

Rules and Regulations Of The Public  
Employment Relations Board When  
Acting Pursuant To Article 20 Of The  
Labor Law (State Employment Relations  
Act, including the Farm Laborers' Fair  
Labor Practices Act)

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**Part 250**

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**§ 250.1 Scope.**



These rules apply to all proceedings other than those involving agricultural workers and employers brought under the New York State Employment Relations Act (“SERA”). Rules for cases brought under the provisions of the Farm Laborers’ Fair Labor Practices Act (“FLFLPA”) are contained in Part 263. These rules shall be liberally construed and shall not be deemed to limit the powers conferred on the board by SERA.

**§ 250.2 Use of terms.**

The terms *person*, *employer*, *employees*, *representatives*, *labor organization*, *company union*, *unfair labor practice*, and *labor dispute*, as used herein, shall have the meanings set forth in section 701 of the New York State Employment Relations Act.<sup>[1]</sup>

[1] The statutory text of the New York State Employment Relations Act uses the terms “labor organization” and “employee organization” as fully synonymous while only defining the former. This usage applies to these Rules.

**§ 250.3 SERA; board; chairperson.**

The term *SERA*, as used herein, shall mean the New York State Employment Relations Act, and the terms *board* or *agency* shall mean the New York State Public Employment Relations Board. The terms *chairperson* or *chair* shall mean the chairperson thereof.

**§ 250.4 Director of PEPR and Director of Conciliation.**

The term *director of PEPR* shall mean the agent of the board designated as director of private employment practices and representation. The term *director of conciliation* shall mean the agent of the board so designated.

**§ 250.5 Counsel.**

The term *counsel* shall mean the agent of the board so designated.

**§ 250.6 Deputy Chairperson**

The term *deputy chairperson* shall mean the agent of the board so designated.

**§ 250.7 Declaration**

The term *declaration*, as used in this Chapter, shall mean a statement that is made under penalty of perjury but is not sworn to before a notary or other person entitled to administer oaths. Any document required by these rules may be supported, evidenced, established, or proved by the unsworn declaration, the contents of which are declared as true under penalty of perjury, dated, and expressly states above the declarant’s signature that the matters so declared, certified, verified, or stated, are made under penalty of perjury under the laws of the State of New York and that the foregoing statements are true and correct.

### **§ 250.8 Administrative law judge; hearing officer.**

The terms *administrative law judge or hearing officer* shall mean an agent of the board so designated by the chair or their designee and shall include the director and assistant director of private employment practices and representation. As used in these rules, the terms *administrative law judge* and *hearing officer* are interchangeable.

### **§ 250.9 Singular/plural use of terms**

Any term used in the singular in these rules also encompasses the plural of that term. For example, the terms *employer* or *labor organization* encompasses the terms *employers* or *labor organizations*.

### **§ 250.10 Parties.**

The term *party* or *parties* as used herein in connection with proceedings under section 706 of SERA, shall mean any person, persons, entity or entities cognizable under SERA, instituting any procedure under SERA, or named as a respondent or party in interest in any matter filed under SERA, and any other persons or labor organizations whose interventions have been permitted by the board, hearing officer, mediator, or fact-finder.

### **§ 250.11 Electronic filing and service; paper filing and service.**

(a) The term *electronic filing*, as used in this Chapter, shall mean a document submitted by electronic mail to an address specified by the board on its website, or by other electronic means specified by the board on its website. Such documents shall be: (1) in a format that can be read using software that is readily available and is in widespread use by government, businesses, and individuals; and (2) electronically searchable unless the party providing the document certifies in a written attachment to the document served and/or in any required proof of service that it does not have the capacity to produce a searchable file.

(b) The term *paper filing* means delivery to the board or an agent thereof, or the act of mailing to the board, or deposit of the original papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. The term *paper service* 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 the latest time designated by the overnight delivery service for overnight delivery.

(c) 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 has not been effectuated.

(d) Unrepresented individuals may choose to file and receive all pleadings, memoranda, correspondence, and any case-related information in paper form. The board and its designees retain discretion in determining whether to grant the application of a represented party to file and serve in paper form due to hardship, inability to comply with the procedure, or other good cause shown.

(e) Compliance with the electronic filing and electronic service requirements contained in this Chapter will be deemed to have been met by the electronic filing of a complete and accurate copy of the document in conformity with the requirements of this subparagraph.

### **§ 250.12 Computing time**

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

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

(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 State or federal holiday, in which event the period shall run to the next working day.

### **§ 250.13 Showing of interest**

The term *showing of interest*, as used in this Chapter, shall mean a demonstration of support for the filing of a petition for certification, a motion to intervene, or for certification without an election. A showing of interest shall consist of evidence of current membership in a labor organization, including dues deduction authorizations, original designation cards, or petitions on a form prescribed by the board, all of which were signed and dated within one year of submission. A showing of interest for the filing of a petition or a motion to intervene must consist of at least thirty (30) percent of employees in an allegedly appropriate negotiating unit or a negotiating unit determined to be appropriate. Any showing of interest must be accompanied by a declaration of authenticity as set forth in section 251.4 of this Chapter. A filing of dues deduction cards or other evidence of support sufficient to demonstrate majority support in a unit alleged to be appropriate may also be used to determine whether a labor organization is entitled to certification without an election pursuant to section 251.4 (b) of this Chapter.

## **Part 251 PROCEDURE UNDER SECTION 705 OF SERA FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PETITION**

§ 251.1 Petition; filing.

§ 251.2 Petition of employee or representative; contents.

§ 251.3 Petition of employer or representative; contents.

§ 251.4 Sufficiency of petition and showing of interest.

- § 251.5 Notice of pending petitions.
- § 251.6 Petition; withdrawal or amendment.
- § 251.7 Response.

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- § 251.8 Investigation; ascertainment of desires of employees; notice.
- § 251.9 Elections; terms and conditions.
- § 251.10 Determination of representatives on consent.
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#### **CERTIFICATIONS**

- § 251.12 Certification of representatives.
- § 251.13 Certification; life of.

#### **PETITION**

##### **§ 251.1 Petition; filing.**

A petition for investigation pursuant to section 705 of SERA may be filed with the board by employees, employers, or their representatives. The petition shall be in writing. The original shall be signed, dated, and supported by the unsworn declaration of such person, the content of which is declared as true under penalty of perjury. The petition shall be electronically filed and served (see section 250.11 of this Title). Petition forms will be supplied by the board upon request and are available on the board's website.

##### **§ 251.2 Petition of employee or representative; contents.**

A petition when filed by an employee or his representative shall contain:

- (a) the name and address of the petitioner;
- (b) the name and address of the employer or employers concerned, the general nature of the business, and the approximate number of employees in the unit alleged to be appropriate;
- (c) the approximate percentage and volume of sales to and purchases from, points outside New York State, and any other facts concerning interstate commerce, if any, and whether the National Labor Relations Board has accepted or declined jurisdiction over the employer. If such information is unknown to the petitioner, the petition shall so state;
- (d) the classification or brief description of employees in the bargaining unit or units claimed to be appropriate, the number of employees therein, and, if applicable, the names and addresses of any other individuals or labor organizations who claim to be the representatives of any of the employees in the alleged bargaining unit or units;
- (e) an allegation that a question or controversy exists concerning representation and a concise statement setting forth the nature thereof;

(f) a request that the board certify the petitioner as the collective bargaining representative of the employees within the bargaining unit or units claimed to be appropriate.

### **§ 251.3 Petition of employer or representative; contents.**

Such petition, when filed by an employer shall contain:

- (a) the names and address of the petitioning employer or representative;
- (b) the general nature of the business and the approximate number of employees;
- (c) the approximate percentage and volume of sales to and purchases from, points outside New York State and any other facts concerning interstate commerce, if any;
- (d) the classification of employees in the bargaining unit or units claimed to be appropriate, and the number of employees employed in such bargaining unit or units;
- (e) the names and addresses of any individuals or labor organizations who claim to represent any of the employees in the alleged bargaining unit or units;
- (f) an allegation that a question or controversy exists concerning representation and a concise statement setting forth the nature thereof.

### **§ 251.4 Sufficiency of petition and showing of interest.**

(a) No petition in a proceeding under section 705 of SERA shall be dismissed for failure of the petitioner to set forth in the petition all the information required, however, the hearing officer may, if necessary, require information not provided in the petition.

(b) **Selection of Employee Organization in General:** Pursuant to section 705.1 of SERA, a petition for certification shall be accompanied by dues deduction authorizations, individually signed petitions in favor of recognition, membership cards, or other similar evidence of support for a labor organization. If the evidence is sufficient to demonstrate majority support of a single labor organization in a unit alleged to be appropriate, the labor organization shall qualify for certification without an election. In the event that the evidence submitted proves to represent less than a majority of the appropriate negotiating unit, the submitted evidence shall be treated as a showing of interest.

(c) A showing of interest shall be filed simultaneously with a petition or motion to intervene, and must indicate support for a labor organization or organizations by a minimum of 30 percent of employees in the unit alleged to be appropriate. In the event that the dues deduction authorizations or other evidence of support fail to establish a showing of interest of at least 30 percent of employees in the unit alleged to be appropriate, the director of PEPR shall dismiss the petition.

(d) In determining whether the evidence submitted to establish a showing of interest is timely, the director of PEPR shall accept evidence of current membership at the time the petition is filed. The director of PEPR shall also accept dues deduction authorizations, original designation cards, or petitions on a form 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. Designation cards shall be submitted in alphabetical order.

The director of PEPR 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 of PEPR a signed declaration that the listing sets forth only the names of the signatories on the showing of interest petitions.

(e) A declaration by a person with personal knowledge shall accompany the showing of interest and shall contain the same elements as required for a declaration in subdivisions (d) through (f) of this section.

(f) The director of PEPR may direct an investigation and, at their discretion, if necessary, a hearing 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 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 section 253.22 of this Title.

#### **§ 251.5 Notice of pending petitions.**

Upon the filing of a petition under section 705 of SERA, notice thereof, including the date when such petition was filed, the name and address of the employer affected and the nature of his business, the unit claimed to be appropriate and the name of the person or organization filing the same, shall be maintained by an agent of the board on a public docket kept by the board at its principal office.

#### **§ 251.6 Petition; withdrawal or amendment.**

At any time before the issuance of a notice of hearing on a petition for investigation and certification, the director of PEPR may permit the amendment of the petition or its withdrawal in whole or in part. At any time after the issuance of such notice of hearing, the hearing officer, upon motion, may permit withdrawal of the petition in whole or in part, and the hearing officer may permit amendment thereof.

#### **§ 251.7 Response.**

Except for the petitioner, all parties shall file electronically (see section 250.11 of this Title) with the director of PEPR or assigned hearing officer within 10 working days after receipt of a copy of the petition from the director of PEPR, a response to the petition 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. 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 bargaining<sup>[1]</sup> and a clear and concise statement of any other facts which the responding party claims may affect the processing or disposition of the petition

[1] The statutory text of SERA uses the terms “collective bargaining” and “collective negotiations” as fully synonymous. This usage applies to these Rules.

## **INVESTIGATION AND ELECTIONS**

### **§ 251.8 Investigation; ascertainment of desires of employees; notice.**

(a) In the course of its investigation of a question or controversy concerning representation, the board may certify a labor organization as the exclusive representative for purposes of collective bargaining when the labor organization demonstrates a showing of majority support by employees in an appropriate unit for purposes of collective bargaining. The director of PEPR shall ascertain employee choice of a labor organization on the basis of dues deduction authorization and other evidence, or if necessary by conducting an election under section 705(1) of SERA. When a hearing has been directed, the director of PEPR shall prepare and cause to be served upon the parties a notice of hearing before a hearing officer, at a time and place fixed therein. A copy of the petition shall be served with the notice of hearing.

(b) The determination by the director of PEPR 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 of PEPR shall inform all parties in writing if the director of PEPR determines that the indications of employee support are sufficient for certification without an election. The director of PEPR’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 of PEPR’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.

