

Proposed amendments to Title 12 of the NYCRR. Underlined material is new; bracketed and struck-through material is to be deleted.

**Section 250.7 is amended as follows:**

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

**New section 250.14 *Electronic signatures on a showing of interest.* is added as follows:**

- (a) Signatures on a showing of interest may be submitted electronically.
- (b) Submissions supported by electronic signature must contain the following: the signer’s name; the signer’s mobile phone number, email address or other known contact information (e.g., social media account); the language to which the signer has agreed; the date the electronic signature was submitted; and the name of the employer of the employee.
- (c) For certification purposes, the language to which the signer agrees must include, but is not limited to, a statement that the signers authorize [name of labor organization] to be their representative to collectively bargain a labor contract covering wages, working conditions, and benefits with their employer and to deduct dues in accordance with New York State laws. For

decertification purposes, the language to which the signer agrees must state that the signer no longer wishes to be represented by [labor organization] for purposes of collectively bargaining a labor contract covering wages, working conditions, and benefits with their employer.

(d) In addition to submitting documents showing the information set forth in section 240.14 (b), a party submitting electronic digital signatures must submit a declaration:

(1) identifying what electronic signature technology was used and explaining how its controls ensure:

(i) that the electronic signature is that of the signatory employee; and

(ii) that the employee signed the document.

(2) that the electronically transmitted information regarding what and when the employees signed is the same information seen and signed by the employees.

(e) When the electronic signature technology being used does not support digital signatures that lend itself to verification as described above, the submitting party must submit evidence that, after the electronic signature was obtained, the submitting party promptly submitted a communication stating and confirming all the information listed above (the “Confirmation Transmission”). The Confirmation Transmission must be sent to an individual account (i.e., text message via mobile phone, email address, social media account, etc.) provided by the signer.

If any responses to the Confirmation Transmission are received by the time of submission to PERB of the showing of interest to support a petition, those responses must also be provided to PERB.

(f) Submissions supported by electronic signature may include other information such as work location, classification, home address, and additional telephone numbers, but may not contain dates of birth, social security numbers, or other sensitive personal identifiers. Submissions with

sensitive personal identifiers will not be accepted and will be returned to the petitioner. They will not be accepted until personal identifiers are redacted.

**Section 251.1 is amended as follows:**

(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 investigation pursuant to section 705 of SERA may be filed with the board by employees, employers, or their representatives.] The petition shall be in writing and may be filed by employees or their representatives. The original shall be signed, dated, and supported by the unsworn declaration of such person, which shall be dated 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 and may be filed in an action or proceeding in a court of law.” [the content of which is declared as true under penalty of perjury.]

(b) The petition shall be electronically filed and served (see section 250.11 of this Title). Petition forms will be supplied by the board upon request and are available on the board’s website.

(c) Showing of interest submission. The showing of interest required by section 705 (1) and (1-a) of SERA and by section 251.4 of this Part may be submitted to the director of PEPR in an electronic (pdf) format or equivalent. Signatures on a showing of interest may be submitted electronically. See section 240.14 of this Title for the requirements for electronic submission of signatures. If the showing of interest includes original signatures, 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.

**Existing section 251.3 is repealed.**

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

~~Such petition, when filed by an employer shall contain:~~

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

**Existing section 251.4 is renumbered 251.3 and subdivision d is amended as follows:**

(d) In determining whether the evidence submitted to establish a showing of interest is timely, the director of PEPR shall accept evidence of current membership at the time the petition is filed. The director of PEPR shall also accept dues deduction authorizations, original designation cards, or petitions on a form prescribed by the board, all of which were signed and dated within one year of their submission. A showing of interest may consist of any combination of the foregoing evidence. Designation cards shall be submitted in alphabetical order. Signatures on a showing of interest may be submitted electronically. See section 250.14 of this Title for the requirements for electronic submission of signatures.

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

**Existing section 251.5 is repealed.**

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

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

**Existing sections 251.6 to 251.13 are renumbered 251.5 to 251.12**

**New section 251.13 *Employer-Filed Petitions under section 705.3 of SERA Raising a Question Concerning Representation.* is added as follows:**

(a) A petition for an investigation of a question or controversy concerning representation of employees, when filed by an employer or its representative, shall contain the following:

(1) The name 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 and email address of the individual who will serve as the representative of the petitioner;

(2) The general nature of the petitioner's business;

(3) A concise statement setting forth the question or controversy requiring investigation.

