that the primary purpose of pleadings is the formation of the issues. Consequently, rules pertaining to pleadings will be liberally construed toward effecting that end.

(b) An answer need not be filed in representation cases.

(c) In unfair labor practice cases the respondent shall have the right to file an answer to the original or amended complaint. Answers shall be in writing, shall be verified by the person filing the same, and shall be filed with the Board at Harrisburg within the time designated by the Board. Copies of answers shall be served upon the parties to the proceeding. Proof of service of the answer shall be filed with the Board. A party who fails to file an answer shall be deemed to admit only those averments relating to the identity of the parties; other averments shall be deemed to be denied.

(d) Affirmative defenses, including but not limited to, the jurisdiction of the Board, statute of limitations, and Section 10.1 of the act (43 P.S. §211.10) shall be pleaded under the heading of new matter in the answer.

(e) Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

(f) In the discretion of the trial examiner at hearing, or otherwise in the discretion of the Board, an answer may be amended upon motion of the party filing it, upon due notice to the parties, at any time before the issuance of the final decision and order. The motion shall be in writing unless made during the conduct of a hearing.

(g) When the respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Board may make, enter and serve upon respondent an order to cease and desist from the violations of the act alleged in the complaint. In either case, the answer shall have the same force and effect as if the allegations of the complaint were admitted to be true and shall be deemed to waive a hearing thereon and to authorize the Board, without a hearing, evidence, findings of facts or without any other intervening procedure, to make, enter, issue and

serve upon respondent an order to cease and desist from the violations of the act charged in the complaint or such other order as shall be appropriate.

#### **§93.16. Intervention.**

(a) Motions to intervene shall be in writing, shall specify the grounds for intervention, shall be signed and verified, and a copy shall be served upon the parties to the proceeding and proof thereof filed with the Board.

(b) The trial examiner may permit employers, employees and labor organizations to participate as parties in representation hearings without formal intervention, upon a showing of good cause which reasonably prevented them from having filed a timely motion to intervene.

#### **§93.17. Continuances.**

(a) Motions for a continuance, made prior to hearing, shall be in writing, shall be filed with the Board at Harrisburg, and shall set forth the reasons for granting the continuance. No motion will be acted upon by the Board unless it is filed at least 72 hours prior to the hearing, and the ruling of the Board thereon will be final. Upon good cause shown, the 72-hour provision or the necessity of a written motion may be waived at the discretion of the Board.

(b) Conflicting engagements of counsel, whether before a court of record or an administrative tribunal, may not constitute sufficient grounds for a continuance of any proceeding before the Board, unless the date for the appearance of counsel in the conflicting engagement was fixed before receipt of notice of the proceeding before the Board.

(c) Agreement of counsel is not of itself sufficient cause for the granting of a continuance.

(d) At a hearing, the trial examiner shall have the right, subject to the approval of the Board, to continue the hearing from day to day, or to adjourn it to a later date, or to a different place, by announcement thereof at the hearing or by other appropriate notice.

#### **§93.18. Elections.**

Elections shall be governed by §§95.51—95.59 (relating to elections).

#### **§93.19. Notices to employees.**

(a) For the purpose of informing employees affected by representation cases, the posting of notices or orders of the Board at the place of business of the employer, where readily accessible to employees, shall constitute notice.

(b) The Board may, from time to time, require the employer to post such notices and orders and to make a return of the posting.

(c) Orders of the Board dismissing charges of unfair labor practices may be posted by the employer, if he so desires, at his place of business, for the information of his employees.

#### **§93.20. Authority of secretary.**

The authority of the Secretary of the Board will be governed by §95.81 (relating to the authority of Secretary and Executive Director).

### **FORMAL PROCEEDINGS**

#### **§93.31. Hearings**

Hearings shall be governed by §§95.91—95.98 (relating to provisions for formal proceedings).

## PUBLIC EMPLOYES

### GENERAL PROVISIONS

#### §95.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ACT - The Public Employe Relations Act (43 P.S. §§1101.101 - 1101.2301).

BOARD - The Pennsylvania Labor Relations Board.

HEARING EXAMINER - A person appointed or designated by the Board to conduct a hearing.

PARTY - A person, employe, group of employes, organization or public employer filing a charge, petition, request or application under this chapter; a person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under the act; or a person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Board, secretary or a hearing officer. Nothing in this definition shall be construed to prevent the Board, or a designated officer from limiting participation by a party in the proceedings to the extent of his interest.

PETITION - A petition for investigation and certification or decertification of a collective bargaining representative filed under the act and this chapter.

SHOWING OF INTEREST - A designated percentage of public employes in an allegedly appropriate bargaining unit, or a bargaining unit determined to be appropriate, who are members of an employe organization, who have designated it as their exclusive bargaining representative, or who have signed a petition requesting an election for certification or decertification of public employe representatives. The designations shall consist of written authorization cards or petitions, signed by employes and dated, authorizing an employe organization to represent the employes for the purpose of collective bargaining or requesting an election for certification or decertification of public employe representatives, current dues records or other evidence approved by the Board.

UNFAIR PRACTICE - A practice prohibited by the act.

### INSTITUTION OF REPRESENTATION PROCEEDINGS

#### §95.11 Request for certification.

(a) A public employe, employe organization or group of employes and the public employer may, when the public employe organization represents a majority of the employes in an appropriate unit, jointly submit to the Board a request for certification upon a form to be supplied by the Board.

(b) The request for certification shall set forth the following:

(1) The name, address and telephone number of the public employer and the person to contact, including his title, if known.

(2) The name, address and affiliation, if any, of the employe organization and the name, address and telephone number of its representative.

(3) A description and factual statement in support of the unit claimed to be appropriate for the purpose of exclusive representation.

(4) The budget submission date of the public employer.

(5) The signatures of the parties, including their titles and telephone numbers.

(6) A statement that the employe organization represents a majority of the employes in the unit and the method of determining the representative majority. Proof of the representative majority shall be submitted to the hearing examiner, if requested.

(7) The names and addresses of known employee representatives, individuals, labor organizations or groups claiming to represent any of the employees in the bargaining unit.