### **§ 251.9 Elections; terms and conditions.**

If the director of PEPR determines, as part of the investigation of a question or controversy concerning representation, that an election or elections by secret ballot is necessary, the director of PEPR shall provide that such election or elections be conducted by an agent of the board upon such terms or conditions as the director of PEPR or the board may specify.

### **§ 251.10 Determination of representatives on consent.**

Subject to the approval of the director of PEPR, the parties to a representation proceeding may agree on the method by which the board shall determine the question of representation.

**§251.11 Decision by hearing officer.**

Upon completion of proceedings, the hearing officer shall issue a decision and submit the record of the case to the board. The record shall include the petition, response, notice of hearing, motions, rulings, orders, stenographic report 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 hearing officer. Exceptions to a decision by a hearing officer may be filed pursuant to section 253.22 of this Title.

**CERTIFICATIONS**

**§ 251.12 Certification of representatives.**

The board, upon the completion of its investigation, shall certify to the parties the name or names of the representatives selected, if any, or make other disposition of the matter.

**§ 251.13 Certification; life of.**

When a representative has been certified by the board, such certification shall remain in effect until such time as it shall be made to appear to the board that the certified representative does not represent a majority of the employees within an appropriate unit.

**PART 252 PROCEDURE UNDER SECTION 706 OF SERA FOR PREVENTION OF UNFAIR LABOR PRACTICES CHARGE**

§ 252.1 Charge.

§ 252.2 Charge; form; filing.

§ 252.3 Contents of charge.

§ 252.4 Initial processing by director

§ 252.5 Charge; amendment and withdrawals.

**ANSWER**

§ 252.6 Answer; motion for particularization; filing; service.

§ 252.7 Answer; declaration.

§ 252.8 Answer; denials

§ 252.9 Answer; defense; new matter; motion for particularization.

§ 252.10 Answer; amendment.

§ 252.11 Answer; failure to file.

§ 252.12 Pleadings; construction.

**CHARGE**

**§ 252.1 Charge.**



A charge that any employer has engaged in or is engaging in any unfair labor practice may be made by any person or labor organization.

**§ 252.2 Charge; form; filing.**

A charge shall be in writing. The original shall be supported by a declaration. The charge shall also be signed and dated. The charge shall be electronically filed with the director of PEPR (see section 250.11 of this Title). Charge forms will be supplied by the board upon request and are available at the board's website.

**§ 252.3 Contents of charge.**

A charge shall contain:

- (a) the full name and address of the person or labor organization making the charge;
- (b) the full name and address of the employer or employers against whom the charge is made;
- (c) upon information and belief, the general nature of the employer's business, the approximate number of its employees, the approximate percentage and volume of sales to and purchases from, points outside New York State, and any other facts concerning interstate commerce, if any, and whether the National Labor Relations Board has accepted or declined jurisdiction over the employer;
- (d) an enumeration of the subdivision or subdivisions of sections 704 or 704-a of SERA which are alleged to have been violated by the employer or employers, and, in the event it is alleged that any employee has been discharged, refused employment, or suffered discrimination in violation of SERA, the name of such employee.

**§ 252.4 Initial processing by director**

(a) *Initial review.* After a charge is filed, the director of PEPR shall conduct a review of the charge to determine whether the facts as alleged may constitute an unfair labor practice as set forth in section 704 or 704-a of SERA. If the director of PEPR determines that the facts as alleged do not, as a matter of law, constitute a violation, the director of PEPR may dismiss the charge, with a written explanation, subject to review by the board under Section 253.22 of this Chapter; alternatively, the director of PEPR may permit the party to amend the charge to cure such deficiency in the charge. If the deficiency is not cured, the director of PEPR may dismiss the charge with a written explanation of the grounds for the dismissal or deem the charge, or any part thereof, withdrawn. Such dismissal is likewise subject to review of the board under Section 253.22 of this Chapter.

(b) *Notice of conference.* A notice of conference pursuant to Section 253.10 of this Chapter shall be prepared by the director of PEPR or a designated hearing officer 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.

#### **§ 252.5 Charge; amendment and withdrawals.**

The director of PEPR or hearing officer designated by the director of PEPR may permit a charging party to amend the charge before, during, or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process. The charge may be withdrawn by the charging party before the issuance of the dispositive decision and order based thereon upon approval by the director of PEPR. Thereafter, the unfair labor practice proceeding may be discontinued only with the approval of the board. Requests to the director of PEPR to withdraw an unfair labor practice charge or to the board to discontinue an unfair labor practice proceeding will be approved unless to do so would be inconsistent with the purpose and policies of SERA or due process of law. Whenever the director of PEPR approves the withdrawal of a charge, or the board approves the discontinuation of a proceeding, the case will be closed without consideration or review of any of the issues raised by the charge.

#### **ANSWER**

#### **§ 252.6 Answer; motion for particularization; filing; service.**

(a) The party or parties against whom the charge is filed shall have the right to file an answer within 10 working days after receipt of the charge from the director of PEPR. Upon application the director of PEPR or hearing officer may extend the time within which the answer shall be filed. One copy of the answer shall be served on each party and the proof of due service shall be filed with the assigned hearing officer. The answer shall be filed electronically (see section 250.11 of this Title) with the hearing officer.

(b) If the charge is believed by a responding party to be so vague and indefinite that it cannot reasonably be required to frame an answer, the responding party may, within 10 working days after receipt from the director of PEPR of a copy of the charge, file electronically a motion with the hearing officer for an order directing the charging party to file a statement supplying specified information. The filing of such motion will extend the time during which the responding party must file and serve its answer until 10 working days after receipt of the ruling of the hearing officer on the motion, or until such later date as the hearing officer may set. Such a motion must be served upon all parties simultaneously with its filing with the hearing officer; proof of service must accompany the filing of the motion with the hearing officer. The charging party may file electronically 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 hearing officer, constitute ground for precluding the party from offering any evidence as to the matters dealt with by the order.

#### **§ 252.7 Answer; declaration.**

The answer shall be supported by a declaration of the party filing it.

### **§ 252.8 Answer; denials**

The answer shall contain a specific denial of each allegation of the charge controverted by the party filing the answer, or of any knowledge or information thereof sufficient to form a belief. An allegation in the charge not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief as to the truth thereof, shall be deemed admitted.

### **§ 252.9 Answer; defense; new matter; motion for particularization.**

(a) The answer shall contain a concise statement of the facts constituting the grounds of defense. Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

(b) If 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 electronically with the hearing officer a motion for an order directing the responding party to file a verified statement supplying specified information. Such a motion must be served upon all parties simultaneously with its filing with the hearing officer; proof of service must accompany the filing of the motion with the hearing officer. The responding party may file electronically 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 hearing officer, constitute ground for precluding the party from offering any evidence as to the matters dealt with by the order.

### **§ 252.10 Answer; amendment.**

In the discretion of the director of PEPR or the hearing officer, an answer may be amended upon motion of the party filing it, upon due notice to all parties, at any time before the issuance of the final decision and order.

### **§ 252.11 Answer; failure to file.**

If the party or parties against whom the charge is brought fails to file an answer in the manner and within the time herein provided, it may be limited to cross-examination of witnesses called by the charging party and shall have such other rights as the hearing officer may deem proper. Where prejudice to the charging party is demonstrated or no sufficient excuse or justification for the failure to file is proffered, the hearing officer may deem such failure to constitute an admission of the material facts alleged in the charge and a waiver by the respondent of a hearing.

### **§ 252.12 Pleadings; construction.**

All pleadings shall be liberally construed.

## **PART 253 GENERAL PROVISIONS RELATING TO ALL NON-FLFLPA PROCEEDINGS**

### **JOINDER**

§ 253.1 Parties; nonjoinder and misjoinder.

§ 253.2 Joinder of parties; relief.

### **MOTIONS**

§ 253.3 Motions during hearing.

§ 253.4 Motions before or after hearing.

### **WAIVER**

§ 253.5 Objections; waiver.

### **INTERVENTION**

§ 253.6 Procedure; contents; filing; service.

### **CONSOLIDATION OR SEVERANCE**

§ 253.7 Consolidation; severance.

### **WITNESSES AND SUBPEONAS**

§ 253.8 Witnesses; examinations; record; depositions.

§ 253.9 Subpoenas.

### **CONFERENCES AND HEARINGS**

§ 253.10 Conferences and hearings; conduct.

§ 253.11 Hearings; powers and duties of hearing officer.

§ 253.12 Hearings; rights of parties.

§ 253.13 Hearings; stipulations.

§ 253.14 Hearings; continuation of.

§ 253.15 Hearings; oral argument or briefs; unfair labor practice cases.

§ 253.16 Hearings; oral argument or brief; representation cases.

§ 253.17 Hearings; variance between pleadings and proof.

§ 253.18 Hearings; motions; objections.

§ 253.19 Hearings; reopening.

§ 253.20 Hearings; evidence as to transactions had at conferences.

§ 253.21 Decision and order.

§ 253.22 Exceptions to the Board.

§ 253.23 Motions for leave to file interlocutory exceptions in extraordinary circumstances

§ 253.24 Final board action

§ 253.25 Record in proceedings under section 706.

§ 253.26 Record in proceedings under section 705.

§ 253.27 Enforcement

§ 253.28 Public record.

### **JOINDER**

#### **§ 253.1 Parties; nonjoinder and misjoinder.**

No proceeding will be dismissed because of nonjoinder or misjoinder of parties.

Upon motion of any party or the board's agent, parties may be added, dropped, or substituted at any stage of the proceedings, upon such terms as may be deemed proper.

§ 253.2 Joinder of parties; relief.

### **§ 253.2 Joinder of parties; relief.**

All persons and entities alleged to have engaged in any unfair labor practices may be joined as parties, whether jointly, severally, or in the alternative, and a decision may be rendered against one or more of them, upon all of the evidence without regard to the party by or against whom such evidence has been introduced.

## **MOTIONS**

### **§ 253.3 Motions during hearing.**

All motions made during a hearing, except as otherwise provided or permitted by the hearing officer, shall be made orally at the hearing and shall be decided by the hearing officer. All such motions and the rulings and orders thereon shall be part of the record of the proceeding.

### **§ 253.4 Motions before or after hearing.**

All motions, other than those made during a hearing, shall be made in writing to the director of PEPR or the designated hearing officer, shall briefly state the relief sought and shall be accompanied by papers setting forth the grounds for such motion. The moving party shall serve copies of all motion papers on all other parties and shall within three working days thereafter file any motion electronically (see section 250.11 of this Title) with proof of service with the director of PEPR or the designated hearing officer. Answering papers, if any, must be filed and served on all parties. Answering papers must be filed electronically with the director of PEPR or the designated hearing officer within three working days after service of the moving papers unless directed otherwise. All such motions shall be decided by the director of PEPR or the designated hearing officer upon the papers filed with them.

## **WAIVER**

### **§ 253.5 Objections; waiver.**

An objection not timely urged before the board, director of PEPR, or designated hearing officer shall be deemed waived unless the failure to urge such objection shall be excused by the board because of extraordinary circumstances.

## **INTERVENTION**

### **§ 253.6 Procedure; contents; filing; service.**

A person, employer, or labor organization desiring to intervene in any proceeding shall file electronically (see section 250.11 of this Title) with the director of PEPR or designated hearing

officer a written application, setting forth the facts upon which such person, employer or organization claims an interest in the proceeding. The application shall be supported by a declaration of the filer. Such application must be served on all parties. Applications must be filed with the director of PEPR or designated hearing officer with proof of service at least two working days before the first hearing. Failure to serve or file such application, as above provided, shall be deemed sufficient cause for the denial thereof, unless good and sufficient reason exists why it was not served or filed as herein provided. The director of PEPR or designated hearing officer shall rule upon all such applications and may permit intervention to such an extent and upon such terms as they shall determine may effectuate the policies of SERA.

## **CONSOLIDATION OR SEVERANCE**

### **§ 253.7 Consolidation; severance.**

Two or more proceedings under sections 705 and 706 of SERA, or either, may be consolidated by the director or the designated administrative law judge. Such proceedings may be severed by the director or designated administrative law judge in their discretion.

