

Underlined material is proposed new material; material that is struck through will be deleted.

PARTart 250

DEFINITIONS AND GENERAL PROVISIONS

(Statutory authority: Labor Law, art. 20)

Sec.

250.1 **Scope**

~~250.1~~2 **Use of terms**

~~250.2~~3 **AetSERA; board; chairperson; filing**

~~250.3~~4 **Director and Director of Conciliation**

~~250.4~~5 **Counsel**

~~250.5~~6 **Deputy Chairperson**

~~250.6~~7 **Declaration**

~~250.7~~8 **Administrative law judge**

~~205.6~~9 **Parties**

~~250.7~~10 **Electronic filing and service**

~~250.10~~11 **Computing time**

~~250.11~~12 **Showing of interest**

§ 250.1 Scope.

These rules apply to all proceedings brought under the New York State Employment Relations Act. Rules promulgated under, and to enforce the provisions of, the Farm Laborers' Fair Labor Practices Act (FLFLPA) do not repeal or supersede extant Rules as applied to matters outside of the scope of the FLFLPA.

§ 250.2 Use of terms.

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

§ 250.3 AetSERA; board; chairperson; filing.

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

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

delivery to the board or an agent thereof, or the act of mailing to the board, or deposit of the papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. The term *service*, as used in this Part, shall mean delivery to a party or the act of mailing to a party, or deposit of the papers enclosed in a properly addressed wrapper into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Nothing in this Part shall preclude the institution of an electronic filing system pursuant to § 250.10 of this Part~~board from instituting an electronic filing system.~~

§ 250.43 Director and Director of Conciliation.

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

§ 250.[4]5 Counsel.

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

§ 250.6 Deputy Chairperson

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

§ 250.7 Declaration

The term declaration, as used in this Chapter, shall mean a statement that is made under penalty of perjury but is not sworn to before a notary or other person entitled to administer oaths. In any case brought under the Farm Laborers' Fair Labor Practices Act, notwithstanding any contrary provision within this Chapter, any matter required to be supported under oath or sworn to before a person entitled to administer oaths, may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, the contents of which are declared as true under penalty of perjury, dated, and expressly states above the declarant's signature that the matters so declared, certified, verified, or stated, are made under penalty of perjury under the laws of the State of New York and that the foregoing statements are true and correct.

§ 250.85 Administrative law judge.

The term *administrative law judge* shall mean an agent of the board so designated and shall include the director and assistant director of public employment practices and representation.

§ 250.96 Parties.

The term *party* or *parties* as used herein in connection with proceedings under section 706 of the Act, shall mean any person, persons, entity or entities cognizable under SERA, instituting any procedure under SERA, or named as a respondent or party in interest in any matter filed under SERA, and any other persons or labor organizations whose interventions have been permitted by the board or administrative law judge, except as limited by the board or administrative law judge in granting such permission. ~~the respondent employer, or employers, multiple employers, the person or organization making the charge, and any other persons or labor organizations whose intervention in the proceeding has been permitted by the board or administrative law judge, except as limited by the board or administrative law judge in granting such permission. As used herein in connection with proceedings under section 705 of the Act, party or parties shall mean the employer, or employers, multiple employers, the person or labor organization filing the petition, any other person or organization designated in the notice of hearing and served therewith, and any other persons or labor organizations whose interventions have been permitted by the board or administrative law judge, except as limited by the board or administrative law judge in granting such permission.~~

§ 250.107 Electronic filing and service.