(8) Five days prior to the submission to the Board of the joint request for certification, the employer shall post on the bulletin boards at all locations where employees in the requested unit work a copy of the joint request for certification and a statement that the request will be filed with the Pennsylvania Labor Relations Board, 1601 Labor and Industry Building, Harrisburg, Pennsylvania 17120\*, for the purpose of securing from that Board a certification of       (Name of employee representative)       as the exclusive bargaining representative for the employees within the unit.

(9) Other relevant facts.

\* Please note that rules have not been formally amended to reflect that the Harrisburg office of the Board is currently located at: 418 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120.

(c) A 15% showing of interest among employees within the requested unit is required before an employee representative may be permitted to intervene.

(d) When the request for certification serves to effectuate the policies of the act, the Board Representative will issue an appropriate order of certification.

#### §95.12. Notice for an election request.

(a) A public employee, a group of public employees or an employee organization may submit, in writing to a public employer, upon forms prepared by the Board, a notice for an election request.

(b) A notice for an election request shall contain the following:

(1) A statement that 30% or more of the public employees in an appropriate unit desire to be exclusively represented for collective bargaining purposes by a designated representative.

(2) A description of the unit deemed appropriate.

(3) A request for a consent election.

#### §95.13. Consent to election request.

(a) If a public employer consents to an election request by a public employee, a group of public employees or an employee organization, the consent shall be given in writing to the party giving notice within 10 days of the receipt of an election request.

(b) Upon consent to an election request, a joint election request shall be submitted to the Board, in triplicate, upon forms prepared by the Board, which shall include the following:

(1) A description and factual statement in support of the unit deemed appropriate.

(2) The basis for alleging a 30% interest or more.

(3) A list of all unit employees prepared by the employer in the order requested by the Board with occupations or classifications of those agreed upon as eligible to vote.

(4) Suggested times and places of holding the election.

(5) The budget submission date of the public employer.

(6) A 1% showing of interest among employees within the requested unit is required before another employee representative may be placed on the ballot. A 10% showing of interest among employees within the requested unit is required before another employee representative may be permitted to intervene as a party.

(7) If a public employer refuses to consent within the 10-day period to an election, the party making the request may file a petition for representation election. A public employer may file a petition for representation

election if, after receiving a notice for an election request, the moving party thereafter fails to submit a joint election request within ten days after consent is given by the employer.

(c) Five days prior to the submission to the Board of the joint election request, the employer shall post on the bulletin boards at all locations where employees in the requested unit work, a copy of the joint election request and a statement that the request will be filed with the Pennsylvania Labor Relations Board, 1601 Labor and Industry Building, Harrisburg, Pennsylvania 17120\*, for the purpose of securing from that Board a certification of       (Name of employee representative)       as the exclusive bargaining representative for the employees within the unit.

\* Please note that rules have not been formally amended to reflect that the Harrisburg office of the Board is currently located at: 418 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120.

#### **§95.14. Contents of election request.**

A petition for representation election shall, when filed by a public employee, employee organization, a group of public employees or public employer, contain the following:

(1) The name, address and telephone number of the public employer and the person to contact, including his title, if known.

(2) The name and affiliation, if any, of the petitioner and its address and telephone number.

(3) A description and factual statement in support of the unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. The description shall indicate the general classifications of employees to be included and those to be excluded and the approximate number of employees in the unit.

(4) The date of the giving of the notice for election request and date it was accepted or declined by the public employer or a statement that no reply has been received.

(5) The name, address, and telephone number of the recognized or certified exclusive representative, if any, the date of the certification or recognition, and the expiration date of an applicable contract, if known to the petitioner.

(6) The budget submission date of the employer.

(7) The signature of the representative of petitioner, including his title and telephone number.

(8) A statement, if appropriate, of the showing of interest of not less than 30% of the employees in the unit and the method of ascertaining the showing of interest. Proof of this statement shall be submitted to the hearing examiner, if requested.

(9) The names, addresses and telephone numbers of known representatives, individuals, labor organizations or groups claiming to represent any of the employees in the bargaining unit.

(10) A 1% showing of interest among employees within the requested unit is required before another employee representative may be placed on the ballot. A 10% showing of interest among employees within the requested unit is required before another employee representative may be permitted to intervene as a party.

(11) Other relevant facts.

#### **§95.15. Disclaimer of interest.**

(a) In the event an employee organization shall, at any point prior to the issuance of an order for election, file a disclaimer of interest with the Board Representative, the Board Representative may either dismiss the petition for election or delete the name of the employee organization from the ballot if the conduct of the employee organization is consistent with the disclaimer.

(b) The Board Representative will have the authority to issue an appropriate order decertifying an incumbent representative under a disclaimer of interest.

### **§95.16. Names and addresses of employees.**

Following the determination of the appropriate unit as required by Article VI of the act (43 P.S. §§1101.601 - 1101.607) the Board, or its authorized agent, will have the right to direct the employer to submit forthwith to the Board a list of the names and addresses of the employees in the appropriate unit, the list to be made available by the Board to any party to the proceeding who requests it.

### **§95.17. Validity of showing of interest.**

The showing of interest submitted will not be furnished to any of the parties. The Board or its agents will determine the adequacy of the showing of interest and such decision will not be subject to collateral attack in a hearing.

## **DECERTIFICATION**

### **§95.21. Petition by employees.**

A petition by a public employe, or a group of public employes, for decertification of public employe representative shall be filed with the Board not sooner than 90 days nor later than 60 days before the expiration date of a collective bargaining agreement; or after the expiration date until a new written agreement has been entered into; or, if no collective bargaining agreement has been entered into, not sooner than 1 year from the date the certification had become effective. The petition shall be on the form supplied by the Board and shall contain the following:

- (1) A statement alleging that the employe representative certified by the Board, or currently recognized by the public employer, no longer represents a majority of the employes in the collective bargaining unit in which it is currently recognized or certified.
- (2) A statement of the showing of interest of not less than 30% of the employes in the unit and the method of ascertaining the showing of interest. Proof of this statement shall be submitted to the hearing examiner, upon request. A showing of interest shall indicate that the employes no longer desire to be represented for the purpose of collective bargaining by the currently recognized or certified employe representative.
- (3) The name and address of the employer.
- (4) The name and address of the petitioner.
- (5) The name and address of the incumbent representative.
- (6) The date of expiration of the contract.
- (7) The number of employes in the unit.
- (8) The date of the last election.
- (9) Other relevant facts.