## **WITNESSES AND SUBPEONAS**

### **§ 253.8 Witnesses; examinations; record; depositions.**

Witnesses at all hearings shall be examined orally under oath or affirmation, and a record of the proceeding shall be made and kept by the board. If any witness resides outside the State or through illness or other cause is unable to testify before the board or its member, agent or agents conducting the hearing or investigation, their testimony or deposition may be taken within or without this State, in such form as may be directed. All applications for taking such testimony or deposition must be made by motion.

### **§ 253.9 Subpoenas.**

Subpoenas under this Part shall be subject to section 205(5)(k) of the Civil Service Law and the rules and regulations promulgated under section 205(5)(l) of the Civil Service Law.

## **CONFERENCES AND HEARINGS**

### **§ 253.10 Conferences and hearings; conduct.**

(a) Prior to or on the scheduled date of any hearing, the designated hearing officer may hold a conference with the parties to the proceeding. The failure of a party to appear at the conference may, in the discretion of the hearing officer, constitute ground for dismissal of the absent party's pleading. The hearing officer may, at their discretion, conduct the conference by videoconference, telephone, or by other platform in whole or in part.

(b) Hearings, where appropriate, shall be conducted by a designated hearing officer. At any time, a hearing officer may be designated to take the place of the hearing officer previously designated

to conduct the hearing. All hearings shall be open to the public unless good cause is shown for closing the hearing.

**§ 253.11 Hearings; powers and duties of hearing officer.**

During the course of any hearing, the hearing officer, in addition to the other powers specifically conferred upon them, shall have full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. It shall be the duty of the hearing officer to see that a full inquiry is made into all the facts in issue and to obtain a complete record of all facts necessary for a fair determination of the issues. The hearing officer shall have the right to call and examine witnesses, to direct the production of papers or other matter present in the hearing room, and to introduce documentary or other evidence. The hearing officer may, at their discretion, conduct the hearing by videoconference in whole or in part.

**§ 253.12 Hearings; rights of parties.**

In any hearing all parties shall have the right to call, examine and cross-examine witnesses, and to introduce documentary or other evidence, subject to the rulings of the hearing officer.

**§ 253.13 Hearings; stipulations.**

At a hearing, stipulations may be introduced in evidence with respect to any issue, where such stipulation has been joined in by all parties.

**§ 253.14 Hearings; continuation of.**

The hearing officer may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by other appropriate notice.

**§ 253.15 Hearings; oral argument or briefs; unfair labor practice cases.**

In a proceeding under section 706, the hearing officer may permit the parties to argue orally at the close of the hearing or to file briefs or written statements. The time for oral argument or filing briefs or memoranda shall be fixed by the hearing officer.

**§ 253.16 Hearings; oral argument or brief; representation cases.**

At the close of hearings in a proceeding under section 705, the hearing officer shall permit the parties to electronically file briefs or written statements. The time for filing such briefs or written statements shall be fixed by the hearing officer.

**§ 253.17 Hearings; variance between pleadings and proof.**

A variance between an allegation in a petition under section 705 or a pleading in a proceeding under section 706, and the proof, is not material unless it is so substantial as prejudicially to

mislead the board or any party. If a variance is not material, the hearing officer may admit such proof and the facts may be found accordingly.

**§ 253.18 Hearings; motions; objections.**

Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing.

**§ 253.19 Hearings; reopening.**

(a) Motions for leave to reopen a hearing because of newly discovered evidence shall be timely made.

(b) The board or a hearing officer may, in their discretion or on their own motion, reopen a hearing and take further testimony at any time.

**§ 253.20 Hearings; evidence as to transactions had at conferences.**

No testimony or evidence shall be given or received at any hearing concerning transactions had or statements or communications made during the conduct or course of any conference called and held concerning charges or petitions unless at the hearing all parties shall expressly waive this provision. This provision shall not apply to the giving or receipt of evidence concerning a consent comparison pursuant to section 251.10 of this Title.

**§ 253.21 Decision and order.**

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

**§ 253.22 Exceptions to the Board.**

(a) This Part applies to exceptions to the board to decisions, reports, orders, rulings or other appealable findings or determinations.

(b) Within 15 working days after receipt of a decision, report, order, ruling or other appealable findings or conclusions, a party may file electronically (see section 250.11 of this Title) with the board a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings. A brief in support thereof shall be filed simultaneously as a separate document. A copy of such exceptions and briefs shall be served upon all other parties and proof of such service shall be filed with the board.

(c) 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.

(d) Within seven working days after receipt of exceptions, any party may file electronically (see section 250.11 of this Title) 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 electronically a response 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 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 is requested or authorized by the board, the board shall notify the parties regarding the conditions under which that pleading will be permitted.

(e) A request for an extension of time within which to file exceptions and briefs shall be in writing, and filed electronically (see section 250.11 of this Title) with the board before the expiration of the required time for filing exceptions, 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.

(f) 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.

(g) 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.

### **§ 253.23 Motions for leave to file interlocutory exceptions in extraordinary circumstances**

(a) Within ten working days after receipt of any interim decision, order or ruling, a party may, consistent with section 253.22 of this Part, file with the board electronically (see section 250.11 of this Title) a motion seeking leave to file interlocutory exceptions to such interim decision, order, or ruling. An original and three 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.

(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 253.22 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 253.23(a) and (b) of this Part.

(d) 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 electronically (see section 250.11 of this Title) 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.

(e) Board action on motion for leave to file exceptions: 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 of PEPR, the director of conciliation, an assistant director, or hearing officer.

(f) 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.

#### **§ 253.24 Final board action**

Unless a party files exceptions in accordance with this Part, the decision, report, order, ruling, finding or other determination, or any part thereof will be final, except that the board may, on its own motion, decide to review the remedial action recommended under an unfair labor practice charge within 45 working days after receipt by the parties of the decision and recommended order. A remedial order of a hearing officer in an unfair labor 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 707 of SERA and section 253.27 of this Part.

#### **§ 253.25 Record in proceedings under section 706.**

(a) The record in proceedings under section 706 shall consist of the charge or amended charge, the pleadings, notices of hearing, notices of argument, motions, orders, stipulations, stenographic minutes, exhibits, depositions, the hearing officer's decision and order, exceptions, responses, any other pertinent materials before the board, and the final decision and order.

(b) If a proceeding under section 706 is predicated in whole or in part upon a prior proceeding under section 705, the record of such prior proceeding shall be deemed a part of the record in the proceeding under section 706 for all purposes.

#### **§ 253.26 Record in proceedings under section 705.**

The record in proceedings under section 705 shall consist of the petition or amended petition, notices of hearing, notices of argument, motions, orders, stipulations, stenographic minutes, exhibits, depositions, decision and direction of election, report on secret ballot, objections thereto, responses, any other pertinent materials before the board, and certification, dismissal or decision.

#### **§ 253.27 Enforcement**

(a) A party may request the board to seek a judicial order as provided by section 707 of SERA, enforcing a remedial order of the board or that of a hearing officer to which no exceptions have been filed with the board, if the party or parties against whom the order was issued refuses or fails to comply with the order, provided that such order is not, or is no longer, subject to judicial review pursuant to section 707 of SERA.

(b) Request for enforcement. A party seeking enforcement by the board must file with the board's office of counsel electronically (see section 250.11 of this Title) a written request stating the reason(s) why a judicial order of enforcement is necessary, supported by 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. 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 shall file electronically (see section 250.11 of this Title) with the office of counsel 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 office of counsel will determine whether a petition for a judicial order of enforcement pursuant to section 707 of SERA should be commenced.

#### **§ 253.28 Public record.**

The record as defined in sections 253.25 and 253.26 of this Part shall constitute the public record of the case and shall be made available for inspection or copying under such conditions as the board may prescribe.

**PART 254 DESIGNATION, POWERS AND DUTIES OF BOARD'S AGENTS FOR NON-FLFLPA MATTERS**

§ 254.1 Hearing officers; powers and duties.

§ 254.2 General.

**§ 254.1 Hearing officers; powers and duties.**

All hearing officers, fact-finders, and any other individuals designated by the board to hold hearings, are hereby designated by the board as its agents:

(a) to conduct and be in full charge and control of any and all hearings;

(b) in connection with such hearings, to have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, to receive evidence, and in connection therewith, to do any and all things necessary and proper to effectuate the policies of SERA and this Subchapter.

**§ 254.2 General.**

The foregoing designations are not to be construed to limit the power of the board to make such special designations of agents as may be necessary to effectuate the purposes of SERA, nor shall the foregoing designations be construed as limiting the power of the board at any time to confer upon its agent or agents additional duties.

**PART 255 SERVICE OF PAPERS AND ORDERS OF THE BOARD FOR NON-FLFLPA MATTERS**

§ 255.1 Method; proof.

§ 255.2 Service by a party.

§ 255.3 Service upon attorney.

**§ 255.1 Method; proof.**

Charges, petitions, orders and other process and papers of the board, its members, agent or agency, may be served electronically, personally, by regular mail, by registered mail, by commercial mail service, or by leaving a copy at the principal office or place of business of the person to be served. A declaration or affidavit of service, setting forth the manner of such service, the return post office receipt when registered and mailed as aforesaid, or electronic confirmation shall constitute proof of service. Final orders issued by the board shall be served upon the parties by registered or certified mail, or pursuant to § 250.11 of this Chapter.

**§ 255.2 Service by a party.**

Service of papers by a party may be made personally or by mail, or electronically. When service is made by mail, a return post-office receipt, or affidavit or declaration of service by mail, shall

constitute proof of service. When service is made electronically, electronic confirmation shall constitute proof of service.

**§ 255.3 Service upon attorney.**

If a party appears by attorney, all papers other than the charge or petition and notice of original hearing may be served as hereinabove provided upon such attorney, or pursuant to § 250.11 of this Chapter, with the same force and effect as though served upon the party.

**PART 256 CERTIFICATION AND SIGNATURE OF DOCUMENTS FOR NON-FLFLPA MATTERS**

§ 256.1 Executive director; certification of papers; notices and reports.

**§ 256.1 Executive director; certification of papers; notices and reports.**

The executive director, or such other person as may be designated by the executive director, is authorized to certify copies of all papers and documents which are a part of any of the files or records of the board, to sign and issue all notices or reports of the board.

**PART 257 CONCILIATION FOR NON-FLFLPA MATTERS**

§ 257.1 Impasses in Collective Bargaining and Assignment of Mediators.

§ 257.2 Voluntary interest arbitration.

§ 257.3 Resolution of Labor Disputes.

§ 257.4 Policy regarding grievance arbitration.

§ 257.5 Panel of arbitrators.

§ 257.6 Agreement to arbitrate.

§ 257.7 Demand for arbitration; submission to arbitrate.

§ 257.8 Determination of jurisdiction.

§ 257.9 Arbitrability.

§ 257.10 Selection process.

§ 257.11 Notice of designation.

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

§ 257.13 Stenographic record and transcript.

§ 257.14 Award upon settlement.

§ 257.15 Expedited rendition of award.

§ 257.16 Form of award and time rendered.

§ 257.17 Time extension.

§ 257.18 Expenses and fees.

**§ 257.1 Impasses in Collective Bargaining and Assignment of Mediators.**

In the event that an employer and a labor organization have failed to achieve an agreement, either the employer or the labor organization, or both acting jointly, may notify the board in writing of the existence of an impasse. The notification, or declaration of impasse, must be

signed by the representative of the declaring party, or where the parties are jointly declaring impasse, the representative of each party. The notification shall be filed electronically with the director of conciliation (see section 250.11 of this Title). Upon receipt of the notification of an impasse in collective bargaining, the board may appoint a mediator from a list of qualified persons maintained by the board to assist the parties to effectuate a voluntary resolution of the impasse. It is the policy of SERA that the board shall consider and make the parties aware of the availability of federal and other mediation services, and shall give priority in providing mediation services to those parties without access to those other services.

#### **§ 257.2 Voluntary interest arbitration.**

(a) In the event that an employer and a labor organization agree to submit any unresolved issue in bargaining to interest arbitration, they may jointly request the assistance of the board in providing for such arbitration by a letter directed to the director of conciliation.

