

PERB's Rules of Procedure were amended on August 2, 2017, and the Rules available on our website have been updated to reflect the changes. Title 4 of the New York Codes, Rules and Regulations will be updated in due course, and PERB will have hard copies of the amended Rules available for purchase in the near future. In the meantime, please use the version of the Rules available at <http://perb.ny.gov/PERBRules.asp> and discontinue use of any hard copies you may have.

Below is a version of the amended Rules which shows the differences between the original and amended Rules. New additions are underlined, while bracketed material has been deleted in the new Rules.

**RULES AND REGULATIONS
OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
WHEN ACTING PURSUANT TO ARTICLE 14 OF THE CIVIL SERVICE LAW**

PART

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PART 200
DEFINITIONS AND GENERAL PROVISIONS
(Statutory Authority: Civil Service Law, art. 14)

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§200.1 Act; board.

The term *act*, as used in this Chapter, shall mean the New York State Public Employees' Fair Employment Act, and the terms board and agency shall each mean the New York State Public Employment Relations Board, or any two members thereof.

§200.2 Director; deputy chair; administrative law judge.

The term *director*, as used in this Chapter, shall mean the agent of the board designated as director of public employment practices and representation; the term *deputy chair* shall mean an agent of the board so designated; the term *administrative law judge* as used in this Chapter shall mean an agent of the board so designated and shall include the director and assistant director of public employment practices and representation.

§200.3 Director of [c]Conciliation.

The term *director of conciliation*, as used in this Chapter, shall mean the agent of the board so designated.

§200.4 Assistant Director.

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The term *assistant director* shall mean an agent of the board so designated.

§200.[4]5 Counsel.

The term *counsel*, as used in this Chapter, shall mean the agent of the board so designated.

§200.[5]6 Party.

The term *party*, except as otherwise provided in this Chapter, shall mean any [person] public employee, employee organization or public employer filing a charge, petition or application under the act or this Chapter; any [person] public employee, employee organization or public employer named as a party in a charge, petition or application filed under the act or this Chapter; or any other [person] public employee, employee organization or public employer whose timely motion to intervene in a proceeding has been granted.

§200.[6]7 Impartial agency.

The term *impartial agency*, as used in this Chapter, shall mean an agency or agent established or designated by a local government pursuant to procedures established by its legislative body under section 206.1 or section 212 of the act, which agency or agent shall be free from direction by the local government involved and without predisposition or appearance of predisposition to favor such local government or any employee organization in matters which come before it.

§200.[7]8 Certification.

The term *certification*, as used in this Chapter, shall mean the designation of an employee organization as negotiating representative of employees in an appropriate unit by the board [Public Employment Relations Board] or by a local impartial agency established pursuant to section 206.1 or section 212 of the act.

§200.[8]9 Recognition.

The term *recognition*, as used in this Chapter, shall mean the designation of an employee organization as negotiating representative of employees in an [appropriate] agreed-upon unit by a government not acting through an impartial agency pursuant to section 206.1 or section 212 of the act.

§200.[9]10 [Working days]Computing time.

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(a) The term *working days*, as used in this Chapter, shall not include a Saturday, a Sunday, or a legal holiday.

(b) The term *days*, as used in this chapter, shall refer to calendar days.

(c) In computing any period of time prescribed or allowed by these rules, or by order or direction, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the next working day.

§200.[10]11 Filing; service.

(a) The term *filing*, as used in this Chapter, except as otherwise specifically provided, shall mean delivery to the board or an agent thereof, or the act of mailing to the board, or deposit of the papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, [prior to] before the latest time designated by the overnight delivery service for overnight delivery.

(b) The term *service*, as used in this Chapter, except as otherwise specifically provided, shall mean delivery to a party or the act of mailing to a party, or deposit of the papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, [prior to] before the latest time designated by the overnight delivery service for overnight delivery. Personal service is complete upon delivery. Service by mail or by overnight delivery is complete at the time of sending. Except as otherwise directed by the board or one of its designees, where a paper described in this Chapter is served by regular mail, the due date of any response will have five calendar days added to the time specified in this Chapter. In the case of service by overnight delivery, an additional day will be added to any prescribed time in which any responsive pleadings, papers, or other required act triggered by the service is calculated.

(c) *Overnight delivery service* means any delivery service which regularly accepts items for overnight delivery to any address in the state.

(d) *Proof of Service* shall mean evidence that any document required to be filed with the Board or any of its agents was delivered to all other parties or other mandated recipients as required by these rules or by the Act. Proof of service shall consist of either a sworn affirmation of counsel or notarized affidavit by the individual who served the document, specifying the document served, the person or persons upon whom it was served, and the means by which it was served. Proof of service may also take the form of a United States Postal Service tracking receipt or report, or by other United States Postal Service issued document establishing the date of mailing, the identity and address of the recipients, or an

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acknowledgment of receipt, whether sworn or unsworn, by the party or parties upon whom service is required, or by an agent thereof.

§200.12 Electronic filing and service.

(a) Notwithstanding any provisions of this Chapter to the contrary including section 200.11 of this part, the director or administrative law judge before whom a matter is pending may permit the electronic filing and electronic service of any or all pleadings or related documents by and upon a party to a proceeding if such party expressly so consents to electronic service in a form provided by the board. Such permission and consent must be on notice to all parties.

(b) Notwithstanding any provisions of this Chapter to the contrary including section 200.11 of this part, the chairperson, in consultation with the board, may generally authorize the electronic service and/or filing of any documents for any or all proceedings before it or before an administrative law judge provided that: such general authorization is posted on the board's website and such general authorization becomes effective no sooner than sixty days from the date of such posting; provision is made to permit unrepresented individuals to choose to file and receive all pleadings, memoranda, correspondence and any case-related information in paper form; and the board or its designees retain discretion in determining whether to grant the application of a party to file and serve in paper form due to hardship, inability to comply with the procedure, or other good cause shown.

(c) The term *electronic filing*, as used in this Chapter, shall mean a document submitted by means specified by the agency on its website. Such documents shall be: (i) in a format that can be read using software that is readily available and is in widespread use by government, businesses, and individuals; and (ii) electronically searchable unless the party providing the document certifies in a written attachment to document served and/or in any required proof of service that it does not have the capacity to produce a searchable file.

(d) The term *electronic service*, as used in this Chapter, shall mean delivery before the latest time designated for service by electronic mail to a party sent to an electronic mail address designated by the recipient. Electronic service is deemed complete upon sending unless an error message or other notification that the served document has not been successfully dispatched or received is returned, in which case the service is null and void.

§200.[11]13 Showing of interest.

The term *showing of interest*, as used in this Chapter, shall mean a designated percentage of public employees in an allegedly appropriate negotiating unit or a negotiating unit determined to be appropriate, who support the filing of a petition or a motion to intervene. Any showing of interest must be accompanied by a declaration of authenticity as set forth in section 201.4(d) of the chapter. A showing of interest may also be used to determine

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whether an employee organization is entitled to certification without an election pursuant to section 201.8(c)(1) of this Chapter.

PART 201
DETERMINATION OF REPRESENTATION STATUS UNDER SECTION 207 OF THE ACT
(Statutory Authority: Civil Service Law, art. 14)

Sec.

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- 201.2 Petition; filing**
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- 201.6 Publication**
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- 201.[9]8 Investigation and election[s]**
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- 201.[11]10 Decision by administrative law judge**
- 201.[12]11 Exceptions to decision of administrative law judge; action by board**

§201.1 Scope.

(a) The following relates to all public employees except:

(1) [those e]Employees employed by a government that has adopted procedures by local law, ordinance or resolution, pursuant to section 212 of the act, and with respect to which there is in effect a determination by the board that such provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and in pertinent rules with respect to the State (see Part 203 of this Chapter); and

(2) [those e]Employees covered by chapter 54 of the Charter and section 1173 specifically and title 12 generally of the Administrative Code of the City of New York.

(b) Except for section 201.[10]9, this Part does not relate to public employees employed by a government which has acted through its legislative body pursuant to section 206.1 of the act and established an impartial agency to administer procedures not inconsistent with section 207 of the act (see Part 202 of this Chapter).

§201.2 Petition; filing.

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(a) A petition [for investigation of] to investigate a question concerning representation of public employees under the act (hereinafter called a petition for certification), or a petition alleging that an employee organization which has been certified or is being currently recognized should be deprived of representation status as to all or part of a unit (hereinafter called a petition for decertification), may be filed by one or more public employees or any employee organization acting in their behalf, or by a public employer, provided that individual employees may not file a petition for certification.

(b) A petition may be filed at any time by a public employer or a recognized or certified employee organization to clarify whether a position is encompassed within the scope of an existing unit (hereinafter called a unit clarification petition), or to determine the unit placement of a position (hereinafter called a unit placement petition). The filing and processing of the petition shall be in accordance with sections 201.5(c), 201.5(d), [201.8] 201.7, [201.9] 201.8(a) and (g), and 201.[11]10 of this Part, and Part 212. Section 201.4 of this Part shall not apply. In determining the unit placement of a position, the administrative law judge shall consider whether the placement would be consistent with the criteria set forth in section 207 of the act. The administrative law judge may decline to make any clarification or placement not otherwise consistent with the purposes or policies of the act. Exceptions to any determination of the administrative law judge may be filed pursuant to Part 213.

(c) Petitions under this section shall be on a form [provided] prescribed by the board [for this purpose, and signed]. [An] In cases filed by paper filing, a signed original and four copies of the petition shall be filed with the director. [Petition forms will be supplied by the director upon request.] In electronically filed cases, a signed paper original will be submitted in addition to the electronically filed petition. Prior to [the issuance of a decision by the] an administrative law judge issuing a decision, a petition may be withdrawn only with the consent of the director. After the issuance of a decision by the administrative law judge, the petition may be withdrawn only with the consent of the board. Whenever the director or the board, as the case may be, approves withdrawal of any petition, the case shall be closed.

§201.3 Time for filing of petitions.

(a) A petition for certification concerning unrepresented employees may be filed between 30 and 120 days after a public employer has been asked to recognize an employee organization, if the request has not been denied and no employee organization has been recognized or certified as majority representative of any of the employees within the unit alleged to be appropriate. [provided, however, that the] A petition may be filed by the public employer within [such] 120 days after receipt of a demand for recognition. Unless filed by a public employer, such a petition shall be supported by a showing of interest of at least 30 percent of the employees within the unit alleged to be appropriate.

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(b) A petition for certification concerning unrepresented employees may be filed by an employee organization within [30] 90 days after it has been refused recognition by the public employer. Such a petition shall be supported by a showing of interest of at least 30 percent of the employees within the unit alleged to be appropriate.

(c) A petition for certification or decertification may be filed within 30 days after publication of notice as described in section 201.6 of this Part, or receipt of written notice, that another employee organization has been recognized. Such a petition shall be supported by a showing of interest of at least 30 percent of the employees in the existing unit [deemed appropriate by the employer] or the unit alleged to be appropriate by the petitioner.

(d) A petition for certification or decertification may be filed during the month before the expiration, under section 208.2 of the act, of the period of unchallenged representation status accorded a recognized or certified employee organization, provided, however, that a public employer may not file a petition challenging the majority status of a recognized or certified employee organization in an existing negotiating unit unless it has a demonstrable, good-faith belief that the employee organization is defunct. [Unless filed by] If a public employer is not the petitioner, a petition for certification or decertification shall be supported by a showing of interest of at least 30 percent of the employees in the unit [already in existence or] for which certification has been granted, or of the unit alleged to be appropriate by the petitioner. If the petition is solely one for decertification, it shall be supported by a showing of interest of at least 30 percent of the employees in the existing unit. A petition seeking to certify a fragment of an existing bargaining unit as a separate bargaining unit shall be supported by a showing of interest of at least 30 percent of the unit alleged to be appropriate.

(e) A petition for certification or decertification may be filed by an employee organization other than the recognized or certified employee organization and a petition for decertification may be filed by one or more public employees, if no new agreement is negotiated, 120 days subsequent to the expiration of a written agreement between the public employer and the recognized or certified employee organization or, if the agreement does not expire at the end of the employer's fiscal year, then 120 days subsequent to the end of the fiscal year immediately prior to the termination date of such agreement. Thereafter, such a petition may be filed until a new agreement is executed. Such a petition shall be supported by a showing of interest of at least 30 percent of the employees in the unit already in existence or alleged to be appropriate by the petitioner.

(f) A petition for decertification may be filed by public employees or by a public employee organization, other than the recognized or certified employee organization, or a petition for certification may be filed by a public employee organization other than the recognized or certified employee organization, commencing one year after such recognition or certification, unless and until the recognized or certified employee organization has negotiated its first collective bargaining agreement.

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([f]g) A petition for certification or decertification which seeks to review a determination of representation status of public employees made [under provisions and procedures established] by a local government pursuant to section 212 of the act may be filed together with a petition for review under section 203.8 of this Chapter. Such a petition will not be processed unless the board determines that the continuing implementation of the provisions and procedures of the local government has not been substantially equivalent to the provisions and procedures set forth in the act and these rules. [Unless filed by] If a public employer is not the petitioner, such a petition shall be supported by a showing of interest of at least 30 percent of the employees in the unit deemed appropriate by the local government or an impartial agency [or alleged to be appropriate by the petitioner].

[(g) No petition may be filed for a unit which includes job titles that were within a unit for which during the preceding 12-month period, a petition was processed to completion.]

§201.4 Showing of interest.

(a) [Proof of] A showing of interest shall be filed simultaneously with a petition or motion to intervene.

[(b) In determining whether the evidence submitted to establish a showing of interest is timely, the director will accept evidence of dues deduction authorizations which have not been revoked, evidence of current membership, original designation cards or petitions on a form prescribed by the board, and which were signed and dated within six months of the submission, or a combination of the three. Designation cards shall be submitted in alphabetical order.

That part of any showing of interest consisting of employee petitions, signed or dated on or after March 15, 1996, shall be submitted on a form prescribed by the director, which shall include the name of the petitioner, the unit alleged by the petitioner to be appropriate, and shall represent that the showing of interest is in support of the certification and/or decertification petition as applicable.

The director may require that an alphabetized listing of the names of the signatories on individually signed and dated petitions be filed within a reasonable period of time after submission of the showing of interest petitions. If such an alphabetized listing is required, the person or persons filing the listing shall simultaneously file with the director a signed attestation that the listing sets forth only the names of the signatories on the showing of interest petitions.]

(b) In determining whether the evidence submitted to establish a showing of interest is timely, the director shall accept evidence of current membership. The director shall also accept dues deduction authorizations, original designation cards, or petitions on a form

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prescribed by the board, all of which were signed and dated within one year of their submission. A showing of interest may consist of any combination of the foregoing evidence, membership lists, dues deduction authorizations. Designation cards shall be submitted in alphabetical order.

The director may require that an alphabetized listing of the names of the signatories on individually signed and dated petitions be filed within a reasonable period of time after submission of the showing of interest petitions. If such an alphabetized listing is required, the person or persons filing the listing shall simultaneously file with the director a signed attestation that the listing sets forth only the names of the signatories on the showing of interest petitions.

(c) [The] A determination by the director [as to the timeliness of a showing of interest and of its numerical sufficiency is a ministerial act and will not] that a showing of interest is timely and that it is numerically sufficient is a ministerial act and cannot be reviewed by the board.

(d) A declaration of authenticity, signed and sworn to before any person authorized to administer oaths, shall be filed by the petitioner or, in the case of a motion to intervene, the movant, with the director simultaneously with the filing of the showing of interest [or any evidence of majority status for the purpose of certification without an election, pursuant to section 201.9(g)(1) of this Part]. Such declaration [of authenticity] shall contain the following:

(1) the name of the individual executing the declaration, and a statement of the declarant's authority to execute it[; if on behalf of an employee organization, the declarant's position with the employee organization, and a statement of the declarant's authority to execute the declaration on its behalf]; and

(2) a declaration that, upon the declarant's personal knowledge[,] or upon the declarant's inquiries [that the declarant has made], the persons whose names appear [up]on the evidence submitted have themselves signed such evidence on the dates specified thereon, and that the persons specified as current members are in fact current members and, [as to any persons whose signatures were solicited on or after March 15, 1996,] that inquiry was made regarding their inclusion in [any existing] the negotiating unit which is the subject of the representation petition. If the declaration is upon inquiries the declarant has made, and not upon the declarant's personal knowledge, the declarant shall specify the nature of those inquiries.

(e) The director may direct an investigation and, if necessary, a hearing [whenever the director deems it appropriate] to ascertain whether the evidence submitted is accurate. If it is determined after investigation or hearing that the evidence is fraudulent or that the declaration is false, such reasonable action as is appropriate to protect the integrity of the

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procedures of the board in connection with the pending matter shall be taken. Such a determination and such action taken shall be reviewable by the board pursuant to Part 213.

201.5 Contents of petition for certification; contents of petition for decertification; contents of petition to clarify existing unit or to determine unit placement of positions; response to petition.

- (a) A petition for certification shall contain the following:
- (1) the name, affiliation, if any, and address of petitioner;
 - (2) the name and address of the public employer involved;
 - (3) a description of the negotiating unit which the petitioner claims to be appropriate;
 - (4) the names and addresses of any other employee organizations which claim to represent any public employees within the allegedly appropriate unit. If there is any contract covering public employees in such unit, petitioner shall specify the duration, the parties, and the unit involved in the contract, or attach a copy of the contract, and the date of the commencement of the fiscal year of the employer;
 - (5) the number of employees in the allegedly appropriate unit;
 - (6) if an employee organization, whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Part, is met;
 - (7) if an employee organization is seeking to represent a unit of unrepresented employees, the date on which it asked the public employer for recognition;
 - [(8) Reserved for future use.]
 - [(9)8] if an employee organization, an affirmation that petitioner and the employee organization, if any, with which it is affiliated does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike; and
 - [(10)9] a clear and concise statement of any other relevant facts.
- (b) Petitions for decertification shall contain the following:
- (1) the name, affiliation, if any, and address of petitioner;

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(2) the name or names of the employee organization(s) which have been certified or are currently recognized by the public employer and which claim to represent the employees in the unit involved, the expiration date of any contract covering such employees, and the date of the commencement of the fiscal year of the employer;

(3) the name and address of the public employer involved;

(4) whether the employee organization(s) which have been certified or are currently recognized by the public employer have engaged in a strike or have caused, instigated, encouraged or condoned a strike against any government;

(5) the grounds upon which decertification or revocation of recognition is sought;

(6) a description of the unit, including the number of employees;

(7) if an employee organization, whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Part, is met;

[(8) Reserved for future use.]