### **§95.22. Petition by employers.**

A petition by a public employer for decertification of a public employe representative shall be filed with the Board not sooner than 90 days nor later than 60 days before the expiration date of a collective bargaining agreement; or after the expiration date until a new written agreement has been entered into; or, if no collective bargaining agreement has been entered into, not sooner than 1 year from the date the certification had become effective. The petition shall be on the form supplied by the Board and contain the following:

- (1) A factual statement indicating a good faith doubt of the majority status of the public employe representative.
- (2) The name of the currently recognized or certified public employe representative.
- (3) The name and address of the employer and a description of the bargaining unit involved.
- (4) The general nature of the business of the employer.

- (5) The name and address of the incumbent representative.
- (6) The date of expiration of the contract.
- (7) The number of employees in the unit.
- (8) The date of the last election.
- (9) Other relevant facts.

#### **§95.23. Unit clarification.**

(a) If no question of representation exists, a petition for clarification of an existing bargaining unit may be filed by the collective bargaining representative or by the public employer.

(b) A petition for unit clarification shall contain the following:

- (1) The name of the employer and the name of the collective bargaining representative.
- (2) The address of the employer.
- (3) A description of the present bargaining unit and, if the bargaining unit is certified, an identification of the existing certification.
- (4) A description of the proposed clarification.
- (5) The names and addresses of other person or employe organizations who claim to represent any employes affected by the proposed clarifications and brief descriptions of the contracts, if any, covering those employes.
- (6) The number of employees in the present bargaining unit and in the unit as proposed under the clarification.
- (7) The job classifications of employees as to whom the issue is raised, and the number of employees in each classification.
- (8) A statement by petitioner setting forth the reasons for requesting the clarification.
- (9) The name, affiliation if any, and address of the Petitioner.
- (10) Other relevant facts.

(c) When unit clarification is jointly requested by the collective bargaining representative and the public employer, the Board Representative will have the authority to issue an appropriate order of unit clarification.

#### **§95.24. Amendment of certification.**

(a) If no question of representation exists, a petition for amendment of certification may be filed by the collective bargaining representative or by the public employer.

(b) A petition for amendment of certification shall contain the following:

- (1) The name of the employer and the name of the certified employe organization involved.
- (2) The address of the employer involved.
- (3) Identification and description of the existing certification.
- (4) A statement by petitioner setting forth the details of the desired amendment and reasons therefor.

(5) The names and addresses of other person or employe organizations claiming to represent any employes in the unit covered by the certification and brief description of the contracts, if any, covering the employes in the unit.

(6) The name, affiliation if any, and address of the petitioner.

(7) A brief description of the process utilized in carrying out the affiliation.

(8) Other relevant facts.

(c) When the requested amendment of certification serves to effectuate the policies of the act, the Board Representative will issue an order amending the certification or other appropriate order.

## **UNFAIR PRACTICES PROCEEDINGS**

### **§95.31. Charges.**

(a) Charges shall be in writing on forms supplied by the Board and shall be signed and sworn to before a person authorized to administer oaths. An original and three copies of the charge shall be filed with the Board by one or more public employes, or an employe organization, acting in their behalf, or by a public employer.

(b) The charge shall include the following information:

(1) The name, address, telephone number and affiliation, if any, of the charging party, and the title of a representative filing the charge.

(2) The name, address and telephone number of the respondent, or respondents, and other party named in the charge.

(3) A clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the act alleged to have been violated.

(c) After a charge has been filed, if it appears to the Board that formal proceedings in respect to the charge should be instituted, the Board, or any member of the Board, or the regional director, may issue and cause to be served upon the parties a complaint in the name of the Board, stating the alleged unfair practices, and containing a notice of hearing before a hearing examiner at a place stated in the complaint and at a time not less than 5 days after the service of the complaint unless involving charges under Sections 803 or 1201(b)(6) or (7) of the act (43 P.S. §1101.803 or 1101.1201(b)(6) or (7)).

### **§95.32. Amendment of complaints and answers.**

(a) At the discretion of the Board, upon due notice to parties, a complaint may be amended, in such manner as the Board may deem proper, before the issuance of a final decision and order, if no new cause of action is added after the statute of limitations has run.

(b) A complaint, amended complaint or a part thereof, may be dismissed by the Board on its own motion or a charge may, with the approval of the Board, be withdrawn upon the motion of the complainant before the issuance of a final decision and order, upon due notice to all parties.

(c) Subject to the approval of the hearing examiner or the Board, an answer may be amended upon motion of the filing party before the commencement of the testimony. The motion shall be in writing, unless made at the hearing and before commencement of the testimony. A copy of the motion shall be served upon all parties. In the event the complainant is prejudiced by the amendment, a motion for continuance will be granted.

### **§95.33. Prosecuting authority.**

Cases in which complaints are actually issued by the Board shall be prosecuted before the Board, a member of the Board, or its hearing examiner, by the representative of the employe organization or party filing the charge, and, in addition to the charge, or in lieu of it, if the Office of Attorney General sees fit, by a Deputy Attorney General, especially assigned to this type of case.

### **§95.34. Answers.**

(a) The Board recognizes that the primary purpose of pleadings is the formation of issues. Consequently, rules pertaining to pleadings will be liberally construed to effect that end.

(b) No answer need be filed in representation cases.

(c) The respondent shall, except in charges provided for in Section 803 or 1201(b)(6) or (7) of the act (43 P.S. §1101.803 or 1101.1201(b)(6) or (7)) file an answer to the original or amended complaint within 15 days from the service of the complaint. Answers shall be verified by the person filing them, and shall be filed with the Board at Harrisburg or at its regional offices. Copies of answers shall be served upon the parties to the proceeding. Proof of service of the answer shall be filed with the Board. A party who fails to file an answer or to specifically deny allegations in the complaint shall be deemed to admit only those averments relating to the identity of the parties; all other averments shall be deemed to be denied.

(d) In the discretion of the hearing examiner at the hearing, or in the discretion of the Board, an answer may be amended upon motion of the party filing it, upon due notice to the parties, before the issuance of the final decision and order. The motion must be in writing unless made during the conduct of the hearing.