(b) The written request 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.

#### **§ 257.3 Resolution of Labor Disputes.**

The board delegates to its Chairperson, or his or her designee, the authority to take such steps under sections 702, and 702-a.1 of SERA deemed expedient and efficient to effectuate a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between an employer, labor organization or employees concerning an existing, imminent or threatened labor dispute.

#### **§ 257.4 Policy regarding grievance arbitration.**

It is the policy of SERA for the board to have the power at the request of the parties to a collective bargaining agreement between an employer and a labor organization to assist them in the arbitration of such grievances as may arise under the agreement and to establish panels of qualified persons to be available to serve as arbitrator of such grievances. 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.

#### **§ 257.5 Panel of arbitrators.**

(a) The board shall maintain a panel of arbitrators 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.

(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. 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.

**§ 257.6 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. The voluntary arbitration rules of procedure shall apply in the form in effect at the time the arbitration is initiated.

**§ 257.7 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.

(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 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;
- (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) of the grievant(s));

(9) the following language, quoted verbatim:

“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, P.O. BOX 2074, EMPIRE STATE PLAZA, AGENCY BUILDING 2, FLOOR 20, ALBANY, NEW YORK, 12220-0074 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 labor organization;

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

(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) of the grievant(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.



### **§ 257.8 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.

### **§ 257.9 Arbitrability.**

(a) Should either party contest the arbitrability of a grievance, the director of conciliation shall make no determination as to whether the grievance is a proper subject for arbitration. The director of conciliation's responsibilities throughout the application of this Part are 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.

(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.

### **§ 257.10 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, of each arbitrator on such panel list shall be provided for the parties' review. Each party shall have 10 working 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 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, 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) *Designation 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.

#### **§ 257.11 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.

#### **§ 257.12 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, 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 power specified in CPLR sections 7505, 7506, and 7509 insofar as these sections may be applicable. The arbitrator's conduct shall conform to applicable laws.

### **§ 257.13 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.

### **§ 257.14 Award upon settlement.**

The commencement of the administration of this Part shall in no way preclude the parties from adjusting the dispute on their own at any time before or during an arbitration hearing. If a settlement has been reached between the parties, the arbitrator, upon joint request of the parties, may set forth the terms of the settlement in the form of an award.

### **§ 257.15 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 the arbitrator.

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

### **§ 257.16 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. If the parties agree, the award shall be delivered electronically. 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 257.15 of this Title, 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. In any case, the parties shall notify the director of conciliation of any undue delay.

**§ 257.17 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.

**§ 257.18 Expenses and fees.**

(a) An administrative fee per party shall be charged by the board for its administrative services.

(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 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.

**PART 258 SETTLEMENT OF LABOR DISPUTES PURSUANT TO § 702-a FOR NON-FLFLPA MATTERS**

**§ 258.1 Settlement of Labor Disputes**

**§ 258.1 Settlement of Labor Disputes**

Parties may submit requests for settlement of existing, imminent, or threatened labor disputes to the director of conciliation, located in Albany, New York.

**PART 259 DECLARATORY RULINGS FOR NON-FLFLPA MATTERS**

**§ 259.1 Petition; filing**

**§ 259.2 Processing by the director of PEPR**

**§ 259.1 Petition; filing**

(a) Filing of petition. Any person, labor organization, or employer may file with the director of PEPR electronically (see section 250.11 of this Title) a petition for a declaratory ruling with

respect to the scope of negotiations under SERA. The petition shall be in writing on a form provided by the director of PEPR and shall be supported by a declaration of the filer.

(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) the names and addresses of any other persons, labor organizations or employers whose interests are reasonably likely to be affected by the ruling; and
- (4) at the option of the petitioner, a proposed ruling.

### **§ 259.2 Processing by the director of PEPR**

(a) The director of PEPR or an assigned hearing officer will determine whether a declaratory ruling would be in the public interest as reflected by the policies underlying SERA. If the director of PEPR or hearing officer determines that it would not, they shall dismiss the petition. Such dismissal shall merely constitute a refusal to issue a declaratory ruling, and not the denial of any position proposed by the petitioner. Such a decision to refuse to issue a declaratory ruling may be made at any stage of the proceeding.

(b) The director of PEPR or hearing officer shall send a copy of the petition to any persons, labor organizations, or employers, in addition to those listed in the petition, whom the director of PEPR or hearing officer deems to have interests that are reasonably likely to be affected by the ruling, together with a notice that they may at their option, become parties to the proceeding by filing electronically 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 Part 253 of this Chapter, except that the director of PEPR or hearing officer shall issue a decision, which may be reviewed pursuant to section 253.22 of this Chapter. Such declaratory ruling will be final and binding on all parties as to the negotiability of the subject or subjects, and may be reviewed along with the final decision of the hearing officer or the board as part of a petition pursuant to article 78 of the civil practice law and rules.

### **PART 260 ACCESS TO RECORDS OF THE BOARD FOR NON-FLFLPA MATTERS**

§ 260.1 Records available for public inspection and copying

§ 260.2 Designation of records access officer and appeals officer

§ 260.3 Procedures for inspection and copying of records

§ 260.4 Denials and appeals

### **§ 260.1 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, are those described by section 87 of the Public Officers Law.

### **§ 260.2 Designation of records access officer and appeals officer**

(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.

### **§ 260.3 Procedures for inspection and copying of records**

(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, 20th 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.

### **§ 260.4 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 261 MISCONDUCT BEFORE THE AGENCY FOR NON-FLFLPA MATTERS**

§ 261.1 Misconduct by any person

§ 261.2 Suspension or other sanctions

### **§ 261.1 Misconduct by any person**

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

### **§ 261.2 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 a hearing officer 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 253.22 of this Chapter.

## **PART 262 PRIVACY PROTECTION AND ACCURACY OF PERSONAL DATA FOR NON-FLFLPA MATTERS**

§ 262.1 Statement of purpose

§ 262.2 Definitions

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

§ 262.4 Requests for records

§ 262.5 Fees for copying records

§ 262.6 Inspection and copying records

§ 262.7 Appeals of denial of access to records

§ 262.8 Procedures governing the correction or amendment of records

§ 262.9 Appeals of denial of correction or amendment of records

### **§ 262.1 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.

## **§ 262.2 Definitions**

As used in this Part, the following words and terms shall have the indicated meanings: 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, PO Box 2074, Empire State Plaza, Agency Building 2, 20th Floor, Albany, NY 12220-0074, or such other address as the board may designate on the agency’s website.

(b) Privacy compliance appeals officer is the chairperson of the board whose business address is Public Employment Relations Board, PO Box 2074, Empire State Plaza, Agency Building 2, 20th Floor, Albany, NY 12220-0074, or such other address as the board may designate on the agency’s website.

## **§ 262.3 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) 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 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.



#### **§ 262.4 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.

#### **§ 262.5 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.

(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 Public Employment Relations Board.

#### **§ 262.6 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 working days after receipt of a request:

(1) make requested records available;

(2) deny the request in writing 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
- (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.

### **§ 262.7 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 working 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.

(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.

### **§ 262.8 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 working 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.

### **§ 262.9 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 working 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:

- (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 working 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.

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## **DEFINITIONS AND GENERAL PROVISIONS**

### **§ 263.1 Scope.**

The rules in Part 263 apply to all proceedings brought under the Farm Laborers' Fair Labor Practices Act ("FLFLPA"). These rules shall be liberally construed and shall not be deemed to limit the powers conferred on the board by SERA.

### **§ 263.2 Use of terms.**

The terms *person*, *employer*, *employees*, *representatives*, *labor organization*, *company union*, *unfair labor practice*, and *labor dispute*, as used herein, shall have the meanings set forth in section 701 of the New York State Employment Relations Act.<sup>[1]</sup>

[1] The statutory text of the New York State Employment Relations Act uses the terms "labor organization" and "employee organization" as fully synonymous while only defining the former. This usage applies to these Rules.

### **§ 263.3 SERA; board; chairperson.**

The term *SERA*, as used herein, shall mean the New York State Employment Relations Act, and the terms *board* and *chairperson* or *chair* shall mean the New York State Public Employment Relations Board and the chairperson thereof.

### **§ 263.4 Agency, PERB.**

The term *agency* or *PERB* shall mean the New York State Public Employment Relations Board.

### **§ 263.5 PEPR.**

The term *PEPR* shall mean the office of private employment practices and representation.

### **§ 263.6 Director of PEPR and Director of Conciliation.**

The term *director of PEPR* shall mean the agent of the board designated as director of private employment practices and representation. The term *director of conciliation* shall mean the agent of the board so designated.

### **§ 263.7 Counsel.**



The term *counsel* shall mean the agent of the board so designated.

**§ 263.8 Deputy Chairperson.**

The term *deputy chairperson* shall mean the agent of the board so designated.

**§ 263.9 Administrative law judge and hearing officer.**

The terms *administrative law judge* or *hearing officer* shall mean any agent of the board so designated by the chair or their designee and shall include the director and assistant director of PEPR. As used in these rules, the terms *administrative law judge* and *hearing officer* are interchangeable.

**§ 263.10 Singular/plural use of terms.**

Any term used in the singular in these rules also encompasses the plural of that term. For example, the terms *employer* or *labor organization* encompass the terms *employers* or *labor organizations*.

**§ 263.11 Special mediator.**

The term *special mediator* shall mean any agent of the board so designated by the chair or their designee.

**§ 263.12 Substitution of agents.**

Any task delegated in Part 263 to an agent of the board may be reassigned by the board or the director of PEPR to a different agent.

**§ 263.13 Parties.**

The term *party* or *parties* as used herein in connection with proceedings under section 706 of SERA, shall mean any person, persons, entity, or entities cognizable under SERA, instituting any procedure under SERA, or named as a respondent or party in interest in any matter filed under SERA, and any other persons or labor organizations whose interventions have been permitted by the board or its agents, including but not limited to any hearing officer, administrative law judge, mediator, or special mediator.

**§ 263.14 Declaration.**

The term *declaration*, as used in this Part, shall mean a statement that is made under penalty of perjury but is not sworn to before a notary or other person entitled to administer oaths. In any case brought under the FLFLPA, any documents submitted may be supported, evidenced, established, or proved by the unsworn declaration of the filing party. The declaration must state

that the contents of the filing are declared as true under penalty of perjury under the laws of the State of New York. The declaration must be dated.

### **§ 263.15 Electronic filing and service; paper filing.**

(a) The term *electronic filing*, as used in this Chapter, shall mean a document submitted by electronic mail to an address specified by the board on its website, or by other electronic means specified by the board on its website. Such documents shall be: (1) in a format that can be read using software that is readily available and is in widespread use by government, businesses, and individuals; and (2) electronically searchable unless the party providing the document certifies in a written attachment to the document served and/or in any required proof of service that it does not have the capacity to produce a searchable file.

(b) The term *paper filing* means delivery to the board or an agent thereof, or the act of mailing to the board, or deposit of the original papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. The term *service* 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 the latest time designated by the overnight delivery service for overnight delivery.

(c) 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 has not been effectuated.

### **§ 263.16 Computing time.**

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

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

(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, Sunday, or legal State or federal holiday, in which event the period shall run to the next working day.

### **§ 263.17 Showing of interest.**

(a) The term *showing of interest*, as used in this Part, shall mean a demonstration of support for the filing of a petition for certification, a motion to intervene, or for certification without an election.

(b) A showing of interest shall consist of evidence of current membership in a labor organization, including dues deduction authorizations, original designation cards, or petitions on a form prescribed by the board, all of which were signed and dated within one year of submission.

(c) In the event that the showing of interest does not represent a majority for the labor organization in the unit alleged to be appropriate and a timely motion to intervene is filed, the motion will be considered and an election held.

(d) A showing of interest for the filing of a petition or a motion to intervene must consist of at least thirty (30) percent of employees in an allegedly appropriate negotiating unit or a negotiating unit determined to be appropriate.

(e) Except as provided for in section 263.22 of this Part, any showing of interest must be accompanied by a declaration of authenticity as set forth in section 263.22 of this Part.