[(9)8] a clear and concise statement of any other relevant facts.

(c) Petitions filed pursuant to section 201.2(b) of this Part shall contain the following:

(1) the name, affiliation, if any, and address of the recognized or certified employee organization;

(2) the name and address of the public employer involved;

(3) a description of any affected existing negotiating unit, a copy of any applicable certification or recognition, and the date thereof;

(4) the number of employees in the existing unit and in the unit proposed in the petition;

(5) the job description and classification of each position;

(6) the name and address of any other employee organization which claims to represent the position;

(7) a copy of any contract affecting the position; and

(8) a statement by the petitioner setting forth the details of the desired clarification or placement and the reasons therefor.

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(d) *Response.* Except for the petitioner, all parties shall file either an original and four copies of a response to the petition, or, in electronically filed cases, a paper original in addition to the electronically filed copy, with the director within 10 working days after receipt of a copy of the petition from the director [an original and three copies of a response to the petition containing a signed declaration of its truthfulness by an identified representatives of the responding party], with proof of service of a copy thereof upon all other parties. The response shall include a specific admission, denial or explanation of each allegation made by the petitioner, a description of the unit claimed to be appropriate by the responding party for the purpose of collective negotiations and a clear and concise statement of any other facts which the responding party claims may affect the processing or disposition of the petition, along with a signed declaration of its truthfulness by an identified representative of the responding party.

(e) *Notice of filing of petition.* In any case in which the director determines that notice in accordance with this section may be reasonably given by a party filing a petition for certification or a petition under section 201.2(b) of this Part, which seeks a review of a managerial or confidential designation made pursuant to section 201.[10]9 of this Part, that party shall mail or, in electronically filed cases, electronically mail, notice thereof in conformity with the director's determination to each managerial or confidential designee named in the petition and state in writing to the director that it has mailed or electronically mailed the notice of filing in accordance with this section. The notice shall include the date the petitioner filed the petition with the director and a copy of the petition and such attachments thereto as pertain to the named designee.

(f) The director or designated administrative law judge may permit an amendment of a petition at any time prior to the issuance of a decision, for good cause shown and under such terms as may be deemed just and proper, filed and served consistently with the method of filing and service of the original petition, and proof of service on all other parties provided, however, that petitions filed pursuant to § 201.3 of this Part, or motions to intervene in such matters, may not be amended where such amendment is not supported by the showing of interest accompanying the original petition or motion to intervene.

§201.6 Publication.

(a) A public employer must publish notice of recognition[, which shall be accomplished] in the following manner:

(1) posting [of a] such written notice in a conspicuous place at suitable offices of the public employer for not less than five working days;

(2) [inclusion in a public advertisement of] publishing such notice in a newspaper of general circulation in the area of the public employer for not less than one day; [and]

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(3) notifying [ication to any] every employee organization[s] that has[ve], in a written communication within [a] one year preceding the recognition, claimed to represent any of the employees in the unit; and

(4) disseminating such notice to all employees by any electronic means of communication normally in use for communications between the public employer and its employees.

(b) The information published shall include:

(1) [specification of] the name of the employee organization which has been recognized;

(2) the job titles included in the unit for which it has been recognized; and

(3) the date of recognition.

(c) If the public employer fails to publish notice of recognition promptly, the employee organization may do so.

(d) If notice of recognition has not been published, neither the recognition nor a contract entered into pursuant thereto will bar a petition for certification or decertification unless the petitioner has received written notice of such recognition more than 30 days prior to the filing of the petition.

[§201.7 Reserved for future use.

(a) Reserved for future use.

(b) Reserved for future use.

(c) Reserved for future use.

(d) Reserved for future use.]

§201.[8] Notice of pending petitions.

Upon the filing of a petition under this Part, notice thereof, including the date when such petition was filed, the name and address of the petitioner, the name and address of the public employer involved, and the unit claimed to be appropriate shall be maintained by an agent of the board on a public docket to be kept by the board at its principal office.

§201.[9] Investigation and election[s].

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(a) [Ascertainment of desires of parties.] Initial review and processing.

(1) *Investigation.* [Subsequent to]After the filing of a petition, the director shall direct an investigation of all questions concerning representation, including, if applicable, whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Part, has been [met] satisfied; whether more than one employee organization seeks to represent some or all of the employees in the allegedly appropriate unit; and whether there is agreement among the parties as to the appropriateness of the [alleged] proposed unit.

(2) *Pre-hearing Conference.* The director may direct all parties to attend a pre-hearing conference pursuant to the procedures specified in Part 212 of this Chapter.

(3) *Hearing.* The director may direct that a hearing be conducted by an administrative law judge, in which event a notice of hearing [before an administrative law judge, at a] specifying the time and place of the hearing [fixed therein,] shall be [prepared and] served upon the parties. [A copy of the petition shall be served with the notice of hearing.] The conduct of the hearing shall be in accordance with the procedures specified in Part 212 of this Chapter.

[(b) Reserved for future use.

(b)(1) Reserved for future use.

(b)(2) Reserved for future use.

(c)(1) Reserved for future use.

(c)(2) Reserved for future use.

(c)(3) Reserved for future use.

(c)(4) Reserved for future use.

(d) Reserved for future use.

(e) Reserved for future use.

(e)(1) Reserved for future use.

(e)(2) Reserved for future use.

(e)(3) Reserved for future use.]

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[(f)](b) *Determination of representatives on consent.* Subject to the director's approval [of the director], the parties [to a] in a representation [proceeding] case may agree on a method by which the director may determine the question of representation.

[(g)](c) *Action by director.* After [completion of] completing the investigation or hearing, as the case may be, or upon the consent of the parties, the director shall dispose of the questions concerning representation.

(1) [Certification without an election] Certification without an election. If the choice available to the employees in a negotiating unit is limited to [the selection or rejection of] selecting or rejecting a single employee organization, that choice may be ascertained by the director on the basis of dues deduction authorizations and other evidence instead of by an election. In such [a] case, the employee organization involved will be certified without an election if a majority of the employees within the unit have [indicated their choice by the execution of dues deduction authorization cards which are current, or by individual designation cards which have been executed within six months prior to the date of the director's decision recommending certification without an election.] executed a showing of interest pursuant to section 201.4 (b) of this Part which remains current as defined in that section. Any new or additional evidence of majority support shall be accompanied by a declaration of authenticity, as defined in section 201.4(d) of this Part. The determination by the director that the indications of employee support are not sufficient for certification without an election is a ministerial act and will not be reviewed by the board. The director shall inform all parties in writing if the director determines that the indications of employee support are sufficient for certification without an election. The director's determination in this respect is reviewable by the board pursuant to a written objection to certification filed with the board by a party within five working days after its receipt of the director's notification. An objection to certification shall set forth all grounds for the objection with supporting facts and shall be served on all parties to the proceeding. A response to the objection may be filed within five working days after a party's receipt of the objection. A copy of any response shall be served on all other parties. [Section 201.12(h) of the Part and sections 213.2(b)(1) and 213.4 of Part 213 shall apply.]

(2) [Direction of an election] Direction of an election. An election will be held whenever the choice available to the employees within a negotiating unit includes more than one employee organization, or when the only employee organization seeking certification does not produce indications of employee support sufficient for certification without an election. If the director determines that an election shall be held, such election shall be conducted by an agent of the board at such time and place and upon such terms and conditions as the board, the director or the agent may specify.

[(h)](d) *Election procedure.* (1) Unless otherwise directed by the board, the director shall conduct and supervise all elections [shall be conducted under the supervision of the director]. All elections shall be by secret ballot. Absentee ballots will not be permitted. [An

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employee organization other than the petitioner shall be permitted to intervene and be placed on the ballot upon submission to the director of a showing of interest of at least 30 percent of the employees in the unit found to be appropriate which is accompanied by the affirmation required by section 207.3(b) of the act] A motion to intervene in any such election may be filed pursuant to section 212.1 of this Chapter, as long as notification of such desire is given to the director within what the director deems to be a reasonable time prior to the scheduled date of the election[; except that no showing of interest shall be required of an employee organization that is the recognized or certified representative of employees in the unit found to be appropriate]. Whenever two or more employee organizations are included as choices in an election, any participant may, upon prompt request to and approval [thereof] by the director, have its name removed from the ballot; provided, however, that with respect to a petition for decertification, the employee organization certified or currently recognized may not have its name removed from the ballot without giving due notice in writing to all parties and the director, disclaiming any representation interest among the public employees in the unit. Any party may be represented by observers of its own selection, subject to such limitations as the director may prescribe. Any party or the board's agent may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, [the director shall cause to be furnished to the parties a tally of ballots.] the tally of ballots shall be provided to the parties.

(2) Any party may file with the director an original and [three] four copies of objections to the conduct of the election or conduct affecting the results of the election within five working days after its receipt of a final tally of ballots. Such objections shall contain a clear and concise statement of the facts constituting the bases for the objection, including the names of the individuals involved and the time and place of occurrence of each particular act alleged. The objections shall be in writing and be signed and sworn to before any person authorized to administer oaths. Copies of such objections shall simultaneously be served upon each of the other parties by the party filing them, and proof of service shall be filed with the director. Should the chairperson authorize electronic filing of objections, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(3) An original and four copies of an answer shall be filed with the director within five working days after receipt from the director of notice of processing of the objections, with proof of service on all other parties. [One copy of the answer shall be served on each party and the original, with proof of service and three copies, shall be filed with the director.] The answer shall contain a specific admission, denial or explanation of each allegation of the objection and a clear and concise statement of any other relevant facts. The original shall be signed and sworn to before any person authorized to administer oaths. Should the chairperson authorize electronic filing of objections, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

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If a party fails or refuses to file an [required] answer, such failure or refusal may be deemed to constitute that party's admission of the material facts in the objections and a waiver by that party of a hearing.

(4) If objections are filed to the conduct of the election or conduct affecting the results of the election, or if challenged ballots are sufficient in number to affect the results of the election, the director shall investigate such objections or challenges, or both, and shall take the appropriate action which may include the direction of a hearing in accordance with the provisions of Part 212 of this Chapter and the issuance of a decision.

[(i)](e) *Runoff election.* (1) The director may conduct a runoff election without further order of the board when an election in which the ballot provides for not less than three choices (i.e., at least two employee organizations and "neither") results in no choice receiving a majority of the valid ballots cast. Only one runoff shall be held pursuant to this section, unless the board directs otherwise.

(2) The ballot in the runoff election shall provide for a selection among the two or more choices receiving the largest number of votes, the sum of whose votes aggregate at least one more than half of the total votes cast. Upon the conclusion of the runoff election, the provisions of subdivision [(h)] (d) of this section shall govern insofar as applicable.

§201.[10]9 Employer applications for designation of persons as managerial or confidential.

(a) *Application; parties.*

(1) An application by a public employer seeking a designation by the board of [that] certain persons as [are] managerial or confidential as defined in section 201.7(a) of the act shall be on a form [provided] prescribed by the board for th[is]at purpose[, and signed]. Unless the board has mandated or permitted electronic filing with respect to such applications, a[A]n original and four copies of the application shall be filed with the director. [Application forms will be supplied by the director upon request.] Prior to the issuance of a decision by the administrative law judge pursuant to section [201.11] 201.10 of this Part, an application may be withdrawn only with the consent of the director. After the issuance of a decision by the administrative law judge, the application may be withdrawn only with the consent of the board. Whenever the director or the board, as the case may, be approves withdrawal of any application, the case shall be closed. Should the chairperson authorize electronic filing of applications, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

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(2) The parties are the applicant and the persons who are within any of the job titles which the public employer is seeking to have designated as managerial or confidential; provided, however, that if any such persons are represented by a recognized or certified employee organization, such employee organization is a party in their stead.

(b) *Time for filing of application.* An application may be filed at any time; provided, however, that with respect to any persons who are in a unit for which an employee organization has been recognized or certified, only one application which has been processed to completion may be filed during a period of unchallenged representation status.

(c) *Notice of filing of application.* Simultaneous with the filing of an application under this section, notice thereof, including the date when such application was filed with the director, shall be served by the public employer upon each of the persons who are within any of the job titles which the public employer is seeking to have designated as managerial or confidential, and upon any employee organization which has been recognized or certified to represent any of them.

(d) *Contents of application.* An application shall contain the following:

(1) the name and address of the public employer filing the application;

(2) the name and address of the attorney or representative of the public employer;

[(3) Reserved for future use.]

[(4)3] each of the job titles that the public employer seeks to have designated as managerial or confidential, and the number of persons in each job title;

[(5)4] a statement as to whether any of these job titles are within a unit presently represented by a recognized or certified employee organization or whether an employee organization is presently seeking to represent the persons occupying any of these job titles[. If the answer is yes] and the name of the employee organization;

[(6) Reserved for future use.]

[(7)5] if there is any contract covering the persons within the job titles which it claims are managerial or confidential, the public employer shall specify the duration, the parties, and the unit involved in the contract;

[(8) Reserved for future use.]

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([9]6) a statement as to whether the employer has ever filed a previous application seeking the designation of any of these job titles as managerial or confidential;

([10]7) a statement as to whether copies of the relevant job descriptions are attached;

([11]8) a statement that notice of the filing of an application has been mailed to each of the persons who are within any of the job titles which it is alleged are managerial or confidential, and to any employee organization which has been recognized or certified to represent any of them; and

([12]9) a clear and concise factual statement in support of the application, which shall identify job duties performed which allegedly form the basis for the designation sought.

(e) *Response.* The parties, as defined by paragraph (a)(2) of this section, except the applicant, shall file with the director within 10 working days after receipt of a copy of the application from the director, an original and [three] four copies of a response to the application containing a signed declaration of its truthfulness by an identified representative of the responding party, with proof of service of a copy thereof upon all other parties. Should the chairperson authorize electronic filing of applications, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. The response shall include a specific admission, denial or explanation of each allegation made by the applicant and a clear and concise statement of any other facts which may bear on the application. If a responding party objects to the processing of an application on the ground that it was filed earlier than the time provided in subdivision (b) of this section, the response shall include a specific, detailed statement of why the application is untimely. Such objection to the processing of the application, if not duly raised, may be deemed waived.

(f) [Reserved for future use.] *Withdrawal of applications.* Before the issuance of a decision by the administrative law judge pursuant to section 201.10 of this Part, an application may be withdrawn only with the consent of the director. After the issuance of a decision by the administrative law judge, the application may be withdrawn only with the consent of the board. Whenever the director or the board, as the case may be, approves withdrawal of any application, the case shall be closed.

(g) *Investigation.* [Subsequent to] After the filing of an application, the director shall direct an investigation of all questions raised by the application.

(h) *Pre-hearing Conference.* The director may direct all parties to attend a pre-hearing conference pursuant to the procedures specified in Part 212 of this Chapter.

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[h](i) *Hearing.* [The director may direct a] A hearing may be conducted by an administrative law judge, in which event a notice of hearing [before an administrative law judge, at] specifying the time and place [fixed therein] for the hearing shall be [prepared and] served [up]on the parties. [A copy of the application shall be served with the notice of hearing.] The conduct of the hearing shall be in accordance with the procedures specified in Part 212 of this Chapter.

[(i) *Conduct of Hearing.* The conduct of the hearing shall be in accordance with the procedures specified in Part 212 of this Title.]

§201.[11]10 Decision by administrative law judge.

Upon completion of proceedings, the administrative law judge shall issue a decision and submit the record of the case to the board. The record shall include the petition or application, notice of hearing, motions, rulings, orders, stenographic [report] record of the hearing, stipulations, exceptions, documentary evidence, any briefs or other documents submitted by the parties, objections to the conduct of an election or conduct affecting the results of an election, and the decision of the administrative law judge.

§201.[12]11 Exceptions to decision of administrative law judge; action by board.

[(a)] Exceptions to a decision by an administrative law judge may be filed pursuant to Part 213 of this Chapter.

[(b)(1)-(4) Reserved for future use.

(c) Reserved for future use.

(d) Reserved for future use.

(e) Reserved for future use.

(f) Reserved for future use.

(g) Reserved for future use.

(h) The board shall designate an employee organization as the exclusive representation of public employees within a negotiating unit if the employee organization has demonstrated that it has majority status among the employees within the negotiating unit.]

PART 202
PROCEDURE FOR THE REVIEW OF QUESTIONS CONCERNING
THE CERTIFICATION OF EMPLOYEE ORGANIZATIONS UNDER SECTION 206.1
OF THE ACT
(Statutory Authority: Civil Service Law, art. 14)

Sec.

- 202.1 Scope**
- 202.2 Petitions; filing**
- 202.3 Time for filing of petitions**
- 202.4 Contents of petition for review**
- 202.5 Intervention**
- 202.6 Notice of pending [review] petitions**
- 202.7 Investigation and hearing**
- 202.8 Decision by administrative law judge**
- 202.9 Exceptions to decision of administrative law judge; action by the board**

§202.1 Scope.

The following relates to public employees of a local government which has acted through its legislative body pursuant to section 206.1 of the act and established an impartial agency to administer procedures not inconsistent with section 207 of the act and pertinent sections of this Chapter.

§202.2 Petitions; filing.