- (a) Notwithstanding any provisions of this Chapter to the contrary, the director, the director of conciliation, counsel, deputy chairperson and/or an administrative law judge or special mediator before whom a matter is pending may permit the electronic filing and electronic service of any or all pleadings or related documents by and upon a party to a proceeding, subject to the requirements of the director, the director of conciliation, counsel, deputy chairperson and/or an administrative law judge or special mediator. ~~if such party expressly so consents in a form provided by the board to electronic service. Such permission and consent must be on notice to all parties.~~
- (b) Notwithstanding any provisions of this Chapter to the contrary, the Chairperson, in consultation with the board, may generally authorize the electronic service and/or filing of any documents for any or all proceedings before it or before an administrative law judge provided that: such general authorization is posted on the board's website and such general authorization becomes effective no sooner than sixty calendar days from the date of such posting; provision is made to permit unrepresented individuals to choose to file and receive all pleadings, memoranda, correspondence, and any case-related information in paper form; and the board or its designees retain discretion in determining 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.
- (c) The term *electronic filing*, as used in this Chapter, shall mean a document submitted by electronic mail to an address specified by the agency on its website, or by other electronic 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.
- (d) The term *electronic service*, as used in this Chapter, shall mean delivery before the latest time designated for service by electronic mail to a party sent to an electronic mail address designated by the recipient. Electronic service is deemed complete upon sending unless an error message or other notification that the served document has not been successfully dispatched or received is returned, in which case the service has not been effectuated is null and void.
 - (e) In any matter in which electronic filing is authorized by the Chairperson, director, director of conciliation, counsel, deputy chairperson, and/or administrative law judge or special mediator, compliance with the filing and service requirements contained in this Chapter will be deemed to have been met by the filing of one signed original paper document, and electronic filing of a complete and accurate copy of the document in conformity with the requirements of this subparagraph and the contemporaneous filing of one paper copy. The deputy chairperson on behalf of the board, the director, the director of conciliation and/or counsel may elect to waive filing of a paper copy in their discretion, as long as such waiver is posted online at the Agency's website.

250.11 Computing time

- (a) The term working days, as used in this Chapter, shall not include a Saturday, a Sunday, or a legal holiday.
- (b) The term days, as used in this Chapter, shall refer to calendar days.
- (c) In computing any period of time prescribed or allowed by these rules, or by order or direction, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the next working day.

250.12 Showing of interest

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

Part 251

PROCEDURE UNDER SECTION 705 OF SERA FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

(Statutory authority: Labor Law, art. 20)

Sec.

PETITION

251.1 Petition; filing

251.2 Petition of employee or representative; contents

251.3 Petition of employer or representative; contents

251.4 Sufficiency of petition and showing of interest

251.5 Notice of pending petitions

251.6 Petition; withdrawal or amendment

251.7 Response

INVESTIGATION AND ELECTIONS

~~251.45~~ 251.8 Investigation; ascertainment of desires of employees; notice

~~251.46~~ 251.9 Elections; terms and conditions

~~251.47~~ 251.10 Determination of representatives on consent

~~251.48~~ 251.11 Decision by administrative law judge

CERTIFICATIONS

~~251.25~~ 251.12 Certification of representatives

~~251.26~~ 251.13 Certification; life of; exceptions

PETITION

§ 251.1 Petition; filing.

A petition for investigation pursuant to section 705 of SERA may be filed with the board by employees, employers, or their representatives. The petition shall be in writing. The original shall be signed, dated, and, except for cases brought under the FLFLPA, verified before any person authorized to administer an oath. In cases brought under the FLFLPA, that is, cases brought by farm laborers, labor organizations seeking to represent farm laborers, or agricultural employers or their representatives, a petition may be supported by the unsworn declaration of such person, the content of which is declared as true under penalty of perjury or, alternatively, verified before any person authorized to administer an oath. The original and ~~four~~ three copies of the petition shall be filed with the director. For cases in which electronic filing is applicable or approved (see § 250.10), the filing of one paper original and filing and service of an electronic copy constitute compliance with the filing requirements. Petition forms will be supplied by the board upon request and will also be available on the board's website.

§ 251.2 Petition of employee or representative; contents.

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

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

§ 251.3 Petition of employer or representative; contents.

Such petition, when filed by an employer shall contain:

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

§ 251.4 Sufficiency of petition and showing of interest.

