§ 200.11 Filing; service

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

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

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

(d) Proof of Service shall mean evidence that any document required to be filed with the Board or any of its agents was delivered to all other parties or other mandated recipients as required by these rules or by the Act. Proof of service shall consist of [either a sworn affirmation of counsel or notarized affidavit] <u>an affirmation</u> by the individual who served the document, specifying the document served, the person or persons upon whom it was served, and the means by which it

was served. Such affirmation shall be signed and shall state "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." Proof of service may also take the form of a United States Postal Service tracking receipt or report, or by other United States Postal Service issued document establishing the date of mailing, the identity and address of the recipients, or an acknowledgment of receipt, whether sworn or unsworn, by the party or parties upon whom service is required, or by an agent thereof.

§ 200.14. Affirmations.

Any affirmation submitted pursuant to these rules shall be signed and shall state "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." The board will prescribe forms consistent with this section. Any requirement in this Chapter for an affirmation may alternatively be satisfied by submitting a writing signed and sworn to before any person authorized to administer oaths.

§ 201.4 Showing of interest

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

(b) In determining whether the evidence submitted to establish a showing of interest is timely, the director shall accept evidence of current membership. The director 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, membership lists, dues deduction authorizations. Designation cards shall be submitted in alphabetical order.

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

(c) A determination by the director that a showing of interest is timely and that it is numerically sufficient is a ministerial act and cannot be reviewed by the board.

(d) A declaration of authenticity[, signed and sworn to before any person authorized to administer oaths,] shall be filed by the petitioner or, in the case of a motion to intervene, the movant, with the director simultaneously with the filing of the showing of interest. 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[.]; and

(3) a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board."

(e) The director may direct an investigation and, 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 Part 213.

§ 201.8 Investigation and election

(a) Initial review and processing.

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

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

(3) Hearing The director may direct that a hearing be conducted by an administrative law judge, in which event a notice of hearing specifying the time and place of the hearing

shall be served upon the parties. The conduct of the hearing shall be in accordance with the procedures specified in Part 212 of this Chapter.

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

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

(1) Certification without an election. If the choice available to the employees in a negotiating unit is limited to selecting or rejecting a single employee organization, that choice may be ascertained by the director on the basis of dues deduction authorizations and other evidence instead of by an election. In such case, the employee organization involved will be certified without an election if a majority of the employees within the unit have executed a showing of interest pursuant to section 201.4 (b) of this Part which remains current as defined in that section. Any new or additional evidence of majority support shall be accompanied by a declaration of authenticity, as defined in section 201.4 (d) of this Part. The determination by the director that the indications of employee support are not sufficient for certification without an election is a ministerial act and will not be reviewed by the board. The director shall inform all parties in writing if the director determines that the indications of employee support are sufficient for certification without an election. The director's determination in this respect is reviewable by the board pursuant to a written objection to certification filed with the board by a party within five working days after its receipt of the director's notification. An objection to certification shall set forth all grounds for the objection with supporting

facts and shall be served on all parties to the proceeding. A response to the objection may be filed within five working days after a party's receipt of the objection. A copy of any response shall be served on all other parties.

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

(d) Election procedure.

(1) Unless otherwise directed by the board, the director shall conduct and supervise all elections. All elections shall be by secret ballot. Absentee ballots will not be permitted. A motion to intervene in any such election may be filed pursuant to section 212.1 of this Chapter, as long as notification of such desire is given to the director within what the director deems to be a reasonable time prior to the scheduled date of the election. Whenever two or more employee organizations are included as choices in an election, any participant may, upon prompt request to and approval by the director, have its name removed from the ballot; provided, however, that with respect to a petition for decertification, the employee organization certified or currently recognized may not have its name removed from the ballot without giving due notice in writing to all parties and the director, disclaiming any representation interest among the public employees in the unit. Any party may be represented by observers of its own selection, subject to such

limitations as the director may prescribe. Any party or the board's agent may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, the tally of ballots shall be provided to the parties.