### **§95.35. New matter in the answer.**

(a) Affirmative defenses, including but not limited to the jurisdiction of the Board and statute of limitations, shall be pleaded under the heading of new matter in the answer.

(b) Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

### **§95.36. Offers of fact and proposals.**

At any stage of a proceeding, prior to a hearing, where time, the nature of the proceeding, and the public interest permit, interested parties shall have the opportunity to submit to the Board, or a member or agent of the Board, for consideration facts, arguments, offers of settlement or proposals of adjustment.

### **§95.37. Dismissal.**

Petitions and charges shall set forth fully and specifically all the information and facts required by the act, the rules and the forms supplied by the Board. The Board may, upon a failure to comply with this section, dismiss the petition or charge without further proceedings.

## **PREHEARING PROVISIONS**

### **§95.41. Service of papers.**

Service of papers by a party on other parties shall be made personally, by United States mail, by telegram or by leaving a copy of the papers with the person then in charge at the principal office or place of business of the person to be served. Where an attorney or representative has entered his appearance under §91.2(a) (relating to appearances), complaints, orders and other processes and papers shall be served on the attorney or representative and need not be served on the party.

### **§95.42. Filing of papers.**

(a) When the act, this chapter or an order of the Board requires the filing of a motion, brief, exception or other paper in a proceeding, the document shall be received by the Board or the officer or agent designated by the Board to receive the document before the close of business of the last day of the time limit, if any, for the filing. Exceptions to this requirement will be at the discretion of the Board.

(b) Charges and petitions may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in Philadelphia\* or Pittsburgh. Charge and petition forms are available at Board offices.

(c) Actions before the Board, the first paper filed on behalf of each party shall contain an address including zip code at which service of complaints, orders and other processes and papers of the Board may be made. Thereafter, a party may file with the Board a correction which shall form part of the record in the case setting forth a new address with

zip code at which the service may be made. If he does not do so, notice sent to him by United States mail at his last address of record shall be equivalent to service.

(d) Papers, pleadings, briefs or other documents filed with the Board shall be legibly typed, printed or otherwise legibly duplicated.

(e) An original and three copies of all papers, pleadings, briefs or other documents to be filed with the Board shall be submitted to the Board, unless otherwise specified.

#### **§95.43. Notice.**

(a) The Board will give notice of election at least 10-calendar days before the date of the election. The notice will include a description of the bargaining unit, the form of the ballot, the times and places where the election is to be held, and a list of names of those eligible to vote or reference to the places where the list shall be filed and available for inspection.

(b) Notices may be posted by the Board officer or the Board may direct the employer to post such notices and orders and make a return of the posting.

(c) Notices shall be posted at the place of business of the employer at locations where employes in the requested unit work. The Board may post or order the public employer to post the other orders and notices as it may deem necessary or appropriate.

#### **§95.44. Interventions.**

(a) Motions to intervene shall be in writing, specify the grounds for intervention, be signed and verified, and a copy shall be served upon the parties to the proceedings. Proof for motions to intervene shall be filed with the Board.

\*Please note that rules have not been formally amended to reflect that there is no longer an office in Philadelphia.

(b) In representation proceedings, the hearing examiner may, subject to §95.11 (relating to request for certification) permit public employers, public employes and employe organizations to participate as parties without formal intervention, upon a showing of good cause which reasonably prevented them from having filed a timely motion to intervene.

(c) The Board or a member of the Board, or the hearing examiner, as the case may be, may, by orders, permit intervention in person, by counsel, or by other representative to such extent and upon the terms as they may deem proper.

#### **§95.45. Continuances.**

(a) Motions for a continuance made prior to a hearing shall be in writing, shall be filed with the Board at Harrisburg, and shall set forth the reasons for a continuance and the position of all parties or their representatives to the request. The motion may not be acted upon by the Board unless it is filed at least 72 hours prior to the hearing, and the ruling of the Board shall be final. Upon good cause shown, the 72 hour provision or the necessity of a written motion may be waived at the discretion of the Board.

(b) conflicting engagements of counsel, whether before a court of record or an administrative tribunal, shall normally not constitute sufficient grounds for a continuance of any proceeding before the Board, unless the date for the appearance of counsel in the conflicting engagement was fixed before receipt of notice of the proceeding before the Board.

(c) Agreement of counsel may not of itself be sufficient cause for the granting of a continuance.

(d) At a hearing, the hearing examiner subject to the approval of the Board, may continue the hearing from day to day, or to adjourn it to a later date or a different place, by announcement of the change at the hearing or by other appropriate notice.

#### **§95.46. Prehearing conferences.**

In representation, decertification and unfair practice proceedings the Board, on its own motion or upon the written request of either party, may designate a member or hearing examiner to meet with the parties at a time mutually

convenient to all, to conduct a prehearing conference for the purpose of delineating the issues and, to the extent possible, agree on the facts, matters or procedures as will facilitate and expedite the hearings, elections or adjudication of the issues.

## **ELECTIONS**

### **§95.51. Election process.**

(a) Elections will be by secret ballot, at times, places and in the manner as the Board or the Board Representative may direct, and will be conducted by a designated agent of the Board, whose determination of questions arising shall be final, subject to review by the Board or the Board Representative.

(b) Ballots will be prepared and issued by the Board. Ballots will contain the name of each representative and a choice of "no representative". The place of priority on the ballot will be determined by the chronological filing or appearance on the dockets of the Board but with the petitioner taking first priority. In a runoff election, the place of priority will be determined by the sequence appearing on the ballot at the prior inconclusive election.

### **§95.52 Procedures for on-site elections.**

(a) Watchers. Each party to the election will be entitled to be represented by one watcher at each polling place or by additional watchers as the parties may agree, subject to such limitations as the Board or its duly authorized agent may prescribe. Watchers for all parties shall be employees eligible to vote. However, if the employer is unable to find an individual on the list of eligible voters who is willing to serve as a watcher, the employer may choose a nonsupervisory or other appropriate person. If the unit includes supervisors, the parties may use as watchers persons who function at the same level of supervision.

(b) Polling area. Before the commencement of an on-site election, the agent of the Board will designate the polling area. No electioneering of any kind may take place within this area. A violation of this requirement by any party or its agent may be ground for setting aside the election.