- (a) No petition in a proceeding under section 705 of SERA shall be dismissed for failure of the petitioner to set forth in the petition all the information required. The director is entitled to require amendment of a petition that fails to provide all required information and if, upon amendment, the petition remains deficient, it may be dismissed by the director.
- (b) **Selection of Employee Organization Where Only One Such Organization is Involved:** Pursuant to section 705.1-a of the SERA, where the choice available to employees in a negotiating unit is limited to selecting or rejecting a single labor organization, a submission of dues deduction authorizations sufficient to demonstrate majority support for a single labor organization, along with a petition identifying the labor organization, the employer, and the negotiating unit alleged to be appropriate, shall suffice to warrant certification of said labor organization without election.
- (c) **Selection of Employee Organization in General:** Pursuant to section 705.1 of the SERA, a petition for certification shall be accompanied by dues deduction authorizations, individually signed petitions in favor of recognition, membership cards, or other similar evidence of support for a labor organization. If the evidence is sufficient to demonstrate majority support of a single labor organization in a unit alleged to be appropriate, the labor organization shall qualify for certification without an election. In the event that the evidence submitted proves to represent less than a majority of the appropriate negotiating unit, the submitted evidence shall be treated as a showing of interest.
- (d) A showing of interest shall be filed simultaneously with a petition or motion to intervene, and must indicate support for a labor organization or organizations by a minimum of 30 percent of employees in the unit alleged to be appropriate. In the event that the dues deduction authorizations or other evidence of support fail to establish a showing of interest of at least 30 percent of employees in the unit alleged to be appropriate, the director shall dismiss the petition.
- (e) In determining whether the evidence submitted to establish a showing of interest is timely, the director shall accept evidence of current membership at the time the petition is filed. The director shall also accept dues deduction authorizations, original designation cards, or petitions on a form prescribed by the board, all of which were signed and dated within one year of their submission. A showing of interest may consist of any combination of the foregoing evidence. Designation cards shall be submitted in alphabetical order.

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

simultaneously file with the director a signed attestation that the listing sets forth only the names of the signatories on the showing of interest petitions. In a case brought under the FLFLPA involving farm laborers, a declaration may be submitted instead of an attestation.

(f) In cases under the FLFLPA involving farm laborers, a declaration of authenticity, supported by an unsworn declaration, the contents of which are declared as true under penalty of perjury and dated, shall be filed by the petitioner or, in the case of a motion to intervene, the movant, with the director simultaneously with the filing of the showing of interest. Such declaration shall contain the following:

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

(2) a declaration that, upon the declarant's personal knowledge or upon the declarant's inquiries, the persons whose names appear on the evidence submitted have themselves signed such evidence on the dates specified thereon, and that the persons specified as current members are in fact current members and that inquiry was made regarding their inclusion in the negotiating unit which is the subject of the representation petition. If the declaration is upon inquiries the declarant has made, and not upon the declarant's personal knowledge, the declarant shall specify the nature of those inquiries.

(g) In cases not brought under the FLFLPA, an affidavit by a person with personal knowledge and/or inquiry shall accompany the showing of interest and shall contain the same elements as required for a declaration in subdivisions (d) through (f) of this section.

(h) The director may direct an investigation and, if necessary, a hearing to ascertain whether the evidence submitted is accurate. If it is determined after investigation or hearing that the evidence is fraudulent or that the declaration is false, such reasonable action as is appropriate to protect the integrity of the procedures of the board in connection with the pending matter shall be taken. Such a determination and such action taken shall be reviewable by the board pursuant to section 253.22.

§ 251.5 Notice of pending petitions.

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

§ 251.6 Petition; withdrawal or amendment.

At any time before the issuance of a notice of hearing on a petition for investigation and certification, ~~the board~~ the director 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 administrative law judge, upon motion, may permit withdrawal of the petition in whole or in part, and the administrative law judge may permit amendment thereof.

§ 251.7 Response.

Except for the petitioner, all parties shall file with the director within 10 working days after receipt of a copy of the petition from the director, an original and three copies of 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. In cases in which electronic filing is used (see § 250.10), the filing of one signed original response and electronic filing and service of the response shall be deemed compliant service and filing. 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 bargaining² and a clear and concise statement of any other facts which the responding party claims may affect the processing or disposition of the petition.

INVESTIGATION AND ELECTIONS

§ 251.158 Investigation; ascertainment of desires of employees; notice.