(2) Any party may file with the director an original and four copies of objections to the conduct of the election or conduct affecting the results of the election within five working days after its receipt of a final tally of ballots. Such objections shall contain a clear and concise statement of the facts constituting the bases for the objection, including the names of the individuals involved and the time and place of occurrence of each particular act alleged. The objections shall be in writing and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." [be signed and sworn to before any person authorized to administer oaths.] Copies of such objections shall simultaneously be served upon each of the other parties by the party filing them, and proof of service shall be filed with the director. Should the chairperson authorize electronic filing of objections, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

(3) An original and four copies of an answer shall be filed with the director within five working days after receipt from the director of notice of processing of the objections, with proof of service on all other parties. The answer shall contain a specific admission, denial or explanation of each allegation of the objection and a clear and concise statement

of any other relevant facts. The original shall be signed and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." [sworn to before any person authorized to administer oaths.] Should the chairperson authorize electronic filing of objections, the filing of a paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

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

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

(e) Runoff election.

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

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

§ 203.4 Investigation and hearing

(a) The board shall direct an investigation of any questions raised by the application and such objections to the application as may be filed with the board. In conducting such an investigation, the board or its agent may require affirmations [affidavits] or direct a hearing. Any affirmation shall contain the language set forth in section 200.14 of this Title. If a hearing is directed, the board or its agent shall prepare and cause to be served upon the applicant and any party a notice of hearing before the board or its designated administrative law judge at a time and place fixed therein.

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

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

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

(b) Petitions: filing. A petition to review the question of whether provisions and procedures of a local government are being implemented in a manner substantially equivalent to the provisions and procedures set forth in the act and this Chapter (hereinafter called a petition for review) may

be filed by any person. Petitions under this section shall be in writing and signed. An original and four copies of the petition shall be filed with the board. Should the chairperson authorize electronic filing of such petitions, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. Petition forms will be supplied by the board upon request and will be available on the agency's website. The petition may be withdrawn only with the consent of the board. Whenever the board approves withdrawal of any petition, the case shall be closed.

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

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

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

(2) The name of the local government involved.

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

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

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

(e) Notice of pending petitions. Upon the filing of a petition under this section, notice thereof, including the date when such petition was filed and the name and address of petitioner and the

local government involved, shall be posted by an agent of the board on the public docket maintained by the board at its principal office.

(f) Investigation and hearing. The board shall direct an investigation of any questions raised by the petition. In conducting such an investigation, the board or its agent may require [affidavits] affirmations or direct a hearing. Any affirmation shall contain the language set forth in section 200.14 of this Title. If a hearing is directed, the board or its agent shall prepare and cause to be served upon petitioner and all other parties a notice of hearing before the board or an administrative law judge at a time and place fixed therein. Any hearing will be conducted in accordance with the procedures set forth in Part 212.

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

§ 204.1 Charge

(a) Filing of charge.

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

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

(2) If the facts constituting the alleged improper practice also are alleged to support a claim by an employee organization that a public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for a strike, then the charge may not be filed after the date on which the employee organization is required to file its answer to the strike charge pursuant to section 206.5 of this Chapter.

(3) The charge shall be in writing on a form provided by the director and shall be signed and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." [sworn to before any person authorized to administer oaths.]

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

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

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

(3) a clear and concise statement, preferably in numbered or lettered paragraphs, of the facts constituting the alleged improper practice, including the names, and, where known or relevant, the titles and work locations of the individuals involved in the alleged improper practice; the date and the place of the occurrence of each particular act alleged;

and the subsections of section 209 a of the act alleged to have been violated. Evidentiary exhibits may be attached but will not relieve the charging party of the requirement to provide sufficient factual particulars as set forth herein;

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

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

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

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

(e) Withdrawals. A charge may be withdrawn by the charging party before issuance of a decision and recommended order based thereon upon approval by the director. Thereafter, a charge may be withdrawn only with the approval of the board. Requests to the director to withdraw a charge or to the board to withdraw a charge will be approved unless to do so would be inconsistent with the purposes and policies of the act or due process of law. Whenever the director approves the withdrawal of a charge, or the board approves the withdrawal of the charge, the case will be closed without consideration or review of any of the issues raised by the charge.