### **§95.53 Procedures for mail ballot elections.**

(a) Ballot packet. Each eligible voter will be mailed a packet containing a ballot, a ballot envelope, a pre-addressed stamped return envelope, and instructions. The return envelopes will have a key number assigned to each voter to assist identification at the ballot count.

(b) Instructions. The instructions will direct the voter to mark the ballot in secret placing an "X" in the square of the desired choice without identifying the voter. The ballot shall then be folded, inserted into the ballot envelope, the ballot envelope sealed and inserted into the return envelope. The return envelope shall be sealed and the voter shall sign his name in the box provided on the reverse of the sealed return envelope. The instructions will also advise the voter of the date, established in the election order, by which return envelopes must be received by the Board to be canvassed.

(c) Duplicate packets. The posted election order will advise voters of a date by which voters who do not receive an election packet should contact the Board at the address or telephone number provided to receive a duplicate packet. The duplicate packets will contain the materials referenced in subsection (a) and be key numbered to prevent casting of more than one ballot by a voter.

(d) Ballot count. Returned ballots will be kept secure by the Board and remain unopened in their return envelopes until the date set for counting the ballots. Either by mail before the ballot count, with a copy to all parties, or at the ballot count, each party and the Board shall have an opportunity to challenge any ballots prior to the opening of the return envelopes. Appropriately challenged ballots will not be tallied and will remain in their return envelopes for subsequent proceedings and identification if necessary. Ballots which have not been challenged will be compared to the eligibility list, removed from the return envelope and the return envelopes destroyed. The ballots will then be commingled while remaining sealed in ballot envelopes. The ballot envelopes will then be opened and the results tabulated.

### **§95.54 Voter eligibility.**

(a) Employees who are hired and working in the payroll period immediately preceding issuance of the order directing the election shall be eligible to vote in the election, if they remain employed when the election takes place.

(b) The order directing election will have attached a voter eligibility list which will be all those employees in the unit found appropriate. The eligibility list is not dispositive if eligibility of voters is disputed by a party.

#### **§95.55 Challenged voters.**

(a) A prospective voter may be challenged for cause.

(b) Employees whose names do not appear upon the list certified by the Board as being a complete list of the employees within the defined appropriate unit will be challenged by the agent of the Board.

(c) A challenged voter shall vote but the ballot will not be canvassed. At an on-site election, the challenged ballot will be sealed in a separate, unmarked envelope under the supervision of the agent of the Board, inserted in a special identifiable form envelope provided by the Board for that purpose, and returned to the Board agent. A challenged mail ballot will remain in the return envelope until its validity is determined, if necessary.

#### **§95.56 Voters with a disability.**

The Board and the parties will provide an opportunity to vote with reasonable accommodation to a voter who because of a physical disability is unable to participate in an election in the manner directed in an election order. Voters with a physical disability who require assistance should contact the Board at either 1601 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17120\*, (717) 787-1091, or 1513 Pittsburgh State Office Building, Pittsburgh, Pennsylvania 15222, (412) 565-5318. Either prior to or during the prehearing conference conducted pursuant to §95.46 (relating to prehearing conferences) or as otherwise directed by an agent of the Board, the parties to the election shall inform the Board of the circumstance of a disabled voter to allow a ballot to be made available to the voter to be marked and returned to the Board in time for the ballot count. An eligible voter, party, or agent of a party to the election may not render assistance to a voter with a disability.

\* Please note that rules have not been formally amended to reflect that the Harrisburg office of the Board is currently located at: 418 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120

#### **§95.57 Objections to the Board's conduct of election.**

Objections to the conduct of a Board agent regarding the election shall be filed within five working days of the final tally of votes.

#### **§95.58 Unfair practices in connection with election.**

(a) Objections to the conduct of a party to the election seeking a new election shall be filed as a charge of unfair practices within five working days of the final tally of votes. Charges of unfair practices which do not seek as a remedy the conduct of a new election shall be filed within the six-week limitation period of Section 9(e) of the Pennsylvania Labor Relations Act or the four-month limitation period of Section 1505 of the Public Employee Relations Act, as applicable.

(b) Blocking charges. If charges of unfair practices are filed before the conduct of an election, the Secretary or hearing examiner shall have discretion to block the further processing of a petition seeking an election if the alleged unfair practice, if proved, would likely prevent a fair and free election. The charging party however shall have the right to waive the blocking nature of such charges of unfair practices with prejudice to its right to seek a new election based upon the allegations in the charge of unfair practices.

#### **§95.59 Election results.**

(a) In elections where challenged ballots affect the election outcome and objections pursuant to §95.57 and/or unfair practices pursuant to §95.58 have been filed, the Board will first resolve the challenged ballots which may render moot charges of unfair practices or election objections.

(b) Each party will be permitted to observe the canvass of the ballots.

### **COLLECTIVE BARGAINING IMPASSE**

#### **§95.61. Fact-finding panels.**

(a) If the Bureau of Mediation notifies the Board of the failure of the parties to have reached an agreement within the time provided by the act, the Board may appoint a fact-finding panel consisting of either one or three members.

(b) If the Board is requested by a school entity or employe organization to appoint a fact-finding panel under section 1122-A(a)(2) of the Public School Code of 1949 (24 P.S. §11-1122-A), the Board will appoint a fact-finding panel which may consist of either one or three members.

(c) If a school entity and employe organization mutually agree to fact-finding under section 1122-A(a)(3) of the Public School Code of 1949, the Board will appoint a fact-finding panel which may consist of either one or three members.

(d) The Board may appoint a fact-finding panel under section 1122-A(a)(4) of the Public School Code of 1949 which may consist of either one or three members.

(e) Immediately following the appointment, the Board will notify the panel members and all parties of the appointment, requesting the panel to proceed with the holding of hearings, giving due notice of the time and place of the hearing in writing to all parties.

#### **§95.62. Filing of issues.**

Within 5 days of receipt of notice from the panel, the parties shall file with the panel written statements of the issues in dispute, a copy of the current collective bargaining agreement, if any, and a summary of the position of the party regarding each unresolved issue. A copy of the statements shall be served upon the other party. The matters to be considered by the panel should be limited to those set forth in the statements.

#### **§95.63. Hearings and report.**

(a) The hearings before the panel are private. While the panel need not insist upon adherence to the legal rules of evidence, it shall, however, base its findings of fact and recommendations upon reliable and credible evidence produced at the hearings.

