

§ 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 or assigned hearing officer 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 director of PEPR or assigned hearing officer, upon motion, may permit withdrawal of the petition in whole or in part, and the hearing officer may permit amendment thereof. Any proposed amendment shall clearly set forth the changes proposed from the initial petition.

§ 251.7 Response.

- (a) 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^[1] and a clear and concise statement of any other facts which the responding party claims may affect the processing or disposition of the petition. At any time prior to the hearing, the director of PEPR or assigned hearing officer may permit the amendment of the response. Any proposed amendment shall clearly set forth the changes proposed from the initial response.
- (b) The employer shall submit with its response 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 of

the petition. 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.

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

§ 251.13. [Certification, Life of] Petitions for Decertification.

(a) [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.] Filing of petition for decertification. A petition for decertification may be filed to resolve a question or controversy concerning the continuing representation of employees. A petition for decertification may be filed with the director of PEPR by any employee or group of employees or any individual or labor organization acting in their behalf. A question or controversy concerning the continuing representation of employees may only be resolved through an election in which employees vote on whether to continue to be represented by the incumbent bargaining representative, by a new bargaining representative, or by no bargaining representative. Any petition for decertification must

be supported by evidence that at least 30 percent of employees in the described unit no longer wish to be represented by the incumbent representative. If the petitioner is an employee organization seeking to replace the incumbent representative, the petition shall further be supported by a showing of interest, as defined in section 250.13 of this Title, that at least 30 percent of the bargaining unit support the petitioning employee organization.

(b) Petitions for decertification shall contain the following:

(1) The name of the employer.

(2) The address of the establishments and a description of the bargaining unit involved.

(3) The general nature of the employer's business.

(4) The name and address of the petitioner and affiliation, if any, and the name, title, address, telephone number, and email address of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding.

(5) The name or names and addresses of the individuals or labor organizations who have been certified or are being currently recognized by the employer and who claim to represent any employees in the unit involved, and the expiration date of any contracts covering such employees.

(6) An allegation that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative in the appropriate unit as defined in section 705 of SERA.

(7) The approximate number of employees in the unit.

- (8) A statement that a substantial number of employees in the described unit no longer wish to be represented by the incumbent representative. Evidence supporting the statement shall be filed with the petition but shall not be served on any party.
- (9) Any other relevant facts.
- (10) The type, date(s), time(s), and locations(s) of the election sought.
- (c) An existing certification shall remain in effect until such time as employees vote by majority to decertify the incumbent representative and/or select another representative.
- (d) No decertification petition will be processed for one year after a newly certified representative and the employer have commenced negotiations for a collective bargaining agreement. Periods where the parties have not actually negotiated, as determined by the director of PEPR or assigned hearing officer, will not be counted towards the one year. Such periods may result from an employer's refusal to bargain in good faith, delays caused by stays issued in court proceedings or board action, an employer's refusal to provide requested information to a certified bargaining representative or a refusal to agree to meeting dates or places, or other events which resulted in no actual bargaining between the parties. A petition for decertification may be filed by employees or by an employee organization, other than the recognized or certified employee organization, commencing one year after the certified representative and the employer have commenced negotiations for a collective bargaining agreement, unless and until the recognized or certified employee organization has negotiated its first collective bargaining agreement.
- (e) Where an unfair labor practice charge alleging that: (1) the employer has failed to bargain collectively in violation of SERA § 706.6, has previously been filed and is pending; and/or (2) conduct which would interfere with employees' free choice either has been

filed or is filed, a decertification petition may be dismissed until the unfair labor practice charge is determined and, if found, remediated.

- (f) A petition for decertification may be filed between 90 days and 60 days before the expiration of a contract between the incumbent employee organization and the employer. If the agreement has a duration of three years or more, a petition for decertification may be filed between 90 days and 60 days before the end of the third year of the agreement and between 90 days and 60 days of the expiration or every three years thereafter.
- (g) A petition for decertification may be filed, if no new agreement is negotiated, 120 days subsequent to the expiration of a written agreement between the employer and the recognized or certified employee organization. Thereafter, such a petition may be filed until a new agreement is executed.

§ 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.]