Such question or controversy may include, but shall not be limited to, allegations that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate or 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;

(4) The approximate number of employees in the unit;

(5) 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;

(6) 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;

(7) Objective evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about an actual loss of majority support for an existing representative. Such evidence shall be filed together with the petition, but if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party with the petition.

(8) If applicable, the type, date(s), time(s) and location(s) of the election sought.

(9) Any other relevant facts.

(b) A petition for an investigation of a question or controversy concerning representation of employees may be filed when a labor organization has made a demand for recognition on the employer. If the petition alleges 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, such petition may be filed when it would be appropriate for an employee or his representative to file a petition for decertification. Section 251.13 (d) through (g) of this Part sets forth the circumstances under which such a petition shall be considered.

**Section 252.1 is amended as follows:**

A charge that any employer has engaged in or is engaging in any unfair labor practice may be made by any person or labor organization and shall be filed within a year of when the charging party first knew, or reasonably should have known, of the alleged unfair labor practice.

**Existing sections 261.1 and 261.2 are repealed.**

**§ 261.1 Misconduct by any person**

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

**§ 261.2 Suspension or other sanctions**

~~Misconduct by an attorney or other representative before the agency, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct, if of an aggravated character, may be grounds for suspension and for prohibiting the attorney or representative from practice before the agency and for other sanctions after due notice and a hearing before the board or its designee. Any order of a hearing officer imposing discipline under this section will be~~

~~appealable to the board as part of an appeal of the ultimate disposition of the underlying proceeding pursuant to section 253.22 of this Chapter.]~~

**New sections 261.1 to 261.4 *Misconduct Before the Agency for Non-FLFLPA Matters.* are added as follows:**

**§ 261.1 Scope.**

This Part applies to the required professional and courteous conduct of parties, persons, and witnesses appearing or practicing before the agency. This Part does not include complaints about or against agency personnel.

**§ 261.2 Misconduct defined.**

The term misconduct, as used in this Part, includes, but is not limited to:

(a) Repeated, redundant, or frivolous filings of charges, motions, or other submissions which fail to comply with the agency's rules of procedure;

(b) Repeated disregard of orders, instructions, directives and/or the authority of the board or its designee;

(c) Submission of fraudulent testimony, documents, or information including but not limited to non-existent legal authority generated by artificial intelligence;

(d) Physical disruption and/or repeated verbal disruption of agency proceedings; and

(e) Abusive conduct toward any party, advocate, witness, administrative law judge, director, board member, agency personnel, or other board designee.

**§ 261.3 Misconduct by any party, advocate or other person.**

(a) Misconduct by any party, advocate or other person at any stage of a case before the director, an administrative law judge, board designee, or the board, may be grounds for immediate exclusion of that person from pending agency proceedings; temporary or permanent suspension

from practice before the agency; the striking of pleadings, exhibits and/or testimony; imposition of a requirement of pre-approval of submissions; dismissal of the charge or petition; and/or such other remedies and relief as are appropriate under the circumstances.

(b) Nothing in this Part shall be deemed to limit the authority of the administrative law judge to regulate the course of the proceeding at any time as provided in section 253.11 of this Title.

#### **§ 261.4 Procedure**

(a) Upon observation of perceived misconduct, or upon the complaint of any person to the administrative law judge, other board designee or board where it appears there are sufficient grounds to believe there has been misconduct, an administrative law judge, other board designee, or the board shall notify in writing the alleged offending party, advocate or other person of the alleged behavior perceived to be misconduct and the proposed action to be taken, and shall allow the alleged offending party, advocate or other person at least ten (10) working days to respond.

(b) The administrative law judge, other board designee, or board may, in their discretion, request the other parties in the proceeding respond to the notice.

(c) If material issues of disputed fact exist, a hearing may be held to resolve such issues. In the case of a proceeding before an administrative law judge or other board designee, the administrative law judge or other board designee may, in their discretion, hear the matter or may request that the board appoint a different hearing officer. In the case of a proceeding before the board, the board may designate a hearing officer to conduct a hearing and issue a report and recommendation to the board.

(d) Upon receipt and review of the response(s), and where necessary after a hearing, the administrative law judge, other board designee, or board shall issue a determination setting forth the misconduct and responsive action. Such determinations will be subject to exceptions to the

board pursuant to Part 253.22 of this Title or, where a final order of the board, a proceeding pursuant to article 78 of the civil practice law and rules.