(b) The panel shall conduct evidentiary hearings as required. For purposes of hearing, the fact-finding panel shall have the power to direct the time, place, course and conduct of the hearings, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel attendance of witnesses and the production of papers and records relevant to the matters before the panel. Costs associated with obtaining a hearing room will be borne by the parties.

(c) The panel shall issue its findings of fact and recommendations in writing to the parties and thereafter make them public in accordance with the provisions of law.

#### **§95.64. Fact finding and arbitration compensation.**

The Board will maintain a list of candidates available for service on the panels to be appointed. Prior to the appointment, fact finders shall have filed with the Board a resume of their qualifications and requested fees for services to be rendered. The services provided by the fact finders shall be compensated in accordance with a schedule of rates approved by the Board.

§95.65. [Reserved].

#### **§95.65a. Arbitration for school entities and their employes.**

(a) Voluntary binding arbitration. Notwithstanding the provisions of the act of July 9, 1992 (P.L. 403, No. 88) (Act 88), which amended the act, a school entity and an employe organization may submit an impasse to voluntary binding arbitration under section 804 of the act (43 P.S. §1101.864) with the proviso that a decision of the arbitrators which would require legislative enactment to be effective shall be considered advisory only.

(b) Compensation for arbitrators under Act 88.

(1) The partisan arbitrators selected by the parties under section 1124-A(l) of the Public School Code of 1949 (24 P.S. §11-1124-A) and the impartial arbitrator selected under section 1124-A(2) shall be compensated for purposes of Section 1124-A(3)(ii) in accordance with a schedule of rates approved by the Board at a regularly scheduled meeting. Once adopted, the schedule of rates and costs shall continue in effect until redetermined by the Board. Compensation for partisan arbitrators selected under section 1124-A(l) in excess of the Board approved schedule of rates shall be borne solely by the party which selected the arbitrator.

(2) Within 30 days of the completion of the arbitration process, the impartial arbitrator and partial arbitrators, if any, shall submit to the Board a detailed statement of the costs, setting forth the dates and time spent in hearing and preparation of the award.

#### **§95.66. Impasses involving court employes, guards at prisons and mental institutions.**

(a) Impasses involving units of guards at prisons or mental hospitals or units of employes directly involved with the functioning of courts of this Commonwealth, unresolved by the intervention of mediation, shall be submitted to arbitration under section 805 of the act (43 P.S. §1101.805). The Bureau of Mediation shall notify the Board of an impasse and the need for invoking arbitration.

(b) Prior to appointment, arbitrators shall have filed with the Board a resume of their qualifications and requested fees for services to be rendered. The services provided by arbitrators will be compensated in accordance with a schedule of rates approved by the Board.

(c) The impartial arbitrator chosen under section 806(l) or (2) of the act (43 P.S. §1101.806(l) or (2)) shall notify the Board of the selection or appointment prior to assuming duties as third member and chairperson.

(d) Third member arbitrators chosen under section 806(l) or (2) of the act (43 P.S. §1101.806(l) or (2)) will be compensated by the Board. See 43 P.S. §1101.806(a). Within 30 days of completion of the arbitration process, the third member arbitrator shall submit to the Board a detailed statement of costs, plus expenses, setting forth the dates and time spent in research, hearing and preparation of the report. The Board will periodically determine a schedule of rates and costs for these purposes at a regularly scheduled meeting. The schedule will be published and made of record and continue in effect until redetermination by the Board.

§95.67. [Reserved].

### **COLLECTIVE BARGAINING CONTRACTS**

#### **§95.71. Collective bargaining contracts.**

Copies of all collective bargaining contracts entered into between a public employer and a certified employe representative following the issuance of a certification shall be filed with the Board within a period of 30 days after the date of execution of the collective bargaining contracts.

### **AUTHORITY OF SECRETARY AND EXECUTIVE DIRECTOR**

#### **§95.81. Authority of Secretary and Executive Director.**

(a) The Secretary of the Board or the Executive Director of the Board will have the authority to issue notices or orders of the Board and to certify copies of all papers and documents which are a part of the files or records of the Board.

(b) The Secretary of the Board or the Executive Director of the Board will have authority to issue orders directing and fixing time and place of initial hearings in representation cases and to issue orders directing and fixing time and place of initial hearings regarding objections and exceptions to the Board's conduct of a representation election.

(c) The Secretary of the Board or the Executive Director of the Board will have authority to determine whether complaints will issue in unfair practice cases.

(d) At any time subsequent to the issuance of a complaint and prior to the issuance of a proposed decision under §95.91(k)(1) (relating to hearings), the Secretary of the Board or the Executive Director of the Board will have the authority to hold in abeyance or rescind complaints and to dismiss unfair practice charges upon failure of the charging party to show cause, upon request by the Secretary of the Board or the Executive Director of the Board, why further proceedings are required to effectuate the policies of the act.

### **PROVISIONS FOR FORMAL PROCEEDINGS**

#### **§95.91. Hearings.**

(a) Hearings shall be open to the public unless otherwise ordered by the Board.

(b) Hearings shall be conducted by a hearing examiner designated by the Board. During the course of the proceeding, the Board may designate a new hearing examiner to take the place of the hearing examiner previously designated to conduct the hearing.

(c) The transcript of the testimony in hearings will become part of the record if no objections to the transcript are filed with the Board within 15 days after its deposit in the United States mail. The postmark shall be conclusive evidence of the date of mailing. Objections shall specify the matter objected to and the relief sought. The Board may, in its discretion, order a hearing on the objections. The Board will make an order that may be necessary to conform the transcript to the occurrences at the hearing; and the conformed transcript will then be certified by the official stenographer, will be filed of record in the case, will be treated as official and part of the record for purposes of review upon appeal, and will be considered as prima facie accurate whenever thereafter offered in evidence.

(d) Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing. Final argument shall not be included in the stenographic report unless the hearing examiner shall so direct.

(e) If a motion to dismiss or preliminary objections challenging the jurisdiction of the Board are advanced, the hearing may, in the discretion of the Board or the hearing examiner, be limited to testimony and evidence relating thereto prior to proceeding with testimony on the merits.