A petition to review a question concerning the certification of an employee organization under procedures established by a local government pursuant to section 206.1 of the act (hereinafter called a petition for review), may be filed by one or more public employees within the affected negotiating unit or any employee organization acting in their behalf, or by a public employer; provided, however, that individual employees may not seek certification. Petitions under this section shall be in writing and signed. An original and four copies of the petition shall be filed with the director. Petition forms will be supplied by the board upon request, or will be available on the agency's website. Should the chairperson authorize electronic filing of petitions, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. [Prior to] Before the submission of a case to the board pursuant to section 202.8 of this [Part] Chapter, the petition may be withdrawn only with the consent of the director. After the submission of a case to the board, the petition may be withdrawn only with consent of the board. Whenever the director or the board, as the case may be, approves withdrawal of any petition, the case shall be closed.

§202.3 Time for filing of petitions.

(a) A petition for review may be filed within 30 days after an impartial agency designated by a local government pursuant to section 206.1 of the act has certified or decertified an employee organization, determined that no employee organization should be certified in an appropriate negotiating unit, or refused to decertify an employee organization.

(b) A petition for review which alleges that an impartial agency has not begun to process a petition expeditiously may be filed not less than 30 days after petitioner has filed a petition for certification or decertification with the impartial agency.

§202.4 Contents of petition for review.

A petition for review shall contain the following:

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

(b) The name and address of the public employer involved.

(c) A summary of the proceedings, if any, before the impartial agency established under section 206.1 of the act, including copies of the petition and other documents filed in such proceedings or issued by the impartial agency.

(d) A clear and concise statement of the grounds for alleging that the procedures established by the local public employer are not consistent with the provisions of sections 206.1 and 207 of the act and pertinent sections of this Chapter, or that the decision of the impartial agency is repugnant to the act and pertinent sections of this Chapter.

(e) A statement that the matter is not subject to section 212 of the act.

(f) If petitioner is seeking certification:

(1) an affirmation that petitioner does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike;

(2) a description of the negotiating unit which petitioner claims to be appropriate;

[(3) a statement of whether petitioner seeks exclusive rights of representation within the negotiating unit or units alleged to be appropriate;]

[(4)] (3) the number of employees in the allegedly appropriate unit;

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[(5)] (4) whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Chapter, is met;

[(6)] (5) the date upon which petitioner asked the public employer for recognition; and

[(7)] (6) the names and addresses of any other employee organizations which claim to represent any public employees within the allegedly appropriate unit. If there is any contract covering the public employees in such unit, petitioner shall specify the duration, the parties and the unit included in the contract, or attach a copy of the contract.

(g) If the petitioner is seeking decertification:

(1) the name or names of the employee organization(s) which have been certified or are currently being recognized by the public employer and which claim to represent the employees in the unit involved, and the expiration date of any contract covering such employees;

[(2)] whether such representation is exclusive;]

[(3)] (2) the grounds upon which decertification or revocation of recognition is sought;

[(4)] (3) a description of the unit including the number of employees;

[(5)] (4) if an employee organization, whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Chapter, is met; and

[(6)] (5) whether the employee organization(s) which have been certified have engaged in a strike or have caused, instigated, encouraged or condoned a strike against any government.

(h) A clear and concise statement of any other relevant facts.

§202.5 Intervention.

Intervention is permitted in accordance with the procedures specified in section 212.1 of this Chapter.

§202.6 Notice of pending petitions.

Notice of pending petitions shall be provided in the manner specified in section 201.[8] of this Chapter.

§202.7 Investigation and hearing.

(a) The director shall direct an investigation of questions raised by the petition including, if applicable, whether the showing of interest requirement, as set forth in sections 201.3 and 201.4 of this Chapter, has been met. The investigator shall also consider whether the procedures established by the local public employer are consistent with the provisions of sections 206.1 and 207 of the act and pertinent sections of this Chapter, and whether the decision of the impartial agency is repugnant to the act and pertinent sections of this Chapter.

(b) The director may direct that a hearing be conducted by an administrative law judge, in which event the [proceedings] procedures shall be those specified in Part 212 of this Chapter.

§202.8 Decision by administrative law judge.

Upon completion of the proceedings, the administrative law judge shall issue a decision and submit the record of the case to the board, as specified in [section] Part 201.[11]10 of this Chapter.

§202.9 Exceptions to decision of administrative law judge; action by the board.

Exceptions to a decision of the administrative law judge and final action by the board shall be as set forth in section 201.[12]11(a) [of this Chapter] and Part 213 of this Chapter.

PART 203
PROCEDURES FOR THE APPROVAL OR REVIEW OF LOCAL GOVERNMENT
PROCEDURES UNDER SECTION 212 OF THE ACT
(Statutory Authority: Civil Service Law, art. 14)

Sec.

- 203.1 Application for approval; filing**
- 203.2 Contents of application**
- 203.3 Objections**
- 203.4 Investigation and hearing**
- 203.5 Determination by the board**
- 203.6 Termination or amendment of procedures by a local government**
- 203.7 Local regulations**
- 203.8 Procedures for the review of implementation of local government procedures under section 212 of the act**

§203.1 Application for approval; filing.

An original and four copies of an application may be filed by a local government which, acting through its legislative body, has adopted or amended by local law, ordinance or resolution its own provisions and procedures, for a determination by the board that such provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules. Applications under this section shall be in writing and signed. Should the chairperson authorize electronic filing of applications, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. Application forms will be supplied by the board upon request, and will be available on the agency's website. Such an application may be filed at any time after the applicant has given public notice of its intention to so file, and may be withdrawn by the applicant at any time before disposition of it by the board and after giving public notice of such withdrawal. Such public notice shall be by posting in a conspicuous place at suitable offices of the applicant for not less than five working days, and inclusion in a public advertisement in a newspaper of general circulation in the area of the applicant for not less than one day.

§203.2 Contents of application.

An application for determination that local provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules shall contain the following:

- (a) name and address of the applicant;

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- (b) a copy of the local law, ordinance or resolution adopted or amended by the legislative body of the applicant;
- (c) if an amendment, a statement as to whether the local law, ordinance or resolution to be amended has been determined to be substantially equivalent to the provisions and procedures set forth in the act and these rules and, if so, whether the board has determined that the continuing implementation of such local law, ordinance or resolution was not substantially equivalent to such provisions and procedures;
- (d) a copy of the public notice announcing the application and a description of the manner and date of its publication;
- (e) the names and addresses of any employee organizations which have been certified or recognized to represent any public employees of the applicant; and
- (f) the names and addresses of any other employee organizations which claim to represent any public employees of the applicant.

§203.3 Objections.

[An original and four copies of a] Any objections to the granting of the application may be filed and served in the same manner as the application by any person or employee organization within 15 working days after receipt by the board of the application; provided, however, that the board may excuse the late filing of objections because of extraordinary circumstances.

§203.4 Investigation and hearing.

(a) The board shall direct an investigation of any questions raised by the application and such objections to the application as may be filed with the board. In conducting such an investigation, the board or its agent may require affidavits or direct a hearing. If a hearing is directed, the board or its agent shall prepare and cause to be served upon the applicant and any party a notice of hearing before the board or its designated administrative law judge at a time and place fixed therein.

(b) In the event a hearing is directed, the provisions of Part 212 of this Chapter shall govern.

§203.5 Determination by the board.

After receipt of a report and recommendations from its agent and of the record of any hearing which may have been held, or upon the completion of its own investigation, and

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upon such exceptions as may have been filed pursuant to Part 213 of this Chapter, the board shall decide the issues and make such disposition of the matter as it deems appropriate.

§203.6 Termination or amendment of procedures by a local government.

(a) To be approved, the provisions and procedures established by a local government under section 212 of the act must provide, *inter alia*, that termination shall become effective no sooner than 60 days after the filing with the board of a duly certified copy of a local law, ordinance or resolution of such local government terminating the applicability of the local provisions and procedures, or on the date specified in the local law, ordinance or resolution, whichever is later. The provisions and procedures must also provide that the local government will give public notice of the termination of the local procedures at least 45 days prior to the effective date thereof, by posting in a conspicuous place at suitable offices of its own for not less than five working days and inclusion in a public advertisement in a local newspaper of general circulation for not less than one day.

(b) To be approved, the provisions and procedures established by a local government under section 212 of the act must provide, *inter alia*, that no amendment shall be effective until the board finds that the provisions and procedures, as amended, are substantially equivalent to the provisions and procedures set forth in the act and these rules.

§203.7 Local regulations.

Upon approval of the provisions and procedures established by a local government under section 212 of the act, the local agency shall perform the duties set forth in the local equivalent of sections 209 and 210.3 of the act. Within 45 days from the date of such approval, the local agency must adopt rules of procedure substantially equivalent to Part 201 of this Chapter. Within such 45 days, it must also adopt rules of procedure substantially equivalent to Part 206 of this Chapter which shall be applicable if no proceeding is instituted under section 751.2 of the Judiciary Law to punish an employee organization which violates section 210.1 of the act.

§203.8 Procedures for the review of implementation of local government procedures under section 212 of the act.

(a) The fact that a local government has not adopted rules and regulations within 45 days after the board has determined that its provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and this Chapter shall be prima facie evidence that the local government has not implemented its provisions and

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procedures in a manner substantially equivalent to the provisions and procedures set forth in the act and this Chapter.

(b) *Petitions: filing.* A petition to review the question of whether provisions and procedures of a local government are being implemented in a manner substantially equivalent to the provisions and procedures set forth in the act and this Chapter (hereinafter called a petition for review) may be filed by any person. Petitions under this section shall be in writing and signed. An original and four copies of the petition shall be filed with the board. Should the chairperson authorize electronic filing of such petitions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. Petition forms will be supplied by the board upon request and will be available on the agency's website. The petition may be withdrawn only with the consent of the board. Whenever the board approves withdrawal of any petition, the case shall be closed.

(c) *Time for filing of petitions.* A petition for review may be filed within 60 days after the act or inaction complained of occurred or failed to occur.

(d) *Contents of petitions for review.* A petition for review shall contain the following:

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

(2) The name of the local government involved.

(3) The names and addresses of any employee organizations which have been certified or recognized to represent any public employees under the local government provisions and procedures.

(4) The names and addresses of any other employee organizations which claim to represent any public employees under the jurisdiction of the local government involved.

(5) A clear and concise statement of the grounds for alleging that the local government provisions and procedures, as implemented, are not substantially equivalent to the provisions and procedures set forth in the act and this Chapter.

[(e) Reserved for future use.]

[(f)] (e) *Notice of pending petitions.* Upon the filing of a petition under this section, notice thereof, including the date when such petition was filed and the name and address of petitioner and the local government involved, shall be posted by an agent of the board on the public docket maintained by the board at its principal office.

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[(g)] (f) *Investigation and hearing.* (1) The board shall direct an investigation of any questions raised by the petition. In conducting such an investigation, the board or its agent may require affidavits or direct a hearing. If a hearing is directed, the board or its agent shall prepare and cause to be served upon petitioner and all other parties a notice of hearing before the board or an administrative law judge at a time and place fixed therein. Any hearing will be conducted in accordance with the procedures set forth in Part 212 of this Chapter.

[(g)](2) Reserved for future use.

(g)(3) Reserved for future use.

(g)(4) Reserved for future use.

(g)(5) Reserved for future use.]

[(h)] (g) [Determination by the board]*Determination by the board.* After receipt of a report and recommendations from its agent and of the record of proceedings of any hearing which may have been held, or upon the completion of its own investigation, and upon such exceptions as may have been filed pursuant to Part 213 of this Chapter, the board shall decide the issues and make such disposition of the matter as it deems appropriate.

PART 204
IMPROPER PRACTICES
(Statutory Authority: Civil Service Law, art. 14)

Sec.

204.1 Charge

204.2 Initial processing by director

204.3 Answer

204.4 Expedited determinations

204.5 [Reserved for future use] Hearing procedures

[204.6 Reserved for future use]

204.[7]6 [Hearing procedures] Decision and recommended order by administrative law judge

204.[8]7 [Reserved for future use] Application for injunctive relief

204.[9]8 [Reserved for future use] Response to application for injunctive relief

204.[10]9 [Reserved for future use] Review of application for injunctive relief

204.[11]10 [Reserved for future use] Expedited treatment where injunctive relief imposed

[204.12 Reserved for future use

204.13 Reserved for future use

204.14 Reserved for future use

204.15 Application for injunctive relief

204.16 Response to application for injunctive relief

204.17 Review of application for injunctive relief]

§204.1 Charge.

(a) *Filing of charge.*

(1) An original and four copies of a charge that any public employer or its agents, or any employee organization or its agents, has engaged in, or is engaging in, an improper practice may be filed with the director [within four months thereof] by one or more public employees or any employee organization acting in their behalf, or by a public employer, within four months of when the charging party first knew, or reasonably should have known, of the alleged improper practice. Should the chairperson authorize electronic filing of such charge, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(2) If the facts constituting the alleged improper practice [also] are also alleged to support a claim by an employee organization that a public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee

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organization for a strike, then the charge may not be filed after the date on which the employee organization is required to file its answer to the strike charge pursuant to section 206.5 of this Chapter.

(3) The charge shall be in writing on a form [provided] prescribed by the [director] board and shall be signed and sworn to before any person authorized to administer oaths.

(b) *Contents of charge.* The charge shall include the following:

(1) the name, address and affiliation, if any, of the charging party, and the title of any representative filing the charge;

(2) the name and address of the respondent or respondents and any other party named therein;

(3) a clear and concise statement, preferably in numbered or lettered paragraphs, of the facts constituting the alleged improper practice, including the names, and, where known or relevant, the titles and work locations of the individuals involved in the alleged improper practice[;]; the [time] date and the place of the occurrence of each particular act alleged[;]; and the subsections of section 209-a of the act alleged to have been violated[;]. Evidentiary exhibits may be attached but will not relieve the charging party of the requirement to provide sufficient factual particulars as set forth herein;

(4) if the charge alleges a violation of section 209-a.1(d) or section 209-a.2(b) of the act, whether the charging party has notified the board in writing of the existence of an impasse pursuant to section 205.1 of this Chapter; and

(5) a statement that the charging party is available to participate in the prehearing conference and the formal hearing immediately.

(c) *Scope of negotiations cases.* Where the primary basis of the dispute between the parties is alleged to be a disagreement as to the scope of negotiations under the act, either party may request of the director or an assigned administrative law judge that the matter be accorded expedited treatment.

(d) *Amendments [and withdrawals].* The director or administrative law judge designated by the director may permit a charging party to amend the charge upon good cause shown before, during or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process.

(e) *Withdrawals.* [The] A charge may be withdrawn by the charging party before issuance of a [the dispositive] decision and recommended order based thereon upon approval by the director. Thereafter, [the improper practice proceeding] a charge may be [discontinued]

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withdrawn only with the approval of the board. Requests to the director to withdraw a[n improper practice] charge or to the board to [discontinue] withdraw a[n improper practice proceeding] charge will be approved unless to do so would be inconsistent with the purposes and policies of the act or due process of law. Whenever the director approves the withdrawal of a charge, or the board approves the [discontinuation] withdrawal of [a proceeding] the charge, the case will be closed without consideration or review of any of the issues raised by the charge.

§204.2 Initial processing by director.

(a)(1) [*Notice of hearing.*] Initial review. After a charge is filed, the director shall conduct a review of the charge to determine whether the facts as alleged may constitute an improper practice as set forth in section 209-a of the act. If [it is] the director determine[d]s that the facts as alleged do not, as a matter of law, constitute a violation, or that the [alleged violation occurred more than four months prior to the filing of the] charge as pleaded is not timely, [it shall be dismissed by] the director may dismiss it subject to review by the board under Part 213 [otherwise, e] of this Chapter; alternatively, the director may permit the party to amend the charge to cure such deficiency in the charge. If the deficiency is not cured, the director may dismiss the charge or deem the charge, or any part thereof, withdrawn.

(2) Notice of conference. Except where subdivision (b) of this section is applicable, a notice of [hearing] conference pursuant to Part 212 of this Chapter shall be prepared by the director or a designated administrative law judge[,], specifying the time and place for the conference and, together with a copy of the charge, shall be delivered to the charging party and each named respondent. [The notice of hearing shall fix the place of hearing at a time not less than 15 working days from issuance thereof.]

(b) *Scope of negotiations cases.* If, upon review of the charge, the director determines that it involves primarily a dispute between the parties as to the scope of negotiations under the act, the director or an assigned administrative law judge shall forthwith schedule a conference for the purpose of inquiring further into the matter. Such an administrative determination is a ministerial act and will not be reviewed by the board.

§204.3 Answer.

(a) *Filing.* The respondent shall file with the director[,], an original and four copies of an answer to the charge, with proof of service of a copy thereof on all other parties within 10 working days after receipt [from the director] of a copy of the charge[, an original and three copies of an answer, with proof of service of a copy thereof upon all other parties] from the director. Should the chairperson authorize electronic filing of such answer, the filing of a signed paper original consistent with this section and electronic filing and service of a copy

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shall constitute compliance with the filing and service requirements herein contained. The original shall be signed and sworn to before any person authorized to administer oaths.

(b) *Motion for particularization of the charge.* If the respondent believes that a charge is [believed by a respondent to be] so vague and indefinite that it cannot reasonably be required to frame an answer, the respondent may, within 10 working days after receipt [from the director] of a copy of the charge from the director, file [an original and three copies of], in the same manner as would be applicable to the filing of an answer, a motion with the administrative law judge, with proof of service on all other parties, for an order directing the charging party to file a verified statement supplying specified information. The charging party may likewise file a response to the motion within seven working days after its receipt thereof, with proof of service of a copy of the response on all other parties. The filing of such motion will extend the time during which the respondent must file and serve its answer until 10 working days after receipt of the ruling of the administrative law judge on the motion, or until such later date as the administrative law judge may set. [Such a motion must be served upon all parties simultaneously with its filing with the administrative law judge; proof of service must accompany the filing of the motion with the administrative law judge. The charging party may file an original and three copies of a response to the motion within seven working days after its receipt thereof, with proof of service of a copy of the response on all other parties.] The failure of a party to timely comply with an order of particularization may, in the discretion of the administrative law judge, constitute ground for precluding the party from offering any evidence as to the matters dealt with by the order.