**Section 263.14 is amended as follows:**

The term *declaration*, as used in this Part, shall mean a statement that is made under penalty of perjury but is not sworn to before a notary or other person entitled to administer oaths. In any case brought under the FLFLPA, any documents submitted may be supported, evidenced, established, or proved by the unsworn declaration of the filing party which states “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 and may be filed in an action or proceeding in a court of law.” [~~The declaration must state that the contents of the filing are declared as true under penalty of perjury under the laws of the State of New York.~~] The declaration must be dated.

**Subdivision (e) and (f) of section 263.17 are amended as follows:**

(e) Except as provided for in section [263.22] 263.23 of this Part, any showing of interest must be accompanied by a declaration of authenticity as set forth in section [263.22] 263.23 of this Part.

(f) A filing of dues deduction cards or other evidence of support sufficient to demonstrate majority support in a unit alleged to be appropriate may also be used to determine whether a labor organization is entitled to certification without an election pursuant to section [263.22] 263.23 (c) and (d) of this Part.

**New section 263.18 Electronic signatures on a showing of interest. is added as follows:**

(a) Signatures on a showing of interest may be submitted electronically.

(b) Submissions supported by electronic signature must contain the following: the signer’s name; the signer’s mobile phone number, email address or other known contact information (e.g., social media account); the language to which the signer has agreed; the date the electronic signature was submitted; and the name of the employer of the employee.

(c) For certification purposes, the language to which the signer agrees must include, but is not limited to, a statement that the signers authorize [name of labor organization] to be their representative to collectively bargain a labor contract covering wages, working conditions, and benefits with their employer and to deduct dues in accordance with New York State laws. For decertification purposes, the language to which the signer agrees must state that the signer no longer wishes to be represented by [labor organization] for purposes of collectively bargaining a labor contract covering wages, working conditions, and benefits with their employer.

(d) In addition to submitting documents showing the information set forth in section 240.14 (b), a party submitting electronic digital signatures must submit a declaration:

(1) identifying what electronic signature technology was used and explaining how its controls ensure:

- (i) that the electronic signature is that of the signatory employee; and
- (ii) that the employee signed the document.

(2) that the electronically transmitted information regarding what and when the employees signed is the same information seen and signed by the employees.

(e) When the electronic signature technology being used does not support digital signatures that lend itself to verification as described above, the submitting party must submit evidence that, after the electronic signature was obtained, the submitting party promptly submitted a communication stating and confirming all the information listed above (the “Confirmation

Transmission”). The Confirmation Transmission must be sent to an individual account (i.e., text message via mobile phone, email address, social media account, etc.) provided by the signer.

If any responses to the Confirmation Transmission are received by the time of submission to PERB of the showing of interest to support a petition, those responses must also be provided to PERB.

(f) Submissions supported by electronic signature may include other information such as work location, classification, home address, and additional telephone numbers, but may not contain dates of birth, social security numbers, or other sensitive personal identifiers. Submissions with sensitive personal identifiers will not be accepted and will be returned to the petitioner. They will not be accepted until personal identifiers are redacted.

**Existing section 263.18 is renumbered 263.19.**

**Existing section 263.19 is renumbered 263.20 and subdivisions (b), (d) and (g) are amended as follows:**

*(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, which 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 and may be filed in an action or proceeding in a court of law.” [~~stating that the content of the petition is declared as true, under penalty of perjury.~~] Declarations need not be notarized or otherwise sworn.

*(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.]

*(g) Showing of interest submission.* The showing of interest required by section 705 (1) and (1-a) of SERA and by section [263.22] 263.23 of this Part may be submitted to the director of PEPR in an electronic (pdf) format or equivalent. Signatures on a showing of interest may also be submitted electronically. See section 263.18 of this Title for the requirements for electronic submission of signatures. If the showing of interest includes original signatures, [T]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.

**Existing sections 263.20 and 263.21 are renumbered 263.21 and 263.22**

**Existing section 263.22 is renumbered 263.23 and subdivisions (c) and (d) are amended as follows:**

(c) Selection of Employee Organization Where Only One Such Organization is Involved. As permitted by section 705.1-a of SERA, where the choice available to employees in a negotiating unit is limited to selecting or rejecting a single labor organization, a showing of interest consisting of dues deduction authorizations sufficient to demonstrate majority support for a single labor organization, along with a petition for certification, shall suffice to warrant certification of said labor organization without election. Signatures on a showing of interest may be submitted electronically. See section 263.18 of this Title for the requirements for electronic submission of signatures.