(f) A filing of dues deduction cards or other evidence of support sufficient to demonstrate majority support in a unit alleged to be appropriate may also be used to determine whether a labor organization is entitled to certification without an election pursuant to section 263.22 (c) and (d) of this Part.

## **SPECIAL MEDIATORS**

### **§ 263.18 Special mediators.**

(a) Any employee, employee organization, or employer subject to SERA may request a special mediator from the director of conciliation to resolve a labor dispute, or to prevent a labor dispute from arising, or to seek to negotiate an agreement to facilitate the exercise of any rights under this article in a mutually acceptable manner.

(b) Such special mediators can be assigned to resolve any controversy between employers and employees or their representatives even before a petition or declaration of impasse is filed or an unfair labor practice is alleged. In their discretion, the director of conciliation will designate and assign a special mediator. This provision in no way limits the authority vested in the board and chairperson to designate special mediators as provided in sections 702 and 702-a of SERA.

(c) Special mediators shall have the authority and power of members of the board with regard to matters to which they are assigned. These powers include the ability to direct the parties to meet at specified times and places and on specified dates.

## **PETITION FOR CERTIFICATION**

### **§ 263.19 Petition; filing.**

(a) *Filing of petition for certification.* A petition for certification may be filed to resolve a question or controversy concerning the representation of employees. A petition for certification may be filed with the director of PEPR by employees or their representatives. Petitions for

certification may be filed to obtain certification of an exclusive representative for collective bargaining<sup>[1]</sup> without an election. Petitions for certification may also be filed to obtain an election in which employees vote on whether to elect an exclusive representative for collective bargaining with their employer.

*(b) Supporting declaration.* A petition for certification shall be in writing. The original shall be signed, dated, and supported by a declaration of the person filing the petition, stating that the content of the petition is declared as true, under penalty of perjury. Declarations need not be notarized or otherwise sworn.

*(c) Availability of petition forms.* Petition forms will be supplied by the board upon request and will also be available on the board's website.

*(d) Filing of petition.* Petitions for certification can be filed by mail, facsimile, or electronically. Procedures for electronic filing shall be available on the board's website. Where service is not made electronically, the service of a paper copy on the employer will begin the time for the employer to respond, beginning on the day of receipt.

*(e) Original petition if filed electronically.* If a petition is filed electronically, no paper original need be filed unless required by the director of PEPR, assigned hearing officer, or other PERB representative.

*(f) Original petition if filed by mail.* If a petition for certification is filed by mail, the original of the petition shall be filed with the director of PEPR.

*(g) Showing of interest submission.* The showing of interest required by section 705 (1) and (1-a) of SERA and by section 263.22 of this Part may be submitted to the director of PEPR in an electronic (pdf) format or equivalent. The original evidence must be received in the mail by the director of PEPR within 3 business days of the electronic filing of the petition. The showing of interest supporting the petition shall be submitted to the board, but **shall not** be served on any party.

*(h) Serving petition and proof of service.* A copy of the petition shall be served on all parties named in the petition. Proof of service on all parties named in the petition shall also be filed when the petition is filed.

[1] The statutory text of the SERA uses the terms "collective bargaining" and "collective negotiations" as fully synonymous. This usage applies to these Rules.

### **§ 263.20 Petition for certification filed by employee or their representative; contents.**

(a) A petition for certification, when filed by an employee or their representative, shall contain:

(1) the name, affiliation, if any, and address of the petitioner and contact information of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding. Contact information shall

include, if applicable, the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner;

(2) the name and address of the employer or employers concerned;

(3) the general nature of the business;

(4) the number of employees in the unit which the petitioner claims to be appropriate;

(5) the classification or brief description of employees in the bargaining unit or units claimed to be appropriate;

(6) the names and addresses of any other persons or labor organizations who claim to represent any employees in the alleged appropriate unit, and brief descriptions of the contracts, if any, covering the employees in such unit;

(7) a statement that a substantial number, or a majority, of employees in the described unit wish to be represented by the petitioner. Evidence supporting the statement shall be filed with the petition in accordance with section 263.22 of this Part, but shall not be served on any party;

(8) any other relevant facts;

(9) a request that the board certify the petitioner as the collective bargaining representative of the employees within the bargaining unit or units claimed to be appropriate.

### **§ 263.21 Sufficiency of petition.**

No petition in a proceeding under section 705 of SERA shall be dismissed for failure of the petitioner to set forth in the petition all the information required, however, the hearing officer may, if necessary, require information not provided in the petition.

### **§ 263.22 Showing of interest.**

(a) Showing of interest to director of PEPR. All petitions for certification, or motions to intervene, shall be accompanied by a showing of interest. Such showing of interest shall be submitted with the petition, but shall not be served on any other party.

(1) Sufficiency of showing of interest. A showing of interest demonstrating majority support for an employee organization shall be sufficient for certification without election.

(2) A showing of interest of at least 30 percent of employees in the unit alleged to be appropriate shall be sufficient for the director of PEPR to order an election to determine employees' choice, if any, of an exclusive representative for collective bargaining.

(3) In the event that the showing of interest represents less than 30 percent of employees in the unit alleged to be appropriate, the director of PEPR shall dismiss the petition.

(b) Confidentiality of showing of interest. All showings of interest shall be kept confidential and shall not be disclosed to any of the parties named in the petition.

(c) Selection of Employee Organization Where Only One Such Organization is Involved. As permitted by section 705.1-a of SERA, where the choice available to employees in a negotiating unit is limited to selecting or rejecting a single labor organization, a showing of interest consisting of dues deduction authorizations sufficient to demonstrate majority support for a single labor organization, along with a petition for certification, shall suffice to warrant certification of said labor organization without election.

(d) Selection of Employee Organization in General. As permitted by section 705.1 of SERA, a petition for certification may be accompanied by dues deduction authorizations, individually signed petitions in favor of recognition, membership cards, or other evidence of support for or designation of the labor organization as collective bargaining representative. If the evidence is sufficient to demonstrate majority support of a single labor organization in a unit alleged to be appropriate, the labor organization shall be certified without an election.

(e) Timeliness of showing of interest. All evidence submitted to establish a showing of interest must be signed and dated within one year of their submission. A showing of interest may consist of any combination of the evidence set forth in sections 263.22 (c) and (d) of this Part. Designation cards shall be submitted in alphabetical order.

The director of PEPR 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 of PEPR a signed declaration that the listing sets forth only the names of the signatories on the showing of interest petitions. This listing is to be provided only to the director of PEPR or their designee, and shall not be provided to other parties.

(f) Declaration of authenticity. A declaration of authenticity shall be filed by the petitioner or, in the case of a motion to intervene, by the movant, simultaneously with the filing of the showing of interest. Declarations need not be notarized or otherwise sworn. Such declaration shall contain the following:

(1) the name of the individual executing the declaration and a statement of the declarant's authority to execute it; and

(2) a declaration that, upon the declarant's personal knowledge or upon the declarant's inquiries, the persons whose names appear 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 that inquiry was made regarding their inclusion in 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.

(g) Investigation. If at any point the hearing officer has a good faith question regarding the veracity of the showing of interest, the hearing officer may conduct an investigation to ascertain whether the evidence submitted is accurate. If it is determined after investigation that the evidence is fraudulent or that the declaration is false, such reasonable action as is appropriate to protect the integrity of the 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. Any exceptions shall be filed with the board within two days of the hearing officer's determination. The board will grant such cases expedited treatment.

### **§ 263.23 Notification of petition to other parties.**

Processing of a petition by PERB will begin within one working day of receipt of the petition by PERB. PERB will immediately notify the parties named in the petition of the filing and will assign a hearing officer. A copy of the petition shall be served with the notification.

### **§ 263.24 Statement of position and offer of proof in certification cases.**

(a) Filing and service of statement of position. All parties named in the petition, except for the petitioner, shall file with the assigned hearing officer within 8 calendar days after receipt of a copy of the petition a statement of position. The statement of position shall be served on all parties named in the petition. The statement of position shall be served electronically (see section 263.15 of this Part), or by any other means permitted by the hearing officer. The statement of position must be received by the hearing officer by noon on the 8th calendar day. The hearing officer may postpone the time for filing and serving the statement of position for up to 2 business days upon timely request of a party only upon a showing of special circumstances. The hearing officer may postpone the time for filing and serving the statement of position for more than 2 business days upon timely request of a party only upon a showing of extraordinary circumstances. The hearing officer may permit the employer to amend its statement of position in a timely manner for good cause.

(b) Content of statement of position. The employer's statement of position shall state whether the employer disputes that the board has jurisdiction over it, and if so, the basis for the dispute, and whether the employer agrees that the proposed unit is appropriate. If the employer does not agree that the proposed unit is appropriate, the statement of position shall state the basis for the employer's contention that the proposed unit is inappropriate, and state the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit; identify any individuals whose eligibility to vote the employer intends to contest in the proceedings and the basis of each such contention; raise any election bar; and describe all other issues the employer intends to raise in the proceedings. The statement of position shall include a specific admission, denial, or explanation of each allegation made by the petitioner. Any allegation in the petition which is not specifically denied shall be deemed to be true. The employer may not raise any issue in the proceedings which has not been raised in a

timely statement of position. Failure to timely provide the required employee lists shall preclude an employer from contesting the appropriateness of the proposed unit.

(c) Offers of proof. The statement of position shall include an offer of proof setting forth the evidence that the party would present regarding any disputed issues that go to whether the petitioner has demonstrated majority support for the proposed unit. The offer of proof shall identify each witness the party would call and summarize each witness's testimony. If the hearing officer determines that the evidence described in an offer of proof, if proven, is insufficient to sustain the proponent's position, the evidence shall not be received.

(d) Representative for service. The statement of position shall also state the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the employer and accept service of all papers for purposes of the representation proceeding.

(e) Information on individuals in proposed unit. The statement of position shall include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer shall separately list the full names, work locations, shifts, and job classifications of all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit. The employer shall also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. The list(s) of names shall be alphabetized (overall or by department) and be in an electronic format, either Microsoft Word, Adobe Acrobat pdf, or Excel, unless the employer certifies that it does not possess the capacity to produce the list in the required form.

(f) Declaration of truthfulness. The statement of position shall contain 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.

## **HEARINGS AND ELECTIONS**

### **§ 263.25 Hearing and/or conference.**

*(a) Scheduling of conference and/or hearing.* A conference and/or hearing shall be scheduled for the second business day after the response is due. Parties should be prepared to fully present any evidence and respond to all arguments and issues raised in the statements of position at the conference and/or hearing.

*(b) Determination of whether hearing necessary.* After receipt of all statements of position, the hearing officer will determine whether there are any disputed issues of material fact which require additional evidence beyond that provided in the petition and the offer of proof. If there are, the hearing officer may conduct a hearing to resolve such issues. In the event that there are no disputed issues of material fact, the hearing officer shall resolve any legal issues raised in the statements of position and shall issue a written decision.



## **§ 263.26 Conduct of hearings**

- (a) Question of representation. The primary purpose of a conference or hearing conducted under Section 705 of SERA by a hearing officer is to investigate whether the requisite showing of interest has been established and to determine if certification of the proposed bargaining representative is appropriate.
- (b) Petitioner's response. At the conference and/or hearing, the Petitioner shall respond to all issues raised in the statements of position.
- (c) At the conference and/or hearing, parties may request to admit additional documentary or testimonial evidence supporting their positions.
- (d) Supervisory status. Disputes concerning supervisory status will normally not be litigated and resolved by the hearing officer before a representative is certified. Questions of supervisory status will only be addressed prior to certification where necessary to resolve whether the showing of interest is sufficient for certification without an election.
- (e) Certification. If, upon the record, the hearing officer finds that the requisite showing of majority support for the proposed bargaining unit has been established and the bargaining unit is appropriate, the hearing officer shall certify the representative.
- (f) Conduct of hearing. Hearings shall be conducted by a hearing officer and shall be open to the public unless otherwise ordered by the hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding by the director of PEPR. A hearing officer may conduct a hearing either in person, by telephone, or electronically by use of a digital platform enabling the hearing officer, all parties, and any witnesses to be seen and heard.
- (g) Continuation of hearing. The hearing shall continue from day to day until completed unless the hearing officer concludes that extraordinary circumstances warrant otherwise. The hearing officer may, in the hearing officer's discretion, adjourn the hearing to a different place by announcement thereof at the hearing or by other appropriate notice.
- (h) Oral argument. Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic record of the hearing. Post-hearing briefs shall be filed only upon special permission of the hearing officer and within the time and addressing the subjects permitted by the hearing officer. Post-hearing briefs, if allowed by the hearing officer, shall be due within two business days of the close of the hearing. Copies of the brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the hearing officer together with the brief. No reply may be filed except upon special permission of the hearing officer.