- (e) a clear and concise statement, preferably with numbered paragraphs, of the facts constituting the alleged unfair labor practice and a summary of the proof expected to be offered to support each alleged subdivision claimed to be violated in the charge. In the event it is alleged that any employee has been discharged, refused employment, or suffered discrimination in violation of SERA, the charge must state the name of such employee;
- (f) supportive exhibits, including affidavits, may be attached that may be relevant and material. The charge may not consist solely of such attachments and will not relieve the charging party of the requirement to provide sufficient factual particulars as set forth in this section. Any attachments or exhibits shall be specifically identified and referred to in the charge.

§ 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. Any proposed amendment shall clearly set forth the changes proposed from the initial charge. 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.

§ 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. Any proposed amendment shall clearly set forth the changes proposed from the initial answer.

§ 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.]

- (a) This section applies to the agency's authority to issue subpoenas to compel the attendance of a person to testify at a hearing conducted by the board or a designee of the board on behalf of a party or subpoenas requiring the production of books, papers, documents or other objects on behalf of a party.
- (b) Nothing contained in this section shall in any way affect the right of any person or entity to issue a subpoena pursuant to law.
- (c) Issuance of subpoenas. All agency subpoenas shall be issued at the discretion of the presiding hearing officer or other presiding officer or agent of the board (hereafter referred to as the hearing officer). The hearing officer may grant or deny any subpoena request in whole or in part. Requests for a subpoena filed within 10 working days of a scheduled hearing date will not be considered absent good cause shown by the party requesting the subpoena.

- (d) Request for subpoena. The hearing officer may issue a subpoena only when the party applying for it files a written affidavit electronically.
- (e) Contents of affidavit for a witness subpoena. Such affidavit must specify:
 - (1) the name and address of each individual for whom the subpoena is sought; and
 - (2) facts sufficient to establish the relevancy of the testimony to be adduced pursuant to the subpoena.
- (f) Contents of affidavit for subpoena requiring the production of books, papers, documents or other objects. Such affidavit must specify:
 - (1) the books, papers, documents or other objects to be produced pursuant to the subpoena;
 - (2) facts sufficient to establish the relevancy of the materials to be produced; and
 - (3) that a copy of the subpoena request and affidavit has been served upon all other parties.
- (g) Response to subpoena request. A party may file with the hearing officer a response to the subpoena request, with copy to all other parties, within five working days after its receipt of the subpoena request.
- (h) Nothing in this section shall in any way affect any rights of any person or entity under law.
- (i) Service of subpoena. The hearing officer shall notify all parties as to the disposition of any subpoena request and shall furnish the party requesting the subpoena a completed subpoena form if the request has been granted in any respect. Service of the subpoena and the payment of appropriate witness fees shall be the responsibility of the requesting party and shall be made as required by law.

- (j) Time and place for production of documents. Any books, papers, documents or other objects ordered pursuant to this section shall be produced at the date and time specified in the notice of hearing and/or at any adjourned dates as directed by the hearing officer unless production of the subpoenaed material at a reasonable time before the scheduled hearing date is necessary in the judgment of the hearing officer to avoid unreasonable delay in the commencement of the hearing due to the volume and/or the complexity of the material to be produced.
- (k) Motion to withdraw or modify. Any person, entity, or party served with a subpoena may file a motion with the hearing officer on notice to all parties, to withdraw or modify any subpoena issued pursuant to this section. Any such motion must be made as soon as reasonably possible after the service of the subpoena so as not to interfere with the processing of the case. The hearing officer upon motion or sua sponte may withdraw or modify a subpoena issued pursuant to this Part for good cause. Nothing in this section shall in any way affect any rights of any person or entity under law.
- (l) Failure to honor a subpoena. If a party or witness fails without reasonable excuse to comply with a subpoena properly served, the default shall be noted in the record and the hearing officer shall have the ability to draw adverse inferences from the failure to comply. The hearing officer may, in their discretion, adjourn all or part of the hearing to allow the party who has requested the subpoena a reasonable opportunity to obtain compliance with the subpoena in accordance with applicable law.

§ 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[1] 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, upon information and belief, that the employer is at least at 50 percent of peak employment. Peak employment is the payroll period during which the employer employs the largest number of employees for that calendar year;

(8) 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;

(9) [(8)]any other relevant facts;

(10) [(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.

§ 263.24 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. Any proposed amendment shall clearly set forth the changes proposed from the initial statement of position.