(d) Selection of Employee Organization in General. As permitted by section 705.1 of SERA, a petition for certification may be accompanied by dues deduction authorizations, individually

signed petitions in favor of recognition, membership cards, or other evidence of support for or designation of the labor organization as collective bargaining representative. If the evidence is sufficient to demonstrate majority support of a single labor organization in a unit alleged to be appropriate, the labor organization shall be certified without an election. Signatures on a showing of interest may be submitted electronically. See section 263.18 of this Title for the requirements for electronic submission of signatures.

**Existing sections 263.23 is renumbered 263.24.**

**Existing section 263.24 is renumbered 263.25 and subdivision (a) is amended as follows:**

(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, at their discretion, may postpone the time for filing and serving the statement of position for up to 2 or more business days [~~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.

**Existing sections 263.25 to 263.27 are renumbered 263.26 to 263.28.**

**Existing section 263.28 is renumbered 263.29 and subdivision (b) and (c) are amended as follows:**

(b) If the hearing officer determines that certification of the representative without an election is appropriate, the hearing officer shall issue such certification. The hearing officer's determination that the indications of employee support are sufficient for certification without an election is reviewable by the board pursuant to a written objection to certification filed with the board by a party within ten working days after its receipt of the hearing officer's notification. An objection to certification shall set forth all grounds for the objection with supporting facts and shall be served on all parties to the proceedings. A response to the objection may be filed within five working days after a party's receipt of the objection. The party filing objections with the board or an opposition to objections shall serve a copy thereof on the other parties and shall file a copy with the board. Review by the board will only be granted in accordance with section [263.29 (b)] 263.30 (b) of this Part.

(c) If the hearing officer determines that certification of the unit without an election is not appropriate, the hearing officer shall issue a decision explaining the basis for her decision. Exceptions to the hearing officer's decision may be filed pursuant to section [263.67] 263.69 of this Part. (d) If the hearing officer determines that that an election by secret ballot is necessary, the hearing officer shall provide that such election or elections be conducted by an agent of the board in compliance with section [263.27] 263.28 of this Part.

**Existing section 263.29 is renumbered 263.30 and subdivision (b) is amended as follows:**

(b) Finality of certification and filing request for review. The certification issued by the hearing officer shall be final and binding and the obligation to bargain shall attach. Objections to the hearing officer's decision and certification may be filed with the board in accordance with section [263.28] 263.29 of this Part. The board will only grant review under compelling

circumstances. Accordingly, a request for review may be granted only upon one or more of the following grounds:

- (1) That a substantial question of law or policy is raised because of:
  - (i) The absence of; or
  - (ii) A unexplained departure from officially reported FLFLPA or applicable SERA precedent.
- (2) That the hearing officer's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important board rule or policy.

**Existing section 263.30 is renumbered 263.31 and subdivision (b) is amended as follows:**

- (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] 263.23 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.

**Existing sections 263.31 and 263.32 are renumbered 263.32 to 263.33.**

**Existing section 263.33 is renumbered 263.34 and amended as follows:**

After a petition has been filed under section [263.32] 263.33 of this Part, the director of PEPR, or their designee, shall conduct an investigation and, as appropriate, may issue a decision without a hearing; or prepare and cause to be served upon the parties and upon any known individuals or labor organization purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein; or take other appropriate action. If a notice of hearing is served, it shall be accompanied by a copy of the petition. All hearing and post-hearing procedure under this paragraph shall be in

conformance with sections [263.26] 263.27 through [263.29] 263.30 of this Part whenever applicable.

**Existing sections 263.34 is renumbered 263.35.**

**New section 263.35 is added as follows:**

**263.35 Employer-Filed Petitions under Section 705.3 of SERA Raising a Question**

**Concerning Representation**

(a) A petition for an investigation of a question or controversy concerning representation of employees, when filed by an employer or its representative, shall contain the following:

(1) The name 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 and email address of the individual who will serve as the representative of the petitioner;

(2) The general nature of the petitioner's business;

(3) A concise statement setting forth the question or controversy requiring investigation. Such question or controversy may include, but shall not be limited to, allegations that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate or 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;

(4) The approximate number of employees in the unit;

(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) Objective evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about an actual loss of majority support for an existing representative. Such evidence shall be filed together with the petition, but if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party with the petition;

(7) If applicable, the type, date(s), time(s) and location(s) of the election sought;

(8) Any other relevant facts.