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

(b) The determination by the director that the indications of employee support are not sufficient for certification without an election is a ministerial act and will not be reviewed by the board. The director shall inform all parties in writing if the director determines that the indications of employee support are sufficient for certification without an election. The director's determination in this respect is reviewable by the board pursuant to a written objection to certification filed with the board by a party within five working days

² The statutory text of the SERA uses the terms "collective bargaining" and "collective negotiations" as fully synonymous. This usage applies to these Rules.

after its receipt of the director's notification. An objection to certification shall set forth all grounds for the objection with supporting facts and shall be served on all parties to the proceedings. A response to the objection may be filed within five working days after a party's receipt of the objection.

§ 251.169 Elections; terms and conditions.

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

§ 251.1710 Determination of representatives on consent.

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

§ 251.1811 Decision by administrative law judge.

Upon completion of proceedings, the administrative law judge shall issue a decision and submit the record of the case to the board. The record shall include the petition, response, notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exceptions, documentary evidence, any briefs or other documents submitted by the parties, objections to the conduct of an election or conduct affecting the results of an election, and the decision of the administrative law judge. Exceptions to a decision by an administrative law judge may be filed pursuant to section 253.4823 of this Part.

CERTIFICATIONS

§ 251.2512 Certification of representatives.

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

§ 251.2613 Certification; life of; exceptions.

When a representative has been certified by the board, such certification shall remain in effect ~~for one year from the date thereof, and thereafter~~ 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. ~~In any case where unusual or extraordinary circumstances require such action, or where probable cause is shown that such action may be necessary to prevent the occurrence or continuation of an unfair labor practice,~~

the board, in its discretion, may shorten or extend the life of the original certification. When the board shall find that during the life of a certification the employer has refused to bargain collectively with the certified representative, the time of the continuance of such refusal to bargain shall not be a part of the time limited in computing the life of the certification.

PART 252

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

(Statutory authority: Labor Law, art. 20)

Sec.

CHARGE

252.1 Charge

252.2 Charge; form; filing

252.3 Contents of charge

252.4 Initial processing by director

252.[4]5 Charge; amendment and withdrawals

ANSWER

252.256 Answer; motion for particularization; filing; service

252.267 Answer; verification

252.278 Answer; denials

252.289 Answer; defense; new matter; motion for particularization

252.2910 Answer; amendment

252.3011 Answer; failure to file

252.3012 Pleadings; construction

CHARGE

§ 252.1 Charge.

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

§ 252.2 Charge; form; filing.

A charge shall be in writing. The original shall be supported by a statement made by the person filing the charge or the agent or representative of that person or entity signed and verified before any person authorized to administer an oath. In cases under the FLFLPA involving farm laborers and/or agricultural employers, the charge shall be supported by an unsworn declaration of such person, the content of which is declared as true under penalty of perjury, and signed and dated ~~signed and verified before any person authorized to administer an oath.~~ The original and three copies of the charge shall be filed with the director, except as to cases in which electronic filing is applicable or approved (see § 250.10), in which case filing of one paper original and filing and service of an electronic copy constitute compliance with the filing requirements. Charge forms will be supplied by the board upon request and will be made available at the board's website.

§ 252.3 Contents of charge.

A charge shall contain:

- (a) the full name and address of the person or labor organization making the charge;
- (b) the full name and address of the employer or employers against whom the charge is made;
- (c) except for charges filed by or on behalf of farm laborers, labor organizations on behalf of farm laborers, or agricultural employers, 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, ~~and 704-a,~~ or 704-b of SERA which are alleged to have been violated by the employer or employers, and, in the event it is alleged that any employee has been discharged, refused employment, or suffered discrimination in violation of SERA, the name of such employee.

§ 252.4 Initial processing by director

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

(b) Notice of conference. A notice of conference pursuant to Section 253.10 of this Chapter shall be prepared by the director or a designated administrative law judge specifying the time and place for the conference and, together with a copy of the charge, shall be delivered to the charging party and each named respondent.

§ 252.[4]5 Charge; amendment and withdrawals.

The director or administrative law judge designated by the director may permit a charging party to amend the charge before, during, or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process. The charge may be withdrawn by the charging party before the issuance of the dispositive decision and

~~recommended~~ order based thereon upon approval by the director. Thereafter, the unfair labor practice proceeding may be discontinued only with the approval of the board. Requests to the director 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 approves the withdrawal of a charge, or the board approves the discontinuation of a proceeding, the case will be closed without consideration or review of any of the issues raised by the charge.