§ 204.3 Answer

(a) Filing. The respondent shall file with the director an original and four copies of an answer to the charge, with proof of service of a copy thereof on all other parties within 10 working days after receipt of a copy of the charge from the director. Should the chairperson authorize electronic filing of such answer, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. The original shall be signed and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." [sworn to before any person authorized to administer oaths.]

(b) Motion for particularization of the charge. If the respondent believes that a charge is so vague and indefinite that it cannot reasonably be required to frame an answer, the respondent may, within 10 working days after receipt of a copy of the charge from the director, file, in the same manner as would be applicable to the filing of an answer, a motion with the administrative law judge, with proof of service on all other parties, for an order directing the charging party to file a verified statement supplying specified information. The charging party may likewise file a response to the motion within seven working days after its receipt thereof, with proof of service of a copy of the response on all other parties. The filing of such motion will extend the time during which the respondent must file and serve its answer until 10 working days after receipt of the ruling of the administrative law judge on the motion, or until such later date as the administrative law judge may set. The failure of a party to timely comply with an order of

particularization may, in the discretion of the administrative law judge, constitute ground for precluding the party from offering any evidence as to the matters dealt with by the order.

(c) Contents.

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

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

(d) Motion for particularization of the answer. If the charging party believes that the statement of facts supporting any affirmative defense is so vague and indefinite that such charging party cannot reasonably be expected to address them in an expeditious manner at a hearing, such charging party may, within 10 working days after receipt of the answer, file with the administrative law judge in the same manner applicable to the filing of the charge a motion for an order directing the respondent to file a verified statement supplying specified information. The respondent may file a response to the motion within seven working days after its receipt

thereof, with proof of service of a copy of the response on all other parties. The failure of a party to timely comply with an order of particularization may, in the discretion of the administrative law judge, constitute grounds for precluding the respondent from offering any evidence as to the matters dealt with by the order.

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

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

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

§ 204.7 Application for injunctive relief

(a) Filing of application. A party filing an improper practice charge pursuant to Part 204 of this Chapter may apply to the board for injunctive relief pursuant to section 209-a.4 of the act by filing with the office of counsel at the board's Albany office either by electronic mail, or by filing an original and two copies of a signed application for injunctive relief. An application filed by mail or overnight delivery service shall be filed in an envelope or container prominently bearing the legend "INJUNCTIVE RELIEF APPLICATION" in capital letters on its front. An

application that is filed by electronic mail at an address designated by the board for such purpose and published on the agency's website shall state in the subject line "APPLICATION FOR INJUNCTIVE RELIEF."

(b) Application form. The application shall be filed on a form prescribed by the board which shall give notice of the right to respond pursuant to section 204.8 of this Part. The application form shall include the following:

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

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

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

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

(5) the date when the improper practice charge was filed; and

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

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

(1) a copy of the improper practice charge;

(2) an affirmation or affirmations [affidavit or affidavits] stating, in a clear and concise manner: (i) those facts personally known to the deponent that constitute the alleged improper practice, the date of the alleged improper practice, the alleged injury, loss, or damage arising from it, and the date when the alleged injury, loss, or damage occurred or will occur; and (ii) why the alleged injury, loss, or damage is immediate, irreparable, and will render a resulting judgment on the merits of the improper practice charge ineffectual if injunctive relief is not granted by the court, and why there is a need to maintain or return to the status quo in order for the board to provide meaningful relief. Such affirmations shall be signed and shall state "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." If filed electronically, the affirmation or affirmations [affidavit or affidavits] shall be in searchable format and shall not be scanned copies of the original documents;