(c) *Contents.* (1) The answer shall include a specific admission, denial or explanation of each allegation of the charge or, if the respondent is without knowledge thereof, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation, but shall fairly meet the circumstances of the allegation.

(2) The answer shall include a specific, detailed statement of any affirmative defense, including but not limited to an allegation that the violation occurred more than four months [prior to] before the filing of the charge. A clear and concise statement of the facts supporting any affirmative defense, including the names of the individuals involved and the [time] date and place of the occurrence of each particular act alleged, shall be set forth. An answer to an alleged violation of section 209-a.1(g) of the act shall identify the statute, interest arbitration award, collectively negotiated agreement, policy, or practice that forms the basis of the employer's affirmative defense, if any.

(d) *Motion for particularization of the answer.* If the charging party believes that the statement of facts supporting any affirmative defense is [believed by a charging party to be] so vague and indefinite that such charging party cannot reasonably be expected to address them in an expeditious manner at a hearing, such charging party may, within 10 working days after receipt of the answer, file with the administrative law judge [an original and three copies of] in the same manner applicable to the filing of the charge a motion for an order

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directing the respondent to file a verified statement supplying specified information. [Such a motion must be served upon all parties simultaneously with its filing with the administrative law judge; proof of service must accompany the filing of the motion with the administrative law judge.] The respondent may file [an original and three copies of] a response to the motion within seven working days after its receipt thereof, with proof of service of a copy of the response on all other parties. The failure of a party to timely comply with an order of particularization may, in the discretion of the administrative law judge, constitute grounds for precluding the [party] respondent from offering any evidence as to the matters dealt with by the order.

(e) *Amendment.* The administrative law judge may permit the respondent to amend the answer [for] upon good cause shown at any time before or during the hearing, or at any time prior to the issuance of the administrative law judge's decision and recommended order, upon such terms as may be deemed just, consistent with due process.

(f) *Admission by failure to answer.* If the respondent fails to file a timely answer, the administrative law judge may deem such failure [may be deemed by the administrative law judge] to constitute an admission of the material facts alleged in the charge and a waiver by the respondent of a hearing.

(g) A public employer which is made a party to an improper practice charge pursuant to section 209-a.3 of the act may file responsive pleadings in accordance with subdivisions (a)-(e) of this section. The administrative law judge may deem the public employer's failure to file any responsive pleading to constitute a waiver of the public employer's right to participate in any hearing held on the allegations of impropriety set forth in the charge.

§204.4 Expedited determinations.

(a) Immediately [subsequent to] after the conference referred to in section 212.2 of Part 212 of this Chapter, and if one or more of the parties [have] has made a request that a dispute involving primarily a disagreement as to the scope of negotiations under the act be processed expeditiously, or if the director shall deem it appropriate to do so, the director shall so notify the board and transmit the papers to the board. The board shall then inform the parties as to whether it will accord expedited treatment to the matter. If the board determines that the matter will be expedited, it will also notify the respondent of the due date for its answer, and the parties of the due date for briefs. The board may also direct that oral argument be held before it, or that a hearing be held before the full board, one of its members, or an administrative law judge. If the board determines that expedited treatment will not be accorded, the matter will be handled in accordance with sections 204.2([a]b) and 204.3 of this Part and Parts 212 and 213 of this Chapter.

(b) If a hearing is held:

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(1) Any objections to the conduct of a hearing, including objections to the introduction of evidence, may be oral or written, must be accompanied by a short statement of the grounds for such objection, and shall be included in the record.

(2) There shall be no intermediate report from a board member or an administrative law judge who may be assigned to hold the hearing. Upon the completion of the hearing, such board member or administrative law judge shall transmit the record to the full board for a determination without making any recommendations.

§204.5 [Reserved for future use.

204.6 Reserved for future use.

§204.7] Hearing procedures.

Hearings will be conducted in accordance with the procedures set forth in Part 212 of this Chapter.

[204.8 Reserved for future use.

§204.9] §204.6 Decision and recommended order by administrative law judge.

Upon [completion of a proceeding] closure of the record before an administrative law judge designated by the director, the administrative law judge shall issue a decision and recommended order and submit the record of the case to the board.

[204.10 Reserved for future use.

204.11 Reserved for future use.

204.12 Reserved for future use.

204.13 Reserved for future use.

204.14 Reserved for future use.

§204.15] §204.7 Application for injunctive relief.

(a) *Filing of application.* A party filing an improper practice charge pursuant to Part 204 of this Chapter may apply to the board for injunctive relief pursuant to section 209-a.4 of the act by filing with the office of counsel at the board's Albany office either by electronic mail,

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or by filing an original and two copies of a signed application for injunctive relief [pursuant to section 209-a.4 of the act]. An application filed by mail or overnight delivery service shall be filed in an envelope or container prominently bearing the legend "INJUNCTIVE RELIEF APPLICATION" in capital letters on its front. An application that is filed by electronic mail at an address designated by the board for such purpose and published on the agency's website shall state in the subject line "APPLICATION FOR INJUNCTIVE RELIEF."

(b) *Application form.* The application shall be filed on a form prescribed by the board which shall give notice of the right to respond pursuant to section 204.[16]8 of this Part. The application form shall include the following:

(1) the name, address, telephone number, electronic mail address, fax number, and affiliation, if any, of the charging party;

(2) the name, title, address, telephone number, electronic mail address, and fax number of any representative filing the application on behalf of the charging party;

(3) the name, title, address, telephone number, electronic mail address, and fax number of any attorney or other representative who will represent the charging party during the processing of the application, if different from the representative named in response to paragraph (2) above;

(4) the name, address, electronic mail address if known, and telephone number of any public employer or employee organization named as a party to the improper practice charge;

(5) the date when the improper practice charge was filed[, if available]; and

(6) the case number of the improper practice charge, if available.

(c) *Additional contents of application.* The charging party shall attach to the application form the following documents:

(1) a copy of the improper practice charge;

(2) an affidavit or affidavits stating, in a clear and concise manner: (i) those facts personally known to the deponent that constitute the alleged improper practice, the date of the alleged improper practice, the alleged injury, loss, or damage arising from it, and the date when the alleged injury, loss, or damage occurred or will occur; and (ii) why the alleged injury, loss, or damage is immediate, irreparable, and will render a resulting judgment on the merits of the improper practice charge ineffectual if injunctive relief is not granted by the court, and why there is a need to maintain or return to the status quo in order for the board to provide

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meaningful relief. If filed electronically, the affidavit or affidavits shall be in searchable format and shall not be scanned copies of the original documents;

(3) copies of any documentary evidence in support of the application;

(4) proof [of the date of actual delivery of a copy of the completed application form and the attached documents (except proof of delivery), by mail, personal delivery, or overnight delivery service, in an envelope or container bearing the legend "ATTENTION: CHIEF LEGAL OFFICER" in capital letters on its front, addressed to every public employer and employee organization named as a party to the improper practice charge; and] that a copy of the completed application for injunctive relief and all supporting documents was delivered to the respondent's chief legal officer in an envelope bearing the legend "ATTENTION: CHIEF LEGAL OFFICER" in capital letters on its front, and the method and date that such delivery was made, and proof of service on all other parties to the charge. If delivery to the respondent's chief legal officer is not by electronic mail or personal service, proof of delivery must establish when the respondent's chief legal officer actually received the completed application and all supporting documents. Delivery by facsimile or by electronic mail will not be accepted, unless the charging party provides a written acknowledgment from the respondent's chief legal officer that such officer accepts delivery by that means, and when such officer received the completed application and all supporting documents; and

(5) [at the option of the charging party] charging party may file, at its option, a memorandum of law in support of the application for injunctive relief. If filed electronically, the application for injunctive relief shall be in searchable format and shall not be scanned copies of the original documents.

[§204.16] §204.8 Response to application for injunctive relief.

(a) *Filing of response.* A party to whom an application for injunctive relief is delivered pursuant to section 204.[15]Z of this Part may file with the office of counsel [within five days after such delivery] an original and two copies of a response to the application, with proof of service of a copy on all parties within five days after the application was actually delivered. Alternatively, an original and one copy of a response, with proof of service [of a copy of the response] on all parties, may be filed with the office of counsel by either electronic mail at an electronic mail address designated by the board for that purpose, or by fax at a fax number designated by the board for that purpose within five days after delivery of the application. If the response is filed by fax, the responding party shall mail or deliver an original and two copies of the response to the office of counsel by the next working day. Unless otherwise authorized by the office of counsel, copies of the response shall be served on all other parties in the same manner in which the [response] application is filed with the office of counsel. The response shall be signed and sworn to before any

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person authorized to administer oaths and shall be deemed filed when received by the office of counsel.

(b) *Contents of response.* (1) The response, if any, shall assert any defense that the responding party, at the time of filing, believes it could rightfully assert in an answer or responsive pleading to the improper practice charge, including any affirmative defenses pursuant to section 204.3(c)(2) of this Part. The response shall not constitute an answer or responsive pleading to the improper practice charge pursuant to section 204.3 of this Part, and asserting or not asserting any affirmative defense or other defense in the response shall not prejudice any party with regard to defenses or affirmative defenses that party may plead or not plead in an answer or responsive pleading filed pursuant to that section.

(2) Any affidavit submitted in support of the response shall be made on the basis of personal knowledge of the relevant facts and documentary evidence attached to the affidavit. If filed electronically, the affidavit or affidavits shall be in searchable format and shall not be scanned copies of the original documents.

(3) The response may be accompanied by a memorandum of law in opposition to the application for injunctive relief. If filed electronically, the affidavit or affidavits shall be in searchable format and shall not be scanned copies of the original documents.

(c) *Accelerated response.* Upon presentation of clear evidence of a compelling need for determination of an application for injunctive relief in fewer than 10 days from its receipt by the board, and upon a determination by the office of counsel that such compelling need exists, the office of counsel may direct that a response, if any, [shall] be filed within a specified time earlier than otherwise required by this section.

[§204.17] §204.9 Review of application for injunctive relief.

Within 10 days after receipt [of an] by the office of counsel of a completed application for injunctive relief [by the board], [where the board by its office of counsel determines that] the board, by its office of counsel, shall determine whether a sufficient showing has been made pursuant to section 209-a.4 of the act[.]. If a sufficient showing has been made, the board, by its office of counsel, shall petition supreme court [upon notice to all parties] for injunctive relief upon notice to all parties or shall issue an order, with notice to all parties, permitting the charging party to seek injunctive relief by petition to supreme court. Where a sufficient showing has not been made, notice of that determination, stating the reasons for it, shall be issued by the board by its office of counsel to all parties within 10 days after receipt of the application by the board. Orders permitting the charging party to seek injunctive relief by petition to supreme court and notices to the parties that a sufficient showing has not been made may be issued by fax or electronic mail.

[§204.18] §204.10 Expedited treatment where injunctive relief imposed.

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Notwithstanding the time limits stated in sections 204.2 and 204.3 of this Part, when injunctive relief is imposed by a court pursuant to section 209-a.4 of the act, after affording the parties an opportunity for consultation, the administrative law judge assigned to the proceeding shall issue a scheduling order or orders setting the dates and times for service and filing of answers, responsive pleadings, motions, responses, briefs, and proposed findings of fact and conclusions of law, and for conduct of a pre-hearing conference and hearing. Unless the parties mutually agree to waive the time limit for concluding the hearing and issuing a decision pursuant to section 209-a.4(d) of the act, scheduling orders shall be fashioned in such a manner as to permit the administrative law judge to issue a decision on the improper practice charge within 60 days after the imposition of injunctive relief in accordance with section 209-a.4(d) of the act.

**PART 205
CONCILIATION**

[(Statutory Authority: Civil Service Law, art. 14)]

Sec.

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- 205.2 Voluntary interest arbitration**
- 205.3 Compulsory interest arbitration[; scope] pursuant to section 209.4 of the act**
- 205.4 Compulsory interest arbitration; petition**
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Rules relating to section 209.5 of the act

- 205.10 Compulsory interest arbitration pursuant to section 209.5 of the act**
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- 205.17 [Selection of interest arbitration panel] Objections to arbitrability**
- 205.18 Selection of interest arbitration panel**
- 205.19 Conduct of the arbitration proceeding**
- 205.20 Determination and award**

§205.1 Impasses.

[(a) *Scope.* The following relates to all public employees except those employed by a government that has adopted procedures by local law, ordinance or resolution pursuant to section 212 of the act, and with respect to which there is in effect a determination that such procedures are substantially equivalent to the provisions and procedures set forth in the act and in pertinent rules with respect to the State.]

[(b)] (a) Filing of [notice] declaration of impasse. In the event that a public employer and a certified or recognized employee organization have failed to achieve an agreement, either the public employer or the employee organization may notify the board in writing of the existence of an impasse by filing a declaration of impasse. An original and [three] one copy[ies] of the [notification] declaration shall be filed with the [board] director of conciliation, and another shall be served upon all other parties to the negotiations. Such [notification] declaration shall specify:

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- (1) the name, affiliation, if any, and address, telephone number, fax number, and electronic mail address, if any, of the person issuing the [notification] declaration;
- (2) the name or names and address(es), telephone number, fax number, and electronic mail address, if known, of the other parties to the collective negotiations;
- (3) a statement that the employee organization involved is either certified or recognized;
- (4) the number of employees in the negotiating unit, together with a list of the job titles represented in that unit;
- (5) the public employer's fiscal year and the expiration date of the present agreement;
- (6) a clear and concise history of negotiations leading to the impasse, including the number and dates of the negotiation sessions;
- (7) a list of all presently unresolved issues;
- (8) a statement that a copy of the [notification] declaration has been served upon the other parties to the collective negotiations; [and]
- (9) a statement that the individual filing the declaration has authority to do so on behalf of the filing party; and
- (10) a clear and concise statement of any other relevant facts.

(b) Assignment of mediator. Upon receipt of the declaration of impasse, the director of conciliation shall determine its sufficiency, and thereafter may appoint a mediator from a list of qualified persons maintained by the board to assist the parties to effect a voluntary resolution of the impasse. Nothing herein shall preclude an impasse from being deemed to exist on motion of the director of conciliation or the board.

(c) Assignment of fact finder. Except for those disputes that are eligible for compulsory public interest arbitration pursuant to sections 209.4 or 209.5 of the act, should the mediation process not achieve an agreement, either party to the negotiations may file with the director of conciliation an original and one copy of a request for appointment of a fact finder. The request for fact-finding shall specify:

- (1) The name, affiliation, if any, address, telephone number, fax number and electronic mail address if any, of the person issuing the request;
- (2) The name(s), address(es), telephone number(s), fax number(s) and electronic mail address(es) if known, of the other party(ies) to the collective negotiations;

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(3) The name of the mediator and the number and dates of mediation sessions;

(4) A list of all presently unresolved issues;

(5) A statement that a copy of the request has been served upon the other party(ies) to the collective negotiations; and

(6) A clear and concise statement of any other relevant facts.

Upon receipt of the request for fact-finding, the director of conciliation shall determine its sufficiency, and thereafter may make an assignment from a list of qualified persons maintained by the board to assist the parties to effect a voluntary resolution of the impasse. Nothing herein shall preclude fact-finding from being deemed appropriate on motion of the director of conciliation or the board.

§205.2 Voluntary interest arbitration.

(a) In the event that a public employer and a certified or recognized employee organization agree to submit any unresolved issue in negotiations to arbitration, they may request the assistance of the board in providing for such arbitration by a letter directed to the director of conciliation.

(b) The written request may be initiated by either party and shall be accompanied by a copy of the submission.

(c) An arbitrator shall be designated pursuant to the selection process established by the director of conciliation, which process will give the parties an opportunity to participate in the selection of the arbitrator.

§205.3 Compulsory interest arbitration[; scope] pursuant to section 209.4 of the act.

The following relates to impasses in collective negotiations between a public employer and a recognized or certified employee organization [that represents officers of members of an organized fire department or an organized police force or police department of any county, city (except the City of New York), town, village, fire district or a police district and the employing county, city (except the City of New York), town, village fire district or police district.] as to the conditions of employment of employees covered by the provisions of section 209.4 of the act.

§205.4 Compulsory interest arbitration; petition.

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(a) *Filing.* An original and three copies of a petition requesting the [board] director of conciliation to refer an impasse to a public arbitration panel may be filed by an employee organization or public employer after 15 days have elapsed following appointment [by the board] of a mediator to such impasse by the director of conciliation. A copy of the petition shall also be served upon the other party to the impasse simultaneously. Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(b) *Contents.* Such petition shall contain the following:

(1) The name and address of the public employer and the employee organization involved in the impasse.

(2) The name, title, address, [and] telephone number, fax number and electronic mail address, if known, of the representative of each party to whom correspondence shall be directed.

(3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:

(i) terms and conditions of employment that have been agreed upon; and

(ii) petitioner's position regarding terms and conditions of employment not agreed upon.

Proposed contract language [may] presented during negotiations must be attached.

(4) The name of the mediator and the number and dates of mediation sessions held.

(5) The name, address, telephone number, fax number and electronic mail address if any, of the individual that the petitioner is appointing to the public arbitration panel, and the same information for the individual who will be representing the petitioner before the public arbitration panel.

(6) Proof of service upon the respondent party.

§205.5 Compulsory interest arbitration; response and cross-response.

(a) *[Filing] Response.* A[n original and three copies of a] response shall be filed in the same manner as was the petition within 10 working days of receipt of the petition requesting arbitration. A copy of the response shall also be served simultaneously upon the petitioning party [simultaneously].

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(b) *Contents of Response.* Such response shall contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position. Proposed contract language [may be attached] presented during negotiations shall be included. If the respondent has filed an improper practice charge or a declaratory ruling petition related to compulsory interest arbitration under section 205.6 of this Part, the response shall contain a reference to such charge or petition. The response must include the name, address, telephone number, fax number and electronic mail address if any, of the individual that the respondent is appointing to the public arbitration panel, the same information for the individual who will be representing the respondent in the interest arbitration, and proof of service upon the petitioning party.

