

The following is an extract of PERB's Rules of Procedure, 4 N.Y.C.R.R. Parts 200-216. Any party filing exceptions or other papers with the Board should consult the Rules of Procedure to ensure compliance with all requirements. The Rules are available at: <https://perb.ny.gov/laws-and-rules>.

All exceptions, briefs in support of exceptions, cross-exceptions, and responses must be filed electronically with PERB at boardsecretary@perb.ny.gov. No hard copy needs to be sent to PERB. **Filing electronically with PERB does not constitute service on the other parties to your matter.** Instructions for electronic filing are included with this mailing, along with information about opting out of electronic filing.

Exceptions to Decision of Director; Exceptions to Administrative Law Judge's (ALJ) Decision and Recommended Order; Action by Board

(a) Within 15 working days after receipt of the decision of the Director or the decision and recommended order of the ALJ, a party may file with the Board an original and four copies of a statement in writing setting forth any exceptions thereto, and a separate original and four copies of a brief in support thereof, together with proof of service of copies of such exceptions and brief upon each party. A copy of such exceptions and briefs shall be simultaneously served upon all other parties.

(b) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law or policy to which exceptions are taken;
- (2) Identify that part of the decision or order to which objection is made;
- (3) Designate by page citation the portions of the record relied upon; and
- (4) State the grounds for exceptions. An exception to a ruling, finding, conclusion or recommendation which is not specifically urged is waived.

(c) The Board shall not determine violations of the Act and affirmative defenses that were not properly pled.

Cross-Exceptions; Responses; Replies

Within seven working days after receipt of exceptions, any party may file an original and four copies of a response thereto, or cross-exceptions and a separate brief in support thereof, together with proof of service of copies of these documents upon each party to the proceeding. Within seven working days after receipt of cross-exceptions, any party may file an original and four copies of a response thereto, together with proof of service of a copy thereof upon each party to the proceeding. No pleading other than exceptions, cross-exceptions or a response thereto and no brief other than that filed in support of such pleading will be accepted or considered by the board unless it is requested by the board or filed with the board's authorization.

Request for Extension of Time

A request for an extension of time within which to file exceptions and briefs shall be in writing, and filed with the Board before the expiration of the required time for filing, provided that the Board may extend the time during which to request an extension of time because of extraordinary circumstances. A party requesting an extension of time shall notify all the parties to the proceeding of its request and

shall indicate to the Board the position of each other party with regard to such request.

Objection to Certification Without Election

A written objection to the Director's determination that an employee organization should be certified without an election may be filed within five working days after receipt of the Director's determination. A party may file a response to the objection within five working days after its receipt of the objection. The objection and any response must be served on all parties.

Oral Argument Before the Board

If a party desires to argue orally before the Board, a written request with reasons therefore shall accompany the exceptions filed, the response thereto, or the cross-exceptions filed 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.

Board Action

(a) Upon receipt of the case, the Board may adopt, modify or reverse the Director's or ALJ's decision or order.

(b) Unless a party files exceptions to the decision and recommended order of the Director or ALJ within 15 working days after receipt thereof, the decision and any accompanying order will be final, except that the Board may, on its own motion, decide to review any remedial action recommended within 20 working days after receipt by the parties of the decision and recommended order.

Party

The term "party", as used in PERB's Rules of Procedure, means any public employee, employee organization or public employer filing a charge, petition or application under the Act or these Rules; any public employee, employee organization or public employer named as a party in a charge, petition or application, filed under the Act or these Rules; or any other public employee, employee organization or public employer whose timely motion to intervene in a proceeding has been granted.

Working Days

The term "working days", as used in PERB's Rules of Procedure, shall not include a Saturday, a Sunday, or a legal holiday.

Filing; Service

- The term "filing," as used in PERB's Rules of Procedure, shall mean delivery to the Board or an agent thereof, or the act of mailing to the Board, or deposit with an overnight delivery service for overnight delivery.
- The term "service," as used in PERB's Rules of Procedure, shall mean delivery to a party or the act of mailing to a party, or deposit with an overnight delivery service for overnight delivery.