(f) The hearing examiner shall have full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence, and to rule upon motions and objections subject to review by the Board.

(g) The hearing examiner shall see that a full inquiry is made into the matters in issue and to obtain a complete record of facts necessary for a fair determination of the issues by the Board.

(h) The hearing examiner may do any of the following:

(1) Call and examine witnesses.

(2) Direct the production of papers or other matter present in the hearing room.

(3) Exclude irrelevant or immaterial testimony.

(4) Introduce documentary or other evidence.

(5) Take action during the progress of a hearing which will properly effectuate the policy of the act.

(i) At a hearing, parties shall have the right to call, examine and cross-examine witnesses and to introduce documentary or other evidence subject to the rulings of the hearing examiner.

(j) Concerning briefs and oral argument, the hearing examiner shall set the time required for the filing of briefs. A party filing a brief shall file the original with the hearing examiner and four copies with the Board, concurrently serving one copy on each other party to the hearing. Briefs shall be accompanied by a certificate of service.

(k) Proposed decision or recommendation shall be issued as follows:

(1) Unfair Practice and unit clarification proceedings. After the close of the formal hearing, if any, the hearing examiner or Board agent conducting the hearing shall issue a proposed decision or may submit the record of the case to the Board for decision under instructions, if any, from the Board. The proposed decision shall be in writing and shall contain a statement of the case, findings of fact, conclusions of law and the order. The hearing examiner or Board agent shall cause a copy of the proposed decision to be served upon the parties.

(2) Representation proceedings. Proposed decisions or recommendations shall be issued as follows for representation proceedings:

(i) Hearing examiner recommendations. After the close of the formal hearing in representation proceedings, the hearing examiner or Board agent conducting the hearing shall submit his recommendations and record to the Board Representative of the Board designated for the purpose of review of representation cases. The Board Representative will be designated by the Board at a regular meeting of the Board and the designation will be recorded in the minutes of the Board meeting.

(ii) Board Representative. Upon receipt of the recommendation and record of the hearing examiner the Board Representative shall adopt, reject or modify the recommendation and shall be authorized to issue and cause to be served on the parties an order directing an election or other appropriate action. A decision or order of the Board Representative shall set forth the findings of fact, conclusions of law, discussion and order or direction and shall be subject only to the filing of a request for review with the Board.

(iii) Request for review. Prior to the conduct of a representation election, an aggrieved party may file a written request for review with the Board accompanied by a statement of service. A request for review will be granted only where the order or direction of the Board Representative is clearly erroneous and prejudicially affects the rights of the party seeking review. The filing of a request for review with the Board will not operate, unless otherwise ordered by the Board, as a stay of any order or direction of the Board Representative.

(A) A request for review must be a self-contained document enabling the Board to rule on the basis of its contents.

(B) A party may file with the Board a timely statement in opposition to a request for review prior to the conduct of a representation election accompanied by a statement of service.

(1) Subsection (b) supplements 1 Pa. Code §35.185 (relating to designation of presiding officers); subsections (f) and (h) supplement 1 Pa. Code §35.187 (relating to authority delegated to presiding officers); and subsection (i) supplements 1 Pa. Code §35.126 (relating to presentation by the parties). Subsection (c) supersedes 1 Pa. Code §§35.131 and 35.132 (relating to recording of proceedings; and transcript corrections); subsection (d) supersedes 1 Pa. Code §§35.131 and 35.178 (relating to recording of proceedings; and presentation of motions); subsection (j) supersedes 1 Pa. Code §35.221 (relating to briefs and oral argument in absence of proposed report); and subsection (k) supersedes 1 Pa. Code §35.202 (relating to proceedings in which proposed reports are prepared).

#### **§95.92. Contemptuous conduct.**

(a) Contemptuous conduct shall be ground for exclusion from the hearing, and the refusal of a witness to answer questions which have been ruled to be proper shall be ground for striking out all testimony previously given by the witness on related matters. Misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be ground, after due notice and hearing, for suspension or disbarment by the Board from further practice before it.

(b) Subsection (a) supersedes 1 Pa. Code §§31.27 and 31.28 (relating to contemptuous conduct; and suspension and disbarment).

§95.93. (Reserved].

#### **§95.94. Depositions.**

(a) Witnesses at hearings shall be examined orally under oath or affirmation, and a record of the proceeding shall be made and kept by the Board. If a witness resides outside this Commonwealth or through illness or other cause is unable to testify before the Board, its members or hearing examiner conducting the hearing or investigation, his testimony may, upon application, be taken by deposition.

(b) Applications to take depositions under this section shall be in writing or may be made orally at a hearing. The application shall set forth the reasons why the depositions should be taken, the name and post office address with zip code of the witness, and the time and place proposed for the taking of the deposition. The Board, any of its members or hearing examiner, as the case may be, may, upon the application, issue an order allowing the taking of a deposition. The order shall be served on the parties. The deposition may be taken before an officer authorized to administer oaths by the laws of the Commonwealth or of the United States or of the place where the examination is held, including an agent of the Board authorized to administer oaths.

(c) During the depositions, objections to questions or evidence shall be deemed waived unless made at the examination of the witness. The officer may not rule upon objections but shall note them on the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was sworn or affirmed by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the outcome of the proceeding or

investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found or refuses to sign it, that fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and a copy of the transcript, together with his certificate, in person or by United States mail to the Board, its members or hearing examiner, as the case may be. The hearing examiner shall rule upon the admissibility of the deposition or any part of the deposition.

(d) Errors or irregularities in compliance with this section shall be deemed waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after the defect is ascertained or, with due diligence, might have been ascertained.

(e) Subsection (a) supersedes 1 Pa. Code §§35.137 and 35.145 (relating to oral examination; and depositions); subsection (b) supersedes 1 Pa. Code §§35.146 and 35.147 (relating to notice and application; and authorization of taking deposition); subsection (c) supersedes 1 Pa. Code §35.150 (relating to scope and conduct of examination).

#### **§95.95. Witnesses and Subpoenas.**

(a) Witness and mileage fees shall be paid by the party at whose instance the witnesses are called, which fees shall be the same as those paid in the courts of the Commonwealth. Subpoenas shall be issued and enforced in accordance with the act.