(c) *Cross-response.* A petitioner filing an objection to arbitrability under Section 205.6(b) of this Part must file a cross-response notifying the director of conciliation of such filing. Such cross-response shall be filed within ten working days of receipt of the response.

§205.6 [Improper practice charges related to compulsory interest arbitration; o]Objections to arbitrability.

(a) *Objections to arbitrability.* Objections to the arbitrability of any matter set forth in the petition or response may only be raised by the filing of an improper practice charge or a declaratory ruling petition pursuant to the requirements of this section. Objections as to arbitrability may include, but not be limited to, the following circumstances:

- (1) a matter proposed is not a mandatory subject of negotiations;
- (2) a matter proposed was not the subject of negotiations prior to the petition;
- (3) a matter proposed had been resolved by agreement during the course of negotiations.

(b) *Improper practice [C]harge.* The proposed arbitration of any matter set forth in the petition or response may be objected to by either party as being violative of section 209-a.1(d) or section 209-a.2(b) of the act by filing an improper practice charge pursuant to section 204.1 of this Chapter. Section 204.1(b)(4) of this Chapter shall not apply. The matter shall be accorded expedited treatment. If filed by the respondent, such a charge may not be filed after the date of the filing of the response filed in accordance with section 205.5 of this Part; if filed by the petitioner, such a charge may not be filed [more than 10 working days after its receipt of the response] after the date of the filing of the cross-response filed in accordance with section 205.5(c) of this Part. A charge shall state the date when the petition or response was received.

(c) The proposed arbitration of any matter set forth in the petition or response may be objected to by either party as not being within the scope of mandatory negotiations by filing a declaratory ruling petition pursuant to Part 210 of this Chapter. If filed by the respondent,

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such a petition may not be filed after the date of the filing of the response filed in accordance with section 205.5 of this Part; if filed by the petitioner, such a petition may not be filed more than 10 working days after its receipt of the response.

(d) The public arbitration panel shall not make any award on issues, the arbitrability of which is the subject of an improper practice charge or a declaratory ruling petition, until final determination thereof by the board or withdrawal of such charge or petition; the panel may make an award on other issues.

§205.7 Selection of [the] compulsory interest arbitration panel.

(a) Within 10 days after receipt of the petition by the board, each party shall appoint its member to the arbitration panel and the two parties will jointly appoint the public member. The parties will immediately notify the [board] director of conciliation of the identity of the three members of the panel selected by the parties. The [board] director of conciliation shall forthwith designate such public arbitration panel and refer the dispute to such panel.

(b) If the parties are unable to agree upon the public member within 10 days of receipt of the petition, either party may request the board to submit a list of qualified persons for selection of the public member. Within seven days after receipt of such request, the [board] director of conciliation shall submit to each party an identical list of nine arbitrators from its panel of arbitrators. A resume and billing disclosure statement of each arbitrator on such list shall be enclosed for the parties' review. [The parties shall be required to meet and make their selection in the following manner]

(c) Selection. Within ten working days after receipt of the list, the parties will notify the director of conciliation of the identity of a qualified public member they have mutually agreed upon, or, if unable to agree, shall be required to meet and make their selection in the following manner: Each party shall alternately strike from the list one of the names with the order of striking determined by lot until [the remaining] one person remains, who shall be designated as the public member. If either party so desires, a representative of the board will be present during the name-striking process. The name-striking process must be completed within five days of receipt of the list from the [board] director of conciliation. The [board] director of conciliation must be immediately notified of the person selected as the public member. Upon the failure of one party to participate in the selection process, all names on the list shall be deemed acceptable to it, and the other party will be entitled to have its selection designated as the public member.

([c]d) Designation. Upon notification of the identity of the public member of the panel, the [board] director of conciliation shall immediately designate such public [arbitration panel] member, along with the individuals named by the parties in sections 205.4(b)(5) and 205.5(b) of this Part, as the public arbitration panel and refer the dispute to such panel.

§205.8 Conduct of the arbitration proceeding.

The conduct of the arbitration [panel] proceedings shall be under the exclusive jurisdiction and control of the arbitration panel. The conduct of the arbitration panel shall conform to applicable law.

§205.9 Determination and award.

The determination and award of the arbitration panel shall be in writing, signed and acknowledged by each member of the arbitration panel, and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested. Within five working days of rendering the determination and award, the arbitration panel shall file two copies of the determination and award with the director of conciliation.

§205.10 Compulsory interest arbitration pursuant to section 209.5 of the act.

[The following] Sections 205.11 through 205.20 of this Part relate[s] to impasses in collective negotiations between the New York City Transit Authority and Metropolitan Transportation Authority and their subsidiaries and recognized or certified employee organizations covered by the provisions of section 209.5 of the act.

§205.11 Joint petition.

(a) In the event the covered parties have failed to achieve an agreement, they may jointly request the [board] director of conciliation to refer their dispute to a public arbitration panel by filing a joint petition. In such event, the provisions of sections 205.12 through 205.17 of this Part shall not apply.

(b) Such joint petition shall contain the following:

(1) the name and address of the public employer and the employee organization involved in the impasse;

(2) the name, title, address, [and] telephone number, fax number and electronic mail address if any, of the representative of each party to whom correspondence shall be directed;

(3) a statement that the parties jointly request arbitration of their dispute and have agreed as to which issues should be submitted to the arbitration panel; [and]

(4) specification of the issues which the parties have agreed to submit to the arbitration panel; and

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(5) the names, addresses, telephone numbers, fax numbers and electronic mail addresses, if any, of the individuals that the parties are appointing to the public arbitration panel as their respective members, and the same information for the individuals who will be representing the parties before the public arbitration panel.

§205.12 Notification of impasse.

In the event the covered parties have failed to achieve an agreement, either party may notify the [board] director of conciliation of the existence of an impasse. Such notice shall be filed with the [board] director of conciliation in accordance with the provisions of section 205.1 of this Part.

§205.13 Assignment of mediator.

Upon receipt of the notification of impasse, the [board] director of conciliation shall appoint a mediator from a list of qualified persons maintained by the board to assist the parties to effect a voluntary resolution of their collective negotiations.

§205.14 Petition.

(a) Either party to the impasse may file an original and three copies of a petition requesting the [board] director of conciliation to refer their dispute to a public arbitration panel after 15 days have elapsed following appointment by the [board] director of conciliation of a mediator to such dispute. Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(b) Such petition shall contain the following:

(1) the name and address of the public employer and the employee organization involved in the impasse;

(2) the name, title, address, [and] telephone number, fax numbers and electronic mail addresses, if known, of the representative of each party to whom correspondence shall be directed;

(3) [dates of all meetings at which contract negotiations between the parties took place] the name of the mediator and the number and dates of all mediation sessions held;

(4) a statement that a voluntary resolution of the contract negotiations between the parties cannot be effected; [and]

(5) the name, address, telephone number, fax number and electronic mail address, if

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any, of the individual that the petitioner is appointing to the public arbitration panel, and the same information for the individual who will be representing the petitioner before the public arbitration panel; and

(6) a statement of each of the terms and conditions of employment raised in the negotiations, as follows:

(i) terms and conditions of employment that have been agreed upon; and

(ii) petitioner's position regarding terms and conditions of employment not agreed upon. Proposed contract language [may] presented during negotiations must be attached; and

[6](7) proof of service upon respondent.

§205.15 Board certification.

(a) Upon receipt of the petition requesting arbitration, the director of conciliation may conduct or cause to be conducted an investigation to ascertain if a voluntary resolution of the contract negotiations between the parties cannot be effected. In the course of such investigation, the director of conciliation may direct the parties to conduct further negotiations, with or without mediation. In such event, no new petition requesting arbitration need be filed.

(b) If the director of conciliation concludes that a voluntary resolution of the contract negotiations between the parties cannot be effected, the director of conciliation shall convey such conclusion to the board, together with a recommendation that the dispute be referred to a public arbitration panel. The parties shall be notified, in writing, of the recommendation of the director of conciliation. The respondent shall have an opportunity to object to the recommendation, in writing, within three days after receipt of the notice of the recommendation.

(c) If the board so determines, it shall certify that a voluntary resolution of the contract negotiations between the parties cannot be effected and shall refer the dispute to the designated public arbitration panel, subject, however, to the conditions set forth in section 205.17(d) of this Part. In reaching its determination, the board may conduct or direct such additional investigation, including hearings, as it deems advisable and proper, and may direct the parties to conduct further negotiations, with or without mediation.

§205.16 Response and cross-response.

(a) Response. An original and three copies of a response shall be filed within 10 working days of receipt of the petition requesting arbitration. [It] A copy of the response shall be simultaneously served, by the same means as the petition was served, upon the petitioning party [simultaneously].

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(b) Contents of response. Such response shall contain respondent's position specifying the terms and conditions of employment that were resolved by agreement and as to those that were not agreed upon, respondent shall set forth its position. Proposed contract language [may be attached] presented during negotiations shall be included. If the respondent has filed an improper practice charge or a declaratory ruling petition relating to the petition for interest arbitration, the response shall contain a reference to such charge or petition. The response must include the name, address, telephone number, fax number and electronic mail address if any, of the individual that the respondent is appointing to the public arbitration panel, the same information for the individual who will be representing the respondent in the interest arbitration, and proof of service upon the petitioning party.

(c) Cross-response. A petitioner filing an objection to arbitrability under Section 205.17(b) of this Part must file a cross-response notifying the director of conciliation of such filing. Such cross-response shall be filed within 10 working days of receipt of the response.

§205.17 Objections to arbitrability.

(a) Objections to the arbitrability of any matter set forth in the petition or response may only be raised by the filing of an improper practice charge or a declaratory ruling petition pursuant to the requirements of this section. Objections as to arbitrability may include, but not be limited to, the following circumstances:

- (1) a matter proposed is not a mandatory subject of negotiations;
- (2) a matter proposed was not the subject of negotiations prior to the petition; or
- (3) a matter proposed has been resolved by agreement during the course of negotiations.

(b) Improper practice charge. The proposed arbitration of any matter set forth in the petition or response may be objected to by either party as being violative of section 209-a.1(d) or section 209-a.2(b) of the act by filing an improper practice charge pursuant to section 204.1 of this Chapter. Section 204.1(b)(4) of this Chapter shall not apply. The matter shall be accorded expedited treatment. If filed by the respondent, such a charge may not be filed after the date of the filing of the response filed in accordance with section 205.16 of this Part; if filed by the petitioner, such a charge may not be filed [more than 10 working days after its receipt of the response] after the date of the filing of the cross-response filed in accordance with section 205.5(c) of this Part. A charge shall state the date when the petition or response was received.

(c) Declaratory ruling petition. The proposed arbitration of any matter set forth in the petition or response may be objected to by either party as not being within the scope of

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mandatory negotiations by filing a declaratory ruling petition pursuant to Part 210 of this Chapter. If filed by the respondent, such a petition may not be filed after the date of the filing of the response filed in accordance with section 205.16 of this Part; if filed by the petitioner, such a petition may not be filed [more than 10 working days after its receipt of the response] after the date of the filing of the cross-response filed in accordance with section 205.5(c) of this Part.

(d) The public arbitration panel shall not make any award on issues, the arbitrability of which is the subject of an improper practice charge or a declaratory ruling petition, until final determination thereof by the board or withdrawal of such charge or petition. The panel may make an award on other issues.

§205.18 Selection of interest arbitration panel.

(a) Within 10 days after receipt of the petition by the board, each party shall appoint its member to the arbitration panel and the two parties shall jointly appoint the public member. The parties shall immediately notify the board of the identity of the three members of the panel selected by the parties. If a joint petition was filed pursuant to section 205.11 of this Part, the [board] director of conciliation shall forthwith designate such arbitration panel and shall refer the dispute to such panel. If a petition was filed pursuant to section 205.14 of this Part, the [board] director of conciliation shall forthwith designate such arbitration panel and shall refer the dispute to such panel upon the board's certification that a voluntary resolution of the contract negotiations between the parties cannot be effected.

(b) If the parties are unable to agree upon the public member within 10 days, either party may request the [board] director of conciliation to submit a list of qualified persons for selection of the public member. Within seven days after receipt of such request, the [board] director of conciliation shall submit to each party an identical list of nine arbitrators from its panel of arbitrators. A resume and billing disclosure statement of each arbitrator on such list shall be enclosed for the parties' review. [The parties shall be required to meet and make their selection in the following manner.]

(c) Selection. Within ten working days after receipt of the list, the parties will notify the director of conciliation of the identity of a qualified public member they have mutually agreed upon, or, if unable to agree, shall be required to meet and make their selection in the following manner: Each party shall alternately strike from the list one of the names with the order of striking determined by lot until [the remaining] one person remains, who shall be designated as the public member. If either party so desires, a representative of the board will be present during the name-striking process. The name-striking process must be completed within five days of receipt of the list from the [board] director of conciliation. The parties shall immediately notify the [board] director of conciliation of the identity of the person selected as the public member. Upon the failure of one party to participate in the selection process, all names on the list shall be deemed acceptable to it and the other party will be entitled to have its selection designated as the public member.

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[(c) Upon notification of the identity of the public member of the panel, the board shall forthwith designate such public arbitration panel and shall refer the dispute to such panel upon the board's certification that a voluntary resolution of the contract negotiations between the parties cannot be effected.]

(d) *Designation.* If a joint petition was filed pursuant to section 205.11 of this Part, upon notification of the identity of the public member of the panel, the director of conciliation shall forthwith designate such public member, along with the individuals named by the parties in section 205.11(b)(5) of this Part, as the public arbitration panel and shall refer the dispute to such panel. If a petition was filed pursuant to section 205.14 of this Part, upon notification of the identity of the public member of the panel, the director of conciliation shall forthwith designate such public member, along with the individuals named by the parties in sections 205.14(b)(5) and 205.16(b) of this Part, as the public arbitration panel and shall refer the dispute to such panel upon the board's certification that a voluntary resolution of the contract negotiations between the parties cannot be effected.

§205.19 Conduct of the arbitration proceeding.

The conduct of the arbitration [panel] proceedings shall be under the exclusive jurisdiction and control of the arbitration panel. The conduct of the arbitration panel shall conform to applicable law.

§205.20 Determination and award.

The determination and award of the arbitration panel shall be in writing, signed and acknowledged by each member of the arbitration panel and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested. Within five working days of rendering the determination and award, the arbitration panel shall file two copies of the determination and award with the director of conciliation.

PART 206
STRIKES AGAINST PUBLIC EMPLOYERS
(Statutory Authority: Civil Service Law, art. 14)

Sec.

206.1 Scope

206.2 Filing of [the] charge

206.3 Contents of the charge

206.4 Notice of hearing

206.5 Answer

206.6 Hearing

206.7 Submission to the board

206.1 Scope.

The following relates to all public employment except by a government that has adopted procedures by local law, ordinance or resolution pursuant to section 212 of the act and with respect to which there is in effect a determination that such provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and in pertinent rules with respect to the State.

§206.2 Filing of charge.

(a) A charge that any employee organization or agent thereof is engaging in, causing, instigating, encouraging or condoning a strike may be made by the chief legal officer of the government involved or the counsel upon his or her own motion. Such a charge shall be in writing and signed. An original and [three] four copies of the charge, with proof of service upon the employee organization-respondent, shall be filed with the board, and, if the charging party is the counsel, counsel shall simultaneously serve a copy of the charge on the chief legal officer of the government involved. Charge forms will be supplied by the counsel upon request, and/or will be available on the agency's website. Should the chairperson authorize electronic filing of the charge, the filing of a signed paper original consistent with this section and electronic filing and service of a copy to an address specified by the agency on its website shall constitute compliance with the filing and service requirements herein contained.

(b) The chief legal officer of a government involved or counsel may intervene as a party in any proceeding initiated by the other pursuant to section 212.1 of this Chapter.

§206.3 Contents of the charge.

A charge shall contain the following:

(a) the full name and address of the party making the charge;

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- (b) the name of the employee organization against whom the charge is made; and
- (c) a clear and concise statement of the facts constituting the alleged violation.

§206.4 Notice of hearing.

After receipt of a charge filed by the chief legal officer of a government involved or the counsel, the board shall issue to the parties a notice setting forth the time and place of the hearing, which time shall be not less than eight working days after the receipt of the notice.

§206.5 Answer.

(a) The employee organization against whom the charge is issued shall file [with the board an original and three copies of] in the same manner as the petition an answer, with proof of service of a copy [of the answer] on all other parties, by such means as the petition was served, within eight days after receipt of a copy of the charge.

(b) The answer shall be in writing and signed.

(c) The answer shall contain a specific denial of each allegation of the charge contravened by the public employee organization, or of any knowledge or information thereof sufficient to form a belief. An allegation of the charge not specifically denied in the answer, unless the party affirms that it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and may be so found by the board. The answer shall also contain a statement of the facts constituting the grounds of defense. Allegations of any [matter] facts in the answer shall be deemed denied without the necessity of a reply.

(d) If the party against whom the charge is issued fails to file an answer within the time or in compliance with the manner herein provided, such failure shall constitute an admission of the material facts alleged in the charge and an admission that the party violated subdivision (1) of section 210 of the act. Such failure shall also constitute a waiver of any claims which the party must raise by its answer under paragraph (f) of subdivision (3) of section 210 of the act. Upon such failure, a hearing shall be held only for the purpose of fixing the duration of the forfeiture.

§206.6 Hearing.

(a) The board may designate an administrative law judge to conduct a hearing pursuant to Part 212 of this Chapter.

[(b)(1)-(3) Reserved for future use.

(c)(1)-(3) Reserved for future use.

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(d) Reserved for future use.

(e)(1)-(3) Reserved for future use.]

§206.7 Submission to the board.