- The term “electronic filing”, as used in PERB’s Rules of Procedures, shall mean a document submitted by means specified by the agency on its website. Such documents shall be: (i) in a format that can be read using software that is readily available and is in widespread use by government, businesses, and individuals; and (ii) electronically searchable unless the party providing the document certifies in a written attachment to document served and/or in any required proof of service that it does not have the capacity to produce a searchable file.
- The term “electronic service,” as used in PERB’s Rules of Procedure, shall mean delivery before the latest time designated for service by electronic mail to a party sent to an electronic mail address designated by the recipient. Electronic service is deemed complete upon sending unless an error message or other notification that the served document has not been successfully dispatched or received is returned, in which case the service is null and void.

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NOTICE TO PARTIES

Judicial Appeal of Board Orders.

A party may appeal a final order of the Board by filing with the court and serving the necessary parties the pleadings and papers required by Article 78 of the New York Civil Practice Law and Rules (CPLR) and New York Civil Service Law (CSL) §213 within thirty days after service of the Board's order. The Board's "filing" and "service" definitions (above) do not govern the filing and service requirements of the CPLR or CSL, which are covered by the terms of those statutes. Failure to comply with a final order of this agency will result in an enforcement proceeding in New York Supreme Court pursuant to CSL §213.

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

PO BOX 2074, ESP
AGENCY BUILDING 2 – 20TH FLOOR
ALBANY, NEW YORK 12220-2074
TEL: (518) 457-2578
FAX: (518) 457-2664

**ELECTRONIC FILING OF EXCEPTIONS, CROSS-
EXCEPTIONS, AND RESPONSES**

The Chair of the Public Employment Relations Board (PERB), in consultation with the Board, has authorized the electronic filing and service of Exceptions and supporting briefs, Cross-Exceptions and supporting briefs, and Responses. You may electronically serve the other parties to this proceeding if the other parties consent to electronic service. You must email proof that the other parties have consented to electronic service to boardsecretary@perb.ny.gov.

WHERE TO FILE

If you choose to electronically file, Exceptions and a supporting brief, Cross-Exceptions and a supporting brief, and Responses should be emailed to boardsecretary@perb.ny.gov by 11:59 p.m. on the day such filings are due. You must complete and submit a “Notification of Electronic Filing and Consent to Electronic Service” (included with this document) with your Exceptions, Cross-Exceptions, and Responses.

WHAT TO FILE

All documents shall be in a format that can be read using software that is readily available and is in widespread use by government, businesses, and individuals and electronically searchable, such as a searchable Adobe Acrobat pdf, unless you certify in a written attachment to the document served and/or in any required proof of service that you do not have the capacity to produce a searchable file. Rule 200.12 (c) of PERB’s Rules.

Electronically filed documents cannot be larger than 20 megabytes (MB). Documents larger than 20 MB must be divided into two or more documents, each under the 20 MB limit.

Electronic filing and service of a copy with the Board shall constitute compliance with the filing requirement. A copy of such exceptions and/or briefs, along with the “Notification of Electronic Filing and Consent to Electronic Service”, shall be simultaneously served upon all other parties. Rule 213.2 (a). **Electronic filing with the Board, absent service on other parties, does not constitute service upon other parties.**

WHEN TO FILE

All filings must conform to the timeliness requirements in Part 213 of PERB’s Rules.

PROOF OF SERVICE

All e-filed documents must be **simultaneously** served on all other parties to the proceeding, along with the “Notification of Electronic Filing and Consent to Electronic Service”. You may electronically serve the other parties to this proceeding if the other

parties consent to electronic service. Electronic service is deemed complete upon sending unless an error message or other notification that the served document has not been successfully dispatched or received is returned, in which case the service is null and void. Rule 200.12 (d).

If the other parties do not consent to electronic service, you must serve a hard copy of your Exceptions and supporting brief, Cross-Exceptions and supporting brief, or Response on the other parties in accordance with Rule 200.11.

All e-filed documents must include proof of service on all other parties. Where electronic filing has been consented to, a copy of such consent, and inclusion of the party or representative who has consented to electronic service as a recipient on the email addressed to boardsecretary@perb.ny.gov (i.e. cc'ing on the email) will be deemed proof of service, subject to failure of service as described above.