## **§ 263.27 Elections; terms and conditions.**

If the director of PEPR or hearing officer determines, as part of the investigation of a question or controversy concerning representation, that an election or elections by secret ballot is necessary, the director of PEPR or hearing officer shall provide that such election or elections be conducted by an agent of the board upon such terms or conditions as the director of PEPR or hearing officer may specify. The election shall be conducted either in person, by mail, or electronically, and shall be scheduled at the first possible date. Elections conducted in person shall be conducted at a location as may be required under conditions set by the director of PEPR and not under the employer's supervision or control.

### **§ 263.28 Decision by hearing officer.**

(a) Upon completion of the hearing, the hearing officer shall issue a written decision resolving any material issues of disputed fact and all legal issues raised by the parties. If the hearing officer's decision is not issued within 14 calendar days from the close of the hearing, either party may request expedited review by the board.

(b) If the hearing officer determines that certification of the representative without an election is appropriate, the hearing officer shall issue such certification. The hearing officer's determination that the indications of employee support are sufficient for certification without an election is reviewable by the board pursuant to a written objection to certification filed with the board by a party within ten working days after its receipt of the hearing officer'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 proceedings. A response to the objection may be filed within five working days after a party's receipt of the objection. The party filing objections with the board or an opposition to objections shall serve a copy thereof on the other parties and shall file a copy with the board. Review by the board will only be granted in accordance with section 263.29 (b) of this Part.

(c) If the hearing officer determines that certification of the unit without an election is not appropriate, the hearing officer shall issue a decision explaining the basis for her decision. Exceptions to the hearing officer's decision may be filed pursuant to section 263.67 of this Part.

(d) If the hearing officer determines that that an election by secret ballot is necessary, the hearing officer shall provide that such election or elections be conducted by an agent of the board in compliance with section 263.27 of this Part.

## **CERTIFICATIONS**

### **§ 263.29 Certification of representatives; requests for review.**

(a) Hearing officer certification. The hearing officer, upon the completion of their investigation, shall certify to the parties the name or names of the representatives selected, if any, or make other disposition of the matter.

(b) Finality of certification and filing request for review. The certification issued by the hearing officer shall be final and binding and the obligation to bargain shall attach. Objections to the hearing officer's decision and certification may be filed with the board in accordance with section 263.28 of this Part. The board will only grant review under compelling circumstances. Accordingly, a request for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of:

(i) The absence of; or

(ii) A unexplained departure from officially reported FLFLPA or applicable SERA precedent.

(2) That the hearing officer's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important board rule or policy.

(c) Contents of request for review. A request for review must be a self-contained document enabling the board to rule on the basis of its contents without the necessity of recourse to the record; however, the board may, in its discretion, examine the record in evaluating the request. Such request may not raise any issue or allege any facts not timely presented to the hearing officer.

(d) Effect of request for review. The grant of a request for review shall not stay the hearing officer's action unless otherwise ordered by the board.

(e) Expedited treatment. All requests for review shall be afforded expedited treatment by the board.

(f) Preclusion. The hearing officer's actions are final unless a request for review is granted. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice charge proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the hearing officer's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

(g) Transmission of the record. Immediately upon issuance of an order granting a request for review by the board, the hearing officer shall transmit the record to the board.

### **§ 263.30 Life of certification.**

When a representative has been certified, the certification shall remain in effect until such time as it shall be made to appear to the board that the certified representative does not represent a majority of the employees within an appropriate unit.

**§ 263.31 Petition; withdrawal or amendment.**

At any time before the assignment of a petition for certification to a hearing officer, the director of PEPR may permit the amendment of the petition or its withdrawal in whole or in part. At any time after the assignment, the hearing officer, upon motion, may permit withdrawal of the petition in whole or in part, and the hearing officer may permit amendment thereof.

**UNIT CLARIFICATION**

**§ 263.32 Petition for unit clarification; contents.**

A petition for unit clarification shall contain the following:

- 1) the name of the employer and the name of the recognized or certified bargaining representative;
- 2) the address of the establishment involved;
- 3) the general nature of the employer's business;
- 4) a description of the present bargaining unit and, if the bargaining unit is certified, an identification of the existing certification;
- 5) a description of the proposed clarification;
- 6) the names and addresses of any other persons or labor organizations who claim to represent any employees affected by the proposed clarifications, and brief descriptions of the contracts, if any, covering any such employees;
- 7) the number of employees in the present bargaining unit and in the unit as proposed under the clarification;
- 8) a statement by petitioner setting forth reasons why petitioner desires clarification of the unit;
- 9) the name, affiliation, if any, and address of the petitioner and contact information of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding. Contact information shall include, if applicable, the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner;
- 10) any other relevant facts.

### **§ 263.33 Petition for unit clarification; processing.**

After a petition has been filed under section 263.32 of this Part, the director of PEPR, or their designee, shall conduct an investigation and, as appropriate, may issue a decision without a hearing; or prepare and cause to be served upon the parties and upon any known individuals or labor organization purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein; or take other appropriate action. If a notice of hearing is served, it shall be accompanied by a copy of the petition. All hearing and post-hearing procedure under this paragraph shall be in conformance with sections 263.26 through 263.29 of this Part whenever applicable.

## **PROCEDURE UNDER SECTION 706 OF SERA FOR PREVENTION OF UNFAIR LABOR PRACTICES**

### **CHARGE**

#### **§ 263.34 Charge.**

(a) A charge that any employer has engaged in or is engaging in any unfair labor practice may be made by any person or labor organization. In deciding any unfair labor practice charge brought pursuant to section 704-b.2(c) of the SERA, the expression of any views, argument, or opinion, regardless of form or method of dissemination, shall not constitute or be evidence of an unfair labor practice if such expression contains no threats of reprisal, force, or promise of benefit. In recognition of First Amendment jurisprudence regarding permissible speech of parties in the labor relations context, precedent decided pursuant to section 704 of the SERA shall be fully applicable, including decisions of the board adopting precedent decided under the National Labor Relations Act by the National Labor Relations Board and by U.S. courts.

(b) Any agricultural employer may make a charge that employee(s) or a labor organization has engaged in or is engaging in an unfair labor practice as defined by section 704-b (1) of SERA. No other unfair labor practice charge may be brought against a labor organization or employees.

#### **§ 263.35 Charge; form; filing.**

A charge shall be in writing. The original shall be supported by a statement made by the person filing the charge or the agent or representative of that person or entity. The statement may be an unsworn declaration of the person filing the charge, the content of which is declared as true under penalty of perjury, and signed and dated. The charge may be filed electronically with the director of PEPR (see section 263.15 of this Part). Filing and service of an electronic copy constitute compliance with the filing requirements. Charge forms will be supplied by the board upon request and are available at the board's website.

#### **§ 263.36 Contents of charge.**

A charge shall contain:

- (a) the full name and address of the person, labor organization, or employer making the charge;
- (b) the full name and address of the employer, labor organization, or employee against whom the charge is made;
- (c) an enumeration of the subdivision or subdivisions of sections 704, 704-a, or 704-b of SERA which are alleged to have been violated by the employer, labor organization, or employee, and, in the event it is alleged that any employee has been discharged, refused employment, or suffered discrimination in violation of SERA, the name of such employee.
- (d) An unfair labor practice form to be used only for FLFLPA cases is available at the board's website.

### **§ 263.37 Initial processing by director**

(a) *Initial review.* After a charge is filed, the director of PEPR shall conduct a review of the charge to determine whether the facts as alleged fall within the jurisdiction of the board under the FLFLPA and whether the facts as pleaded support an unfair labor practice charge as set forth in section 704 or 704-b of SERA. If the director of PEPR determines that the pleaded facts do not support such a charge, or that the charge is so vague that the respondent could not reasonably respond to the charge, the director may permit the party to amend the charge to cure such deficiency. Any motions by the parties will be filed subsequent to a case conference with the assigned hearing officer.

(b) *Notice of conference.* A notice of conference shall be prepared by the director or a designated hearing officer specifying the time and place for the conference and, together with a copy of the charge, shall be served electronically upon the charging party and each named respondent.

### **§ 263.38 Charge; amendment**

The director of PEPR or hearing officer designated by the director of PEPR may permit a charging party to amend the charge at any time prior to issuance of a decision or dismissal upon such terms as may be deemed just and consistent with due process.

### **§ 263.39 Charge; withdrawal**

The charge may be withdrawn by the charging party before the issuance of the hearing officer's decision and order based thereon upon approval by the director of PEPR. Thereafter, the unfair labor practice proceeding may be discontinued only with the approval of the board. Requests to the director of PEPR to withdraw an unfair labor practice charge or to the board to discontinue an unfair labor practice proceeding will be approved unless to do so would be inconsistent with the purpose and policies of SERA, the FLFLPA, or due process of law. Whenever the director of

PEPR approves the withdrawal of a charge, or the board approves the discontinuation of a proceeding, the case will be closed without consideration or review of any of the issues raised by the charge.

## **ANSWER**

### **§ 263.40 Answer; filing; service.**

The party or parties against whom the charge is filed may file an answer within 10 calendar days after receipt of the charge from the director of PEPR. Upon application, and for good cause shown, the director of PEPR or designated hearing officer may extend once the time within which the answer shall be filed.

### **§ 263.41 Answer; verification.**

The answer shall contain a declaration of the party filing it.

### **§ 263.42 Answer; contents.**

The answer shall contain:

- (a) Specific admissions or denials of each allegation of the charge controverted by the party filing the answer, or of any knowledge or information thereof sufficient to form a belief. An allegation in the charge not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief as to the truth thereof, shall be deemed admitted;
- (b) A statement of facts with numbered paragraphs setting forth the nature of the controversy. The statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the answer;
- (c) Defenses: The answer shall contain a concise statement of the facts constituting the grounds of each and every defense alleged. Any defense not raised in the answer is waived. Mere conclusory allegations of law absent a factual basis will not be considered. The answer may also contain an argument with citations to legal authority in support of the defenses raised. Allegations of new matters in the answer shall be deemed denied without the necessity of a reply.

### **§ 263.43 Answer; amendment.**

In the discretion of the director of PEPR or the hearing officer, an answer may be amended upon motion of the party filing it, upon due notice to all parties.

### **§ 263.44 Answer; failure to file.**

If the party or parties against whom the charge is brought fails to file a timely answer as required, the hearing officer may deem such failure to constitute an admission of the material facts alleged in the charge.

**§ 263.45 Pleadings; construction.**

All pleadings shall be liberally construed.

**GENERAL PROVISIONS RELATING TO ALL PROCEEDINGS**

**JOINDER**

**§ 263.46 Parties; nonjoinder and misjoinder.**

No proceeding will be dismissed because of nonjoinder or misjoinder of parties. Upon motion of any party or the board's agent, parties may be added, dropped, or substituted at any stage of the proceedings, upon such terms as may be deemed proper.

**§ 263.47 Joinder of parties; relief.**

All persons and entities alleged to have engaged in any unfair labor practices may be joined as parties, whether jointly, severally, or in the alternative, and a decision may be rendered against one or more of them, upon all of the evidence without regard to the party by or against whom such evidence has been introduced.

**MOTIONS**

**§ 263.48 Motions during hearing.**

All motions made during a hearing, except as otherwise provided or permitted by the hearing officer, shall be made orally at the hearing and shall be decided by the hearing officer. All such motions and the rulings and orders thereon shall be part of the record of the proceeding.