(a) After completion of the hearing, or upon the consent of the parties, the administrative law judge shall submit the case, including his or her report and recommendations, to the board. The record shall include the charge, notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exceptions, documentary evidence and any brief or other documents submitted by the parties. The board shall cause the report and recommendations of the administrative law judge to be delivered to all parties to the proceeding. Exceptions to the report and recommendations may be filed pursuant to Part 213 of this Chapter.

(b) Upon completion of the case before it, the board shall decide the issues and make such disposition of the matter as it deems appropriate in accordance with section 210.3(f) of the act.

PART 207
VOLUNTARY GRIEVANCE ARBITRATION
(Statutory Authority: Civil Service Law, art. 14)

Sec.

- 207.1 Policy regarding grievance arbitration**
- 207.2 Panel of arbitrators**
- 207.3 Agreement to arbitrate**
- 207.4 Demand for arbitration; submission to arbitrate**
- 207.5 Determination of jurisdiction**
- 207.6 Arbitrability**
- 207.7 Selection process**
- 207.8 Notice of designation**
- 207.9 Status of arbitrator after designation; conduct of proceedings**
- 207.10 Stenographic record and transcript**
- 207.11 Award upon settlement**
- 207.12 Expedited rendition of award**
- 207.13 Form of award and time rendered**
- 207.14 Time extension**
- 207.15 Expenses and fees**
- 207.16 Filing of [award and arbitration report form] the arbitrator's invoice**
- [207.17 Publication of award]**

§207.1 Policy regarding grievance arbitration.

It is the policy of the act to encourage public employers and recognized or certified employee organizations to enter into written agreements containing grievance procedures.

In furtherance of this policy, the following voluntary arbitration rules of procedure are provided to (a) insure an efficient and orderly procedure for grievance arbitration, (b) assist the parties in remedying procedural deadlocks, and (c) effectuate the rapid adjudication of disputes and controversies.

§207.2 Panel of arbitrators.

(a) The board shall maintain a panel of arbitrators, broadly representative of the public, who qualify and meet the board's standards and criteria of professional competence, impartiality and acceptability. All applicants requesting inclusion on the panel shall be reviewed by the board on the basis of their education, experience and expertise in the field of labor arbitration or its equivalent, and general reputation in the practice of labor-management relations. Careful evaluation, subject to the above standards and criteria, shall be made before an applicant is included on the panel of arbitrators.

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(b) Inclusion in good standing on the panel shall be conditioned on the arbitrator assuming the responsibility of keeping the director of conciliation immediately informed of any changes in address, availability limitations, per diem rate, and occupation, especially where such occupational change results in financial return from, connection with, or of concern to, a public employer or employee organization. The board shall periodically review the panel of arbitrators and shall at any time take appropriate action, including removal of the arbitrator from the panel, where the arbitrator has not adhered to the board's policies and this Part.

§207.3 Agreement to arbitrate.

Either party or both parties to a written agreement may request the director of conciliation to commence the administration of these voluntary arbitration rules of procedure if, in their agreement, the parties have provided for arbitration pursuant to the provisions of this Part. The voluntary arbitration rules of procedure shall apply in the form obtaining at the time the arbitration is initiated.

§207.4 Demand for arbitration; submission to arbitrate.

(a) *Demand for arbitration (request made by one party to the other).* Petitioner shall serve on the respondent a demand for arbitration which shall serve as notice of intention to arbitrate pursuant to CPLR section 7503. Such notice shall be served in the same manner as the summons or by registered or certified mail, return receipt requested. In addition, two copies of the demand for arbitration shall be filed with the director of conciliation together with proof of service on the respondent. Should the board permit or mandate electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(b) *Contents of demand for arbitration.* A demand for arbitration shall include the following:

- (1) date;
- (2) name of petitioner;
- (3) name of respondent;
- (4) name, title, address, electronic mail address, and telephone number of the representative of each party to whom correspondence from the director of conciliation shall be directed;
- (5) effective date and expiration date of agreement;

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(6) identification of the provision(s) in the agreement providing for arbitration, together with a copy thereof;

(7) identification of the provision(s) in the agreement claimed to be violated, together with a copy thereof;

(8) a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name[[s]](s) of the grievant[[s]](s);

(9) the following language, quoted verbatim, except that the board may, at its discretion, designate a different address than that provided below on the agency's website:

"THE UNDERSIGNED, A PARTY TO A WRITTEN AGREEMENT WHICH PROVIDES FOR ARBITRATION AS DESCRIBED HEREWITH, HEREBY DEMANDS ARBITRATION. YOU ARE HEREBY NOTIFIED THAT COPIES OF THIS DEMAND FOR ARBITRATION ARE BEING FILED WITH THE DIRECTOR OF CONCILIATION, NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, [80 WOLF ROAD] EMPIRE STATE PLAZA, AGENCY BUILDING 2, 20th FLOOR, ALBANY, NEW YORK [12205] 12220 WITH THE REQUEST THAT THE ADMINISTRATION OF THE VOLUNTARY ARBITRATION RULES OF PROCEDURE BE COMMENCED.

PURSUANT TO THE NEW YORK ARBITRATION LAW, ARTICLE 75, SECTION 7503, CIVIL PRACTICE LAW AND RULES, YOU HAVE TWENTY (20) DAYS FROM DATE OF SERVICE OF THIS DEMAND TO APPLY TO STAY THE ARBITRATION OR BE PRECLUDED FROM SUCH APPLICATION."

(10) signature and title of the representative serving the demand for arbitration.

(c) *Submission to arbitrate (joint request)*. Parties to an arbitration agreement may jointly request arbitration by forwarding a submission to arbitrate to the director of conciliation.

(d) *Contents of submission to arbitrate*. A submission to arbitrate shall include the following:

(1) date;

(2) name of public employer and employee organization;

(3) name, title, address, electronic mail address, and telephone number of the representative of each party to whom correspondence from the director of conciliation shall be directed;

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(4) [identification of] the provision(s) in the agreement claimed to be violated, together with a copy thereof;

(5) a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name[[s]](s) of the grievant[[s]](s));

(6) the following language, quoted verbatim:

"THE PARTIES NAMED HEREIN HEREBY JOINTLY REQUEST BINDING ARBITRATION OF THE DISPUTE DESCRIBED HEREIN UNDER THE VOLUNTARY ARBITRATION RULES OF PROCEDURE OF THE NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD."

(7) signatures and titles of the representatives filing the submission to arbitrate.

§207.5 Determination of jurisdiction.

(a) Where this Part has been incorporated by reference into an agreement to arbitrate, it shall be deemed binding on the parties as a valid part of such agreement.

(b) Where no agency's rules of procedure for arbitration have been incorporated by reference into an agreement to arbitrate, the board's jurisdiction will not attach in the matter until a submission to arbitrate has been received by the director of conciliation or until the respondent has been served with a demand for arbitration and the time limit to apply for a stay of arbitration, as provided in CPLR section 7503, has expired. In the event no application for a stay is made within the specified time limit, the board's jurisdiction shall attach and this Part shall be deemed binding on the parties as a valid part of their agreement to arbitrate.

§207.6 Arbitrability.

(a) Should either party contest the arbitrability of a grievance, the director of conciliation shall [make no determination as to] not determine whether the grievance is a proper subject for arbitration. The director of conciliation's sole responsibility[ies]y throughout the application of this Part [are] is administrative and, therefore, commencement of the administration of this Part shall be construed as compliance with a request.

(b) The board encourages parties to submit arbitrability questions to the arbitrator for determination. However, should the party served with a demand for arbitration pursue the legal remedies for a stay of arbitration in accordance with CPLR section 7503, a copy of the application to stay arbitration shall be filed with the director of conciliation within 20 days of service of the demand for arbitration.

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(c) Upon timely receipt of a copy of the application to stay arbitration, the director of conciliation shall hold in abeyance the designation of the arbitrator pending final court determination of the arbitrability question. Absent timely receipt, the administrative responsibilities of the director of conciliation shall be carried out pursuant to this Part.

§207.7 Selection process.

After receipt of a demand for arbitration or submission to arbitrate, the director of conciliation shall forward to the representatives named therein two copies of an identical panel list of seven arbitrators selected from the panel of arbitrators. A resume, including per diem fee and billing disclosure statement, of each arbitrator on such panel list shall be [enclosed] made available for the parties' review. Each party shall have 10 days from date of the letter containing the panel list in which to select, rank and return their selections to the director of conciliation.

(a) *Selection and preferential ranking.* Unless the parties have provided for their own method of selecting an arbitrator in their agreement to arbitrate, the following process for [the selection of] selecting an arbitrator shall be employed: if more than four names on the panel list are acceptable, those names shall be ranked in order of the party's preference and the remaining name(s), if any, shall be stricken. Otherwise, the party shall strike no more than three names from the panel list and indicate a preference among those names remaining by ranking them (1), (2), (3) and (4).

(b) *Additional lists.* If a party determines that more than three names on a panel list are unacceptable, a request by such party for an additional panel list shall be filed with the director of conciliation within the 10-day time period established for selection and preferential ranking. A copy of such request shall be sent to the other party simultaneously. Each party shall have the right to request one additional list, and consequently, no party shall receive more than three panel lists. Pursuant to the selection process, if the parties fail to select an arbitrator after the submission of a third panel list, the director of conciliation shall take whatever steps are necessary to designate an arbitrator.

(c) *Designat[ion]ing [of] the arbitrator.* (1) Timely receipt of selections. Upon timely receipt of each party's selections and consistent with their selected order of preference, the director of conciliation shall designate the arbitrator. If the designated arbitrator declines or is unable to serve, the director of conciliation shall reserve the right to designate an arbitrator without the submission of an additional panel list. In no case, however, will an arbitrator be designated whose name was stricken by either or both parties.

(2) Failure to timely return selections. If a party fails to timely return its selections to the director of conciliation, all names submitted in the panel list shall be deemed acceptable to such party and the designation of the arbitrator shall be made according to the preferences of the party whose selections have been timely received.

§207.8 Notice of designation.

(a) The parties shall be notified forthwith by the director of conciliation of the name of the designated arbitrator.

(b) The arbitrator, upon notification of designation by the director of conciliation, shall immediately communicate directly with the parties to make arrangements for preliminary matters such as the date, time and place of the arbitration hearing. If the arbitrator cannot schedule a hearing and determine the issues promptly, the arbitrator shall notify the director of conciliation forthwith. The director of conciliation shall take such action, consistent with this Part, as the director of conciliation deems appropriate.

§207.9 Status of arbitrator after designation; conduct of proceedings.

After designation, the legal relationship of the arbitrator is with the parties, rather than the board. [While the board shall maintain a continuing interest in the proceedings, t] The designated arbitrator shall not be considered an agent or representative of the board. The conduct of the arbitration proceeding shall be under the arbitrator's exclusive jurisdiction and control, subject to such rules of procedure as the parties may jointly agree upon. The arbitrator shall have all of the powers specified in CPLR sections 7505, 7506 and 7509 insofar as these sections may be applicable. The arbitrator's conduct shall conform to applicable laws.

§207.10 Stenographic record and transcript.

(a) Either party or the arbitrator may request that a stenographic record of testimony be taken and that party shall be responsible for arrangements for such stenographic record.

(b) The party or parties requesting the record shall pay the cost thereof, including the cost of a transcript to be furnished to the arbitrator. If the arbitrator orders that testimony be recorded, the cost of recording the testimony shall be mutually shared by the parties, including the cost of a transcript to be furnished to the arbitrator. Any other party to the arbitration shall be entitled to obtain a transcript upon payment therefor. The arbitrator shall indicate whether or not the transcript taken shall serve as the official record of the proceeding.

§207.11 Award upon settlement.

The commencement of the administration of this Part shall in no way preclude the parties from [adjusting] settling the dispute on their own at any time before or during an arbitration hearing. If [a settlement has been reached between] the parties have settled, the

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arbitrator, upon joint request of the parties, may set forth the terms of the settlement in the form of an award.

§207.12 Expedited rendition of award.

(a) Should the parties mutually agree to an expedited rendition of the arbitrator's award, notice in the form of a joint request in writing shall be received by the director of conciliation before [the designation of] designating the arbitrator.

(b) The decision of the arbitrator shall be in the form of an award only, and shall be rendered within seven days after the arbitrator has declared the hearing closed.

§207.13 Form of award and time rendered.

[(a)] The award shall be in writing, signed and affirmed by the arbitrator, and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested, or by other means as mutually agreed by all parties involved. If no period of time for the rendition of an award has been specified in the agreement and the parties have not mutually agreed to an expedited rendition of the award, as provided in section 207.12 of this Part, an award shall be rendered within 30 days after the arbitrator has declared the hearing closed, unless this time period has been extended by the parties and so confirmed by them in writing.

[(b) If no award has been rendered within 60 days after the arbitrator has been designated, it shall be the responsibility of the arbitrator to inform the director of conciliation of the status of the case. Similar reports are to be made every 15 days thereafter until completion of the arbitration assignment. In any case, the parties shall notify the director of conciliation of any undue delay.]

§207.14 Time extension.

Except as prescribed by statute, upon request of any party, with notice to the other party, the director of conciliation, for good cause shown, may extend any time limit in this Part except the time limit for rendering an award.

§207.15 Expenses and fees.

(a) An administrative fee [of] established by the chairperson but no less than fifty dollars (\$50) per party shall be charged by the board for its administrative services. The amount of this administrative fee may be changed by the board on a yearly basis after an annual review. The board must provide notice on the agency's website at least 60 (sixty) days in advance of any change.

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(b) The arbitrator's per diem fee, certified in advance by the arbitrator to the board and listed on the arbitrator's resume, shall be the rate charged to the parties. Compensation for the services of an arbitrator, including required travel and other necessary and incidental expenses, shall be borne completely by the parties. Each party shall pay 50 percent of such fees and expenses, unless otherwise mutually agreed upon in writing by the parties.

(c) An arbitrator who requires the payment of an adjournment fee in the event of a postponement or cancellation of a scheduled hearing by either or both parties, shall give proper notice of this requirement on his or her resume. Unless otherwise mutually agreed upon in writing by the parties, the party responsible for such adjournment shall pay the entire fee, and in the case where both parties require adjournment, each party shall pay 50 percent of such adjournment fee.

(d) Since the designated arbitrator is not an agent or representative of the board, all matters involving arbitrator payments and compensation are to be resolved between the parties and the arbitrator directly.

§207.16 Filing [award and arbitration report form] the arbitrator's invoice.

[Within 10 days of rendering an award, the arbitrator shall file one copy of the award with the director of conciliation.] Upon completion of the assignment, the arbitrator shall submit to the director of conciliation [an arbitration report form] a copy of the invoice submitted to the parties showing a detailed accounting of fees and expenses (if any) [and other relevant information concerning the final disposition of the issue(s) in dispute].

§207.17 Publication of award.

In the absence of objection by either party, all awards shall be made available for publication.

PART 208
ACCESS TO RECORDS OF THE BOARD
(Statutory Authority: Civil Service Law, art. 14)

Sec.

- 208.1** Records available for public inspection and copying
- 208.2** [Procedures for inspection and copying of records] Designation of records access officer and appeals officer
- 208.3** [Appeal] Procedures for inspection and copying of records
- 208.4** Denials and appeals

§208.1 Records available for public inspection and copying.

The records of the board available for public inspection and copying, in accordance with the procedures hereinafter set forth, [shall be the records so designated in the subject matter list prescribed to be maintained by] are those described by section 87 of the Public Officers Law.

§208.2 [Procedures for inspection and copying of records.] Designation of records access officer and appeals officer.

[(a) The board's executive director is hereby designated its records access officer for the purposes of this Part.

(b) A request to inspect any record shall be made either orally or in writing to the board's executive director at 80 Wolf Road, Albany, NY 12205, who will make suitable arrangements for such inspection during regular office hours at the offices of the board in Albany, New York City or Buffalo, unless the location of a particular record may require its inspection at a particular office, in which case inspection shall occur at such office.

Note: Most records of the board available for inspection may also be found in the published volume entitled *Official Decisions, Opinions and Related Matters of the Public Employment Relations Board*, sets of which are kept in various libraries, including the library of the Court of Appeals, the four Appellate Divisions and the board's libraries.

Note: Since most of PERB's records are intended for the guidance of, and to be helpful to, various segments of the public, they are ordinarily available for inspection on the day that a

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request is received. However, if a request is made to inspect large numbers of records, PERB reserves the right to require reasonable advance notice of such request.

(c) Copies of documents previously prepared for distribution and in stock are available by either writing to the board's executive director or requesting such documents at the board's principal offices at 80 Wolf Road, Albany, NY 12205.

(d) A fee of 25 cents per page will be charged for all copies made upon request by anyone other than a representative of a public employer or employee organization or a member of a board panel, to whom one copy of a document may be given without charge. The board will make every effort to comply with requests for such copies as expeditiously as possible.

(e) Stenographic services at hearings held by the board are provided pursuant to contract under which the stenographer has exclusive right to reproduce and sell copies of minutes at hearings at charges fixed in such contract. While the minutes of hearings may be inspected at the offices of the board, any person desiring a copy of minutes must make arrangements directly with the stenographer. The name and address of the current contract stenographer will be furnished by the executive director upon request.]

(a) A records access officer shall be designated by the board's executive director for purposes of this Part. The name, title, business address and business phone number of such designee will be posted on the agency's website.

(b) An appeals officer shall be designated by the board's executive director for purposes of this Part. The name, title, business address and business phone number of such designee will be posted on the agency's website.

§208.3 [Appeal.] Procedures for inspection and copying of records.

[(a) An appeal may be taken to the chairperson of the board within 30 working days from:

(1) denial of a request for access to records;

(2) a failure to provide access to records within five working days after receipt of a request;
or

(3) the failure to furnish a written acknowledgment of receipt of a request for access to records and of a statement of the approximate date when the request will be granted or denied in the event additional time is needed to make a decision on the request.]