(b) Subsection (a) supersedes the provisions of 1 Pa. Code §35.139 (relating to fees of witnesses) and supplements 1 Pa. Code §35.142 (relating to subpoenas).

#### **§95.96. Exceptions.**

(a) No exceptions may be filed to orders directing elections issued by the Board Representative under §95.91(k)(2) (relating to hearings), orders directing the canvassing of challenged ballots, final orders or procedural orders of the Board or its designated agents.

(b) When an election has been held, the Board Representative will issue a nisi decision and order stating findings on the conduct and results of the election and will certify the representative that has been designated, certify the results of the election or issue another appropriate order as the facts of the case may warrant.

#### **§95.97. Motions for withdrawal.**

(a) Motions for withdrawal of charges or petitions made before or after hearing and based upon settlements between employers, employees or their respective representatives, will not be considered unless filed with the Secretary of the Board in writing or otherwise of record; and, if requested by the Secretary of the Board, the reasons for withdrawal shall be stated.

(b) Motions for withdrawal of charges or petitions may be made orally during the progress of a hearing. The reasons for withdrawal, if requested by the hearing examiner, shall be stated on the record. The decision on the motions will be reserved for the Secretary of the Board.

(c) A charge or petition may not be withdrawn without the consent of the Secretary of the Board.

(d) Subsections (a)-(c) supersede 1 Pa. Code §35.51 (relating to withdrawal of pleadings).

#### **§95.98. Decisions of the Board.**

(a) Exceptions to a hearing examiner decision. Filing of statements of exceptions to a hearing examiner decision will be as follows:

(1) A party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision issued under §95.91(k)(1) (relating to hearings) or a nisi order issued under §95.96(b) (relating to exceptions) certifying a representative or the results of an election. Exceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions. The statement of exceptions shall:

(i) State the specific issues of procedure, fact or law, or other portion of the proposed decision to which each exception is taken.

(ii) Identify the page or part of the decision to which each exception is taken.

(iii) Where possible, designate by page citation or exhibit number the portions of the record relied upon for each exception.

(iv) State the grounds for each exception.

(2) No reference may be made in the statement of exceptions to any matter not contained in the record of the case.

(3) An exception not specifically raised shall be waived.

(4) The party shall, concurrent with its filing of the statement of exceptions and supporting brief, serve a copy of the same upon each party to the proceeding. Proof of service shall be filed with the Board.

(b) Failure to file exceptions. Where no exceptions are filed to a proposed decision, it will become final upon the expiration of 20-calendar days from the date of issuance.

(c) Response to exceptions. Within 20-calendar days following the date of receipt of the statement of exceptions and supporting brief, a party may file an original and four copies of a response to the statement of exceptions and a supporting brief with the Board and one copy with the hearing examiner. Copies of these documents shall be served concurrently on each party, and proof of service shall be filed with the Board.

(d) Review on Board's own motion. The Board may, on its own motion, decide to review the proposed decision within 20-calendar days following the date of issuance of the decision. Notice of the Board's review will be entered on the docket; notice of the Board's review will be served on parties of record; and an opportunity to present briefs will be provided to all parties.

(e) Oral argument on exceptions. A party desiring to argue orally before the Board regarding exceptions to a decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon the request or its own motion the Board may direct oral argument.

(f) Decision of the Board. The Board may do any of the following:

(1) Issue a final order adopting, modifying or reversing the prior decision.

(2) Reopen the record for the taking of further testimony and evidence.

(3) Take such other action as it deems proper.

(g) Reconsideration of Board decisions. Decisions of the Board will be reconsidered under the following circumstances:

(1) A motion for reconsideration need not be filed to exhaust administrative remedies.

(2) A party to a decision of the Board may, because of extraordinary circumstances, file a request to reconsider the decision with the Board within 7-calendar days following the date of service of the decision. The party shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied upon. A copy of the request shall have been actually served upon each party of record prior to filing the request, and a statement of the service shall accompany the request. A party shall have 5-calendar days from actual service to file a response with the Board. "Actual service," as used in this paragraph, means actual receipt by the party or his agent. The filing of a request for reconsideration will not operate to stay the effectiveness of a decision of the Board unless otherwise ordered by the Board.

(h) Subsection (a) supersedes 1 Pa. Code §§35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions); subsection (b) supersedes 1 Pa. Code §35.213 (relating to effect of failure to except to proposed report); subsection (c) and (e) supersede 1 Pa. Code §35.214 (relating to oral argument on exceptions); and subsection (g) supersedes 1 Pa. Code 35.241 (relating to application for rehearing or reconsideration).

§95.99. (Reserved).

### **§95.100. Computation of time.**

(a) When any period of time is referred to in the act or in a rule or order, the period in all cases will be so computed as to exclude the first and include the last day of the period.

(b) Whenever the last day of a period falls on a Saturday or Sunday or on a day made a legal holiday by the laws of the Commonwealth or of the United States, the day will be omitted from the computation.

(c) For purposes of computation of time under sections 301(18) and 605(7)(ii) of the act (43 P.S. §§1101.301(18) and 1101.605(7)(ii)), time will be computed backward from the date of expiration of the collective bargaining agreement.

## **CONTRIBUTIONS**

### **§95.111. Political contributions.**

An employe organization which has made contributions out of funds of the employe organization either directly or indirectly to a political party or organization or in support of a political candidate for public office shall file a report with the Board which shall contain the following:

- (1) A statement describing the dates, places of occurrence, amounts and beneficiaries of the contributions.
- (2) The signatures of the president and treasurer or corresponding principals of the employe organization.

### **§95.112. Illegal contributions.**

(a) An individual who has knowledge of a political contribution or other activity by an employe organization thought to be in violation of section 1701 of the act (43 P.S. §1101.1701) may file a report with the Board. The report shall be signed and sworn to before any person authorized to administer oaths.

(b) The report shall contain the following information:

- (1) The name, address, telephone number and affiliation, if any, of the charging party.
- (2) A clear and concise statement of the facts constituting the alleged illegal contribution, including the names of the individuals involved, the name of the employe organization, and the time, place of occurrence and nature of each particular contribution or act alleged.

(c) Upon receipt of such report, if it appears to the Board that an investigation in respect to the charge should be instituted, the Board shall refer the report to the Attorney General of the Commonwealth for proceedings under applicable statutes.