**§ 263.49 Motions before or after hearing.**

All motions, other than those made during a hearing, shall be made in writing to the director of PEPR or the designated hearing officer, shall briefly state the relief sought and shall be accompanied by papers setting forth the grounds for such motion. The moving party shall serve copies of all motion papers on all other parties and shall within three working days thereafter file electronically (see section 263.15 of this Part) with proof of service with the director of PEPR or the designated hearing officer. Answering papers, if any, must be filed and served on all parties. Answering papers must be filed electronically with the director of PEPR or the designated hearing officer (see section 263.15 of this Part) within three working days after service of the moving papers unless directed otherwise. All such motions shall be decided by the director of PEPR or the designated hearing officer upon the papers filed with them.



## **WAIVER**

### **§ 263.50 Objections; waiver.**

An objection not timely urged before the board, director of PEPR, or designated hearing officer shall be deemed waived unless the failure to urge such objection shall be excused by the board because of extraordinary circumstances.

## **INTERVENTION**

### **§ 263.51 Procedure; contents; filing; service.**

A person, employer, or labor organization desiring to intervene in any proceeding shall file electronically with the director of PEPR or designated hearing officer (see section 263.15 of this Part) a written application, setting forth the facts upon which such person, employer or organization claims an interest in the proceeding. The application may be supported by a declaration of the filer. Such application must be served on all parties. Applications must be filed with the director of PEPR or designated hearing officer with proof of service at least two working days before the first hearing. Failure to serve or file such application, as above provided, shall be deemed sufficient cause for the denial thereof, unless good and sufficient reason exists why it was not served or filed as herein provided. The director of PEPR or designated hearing officer shall rule upon all such applications and may permit intervention to such an extent and upon such terms as they shall determine may effectuate the policies of FLFLPA and, where applicable, of SERA.

## **CONSOLIDATION OR SEVERANCE**

### **§ 263.52 Consolidation; severance.**

Two or more proceedings under sections 705 and 706 of SERA, or either, may be consolidated by the director of PEPR or the designated hearing officer. Such proceedings may be severed by the director of PEPR or the designated hearing officer in their discretion.

## **WITNESSES AND SUBPOENAS**

### **§ 263.53 Witnesses; examinations; record; depositions.**

Witnesses at all hearings shall be examined orally under oath or affirmation, and a record of the proceeding shall be made and kept by the board. If any witness resides outside the State or through illness or other cause is unable to testify before the board or its member, agent or agents conducting the hearing or investigation, their testimony or deposition may be taken within or without this State, in such form as may be directed. All applications for taking such testimony or deposition must be made by motion.

### **§ 263.54 Subpoenas.**

Subpoenas under this Part shall be subject to paragraph (k) of subdivision five of section two hundred five of the civil service law and the rules and regulations promulgated under paragraph (l) of subdivision five of section two hundred five of the civil service law.

## **CONFERENCES AND HEARINGS**

### **§ 263.55 Conferences and hearings; conduct.**

(a) Prior to or on the scheduled date of any hearing, the designated hearing officer shall hold a conference with the parties to the proceeding. The failure of a party to appear at the conference may, in the discretion of the hearing officer, constitute ground for dismissal of the absent party's pleading. The hearing officer may, at their discretion, conduct the conference by videoconference, telephone, or by other platform in whole or in part.

(b) Hearings shall be conducted by a designated hearing officer. At any time, a hearing officer may be designated to take the place of the hearing officer previously designated to conduct the hearing. All hearings shall be open to the public unless good cause is shown for closing the hearing.

### **§ 263.56 Hearings; powers and duties of hearing officer.**

During the course of any hearing, the hearing officer, in addition to the other powers specifically conferred upon them, shall have full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. It shall be the duty of the hearing officer to see that a full inquiry is made into all the facts in issue and to obtain a complete record of all facts necessary for a fair determination of the issues. The hearing officer shall have the right to call and examine witnesses, to direct the production of papers or other matter present in the hearing room, and to introduce documentary or other evidence. The hearing officer may, at their discretion, conduct the hearing by videoconference in whole or in part.

### **§ 263.57 Hearings; rights of parties.**

In any hearing all parties shall have the right to call, examine and cross-examine witnesses, and to introduce documentary or other evidence, subject to the rulings of the hearing officer.

### **§ 263.58 Hearings; stipulations.**

At a hearing, stipulations may be introduced in evidence with respect to any issue, where such stipulation has been joined in by all parties.

### **§ 263.59 Hearings; continuation of.**

The hearing shall continue from day to day until completed unless the hearing officer concludes that extraordinary circumstances warrant otherwise. The hearing officer may, in the hearing

officer's discretion, adjourn the hearing to a different place by announcement thereof at the hearing or by other appropriate notice.

**§ 263.60 Hearings; oral argument or briefs; unfair labor practice cases.**

In a proceeding under section 706, the hearing officer may permit the parties to argue orally at the close of the hearing or to file briefs or written statements. The time for oral argument or filing briefs or memoranda shall be fixed by the hearing officer.

**§ 263.61 Hearings; oral argument or brief; representation cases.**

At the close of hearings in a proceeding under section 705, the hearing officer may permit the parties to argue orally at the close of the hearing or to electronically file briefs or written statements. The time for filing such briefs or written statements shall be fixed by the hearing officer.

**§ 263.62 Hearings; variance between pleadings and proof.**

A variance between an allegation in a petition under section 705 or a pleading in a proceeding under section 706, and the proof, is not material unless it is so substantial as prejudicially to mislead the board or any party. If a variance is not material, the hearing officer may admit such proof and the facts may be found accordingly.

**§ 263.63 Hearings; motions; objections.**

Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing.

**§ 263.64 Hearings; reopening.**

(a) Motions for leave to reopen a hearing because of newly discovered evidence shall be timely made.

(b) The board or a hearing officer may, in their discretion or on their own motion, reopen a hearing and take further testimony at any time.

**§ 263.65 Hearings; evidence as to transactions had at conferences.**

No testimony or evidence shall be given or received at any hearing concerning transactions had or statements or communications made during the conduct or course of any conference called and held concerning charges or petitions unless at the hearing all parties shall expressly waive this provision.

**§ 263.66 Decision and order.**

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

### **§ 263.67 Exceptions to the Board.**

(a) This section applies to exceptions to the board to decisions, reports, orders, rulings or other appealable findings or determinations.

(b) Within 15 working days after receipt of a decision, report, order, ruling or other appealable findings or conclusions, a party may file electronically (see section 263.15 of this Part ) with the board a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings. A brief in support thereof shall be filed simultaneously as a separate document. A copy of such exceptions and briefs shall be served upon all other parties and proof of such service shall be filed with the board.

(c) 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.

(d) Within seven working days after receipt of exceptions, any party may file electronically (see section 263.15 of this Part) 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 electronically a response, 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 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 is requested or authorized by the board, the board shall notify the parties regarding the conditions under which that pleading will be permitted.

(e) A request for an extension of time within which to file exceptions and briefs shall be in writing, and filed electronically with the board before the expiration of the required time for filing exceptions, 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.

(f) 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.

(g) 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.

### **§ 263.68 Motions for leave to file interlocutory exceptions in extraordinary circumstances**

(a) Within ten working days after receipt of any interim decision, order or ruling, a party may, consistent with section 263.67 of this Part, file with the board electronically (see section 263.15 of this Part) a motion seeking leave to file interlocutory exceptions to such interim decision, order, or ruling. 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.

(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 263.67 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 263.68 (a) and (b) of this Part.

(d) 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 electronically (see section 263.15 of this Part) 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.

(e) Board action on motion for leave to file exceptions: 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 of PEPR, the director of conciliation, an assistant director or hearing officer.

(f) 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.

### **§ 263.69 Final board action**

Unless a party files exceptions in accordance with this Part, the decision, report, order, ruling, finding or other determination, or any part thereof will be final, except that the board may, on its own motion, decide to review the remedial action recommended under an unfair labor practice charge within 45 working days after receipt by the parties of the decision and recommended order. A remedial order of a hearing officer in an unfair labor 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 707 of SERA and section 263.72 of this Part.

### **§ 263.70 Record in proceedings under section 706.**

(a) The record in proceedings under section 706 shall consist of the charge or amended charge, the pleadings, notices of hearing, notices of argument, motions, orders, stipulations, stenographic minutes, exhibits, depositions, the hearing officer's decision and order, exceptions, responses, any other pertinent materials before the board, and the final decision and order.

(b) If a proceeding under section 706 is predicated in whole or in part upon a prior proceeding under section 705, the record of such prior proceeding shall be deemed a part of the record in the proceeding under section 706 for all purposes.

### **§ 263.71 Record in proceedings under section 705.**

The record in proceedings under section 705 shall consist of the petition or amended petition, notices of hearing, notices of argument, motions, orders, stipulations, stenographic minutes, exhibits, depositions, decision and direction of election, report on secret ballot, objections thereto, responses, any other pertinent materials before the board, and certification, dismissal or decision.

### **§ 263.72 Enforcement**

(a) A party may request the board to seek a judicial order as provided by section 707 of SERA, enforcing a remedial order of the board or that of a hearing officer to which no exceptions have been filed with the board if the party or parties against whom the order was issued refuses or fails to comply with the order, provided that such order is not, or is no longer, subject to judicial review pursuant to section 707 of SERA.

(b) Request for enforcement. A party seeking enforcement by the board must file with the board's office of counsel electronically (see section 263.15 of this Part) a written request stating the reason(s) why a judicial order of enforcement is necessary, supported by 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. 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 electronically with the office of counsel 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 office of counsel. Following review of a request for enforcement and the response, the office of counsel, will determine whether a petition for a judicial order of enforcement pursuant to section 707 of SERA should be commenced.

### **§ 263.73 Public record.**

The record as defined in sections 263.70 and 263.71 of this Part shall constitute the public record of the case and shall be made available for inspection or copying under such conditions as the board may prescribe.

## **DESIGNATION, POWERS AND DUTIES OF BOARD'S AGENTS**

### **§ 263.74 Hearing officers; powers and duties.**

All hearing officers, fact-finders, and any other individuals designated by the board to hold hearings, are hereby designated by the board as its agents:

- (a) to conduct and be in full charge and control of any and all hearings;
- (b) in connection with such hearings, to have access to and the right to copy evidence, to administer oaths and affirmations, to examine witnesses, to receive evidence, and in connection therewith, to do any and all things necessary and proper to effectuate the policies of SERA and this Part.

### **§ 263.75 General.**

The foregoing designations are not to be construed to limit the power of the board to make such special designations of agents as may be necessary to effectuate the purposes of FLFLPA and, where applicable, SERA, nor shall the foregoing designations be construed as limiting the power of the board at any time to confer upon its agent or agents additional duties.

## **SERVICE OF PAPERS AND ORDERS OF THE BOARD**

### **§ 263.76 Method; proof.**

Charges, petitions, orders and other process and papers of the board, its members, agent or agency, may be served electronically, personally, by regular mail, by registered mail, by

commercial mail service, or by leaving a copy at the principal office or place of business of the person to be served. A declaration or affidavit of service, setting forth the manner of such service, the return post office receipt when registered and mailed as aforesaid, or electronic confirmation shall constitute proof of service. Final orders issued by the board shall be served upon the parties by registered or certified mail, or pursuant to section 263.15 of this Part.

**§ 263.77 Service by a party.**

Service of papers by a party may be made personally or by mail, or electronically. When service is made by mail, a return post-office receipt, or declaration or affidavit of service by mail, shall constitute proof of service. When service is made electronically, electronic confirmation shall constitute proof of service.

**§ 263.78 Service upon attorney.**

If a party appears by attorney, all papers other than the charge or petition and notice of original hearing may be served as hereinabove provided upon such attorney, or pursuant to section 263.15 of this Part, with the same force and effect as though served upon the party.