- (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. If the employer does not agree that it is at least 50 percent of peak employment, it shall provide to PERB and the petitioner all information that it is relying on in disputing this issue, including but not limited to, pay and time records for prior years, and any other information that supports its position. 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 of the petition. 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. Failure to provide all requested information may result in the hearing officer taking an adverse inference against the employer's position(s).

§ 263.30. [Life of Certification] Petitions for Decertification.

- (a) [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.] Filing of petition for decertification. A petition for decertification may be filed to resolve a question or controversy concerning the continuing representation of employees. A petition for decertification may be filed with the director of PEPR by any employee or group of employees or any individual or labor organization acting in their behalf. A question or controversy concerning the continuing representation of employees may only be resolved through an election in which employees vote on whether to continue to be represented by the incumbent bargaining representative, by a new bargaining representative, or by no bargaining representative. Any petition for decertification must be supported by evidence that at least 30 percent of employees in the described unit no longer wish to be represented by the incumbent representative. If the petitioner is an employee organization seeking to replace the incumbent representative, the petition shall further be

supported by a showing of interest, as defined in section 263.17 of this Part, that at least 30 percent of the bargaining unit support the petitioning employee organization.

(b) Petitions for decertification shall contain the following:

(1) The name of the employer.

(2) The address of the establishments and a description of the bargaining unit involved.

(3) The general nature of the employer's business.

(4) The name and address of the petitioner and affiliation, if any, and the name, title, address, telephone number, and email address of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding.

(5) The name or names and addresses of the individuals or labor organizations who have been certified or are being currently recognized by the employer and who claim to represent any employees in the unit involved, and the expiration date of any contracts covering such employees.

(6) An allegation that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative in the appropriate unit as defined in section 705 of SERA.

(7) The approximate number of employees in the unit.

(8) A statement that the employer is at least at 50 percent of peak employment.

9. A statement that a substantial number of employees in the described unit no longer wish to be represented by the incumbent representative. 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.

- (10) Any other relevant facts.
- (11) The type, date(s), time(s), and locations(s) of the election sought.
- (c) An existing certification shall remain in effect until such time as employees vote by majority to decertify the incumbent representative and/or select another representative.
- (d) No decertification petition will be processed for one year after a newly certified representative and the employer have commenced negotiations for a collective bargaining agreement. Periods where the parties have not actually negotiated, as determined by the director of PEPR or assigned hearing officer, will not be counted towards the one year. Such periods may result from an employer's refusal to bargain in good faith, delays caused by stays issued in court proceedings or board action, an employer's refusal to provide requested information to a certified bargaining representative or a refusal to agree to meeting dates or places, or other events which resulted in no actual bargaining between the parties. A petition for decertification may be filed by employees or by an employee organization, other than the recognized or certified employee organization, commencing one year after the certified representative and the employer have commenced negotiations for a collective bargaining agreement, unless and until the recognized or certified employee organization has negotiated its first collective bargaining agreement.
- (e) Where an unfair labor practice charge alleging that: (1) the employer has failed to bargain collectively in violation of SERA § 706.6, has previously been filed and is pending; and/or (2) conduct which would interfere with employees' free choice either has been filed or is filed, a decertification petition may be dismissed until the unfair labor practice charge is determined and, if found, remediated.

- (f) A petition must be filed when the number of farm laborers is not less than 50 percent of the employer's peak agricultural employment for the current calendar year. Peak employment is the payroll period during which the employer employs the largest number of employees for that calendar year;
- (g) A petition for decertification may be filed between 90 days and 60 days before the expiration of a contract between the incumbent employee organization and the employer. If the agreement has a duration of three years or more, a petition for decertification may be filed between 90 days and 60 days before the end of the third year of the agreement and between 90 days and 60 days of the expiration or every three years thereafter.
- (h) A petition for decertification may be filed, if no new agreement is negotiated, 120 days subsequent to the expiration of a written agreement between the employer and the recognized or certified employee organization. Thereafter, such a petition may be filed until a new agreement is executed. If the open period occurs when the employer is at less than 50% of the employer's peak agricultural employment, the decertification petition may only be filed during the next period when the employer is at least at 50% of peak employment. Peak employment is the payroll period during which the employer employs the largest number of employees for that calendar year.