(b) A petition for an investigation of a question or controversy concerning representation of employees may be filed when a labor organization has made a demand for recognition on the employer. If the petition alleges 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, such petition may be filed when it would be appropriate for an employee or his representative to file a petition for decertification. Section 263.31 (d) through (h) of this Part sets forth the circumstances under which such a petition shall be considered.

**Existing section 263.35 is renumbered 263.37 and amended as follows:**

A charge shall be in writing and shall be filed within a year of when the charging party first knew, or reasonably should have known, of the alleged unfair labor practice. The charge [original] shall be supported by a statement made by the person filing the charge or the agent or

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

**Existing sections 263.36 to 263.66 are renumbered 263.38 to 263.68.**

**Existing section 263.67 is renumbered 263.69 and amended as follows:**

(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] 263.29 and 263.30 of this Part.

**Existing section 263.68 is renumbered 263.70 and subdivisions (a), (b) and (c) are amended as follows:**

(a) Within ten working days after receipt of any interim decision, order or ruling, a party may, consistent with section [263.67] 263.67 of this Part, file with the board electronically (see section 263.15 of this Part) a motion seeking leave to file interlocutory exceptions to such interim decision, order, or ruling. A brief in support thereof shall be filed simultaneously as a separate document. A copy of the motion and briefs shall be served simultaneously upon all other parties and proof of such service shall be filed with the board.

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

- (1) identify the alleged extraordinary circumstances warranting the grant of leave to file exceptions which shall include the factual, legal, and/or policy reasons why leave should be granted;
- (2) contain the proposed exceptions that shall meet the requirements of section [263.67] 263.69 of this Part; and
- (3) attach copies of pleadings, the decision, order, or ruling and relevant excerpts from the record.

(c) Initial review. After a motion for leave to file exceptions is filed, the deputy chair or agent of the board so designated shall review the motion to determine whether it complies with section [263.68] 263.70 (a) and (b) of this Part.

**Existing section 263.69 is renumbered section 263.71 and amended as follows:**

Unless a party files exceptions in accordance with this Part, the decision, report, order, ruling, finding or other determination, or any part thereof will be final, except that the board may, on its own motion, decide to review the remedial action recommended under an unfair labor practice charge within 45 working days after receipt by the parties of the decision and recommended order. A remedial order of a hearing officer in an unfair labor practice charge that is not, or is no longer, subject to review by the board as provided in this Part, shall be deemed to be a final order of the board for purposes of enforcement proceedings under section 707 of SERA and section [263.72] 263.74 of this Part.

**Existing sections 263.70 to 263.72 are renumbered 263.72 to 263.74.**

**Existing section 263.73 is renumbered 263.75 and amended as follows:**

The record as defined in sections [263.70] 263.72 and [263.71] 263.73 of this Part shall constitute the public record of the case and shall be made available for inspection or copying under such conditions as the board may prescribe.

**Existing sections 263.74 to 263.94 are renumbered 263.76 to 263.96.**

**Existing section 263.95 is renumbered 263.97 and amended as follows:**

(a) The award shall be in writing, signed and affirmed by the arbitrator, and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested. If the parties agree, the award shall be delivered electronically. If no period of time for the rendition of an award has been specified in the agreement and the parties have not mutually agreed to an expedited rendition of the award, as provided in section [263.94] 263.96 of this Part, an award shall be rendered within 30 days after the arbitrator has declared the hearing closed, unless this time period has been extended by the parties and so confirmed by them in writing.

**Existing sections 263.96 to 263.100 are renumbered 263.95 to 263.102.**

**Existing section 263.101 is renumbered 263.103 and subdivisions (b) and (c) are amended as follows:**

(b) Contents of response. Such response shall contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position. Proposed contract language presented during negotiations shall be included. If the respondent has filed a declaratory ruling petition with the director of PEPR related to neutral arbitration under section [263.107] 263.109 of this Part, the response shall contain a reference to such petition. The response must include proof of service upon the petitioning party.

(c) Cross-response. A petitioner filing an objection to arbitrability under Section [263.107] 263.109 of this Part, as a result of the response, must file a cross-response notifying the director of conciliation of such filing. Such cross-response shall be filed within ten working days of receipt of the response.

**Existing section 263.102 is renumbered 263.104 and subdivision (b) is amended as follows:**

(b) Declaratory ruling petition. The proposed arbitration of any matter set forth in the petition or response may be objected to by either party as not being within the scope of mandatory negotiations by filing a declaratory ruling petition pursuant to section [263.107] 263.109 of this Part. The sole means of resolving such objection will be by filing a declaratory ruling petition. If filed by the respondent, such a petition may not be filed after the date of the filing of the response filed in accordance with section [263.101] 263.103 of this Part; if filed by the petitioner, such a petition may not be filed more than 10 working days after its receipt of the response.