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(a) A request to inspect or copy any record shall be made in writing to the board's executive director at P.O. Box 2074 Empire State Plaza, Agency Building 2, 18th Floor, Albany, NY 12220-0074, or at such other address the board shall designate on the agency's website, who will make suitable arrangements for such inspection during regular office hours at the offices of the board in Albany, New York City or Buffalo, unless the location of a particular record may require its inspection at a particular office, in which case inspection shall occur at such office. Office hours will be provided on the agency's website.

Note: Most records of the board available for inspection may also be found in the published volume entitled *Official Decisions, Opinions and Related Matters of the Public Employment Relations Board*, sets of which are kept in various libraries, including the library of the Court of Appeals, the four Appellate Divisions and the board's libraries.

(b) A fee of 25 cents per page will be charged for all print copies made upon request by anyone other than a member of a board panel, to whom one copy of a document may be given without charge. The board will make every effort to comply with requests for such copies as expeditiously as possible.

(c) Stenographic services at hearings held by the board are provided pursuant to arrangements under which the stenographer has exclusive right to reproduce and sell copies of minutes at hearings. While the minutes of hearings may be inspected at the offices of the board, any person desiring a copy of minutes must make arrangements directly with the stenographer. The name and address of the stenographer will be furnished by the executive director upon request.

(d) The records access officer may, in his or her discretion, waive all or any portion of the fees authorized by this section for any record or class of records.

§208.4 Denials and appeals.

(a) Denial of access to records shall be in writing stating the reason therefor and advising the requester of the right to appeal to the individual established to determine appeals, who shall be identified by name, title, business address and business phone number.

(b) Appeals may be taken in accordance with section 89 of the Public Officers Law.

PART 209
PRIVACY PROTECTION AND ACCURACY OF PERSONAL DATA
(Statutory Authority: Civil Service Law, art. 14)

Sec.

- 209.1 Statement of purpose**
- 209.2 Definitions**
- 209.3 Times, places for inspecting records and means for verifying the identity of a data subject**
- 209.4 Requests for records**
- 209.5 Fees for copying records**
- 209.6 Inspection and copying records**
- 209.7 Appeals of denial of access to records**
- 209.8 Procedures governing the correction or amendment of records**
- 209.9 Appeals of denial of correction or amendment of records**

§209.1 Statement of purpose.

The purpose of this Part is to set forth the methods and procedures governing the availability, location and nature of those records of the board subject to the provisions of article 6-A of the Public Officers Law, known as the Personal Privacy Protection Law.

§209.2 Definitions.

As used in this Part, the following words and terms shall have the indicated meanings:

Note: The meaning of the words or term "data subject", "disclose", "personal information", "record", "system of records", and "routine use" shall be as set forth in the Personal Privacy Protection Law article 6-A of the Public Officers Law.

(a) *Privacy compliance officer* means the board's executive director, whose business address is Public Employment Relations Board, [80 Wolf Road, Fifth Floor] PO Box 2074, Empire State Plaza, Agency Building 2, 18th Floor, Albany, NY 122[05]20-0074, or such other address as the board may designate on the agency's website.

(b) *Privacy compliance appeals officer* means the chairperson of the board whose business address is Public Employment Relations Board, [80 Wolf Road, Fifth Floor] PO Box 2074, Empire State Plaza, Agency Building 2, 20th Floor, Albany, NY 122[05]20-0074, or such other address as the board may designate on the agency's website.

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§209.3 Times, places for inspecting records and means for verifying the identity of a data subject.

(a) Records shall be available for inspection and copying by data subjects or their authorized representatives on every day that the offices of the board are open for the transaction of business between the hours of 8:30 a.m. and 4:45 p.m.

(b) Records may be inspected at the locations designated by the privacy compliance officer.

(c) The identity of a data subject requesting access to his or her record may be verified as follows:

(1) [Prior to] Before being given access to personal information, an individual shall provide reasonable verification of his or her identity. No individual need verify his or her identity [verification of identity, however, shall be required of an individual] when seeking access to records which are otherwise available to any member of the public under the Freedom of Information Law.

(2) In the case of an individual who seeks in-person access to or amendment of record(s), an employee identification card, a driver's license, or other similar document shall constitute reasonable verification of identity.

(3) When access to or amendment of record(s) is requested by mail, the requirement for verification of identity shall be met if the individual provides minimum identifying data, such as date of birth and some item of information in the record that only the concerned individual would likely know.

§209.4 Requests for records.

All requests to inspect and/or copy records, subject to disclosure as provided by this Part, are to be made to the privacy compliance officer.

§209.5 Fees for copying records.

(a) Fees for certification of copies and supplying transcripts of all documents and records under the seal of the board shall be the fees as prescribed by the applicable regulation of the board.

(b) Fees for photocopies or data printouts of records available pursuant to this Part shall be 25 cents per page.

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(c) Except where fees are established by law, rule or regulation, no fee shall be charged for:

(1) inspection of a record;

(2) record searches;

(3) certification pursuant to this Part; and

(4) amendment or correction of an agency record found to be in error.

(d) Fees shall be paid in full or a valid offer made to pay established fees prior to issuance of copies, transcripts or certification of records.

(e) Payment shall be made in the form of a check, bank draft, or money order payable to New York State Public Employment Relations Board[, or if personally delivered may be made in cash for which a receipt shall be given].

§209.6 Inspection and copying records.

Inspection and copying of records shall be subject to the following process:

(a) Request for access to records must be in writing, and shall identify or reasonably describe the records sought. Such a request may be submitted by electronic mail to an email address designated by the board, and posted on the agency's website. All responsive communications to such a request, when submitted by electronic mail, shall also be in electronic mail, provided that the request does not seek a response in another form.

(b) The privacy compliance officer shall, within five business days after receipt of a request:

(1) make requested records available;

(2) deny the request in writing [Such denial shall] and in such denial:

(i) explain the reason for denial;

(ii) set forth the right of appeal to the privacy compliance appeals officer;

(iii) provide the name, title, business address and telephone number of the privacy compliance appeals officer; or

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(3) furnish written acknowledgment of the request and the approximate date when the request will be granted or denied.

(c) If access is approved, the privacy compliance officer shall cause a search for the records requested.

(d) If the record cannot be found after diligent search, the privacy compliance officer shall so notify the requestor.

(e) Upon request, the privacy compliance officer will certify that the record is a true copy.

(f) Confidentiality questions concerning records in the possession of the board which originated in any other state or federal agency shall be referred to such originating agency for resolution.

(g) Persons inspecting a record shall be allowed to copy it by any means which will not damage the record.

§209.7 Appeals of denial of access to records.

(a) Any person who has been denied access to records by the privacy compliance officer may appeal such denial within 30 days to the privacy compliance appeals officer, by submitting a written request, which shall set forth:

(1) the date of the request for records;

(2) the records to which the requestor was denied access;

(3) the name and return address of the requestor; and

(4) the requestor's position, concisely stated, setting forth the reason why the decision of the privacy compliance officer should be changed.

(b) The time for deciding on an appeal by the privacy compliance appeals officer shall commence upon receipt of the written appeal.

(c) The privacy compliance appeals officer shall, within seven business days of the receipt of a written appeal, review the matter and affirm, modify or reverse the denial.

(d) If the privacy compliance appeals officer determines that the denial of access was erroneous, such officer shall instruct the privacy compliance officer to allow prompt inspection or copying of the record as requested.

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(e) If the privacy compliance appeals officer affirms or modifies the denial, such officer shall communicate the reasons in writing by either first class mail or certified mail, return receipt requested, to the person making the appeal and inform such person of the right of judicial review.

(f) The privacy compliance appeals officer shall immediately forward to the Committee on Open Government a copy of such appeal and the determination thereon.

§209.8 Procedures governing the correction or amendment of records.

The correction or amendment of records shall be subject to the following process:

(a) A request for the correction or amendment of a record shall be made in writing and shall identify or reasonably describe such record. Such a request may be submitted by electronic mail to an email address designated by the board, and posted on the agency's website. All responsive communications to such a request, when submitted by electronic mail, shall also be in electronic mail, provided that the request does not seek a response in another form.

(b) The privacy compliance officer shall within 30 business days after receipt of a request:

(1) make requested correction or amendment in whole or part and advise the individual that upon request, parties to whom such data has been disclosed in accordance with section 94.3(c) of the Public Officers Law, will be advised of such correction or amendment;

(2) deny the request in writing. Such denial shall:

(i) explain the reason for the denial;

(ii) set forth the right of appeal to the privacy compliance appeals officer; and

(iii) provide the name, title, business address and telephone number of the privacy compliance appeals officer.

§209.9 Appeals of denial of correction or amendment of records.

(a) Any person whose request for correction or amendment of records has been denied by the privacy compliance officer may appeal such denial within 30 business days to the privacy compliance appeals officer. Such a request may be submitted by electronic mail to an email address designated by the board, and posted on the agency's website. All responsive communications to such a request, when submitted by electronic mail, shall also be in electronic mail, provided that the request does not seek a response in another form. Such appeal shall be in writing and shall set forth:

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- (1) the date of the request for records;
 - (2) the records whose correction or amendment was denied and the requestor's justification for changes sought; and
 - (3) the name and return address of the requestor.
- (b) The time for deciding on an appeal by the privacy compliance appeals officer shall commence upon receipt of the written appeal.
- (c) The privacy compliance appeals officer shall, within 30 business days of the receipt of a written appeal, review the matter and affirm, modify or reverse the denial.
- (d) If the privacy compliance appeals officer determines that the denial was erroneous, such officer shall instruct the privacy compliance officer to allow correction or amendment of the record as requested and notify appropriate parties, if requested, by the requestor.
- (e) If the privacy compliance appeals officer affirms or modifies the denial, such officer shall communicate the reasons in writing by either first class mail or certified mail, return receipt requested, to the person making the appeal and inform such person of the right of judicial review. In addition, the records appeals officer shall notify the requestor of its right to file with the board a statement of reasons for disagreement with its determination, and that the board will attach requestor's statement to the disputed record. Upon an individual's request, such statement will be provided to parties to whom such data has been disclosed in accordance with section 94.3(c) of the Public Officers Law together, if appropriate, with a concise statement of the board's reasons for not making the requested amendment.
- (f) The privacy compliance appeals officer shall immediately forward to the Committee on Open Government a copy of such appeal and the determination thereon.

PART 210
DECLARATORY RULINGS
(Statutory Authority: Civil Service Law, art. 14)

Sec.

210.1 Petition; filing

210.2 Processing by the director

§210.1 Petition; filing.

(a) *Filing of petition.* Any person, employee organization or employer may file with the director an original and four copies of a petition for a declaratory ruling with respect to the applicability of the act to it or any other person, employee organization or employer, or with respect to the scope of negotiations under the act. The petition shall be in writing on a form provided by the director and shall be signed and sworn to before any person authorized to administer oaths. Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(b) *Contents of petition.* The petition shall include the following:

(1) the name, address and affiliation, if any, of the petitioner, and the title of any representative filing the petition;

(2) a complete statement of the relevant facts and the grounds prompting the petition, including a full disclosure of the petitioner's interest;

(3) [a statement whether,] if the petition raises a question with respect to the scope of negotiations under the act, a statement whether such question is the subject of a charge brought under Part 204 of this Chapter;

(4) the names and addresses of any other persons, employee organizations or employers whose interests are reasonably likely to be affected by the ruling; and

(5) at the option of the petitioner, a proposed ruling.

§210.2 Processing by the director.

(a) The director or an assigned administrative law judge will determine whether [the issuance of the] a declaratory ruling would be in the public interest as reflected by the

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policies underlying the act. If the [determination is in the negative, the] director or administrative law judge determines that it would not, he or she shall dismiss the petition. Such [a] dismissal shall merely constitute a refusal to issue a declaratory ruling, and not the denial of any position proposed by the petitioner. Such a [A] decision [of the director] to refuse to issue a declaratory ruling may be made at any stage of the proceeding.

(b) The director or administrative law judge shall send a copy of the petition to any persons, employee organizations or public employers, in addition to those listed in the petition, whom the director or administrative law judge deems to have interests that are reasonably likely to be affected by the ruling, together with a notice that they may [choose to] at their option, become parties to the proceeding by filing [an original and three copies of] in the same manner as the petition was filed a response to the petition within 10 working days from their receipt thereof. Such response may challenge any of the allegations in the petition and, whether or not petitioner has done so, it may propose a ruling.

(c) The matter shall be processed in accordance with the procedures set forth in section 204.4 and Part 212 of this Chapter, except that the director or administrative law judge shall issue a [recommended declaratory ruling instead of a] decision, which may be reviewed pursuant to part 213 of this Chapter. [and recommended order.]

**PART 211
SUBPOENAS
(Statutory Authority: Civil Service Law, art. 14)**

Sec.

- 211.1 Scope**
- 211.2 Issuance of subpoenas**
- 211.3 Request for subpoena**
- 211.4 Service of subpoena**
- 211.5 Time and place for production of documents**
- 211.6 Motion to withdraw or modify**
- 211.7 Failure to honor a subpoena**

§211.1 Scope.

(a) This Part applies to the agency's [issuance of] authority pursuant to section 205.5(k) of the act to issue subpoenas to compel the attendance of a person to testify at a hearing conducted by the board or a designee of the board on behalf of a party or subpoenas requiring the production of books, papers, documents or other objects on behalf of a party.

(b) Nothing contained herein shall in any way affect the right of any person or entity to issue a subpoena pursuant to law.

§211.2 Issuance of subpoenas.

All agency subpoenas shall be issued [by and] at the discretion of the presiding administrative law judge or other presiding officer or agent of the board (hereafter referred to as the [ALJ] administrative law judge). The [ALJ] administrative law judge may grant or deny any subpoena request in whole or in part. Requests for a subpoena filed within [15] ten working days of a scheduled hearing date will not be considered absent good cause shown by the party requesting the subpoena.

§211.3 Request for subpoena.

(a) The [ALJ] administrative law judge may issue a subpoena only when the party applying for it files a written affidavit, with four copies, unless the chairperson has authorized electronic filing of such requests, conforming to the requirements of this Part, in which case the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

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(b) *Contents of affidavit for a witness subpoena.* Such affidavit must specify: (1) the name and address of each individual for whom the subpoena is sought; and (2) facts sufficient to establish the relevancy of the testimony to be adduced pursuant to the subpoena.

(c) *Contents of affidavit for subpoena requiring the production of books, papers, documents or other objects; response.* Such affidavit must specify: (1) the books, papers, documents or other objects to be produced pursuant to the subpoena; (2) facts sufficient to establish the relevancy of the materials to be produced; and (3) that a copy of the subpoena request and affidavit has been served upon all other parties. A party may file with the [ALJ] administrative law judge a response to the subpoena request, with copy to all other parties, within five working days after its receipt of the subpoena request.

(d) Nothing in this section shall in any way affect any rights of any person or entity under law.

§211.4 Service of subpoena.

(a) The [ALJ] administrative law judge shall notify all parties as to the disposition of any subpoena request and shall furnish the party requesting the subpoena a completed subpoena form if the request has been granted in any respect.

(b) Service of the subpoena and the payment of appropriate witness fees shall be the responsibility of the requesting party and shall be made as required by law.

§211.5 Time and place for production of documents.

Any books, papers, documents or other objects ordered pursuant to this Part shall be produced at the date and time specified in the notice of hearing and/or at any adjourned dates as directed by the [ALJ] administrative law judge unless production of the subpoenaed material at a reasonable time before the scheduled hearing date is necessary in the judgment of the [ALJ] administrative law judge to avoid unreasonable delay in the commencement of the hearing due to the volume and/or the complexity of the material to be produced.

§211.6 Motion to withdraw or modify.

(a) Any person, entity, or party served with a subpoena may file a motion with the [ALJ] administrative law judge on notice to all parties, to withdraw or modify any subpoena issued pursuant to this Part.

(b) Any such motion must be made as soon as reasonably possible after the service of the subpoena so as not to interfere with the processing of the case.

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(c) The [ALJ] administrative law judge upon motion or *sua sponte* may withdraw or modify a subpoena issued pursuant to this Part for good cause.

(d) Nothing in this section shall in any way affect any rights of any person or entity under law.

§211.7 Failure to honor a subpoena.

(a) If a party or witness fails without reasonable excuse to comply with a subpoena properly served, the default shall be noted in the record.

(b) The [ALJ] administrative law judge may, in his or her discretion, adjourn all or part of the hearing to allow the party who has requested the subpoena a reasonable opportunity to obtain compliance with the subpoena in accordance with applicable law.

PART 212
CONFERENCE AND HEARINGS
(Statutory Authority: Civil Service Law, art. 14)

Sec.

- 212.1 Intervention**
- 212.2 Conference**
- 212.3 Conduct of hearings**
- 212.4 Formal hearing**
- 212.5 Briefs and proposed findings**
- 212.6 Decision and order**

§212.1 Intervention.

(a) One or more public employees, an employee organization acting in their behalf, or a public employer may be permitted to intervene in [a proceeding] an improper practice charge or representation petition. The intervenor must file with the [agent of the board then presiding over the proceeding] administrative law judge an original and [three] four copies of a motion setting forth the grounds for the intervention, with proof of service of such motion on all other parties. Should the chairperson authorize electronic filing of motions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. Upon receipt of a motion to intervene, the administrative law judge shall set a schedule for the parties to respond to the motion. [A copy of the motion and any supporting papers shall be served upon all other parties at the same time as the motion is filed and proof of such service shall be filed with the presiding agent of the board.]

(b) Unless filed by a public employer or by an employee organization that is the recognized or certified representative of employees in a unit claimed to be appropriate by one of the parties to the proceeding, a motion to intervene in a proceeding for certification and/or decertification shall be supported by a showing of interest of at least 30 percent of the employees in such a unit or in a unit alleged to be appropriate by the intervenor. The showing of interest shall comply with the requirements specified in section 201.4 of this Chapter.

(c) A motion to intervene filed by an employee organization which seeks certification shall be accompanied by the affirmation required by section 207.3(b) of the act.

§212.2 Conference.