§ 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. Any proposed amendment shall clearly set forth the changes proposed from the initial petition.

§ 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.] a clear and concise statement, preferably with numbered paragraphs, of the facts constituting the alleged unfair labor practice and a summary of the proof expected to be offered to support each alleged subdivision claimed to be violated in the charge. In the event it is alleged that any employee has been discharged, refused employment, or suffered discrimination in violation of SERA, the charge must state the name of such employee. Supportive exhibits, including affidavits, may be attached that may be relevant and material. The charge may not consist solely of such attachments and will not relieve the charging party of the requirement to provide sufficient factual particulars as set forth in this section. Any attachments or exhibits shall be specifically identified and referred to in the charge.

§ 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. Any proposed amendment shall clearly set forth the changes proposed from the initial charge.

§ 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. Any proposed amendment shall clearly set forth the changes proposed from the initial answer.

§ 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.]

- (a) This section applies to the agency's authority to issue subpoenas to compel the attendance of a person to testify at a hearing conducted by the board or a designee of the board on behalf of a party or subpoenas requiring the production of books, papers, documents or other objects on behalf of a party.
- (b) Nothing contained in this section shall in any way affect the right of any person or entity to issue a subpoena pursuant to law.
- (c) Issuance of subpoenas. All agency subpoenas shall be issued at the discretion of the presiding hearing officer or other presiding officer or agent of the board (hereafter referred to as the hearing officer). The hearing officer may grant or deny any subpoena request in whole or in part. Requests for a subpoena filed within 10 working days of a

scheduled hearing date will not be considered absent good cause shown by the party requesting the subpoena.

(d) Request for subpoena. The hearing officer may issue a subpoena only when the party applying for it files a written affidavit electronically.

(e) Contents of affidavit for a witness subpoena. Such affidavit must specify:

(1) the name and address of each individual for whom the subpoena is sought; and

(2) facts sufficient to establish the relevancy of the testimony to be adduced pursuant to the subpoena.

(f) Contents of affidavit for subpoena requiring the production of books, papers, documents or other objects; response. Such affidavit must specify:

(1) the books, papers, documents or other objects to be produced pursuant to the subpoena;

(2) facts sufficient to establish the relevancy of the materials to be produced; and

(3) that a copy of the subpoena request and affidavit has been served upon all other parties.

(g) Response to subpoena request. A party may file with the hearing officer a response to the subpoena request, with copy to all other parties, within five working days after its receipt of the subpoena request.

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

(i) Service of subpoena. The hearing officer shall notify all parties as to the disposition of any subpoena request and shall furnish the party requesting the subpoena a completed subpoena form if the request has been granted in any respect. Service of the subpoena

and the payment of appropriate witness fees shall be the responsibility of the requesting party and shall be made as required by law.

- (j) Time and place for production of documents. Any books, papers, documents or other objects ordered pursuant to this section shall be produced at the date and time specified in the notice of hearing and/or at any adjourned dates as directed by the hearing officer unless production of the subpoenaed material at a reasonable time before the scheduled hearing date is necessary in the judgment of the hearing officer to avoid unreasonable delay in the commencement of the hearing due to the volume and/or the complexity of the material to be produced.
- (k) Motion to withdraw or modify. Any person, entity, or party served with a subpoena may file a motion with the hearing officer on notice to all parties, to withdraw or modify any subpoena issued pursuant to this section. Any such motion must be made as soon as reasonably possible after the service of the subpoena so as not to interfere with the processing of the case. The hearing officer upon motion or sua sponte may withdraw or modify a subpoena issued pursuant to this section for good cause. Nothing in this section shall in any way affect any rights of any person or entity under law.
- (l) Failure to honor a subpoena. If a party or witness fails without reasonable excuse to comply with a subpoena properly served, the default shall be noted in the record and the hearing officer shall have the ability to draw adverse inferences from the failure to comply. The hearing officer may, in their discretion, adjourn all or part of the hearing to allow the party who has requested the subpoena a reasonable opportunity to obtain compliance with the subpoena in accordance with applicable law.

§ 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, except for a hearing officer's determination that certification of a representative without an election is appropriate. Exceptions to such a determination are governed by section 263.28 and 263.29 of this Part.
- (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.