CONSENT TO RECEIPT OF ELECTRONIC FILINGS

By electronically filing Exceptions or Cross-Exceptions, you consent to receive responses from the other parties electronically, at the email address provided on your "Notification of Electronic Filing and Consent to Electronic Service."

EXTENSION REQUESTS

Extension requests may be filed electronically, but must comply with Rule 213.7.

ELECTRONIC DELIVERY OF BOARD'S DECISION

If you wish to receive the Board's Decision and Order electronically, complete the enclosed form "Consent to Electronic Delivery of the Board's Decision" and return the completed form to boardsecretary@perb.ny.gov. The Board's Decision and Order will be delivered to the email address you provide. It will be the only copy of the decision that you will receive, and receipt of the decision via email will be deemed service of the decision by the Board.

OPTING OUT OF ELECTRONIC FILING

Unrepresented individuals may choose to file and receive all decisions memoranda, correspondence and any case-related information in paper form. Rule 200.12 (b).

Unrepresented parties who wish to file in paper form should file their Exceptions with:

Office of the Chair
P.O. Box 2074
Empire State Plaza, Agency Building 2
Albany, NY 12220-0074

Other parties wishing to file in paper form should file their documents along with the Opt-Out Form below. PERB retains the discretion to determine whether to grant the application of a party to file and serve in paper form due to hardship, inability to comply with the procedure, or other good cause shown. Rule 200.12 (b).

Notification of E-Filing and Consent to Electronic Service

Case number(s): _____

Charging party: _____

Respondent(s): _____

I, (enter your name) _____, am (check one)

- the representative of a party in the above-captioned action or
 a self-represented party in this matter.

On the date listed below I electronically filed with the Public Employment Relations Board (PERB) the following.

- Exceptions and supporting brief;
 Cross-Exceptions and supporting brief;
 Response.

CHOOSE ONE OF THE FOLLOWING TWO OPTIONS:

OPTION ONE:

All of the other parties to this proceeding have consented to electronic service. I have simultaneously sent a copy of my filings to each party at the email address(es) listed below and included all parties on my email to PERB.

List the email address(es) used: _____

or:

OPTION TWO:

I have simultaneously sent a paper copy of my filings to the representatives of each of the other parties to this proceeding and have included proof of service with my filing.

I hereby consent to receive service of Cross-Exceptions and/or Responses from the other parties to this proceeding at this email address: _____

Signature: _____ Date: _____

Print name: _____

Party Represented: _____

Email this completed form with Exceptions, Cross-Exceptions, or Response to boardsecretary@perb.ny.gov.

Consent to Electronic Delivery of the Board's Decision (optional)

Case numbers: _____

Charging party: _____

Respondent(s): _____

I, (enter your name) _____, am (check one)

- the representative of a party in the above-captioned action.
 a self-represented party in this matter.

I hereby consent to receive the Board's Decision and Order electronically at this email address:

I acknowledge that this will be the only copy of the Board's Decision and Order that I will receive. I hereby waive my right to receive a copy of the Board's Decision and Order by registered or certified mail pursuant to Section 213 (a) of the Civil Service Law (the Taylor Law). Receipt of the Board's Decision and Order via email will be deemed service of the decision by the Board, and service will be complete when the email is sent.

Signature: _____ Date: _____

Print name: _____

Party Represented: _____

Email this completed form with Exceptions, Cross-Exceptions, or Response to boardsecretary@perb.ny.gov.

OPT OUT OF ELECTRONIC FILING REQUEST

Case Number(s)(if available): _____

Charging Party/Petitioner: _____

Respondent(s)/Employer and/or Union: _____

I, (enter your name) _____, am (check one):

- the representative of a party in the above-captioned action or
 a self-represented party in this matter.

I am applying to file and serve in paper form. I request to file and receive all case-related documents, including PERB decisions, in paper form only.

For representatives only

Reason for opting out:

- Hardship
 Inability to comply
 Other good cause

Provide details on reason for opting out (self-represented parties do not need to provide a reason for opting out):

Signature: _____ Date: _____

Print name: _____

Party Represented: _____

Provide this completed form with your filing if you wish to apply to opt out of electronic filing.