**CERTIFICATION AND SIGNATURE OF DOCUMENTS**

**§ 263.79 Executive director; certification of papers; notices and reports.**

The executive director, or such other person as may be designated by the executive director, is authorized to certify copies of all papers and documents which are a part of any of the files or records of the board, to sign and issue all notices or reports of the board.

**CONCILIATION**

**§ 263.80 Impasses in Collective Bargaining and Assignment of Mediators.**

In the event that an employer and a labor organization have failed to achieve an agreement, either the employer or the labor organization, or both acting jointly, may notify the board in writing of the existence of an impasse. The notification, or declaration of impasse, must be signed by the representative of the declaring party, or where the parties are jointly declaring impasse, the representative of each party. The notification shall be filed electronically with the director of conciliation (see section 263.15 of this Part). Upon receipt of the notification of an impasse in collective bargaining, the board may appoint a mediator from a list of qualified persons maintained by the board to assist the parties to effectuate a voluntary resolution of the impasse. It is the policy of SERA that the board shall consider and make the parties aware of the availability of federal and other mediation services, and shall give priority in providing mediation services to those parties without access to those other services.

**§ 263.81 Voluntary interest arbitration.**



(a) In the event that an employer and a labor organization agree to submit any unresolved issue in bargaining to interest arbitration, they may jointly request the assistance of the board in providing for such arbitration by a letter directed to the director of conciliation.

(b) The written request 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.

### **§ 263.82 Resolution of Labor Disputes.**

The board delegates to its Chairperson, or his or her designee, the authority to take such steps under sections 702, and 702-a.1 of SERA deemed expedient and efficient to effectuate a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between an employer, labor organization or employees concerning an existing, imminent or threatened labor dispute.

### **§ 263.83 Policy regarding grievance arbitration.**

It is the policy of SERA for the board to have the power at the request of the parties to a collective bargaining agreement between an employer and a labor organization to assist them in the arbitration of such grievances as may arise under the agreement and to establish panels of qualified persons to be available to serve as arbitrator of such grievances. 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.

### **§ 263.84 Panel of arbitrators.**

(a) The board shall maintain a panel of arbitrators 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.

(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. 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.

### **§ 263.85 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. The voluntary arbitration rules of procedure shall apply in the form in effect at the time the arbitration is initiated.

**§ 263.86 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.

(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 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;
- (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 of the grievant);
- (9) the following language, quoted verbatim:  
“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, P.O. BOX 2074, EMPIRE STATE PLAZA, AGENCY BUILDING 2, FLOOR 20, ALBANY, NEW YORK, 12220-0074 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 labor organization;

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

(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 of the grievant);

(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.

### **§ 263.87 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.

### **§ 263.88 Arbitrability.**

(a) Should either party contest the arbitrability of a grievance, the director of conciliation shall make no determination as to whether the grievance is a proper subject for arbitration. The director of conciliation's responsibilities throughout the application of this Part are 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.

(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.

### **§ 263.89 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, of each arbitrator on such panel list shall be provided for the parties' review. Each party shall have 10 working 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 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, 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) Designation 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.

**§ 263.90 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.

**§ 263.91 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, 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 power specified in CPLR sections 7505, 7506, and 7509 insofar as these sections may be applicable. The arbitrator's conduct shall conform to applicable laws.

**§ 263.92 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.

#### **§ 263.93 Award upon settlement.**

The commencement of the administration of this Part shall in no way preclude the parties from adjusting the dispute on their own at any time before or during an arbitration hearing. If a settlement has been reached between the parties, the arbitrator, upon joint request of the parties, may set forth the terms of the settlement in the form of an award.

#### **§ 263.94 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 the arbitrator.

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

#### **§ 263.95 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. If the parties agree, the award shall be delivered electronically. 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 263.94 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. In any case, the parties shall notify the director of conciliation of any undue delay.

#### **§ 263.96 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.

#### **§ 263.97 Expenses and fees.**

(a) An administrative fee per party shall be charged by the board for its administrative services.

(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 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.

## **SETTLEMENT OF LABOR DISPUTES PURSUANT TO § 702-a of SERA**

### **§ 263.98 Settlement of Labor Disputes**

Parties may submit requests for settlement of existing, imminent, or threatened labor disputes to the director of conciliation, located in Albany, New York.

## **IMPASSE RESOLUTION PROCEDURES FOR AGRICULTURAL EMPLOYERS AND FARM LABORERS**

### **§ 263.99 Impasse Resolution Procedures for Agricultural Employers and Farm Laborers**

(a) *Filing of declaration of impasse.* In the event that an agricultural employer and a certified or recognized labor organization have failed to achieve an agreement by the end of a forty-day period from the date of certification or recognition of an labor organization or from the expiration date of a collective bargaining agreement, either the employer or the labor organization, or both acting jointly, may notify the board in writing of their belief that an impasse exists by filing a declaration of impasse. A copy of the declaration shall be served on the other party to the negotiations and on the director of conciliation. Compliance with electronic filing protocols shall constitute full compliance with all filing requirements (see section 263.15 of this Part). Such declaration shall specify:

(1) the name, affiliation, if any, and address, telephone number, fax number, and electronic mail address, if any, of the person issuing the 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 labor 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 expiration date of the present agreement, if any;
- (6) a clear and concise history of negotiations prior to filing the declaration, 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 declaration has been served upon the other parties to the collective negotiations;
- (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) *Answer.* Within 5 business days of receipt of the declaration, the party not declaring impasse may file an answer to the declaration with the director of conciliation. The answer shall be served on the party declaring impasse.

(c) *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. The director of conciliation may order the parties to meet and bargain with each other at specific dates and times and in specific locations. Nothing herein shall preclude an impasse from being deemed to exist on motion of the director of conciliation or the board.

### **§ 263.100 Impasse arbitration; petition**

(a) *Filing.* If the mediator is unable to effect settlement of the impasse within 30 days after their appointment, either party may petition the director of conciliation to refer the dispute to a neutral arbitrator. The director of conciliation shall refer the impasse to a neutral arbitrator. A copy of the petition shall be served upon the other party to the impasse simultaneously. Electronic filing and service shall constitute compliance with the filing and service requirements herein contained. See section 263.15 of this Part.

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

- (1) The name and address of the employer and the labor organization involved in the impasse.
- (2) The name, title, address, 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 most recent proposal regarding terms and conditions of employment not agreed upon.

Proposed contract language presented during negotiations must be attached.

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

(5) Proof of service upon the respondent party.

### **§ 263.101 Impasse arbitration; response and cross-response**

(a) *Response.* 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.

(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 presented during negotiations shall be included. If the respondent has filed a declaratory ruling petition with the director of PEPR related to neutral arbitration under section 263.107 of this Part, the response shall contain a reference to such petition. The response must include proof of service upon the petitioning party.

(c) *Cross-response.* A petitioner filing an objection to arbitrability under Section 263.107 of this Part, as a result of the response, 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.

### **§ 263.102 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 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) *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 mandatory negotiations by filing a declaratory ruling petition pursuant to section 263.107 of this Part. The sole means of resolving such objection will be by filing a declaratory ruling petition. 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 263.101 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.

(c) *Effect of declaratory ruling petition.* The arbitrator shall not make any award on issues, the arbitrability of which is the subject of a declaratory ruling petition, until final determination thereof or withdrawal of such petition; the arbitrator may make an award on other issues.

### **§ 263.103 Selection of the neutral arbitrator**

(a) *Selection.* If the parties are unable to agree upon the arbitrator within seven working days of receipt of the petition, either party may request the board to submit a list of qualified persons for selection as the arbitrator. Within seven working days after receipt of such request, the 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.

(b) *Selection process.* Within ten working days after receipt of the list, the parties will notify the director of conciliation of the identity of a qualified arbitrator 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 one person remains, who shall be designated as the arbitrator. 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 working days of receipt of the list from the director of conciliation. The director of conciliation must be immediately notified of the person selected as the arbitrator. 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 arbitrator.

(c) *Designation.* Upon notification of the identity of the arbitrator, the director of conciliation shall immediately designate such arbitrator and refer the dispute to such panel.

### **§ 263.104 Powers and duties of the arbitrator and conduct of the arbitration proceeding**

A neutral arbitrator has the powers and duties set forth in section 702-b (c)(ii) through (iv) of SERA. The conduct of the arbitration proceedings shall be under the exclusive jurisdiction and control of the arbitrator. The conduct of the arbitrator shall conform to applicable law.

### **§ 263.105 Payment of the arbitrator**

Each of the respective parties is to share equally the cost of the neutral arbitrator.

### **§ 263.106 Determination and award**

The determination and award of the arbitrator shall be in writing, signed and acknowledged, and shall be delivered to the parties by registered or certified mail, return receipt requested, or, upon request of both parties, by electronic mail. Within five working days of rendering the determination and award, the arbitrator shall file one executed copy of the determination and award with the director of conciliation. Electronic filing of the determination and award shall fulfill the requirement of filing with the director of conciliation.

## **DECLARATORY RULINGS**

### **§ 263.107 Petition; filing**

(a) Filing of petition. Any labor organization or employer may file with the director of PEPR electronically (see section 263.15 of this Part) a petition for a declaratory ruling with respect to the scope of negotiations under FLFLPA and SERA. The petition shall be in writing on a form provided by the director of PEPR and shall be supported by a declaration of the filer.

(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) the names and addresses of any other persons, labor organizations or employers whose interests are reasonably likely to be affected by the ruling; and
- (4) at the option of the petitioner, a proposed ruling.

### **§ 263.108 Processing by the director of PEPR**

(a) The director of PEPR or an assigned hearing officer will determine whether a declaratory ruling would be in the public interest as reflected by the policies underlying FLFLPA and, where applicable, SERA. If the director of PEPR or hearing officer determines that it would not, they shall dismiss the petition. Such dismissal shall merely constitute a refusal to issue a declaratory ruling, and not the denial of any position proposed by the petitioner. Such a decision to refuse to issue a declaratory ruling may be made at any stage of the proceeding.

(b) The director of PEPR or hearing officer shall send a copy of the petition to any persons, labor organizations, or employers, in addition to those listed in the petition, whom the director of PEPR or hearing officer deems to have interests that are reasonably likely to be affected by the ruling, together with a notice that they may at their option, become parties to the proceeding by filing electronically 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 sections 263.46 through 263.73 of this Part, except that the director of PEPR or hearing officer shall issue a decision, which may be reviewed pursuant to section 263.67 of this Part. Such declaratory ruling will be final and binding on all parties as to the negotiability of the subject or subjects, and may be reviewed along with the final decision of the hearing officer or the board as part of a petition pursuant to article 78 of the civil practice law and rules.

## **ACCESS TO RECORDS OF THE BOARD**

### **§ 263.109 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, are those described by section 87 of the Public Officers Law.

### **§ 263.110 Designation of records access officer and appeals officer**

(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.

### **§ 263.111 Procedures for inspection and copying of records**

(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, 20th 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.

### **§ 263.112 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.

## **MISCONDUCT BEFORE THE AGENCY**

### **§ 263.113 Misconduct by any person**

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

### **§ 263.114 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 a hearing officer 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 263.67 of this Part.

## **PRIVACY PROTECTION AND ACCURACY OF PERSONAL DATA**

### **§ 263.115 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.

### **§ 263.116 Definitions**

As used in this Part, the following words and terms shall have the indicated meanings: 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, PO Box 2074, Empire State Plaza, Agency Building 2, 20th Floor, Albany, NY 12220-0074, or such other address as the board may designate on the agency’s website.

(b) Privacy compliance appeals officer is the chairperson of the board whose business address is Public Employment Relations Board, PO Box 2074, Empire State Plaza, Agency Building 2, 20th Floor, Albany, NY 12220-0074, or such other address as the board may designate on the agency’s website.

**§ 263.117 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) 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 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.

**§ 263.118 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.

### **§ 263.119 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.

(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 Public Employment Relations Board.

### **§ 263.120 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 working days after receipt of a request:

(1) make requested records available;

(2) deny the request in writing 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

- (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.

#### **§ 263.21 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 working 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.

(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.

### **§ 263.122 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 working 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.

### **§ 263.123 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 working 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:

(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 working 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.