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

(4) proof that a copy of the completed application for injunctive relief and all supporting documents was delivered to the respondent's chief legal officer in an envelope bearing the legend "ATTENTION: CHIEF LEGAL OFFICER" in capital letters on its front, and the method and date that such delivery was made, and proof of service on all other parties to the charge. If delivery to the respondent's chief legal officer is not by electronic mail or personal service, proof of delivery must establish when the respondent's chief legal officer actually received the completed application and all supporting documents. Delivery by facsimile or by electronic mail will not be accepted, unless the charging

party provides a written acknowledgment from the respondent's chief legal officer that such officer accepts delivery by that means, and when such officer received the completed application and all supporting documents; and

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

§ 204.8 Response to application for injunctive relief

(a) Filing of response. A party to whom an application for injunctive relief is delivered pursuant to section 204.7 of this Part may file with the office of counsel an original and two copies of a response to the application, with proof of service of a copy on all parties within five days after the application was actually delivered. Alternatively, an original and one copy of a response, with proof of service on all parties, may be filed with the office of counsel by either electronic mail at an electronic mail address designated by the board for that purpose, or by fax at a fax number designated by the board for that purpose within five days after delivery of the application. If the response is filed by fax, the responding party shall mail or deliver an original and two copies of the response to the office of counsel by the next working day. Unless otherwise authorized by the office of counsel, copies of the response shall be served on all other parties in the same manner in which the application is filed with the office of counsel. The response shall be signed and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." [sworn to before any person authorized to administer oaths and] The response shall be deemed filed when received by the office of counsel.

(b) Contents of response.

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

(2) Any affirmation [affidavit] submitted in support of the response shall be made on the basis of personal knowledge of the relevant facts and documentary evidence attached to the affidavit. Such affirmation shall be signed and shall state "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." If filed electronically, the affirmation or affirmations [affidavit or affidavits] shall be in searchable format and shall not be scanned copies of the original documents.

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

(c) Accelerated response. Upon presentation of clear evidence of a compelling need for determination of an application for injunctive relief in fewer than 10 days from its receipt by the

board, and upon a determination by the office of counsel that such compelling need exists, the office of counsel may direct that a response, if any, be filed within a specified time earlier than otherwise required by this section.

§ 210.1 Petition; filing

(a) Filing of petition. Any person, employee organization or employer may file with the director an original and four copies of a petition for a declaratory ruling with respect to the applicability of the act to it or any other person, employee organization or employer, or with respect to the scope of negotiations under the act. The petition shall be in writing on a form provided by the director and shall contain a signed affirmation stating, "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." [be signed and sworn to before any person authorized to administer oaths.] Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

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

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

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

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

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

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

§ 211.3 Request for subpoena

(a) The administrative law judge may issue a subpoena only when the party applying for it files a written affirmation [affidavit], with four copies, unless the chairperson has authorized electronic filing of such requests, conforming to the requirements of this Part, in which case the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. The affirmation shall be signed and shall state "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board."

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

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

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

§ 213.11 Enforcement of board orders

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

(b) Request for enforcement. A party seeking enforcement by the board must file with the office of counsel an original and four copies of a written request stating the reason(s) why a judicial order of enforcement is necessary, supported by an original and four copies of affirmations [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. Such affirmations shall be signed and shall state "I affirm under penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." Should the chairperson authorize electronic filing of such requests, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained. Said request and supporting affirmations [affidavits] shall be accompanied by proof of service on all other parties before the board.

(c) Response. Pursuant to a schedule set by the office of counsel, all other parties before the board may file in the same manner as the request was filed with the office of counsel an original and four copies of a written response to the request for enforcement stating why enforcement is not necessary, supported by affirmations [affidavits] of persons with personal knowledge of the facts set forth therein. Such affirmations shall be signed and shall state "I affirm under penalties

of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document will be filed in a proceeding before the Public Employment Relations Board." Said response and supporting affirmations [affidavits] shall be accompanied by proof of service on all other parties before the board.

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