**Existing sections 263.103 to 263.107 are renumbered 263.105 to 263.109.**

**Existing section 263.108 is renumbered 263.110 and subdivision (c) is amended as follows:**

(c) The matter shall be processed in accordance with the procedures set forth in sections [263.46] 263.48 through [263.73] 263.75 of this Part, except that the director of PEPR or hearing officer shall issue a decision, which may be reviewed pursuant to section [263.67] 263.69 of this Part. Such declaratory ruling will be final and binding on all parties as to the negotiability of the subject or subjects, and may be reviewed along with the final decision of the hearing officer or the board as part of a petition pursuant to article 78 of the civil practice law and rules.

**Existing sections 263.109 to 263.113 are renumbered 263.111 to 263.115.**

**Existing sections 263.114 and 263.115 are repealed;**

**~~§ 263.113 Misconduct by any person~~**

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

**~~§ 263.114 Suspension or other sanctions~~**

~~Misconduct by an attorney or other representative before the agency, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct, if of an aggravated character, may be grounds for suspension and for prohibiting the attorney or representative from practice before the agency and for other sanctions after due notice and a hearing before the board or its designee. Any order of a hearing officer imposing discipline under this section will be appealable to the board as part of an appeal of the ultimate disposition of the underlying proceeding pursuant to section 253.22 of this Chapter.]~~

**New section 263.116 is added as follows:**

**§ 263.116 Misconduct before the agency**

- (a) Scope. This Part applies to the required professional and courteous conduct of parties, persons, and witnesses appearing or practicing before the agency. This Part does not include complaints about or against agency personnel.
- (b) Misconduct defined. The term misconduct, as used in this Part, includes, but is not limited to:
  - (i) Repeated, redundant, or frivolous filings of charges, motions, or other submissions which fail to comply with the agency's rules of procedure;
  - (ii) Repeated disregard of orders, instructions, directives and/or the authority of the board or its designee;

- (iii) Submission of fraudulent testimony, documents, or information including but not limited to non-existent legal authority generated by artificial intelligence;
- (iv) Physical disruption and/or repeated verbal disruption of agency proceedings; and
- (v) Abusive conduct toward any party, advocate, witness, administrative law judge, director, board member, director, agency personnel, or other board designee.

(c) Misconduct by any party, advocate or other person.

(i) Misconduct by any party, advocate or other person at any stage of a case before the director, an administrative law judge, board designee, or the board, may be grounds for immediate exclusion of that person from pending agency proceedings; temporary or permanent suspension from practice before the agency; the striking of pleadings, exhibits and/or testimony; imposition of a requirement of pre-approval of submissions; dismissal of the charge or petition; and/or such other remedies and relief as are appropriate under the circumstances.

(ii) Nothing in this Part shall be deemed to limit the authority of the administrative law judge to regulate the course of the proceeding at any time as provided in section 263.58

(d) Procedure

(i) Upon observation of perceived misconduct, or upon the complaint of any person to the administrative law judge, other board designee or board where it appears there are sufficient grounds to believe there has been misconduct, an administrative law judge, other board designee, or the board shall notify in writing the alleged offending party, advocate or other person of the alleged behavior perceived to be misconduct and the proposed action to be taken, and shall allow the alleged offending party, advocate or other person at least ten (10) working days to respond.

- (ii) The administrative law judge, other board designee, or board may, in their discretion, request the other parties in the proceeding respond to the notice.
- (iii) If material issues of disputed fact exist, a hearing may be held to resolve such issues. In the case of a proceeding before an administrative law judge or other board designee, the administrative law judge or other board designee may, in their discretion, hear the matter or may request that the board appoint a different hearing officer. In the case of a proceeding before the board, the board may designate a hearing officer to conduct a hearing and issue a report and recommendation to the board.
- (iv) Upon receipt and review of the response(s), and where necessary after a hearing, the administrative law judge, other board designee, or board shall issue a determination setting forth the misconduct and responsive action. Such determinations will be subject to exceptions to the board pursuant to Part 263.69 of this Title or, where a final order of the board, a proceeding pursuant to section 78 of the civil practice law and rules.

**Existing sections 263.116 to 263.124 are renumbered 263.117 to 263.125.**