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Prior to the [scheduled date of any] hearing, [the] a designated administrative law judge shall [hold a conference with the parties to the proceeding.] conduct a conference on notice to all parties. The failure of a party to appear at the conference may, in the discretion of the administrative law judge, constitute grounds for dismissal of the absent party's pleading and a default determination.

§212.3 Conduct of hearings.

Hearings shall be open to the public unless otherwise ordered by the administrative law judge. It shall be the duty of the administrative law judge to inquire fully into all matters at issue and to obtain a full and complete record.

§212.4 Formal hearing.

(a) A formal hearing for the purpose of taking evidence relevant to the [proceeding] case before the agency shall be conducted as necessary by the administrative law judge designated by the director. At any time, an administrative law judge may be substituted by the director for the administrative law judge previously assigned.

(b) The hearing will not be adjourned unless good and sufficient grounds are established by the requesting party, who shall file, consistent with the manner in which the petition was filed, with the administrative law judge an [original and three copies of the] application, on notice to all other parties, setting forth the factual circumstances of the application, and the previously ascertained position of the other parties. [to the application.] The failure of a party to appear at the hearing may, in the discretion of the administrative law judge, constitute grounds for dismissal of the absent party's pleading and a default determination.

(c) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the administrative law judge shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath.

(d) Stipulations of fact may be introduced into evidence with respect to any issue. The administrative law judge is authorized to administer oaths and affirmations, and to exercise discretion in regulating the course of the proceeding, including, but not limited to, sequestering witnesses, and controlling the order and method of presentation of relevant evidence. In exercising this discretion, the administrative law judge may require oral or written offers of proof, and may direct the production of supporting documentary evidence as exhibits to such offers of proof. The administrative law judge may entertain motions based upon such offers of proof. Interlocutory appeal of a decision, ruling, or order of an administrative law judge that does not resolve the entirety of a case shall be permissible

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only as provided in section 213.4 of this Part. All such non-dispositive decisions, rulings, or orders of an administrative law judge may be appealed to the board in exceptions pursuant to section 213.2 of this Part to a final decision rendered by the administrative law judge.

(e) [Except as to the rules of privilege recognized by law, compliance with the technical rules of evidence shall not be required.] Stipulations of undisputed facts or stipulations regarding the authenticity of documents to be admitted into evidence may be introduced with respect to any relevant issue.

(f) [A party shall, upon offering an exhibit into evidence at the hearing, simultaneously furnish copies to all other parties, unless excused by the administrative law judge.] Except as to the rules of privilege recognized by law, compliance with the technical rules of evidence shall not be required.

(g) A party seeking to introduce an exhibit into evidence shall simultaneously provide copies to all other parties and the administrative law judge, unless excused by the administrative law judge.

(h) (1) An administrative law judge may recuse himself/herself from a case whenever he/she believes it to be appropriate. (2) Any party to a proceeding may [move that] file a motion with the assigned administrative law judge [assigned to that proceeding recuse] requesting that the administrative law judge recuse himself/herself from further participation in that [proceeding. Except upon a showing of extraordinary circumstances, a] case. A motion for recusal shall be made as soon as reasonably possible after the basis for such motion becomes known to the party making it. Unless made at a hearing, [an original and three copies of] such motion shall be filed with the administrative law judge in the same manner as was the petition, shall set forth all of the known grounds for the motion, and shall be accompanied by proof of service of a copy thereof upon all other parties. Unless such motion is made at a hearing, any party may file in the same manner with the administrative law judge [an original and three copies of] a response to such motion within three working days of its receipt of a copy thereof, with proof of service of a copy of the response on all other parties, unless otherwise directed by the administrative law judge. Motions for recusal made at a hearing, and responses thereto, shall be made upon such terms as the administrative law judge shall direct. The administrative law judge's ruling on the motion shall be made either in writing or on the record at the hearing and the ruling, the recusal motion and any response shall be part of the record of the proceeding.

[(h)] (i) All motions and rulings [made at the hearing] shall be part of the record of the [proceeding] case and, unless expressly authorized by the board, shall not be appealed directly to the board, but shall be considered by the board whenever the case is submitted to it for decision. Any objection to the conduct of a hearing, including an objection to the

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introduction of evidence, may be oral or written, must be accompanied by a short statement of the grounds for such objection, and shall be included in the record. Any objection not duly taken at the hearing shall be deemed waived, unless excused because of extraordinary circumstances.

[(i)] (j) The refusal of a witness to answer any question which has been ruled to be proper shall, at the discretion of the administrative law judge, be grounds for striking all testimony previously given by such witness on related matters, or the basis of an adverse inference on the subject of the question.

[(j)] Misconduct at any hearing shall be grounds for summary exclusion from the hearing. Misconduct, if of an aggravated character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the board after due notice and hearing.]

(k) At the discretion of the administrative law judge, the hearing may be continued from day to day or to a later day or another place, by announcement thereof at the hearing or by other appropriate notice.

(l) A motion may be made to dismiss an improper practice charge, or the administrative law judge may dismiss a charge, on the ground that the alleged violation occurred more than four months prior to the filing of the charge, but only if the failure of timeliness was first revealed during the hearing. An objection to the timeliness of the charge, if not duly raised, shall be deemed waived.

§212.5 Briefs and proposed findings.

Any party shall be entitled upon request made before the close of the record to file [an original and three copies of] as directed by the administrative law judge a brief or proposed findings and conclusions of fact and conclusions of law, or both, within such time as fixed by the administrative law judge. The administrative law judge may direct the filing of briefs when the submission of briefs is warranted by the nature of the proceeding or the particular issue therein. Any such brief or proposed findings and conclusions of fact and conclusions of law filed with the administrative law judge must be accompanied by proof of service of a copy thereof upon all other parties. Reply or supplemental briefs, however denominated, will not be permitted without prior request to and approval by the administrative law judge. Such requests will not be approved unless the opponent's brief properly raises issues for the first time which are material to the disposition of the matter.

§212.6 Decision and order.

Upon completion of a proceeding, the administrative law judge shall issue a decision and order, ruling or report and recommendations as appropriate to the proceeding.

PART 213
EXCEPTIONS TO THE BOARD
(Statutory Authority: Civil Service Law, art. 14)

Sec.

213.1 Scope

213.2 Exceptions

213.3 Cross-exceptions; responses; replies

213.4 [Request for extension of time] Motions for leave to file interlocutory exceptions in extraordinary circumstances

213.5 [Oral argument] Responses to motions for leave to file exceptions

213.6 Board action on motion for leave to file exceptions

213.7 Request for extension of time

213.8 Oral argument

213.9 Amicus curiae procedure

213.10 Final board action

213.11 Enforcement of board orders

§213.1 Scope.

This Part applies to exceptions and motions for leave to file exceptions to the board to decisions, reports, orders, rulings or other appealable findings or determinations of the director, the director of conciliation, an assistant director or an administrative law judge.

§213.2 Exceptions.

(a) Within 15 working days after receipt of a final decision or report[, order, ruling or other appealable findings or conclusions,] by the director, the director of conciliation, an assistant director or administrative law judge, a party may file with the board [an original and three copies of] a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings. [An original and three copies of a brief in support thereof shall be filed simultaneously as a separate document.] An original and four copies shall be filed, to be accompanied with an original and four copies of a separate brief in support thereof, along with proof of service on all other parties. Should the chairperson authorize electronic filing of exceptions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. A copy of such exceptions and briefs shall be simultaneously served upon all other parties [and proof of such service shall be filed with the board].

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(b) The exceptions shall:

- (1) set forth specifically the questions or policy to which exceptions are taken;
- (2) identify that part of the decision, report, order, ruling or other findings or determinations to which exceptions are taken;
- (3) designate by page citation the portions of the record relied upon; and
- (4) state the grounds for exceptions. An exception which is not specifically urged is waived.

(c) the board shall not determine violations of the act and affirmative defenses that were not properly pled.

§213.3 Cross-exceptions; responses; replies.

Within seven working days after receipt of exceptions, any party may file [an original and three copies of] in the same manner as the exceptions were filed, a response thereto, or cross-exceptions and a brief in support thereof, together with proof of service of copies of these documents upon each party to the proceeding. Within seven working days after receipt of cross-exceptions, any party may file [an original and three copies of] in the same manner as the cross-exceptions were filed a response thereto, together with proof of service of a copy thereof upon each party [to the proceeding]. No pleading other than exceptions, cross-exceptions or a response thereto and no brief other than that filed in support of such pleading will be accepted or considered by the board unless it is requested by the board or filed with the board's authorization. [Such additional pleadings will not be requested or authorized by the board unless the preceding pleading properly raises issues which are material to the disposition of the matter for the first time.] If any additional pleading or brief is requested or authorized by the board, the board shall notify the parties regarding the conditions under which that pleading will be permitted.

§213.4 Motions for leave to file interlocutory exceptions in extraordinary circumstances.

(a) Within ten working days after any interim decision, order or ruling, a party may, consistent with section 212.4(d) of this Chapter, file with the board an original and four copies of a motion seeking leave to file interlocutory exceptions to such interim decision, order or ruling. An original and four copies of a brief in support thereof shall be filed simultaneously as a separate document. A copy of the motion and briefs shall be served simultaneously upon all other parties and proof of such service shall be filed with the board. Should the chairperson authorize electronic filing of such motions and responses thereto, the filing of a signed paper original consistent with this section and electronic filing

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and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(b) The motion for leave to file interlocutory exceptions shall:

(1) identify the alleged extraordinary circumstances warranting the grant of leave to file exceptions which shall include the factual, legal and/or policy reasons why leave should be granted;

(2) contain the proposed exceptions that shall meet the requirements of section 213.2 of this Part; and

(3) attach copies of pleadings, the decision, order or ruling and relevant excerpts from the record.

(c) Initial review. After a motion for leave to file exceptions is filed, the deputy chair or agent of the board so designated shall review the motion to determine whether it complies with section 213.4(a) and (b) of this Part.

§213.5 Responses to motions for leave to file exceptions.

Within five working days after notification from the deputy chair or other agent of the board so designated that the motion for leave will be considered by the board, any other party may file an original and four copies of a response and brief in opposition as a separate document. A copy of the response and brief shall be served simultaneously upon all other parties and proof of such service shall be filed with the board. Should the chairperson authorize electronic filing of such motions and responses thereto, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

§213.6 Board action on motion for leave to file exceptions.

(a) The board may grant or deny a motion for leave to file exceptions in a non-final decision. The denial of a motion for leave shall not preclude a party from filing an exception from a final determination by the director, the director of conciliation, an assistant director or administrative law judge.

(b) Upon the grant of a motion for leave to file exceptions, the board shall issue a schedule for the filing of exceptions, cross-exceptions, responses and briefs.

§213.[4]7 Request for extension of time.

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A request for an extension of time within which to file exceptions, motions for leave to file exceptions, cross-exceptions, responses and briefs shall be in writing, and filed with the board before the expiration of the required time for filing [exceptions] them, provided that the time during which to request an extension of time may be extended because of extraordinary circumstances. A party requesting an extension of time shall notify all parties [to the proceeding] of its request and shall indicate to the board the position of each other party with regard to such request.

§213.[5]8 Oral argument.

If a party desires to argue orally before the board, a written request with reasons therefor shall accompany the exceptions, the response thereto, or the cross-exceptions and be prominently displayed on the first page of the party's papers. The board may grant such a request; it may also direct oral argument on its own motion.

§213.9 Amicus curiae procedure.

(a) Board Initiated Amicus Procedure

(1) The board on its own motion may issue a notice soliciting non-parties to file amici briefs on a legal and/or policy issue in a pending matter before the board. The notice shall set the schedule for the filing of such briefs as well as the filing of supplemental briefs by the parties.

(b) Non-Party Initiated Amicus Procedure

(1) A non-party seeking to file an amicus brief in a matter pending before the board may file an original and four copies of a motion for leave along with a proposed brief with proof of service of one copy on each party. Should the chairperson authorize electronic filing of such motions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(2) Criteria. A motion for amicus curiae relief shall demonstrate that the movant can identify legal or policy arguments under the act that might otherwise escape the board or that may provide assistance to the board in some other manner.

(3) Positions of the Parties. The parties may file in the same manner as the motion [an original and four copies of papers] papers in support or opposition to the motion with proof of service consistent with the schedule for the motion as set by the board.

(4) Upon receipt of a motion to file an amicus curiae brief, the board shall set a schedule for the parties to respond to the motion.

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(5) Should the board grant the motion to file briefs *amicus curiae*, such briefs will be in the manner and time frame set forth by the board in its order granting the motion.

§213. [6]10 Final [B]board action.

(a) Upon receipt of the case, the board may adopt, modify or reverse the decision, report, order, ruling, finding or determination to which exceptions have been filed.

(b) Unless a party files exceptions in accordance with this Part, the decision, report, order, ruling, finding or other determination, or any part thereof, other than that made in a proceeding under Parts 203 or 206 of [these rules] this Chapter, will be final, except that the board may, on its own motion, decide to review the remedial action recommended under an improper practice charge within 20 working days after receipt by the parties of the decision and recommended order. A remedial order of an administrative law judge in an improper practice charge that is not, or is no longer, subject to review by the board as provided in this Part, shall be deemed to be a final order of the board for purposes of enforcement proceedings under section 213 of the act.

(c) Reconsideration of final board action. Final decisions and orders will be reconsidered by the board under the following circumstances:

(1) A party may, because of extraordinary circumstances, file a request for reconsideration with the board within five calendar days following the date of receipt of the final decision or order. 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. Proof of actual service upon each party shall accompany the request. Any other party shall have three calendar days from actual service to file a response with the board. "Actual service" as used in this Part, means actual receipt by the party or the party's agent.

(2) The filing of a request for reconsideration shall not operate to stay the finality and effectiveness of the decision or order of the board for any purpose including but not limited to those of section 213 of the act unless otherwise ordered by the board.

§213.11 Enforcement of Board Orders.

(a) A party may ask the board to seek a judicial order enforcing the board's remedial order as provided by section 213 of the act if the party or parties against whom the order was issued refuses or has failed to comply with the board's order, provided that such order is not, or is no longer, subject to judicial review pursuant to section 213 of the act.

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(b) Request for enforcement. A party seeking enforcement by the board must file with the office of counsel an original and four copies of a written request stating the reason(s) why a judicial order of enforcement is necessary, supported by an original and four copies of affidavits of persons with personal knowledge of the facts set forth therein, attesting to the alleged refusal or failure to comply with the remedial order. Should the chairperson authorize electronic filing of such requests, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. Said request and supporting affidavits shall be accompanied by proof of service on all other parties before the board.

(c) Response. Pursuant to a schedule set by the office of counsel, all other parties before the board may file in the same manner as the request was filed with the office of counsel an original and four copies of a written response to the request for enforcement stating why enforcement is not necessary, supported by affidavits of persons with personal knowledge of the facts set forth therein. Said response and supporting affidavits shall be accompanied by proof of service on all other parties before the board.

(d) Action by the board. Following review of a request for enforcement and the response, the board, by its office of counsel, will determine whether a petition for a judicial order of enforcement pursuant to section 213 of the act should be commenced.

PART 214

MISCONDUCT BEFORE THE AGENCY

Sec.

214.1 Misconduct by any person

214.2 Suspension or other sanctions

§ 214.1 Misconduct by any person.

Misconduct by any person at any stage of a case before the board, an administrative law judge or other person designated by the board to conduct proceedings, may be grounds for summary exclusion by the board, administrative law judge, or other designee before whom the misconduct occurred.

§ 214.2 Suspension or other sanctions.

Misconduct by an attorney or other representative before the agency, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct, if of an aggravated character, may be grounds for suspension and for prohibiting the attorney or representative from practice before the agency and for other sanctions after due notice and a hearing before the board or its designee. Any order of an administrative law judge imposing discipline under this section will be appealable to the board as part of an appeal of the ultimate disposition of the underlying proceeding pursuant to section 212.4(d) of this Chapter, or, upon a showing of extraordinary circumstances, under § 213.4 of this Chapter.

PART 21[4]5
ACCUMULATION OF REFERENCE MATERIAL UNDER SECTION 205.5(e)
OF THE ACT
(Statutory Authority: Civil Service Law, art. 14)

Sec.

- 21[4]5.1 Filing of contracts by public employers**
- 21[4]5.2 Filing of reports by public employers**
- 21[4]5.3 Filing of rules, regulations, orders and determinations issued by local agencies**

§21[4]5.1 Filing of contracts by public employers.

Every public employer entering into a written [contract] collectively negotiated agreement pursuant to the act shall file a copy of [the contract] such agreement with the board within 15 working days [thereafter] following the execution of such agreement. Electronic submissions of contracts are encouraged.

§21[4]5.2 Filing of reports by public employers.

Every public employer which [grants recognition to] recognizes an employee organization, including every local government that has obtained a determination by the board that its provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and this Chapter and public employee organizations that are recognized or certified, shall file with the board such reports as the board shall require.

§21[4]5.3 Filing of rules, regulations, orders and determinations issued by local agencies.

A copy of every rule, regulation, order and determination that has been adopted or issued by a local agency of a government which [has obtained a determination by the board that its provisions and procedures are] the board has determined is substantially equivalent to the provisions and procedures set forth in the act and this Chapter, shall be filed with the board within 15 working days after adoption or issuance.

**PART 21[5]6
MISCELLANEOUS
(Statutory Authority: Civil Service Law, art. 14)**

Sec.

21[5]6.1 Board employees

[215.2 Reserved for future use

215.3] 216.2 Confidential communication

§21[5]6.1 Board employees.

Persons who hold positions by appointment or employment in the service of the board are excluded from the application of the act.

[§215.2 Reserved for future use.]

§[215.3]216.2 Confidential communication.

Communications in collective negotiations between a party to such negotiations and its negotiator(s) shall be deemed confidential in cases before the board, a director or a director's designee to the same extent that such communications would be subject to an attorney-client privilege if the negotiator(s) were an attorney. No administrative law judge shall accept evidence regarding such communications during any proceeding subject to this Chapter except under circumstances where it would be admissible if the negotiator(s) were an attorney.