ANSWER

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

(a) The party or parties against whom the charge is filed shall have the right to file an answer within 10 working days after receipt of the charge from the director. Upon application the director or administrative law judge may extend the time within which the answer shall be filed. One copy of the answer shall be served on each party and the original with proof of due service and three copies shall be filed with the assigned administrative law judge~~director~~. Where electronic filing has been approved for or is otherwise applicable to a case (see § 250.10), compliance with electronic filing protocols as contained in this chapter shall constitute full compliance with all filing requirements.

(b) If the charge is believed by a responding party to be so vague and indefinite that it cannot reasonably be required to frame an answer, the responding party may, within 10 working days after receipt from the director of a copy of the charge, file, either in compliance with applicable electronic filing rules in this Chapter, or by filing an original and three copies of a motion with the administrative law judge for an order directing the charging party to file a verified statement supplying specified information. The filing of such motion will extend the time during which the responding party must file and serve its answer until 10 working days after receipt of the ruling of the administrative law judge on the motion, or until such later date as the administrative law judge may set. Such a motion must be served upon all parties simultaneously with its filing with the administrative law judge; proof of service must accompany the filing of the motion with the administrative law judge. The charging party may file either, where applicable under these rules, an electronic response to the motion, or an original and three copies of a response to the motion within seven working days after its receipt thereof, with proof of service of a copy of the response on all other parties. The failure of a party to timely comply with an order of particularization may, in the discretion of the administrative law judge, constitute ground for precluding the party from offering any evidence as to the matters dealt with by the order.

§ 252.726 Answer; verification.

The answer shall be verified by the party filing it, either by (a) in cases brought under the FLFLPA involving farm laborers and agricultural employers, an unsworn declaration, the contents of which are declared as true under penalty of perjury or (b) in any case, a

sworn statement before an individual empowered to administer oaths under the law of the state of New York.

§ 252.827 Answer; denials.

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

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

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

(b) If the statement of facts supporting any affirmative defense is believed by a charging party to be so vague and indefinite that such charging party cannot reasonably be expected to address them in an expeditious manner at a hearing, such charging party may, within 10 working days after receipt of the answer, file with the administrative law judge an original and three copies of a motion for an order directing the responding party to file a verified statement supplying specified information. Such a motion must be served upon all parties simultaneously with its filing with the administrative law judge; proof of service must accompany the filing of the motion with the administrative law judge. The responding party may file an original and three copies of a response to the motion within seven working days after its receipt thereof, with proof of service of a copy of the response on all other parties. The failure of a party to timely comply with an order of particularization may, in the discretion of the administrative law judge, constitute ground for precluding the party from offering any evidence as to the matters dealt with by the order.

§ 252.1029 Answer; amendment.

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

§ 252.1130 Answer; failure to file.

If the party or parties against whom the charge is ~~issued~~brought fails to file an answer in the manner and within the time herein provided, it may be limited to cross-examination of witnesses called by the charging party and shall have such other rights as the administrative law judge may deem proper. Where prejudice to the charging party is demonstrated or no sufficient excuse or justification for the failure to file is proffered, the

administrative law judge may deem such failure to constitute an admission of the material facts alleged in the charge and a waiver by the respondent of a hearing.

§ 252.1231 Pleadings; construction.

All pleadings shall be liberally construed.

PART 253

GENERAL PROVISIONS RELATING TO ALL PROCEEDINGS

(Statutory authority: Labor Law, art. 20)

Sec.

JOINDER

253.1 **Parties; nonjoinder and misjoinder**

253.2 **Joinder of parties; relief**

MOTIONS

253.53 **Motions during hearing**

253.64 **Motions before or after hearing**

WAIVER

253.105 **Objections; waiver**

INTERVENTION

253.156 **Procedure; contents; filing; service**

CONSOLIDATION OR SEVERANCE

253.207 **Consolidation; severance**

WITNESSES AND SUBPOENAS

253.258 **Witnesses; examination; record; depositions**

253.269 **Subpoenas**

CONFERENCES AND HEARINGS

253.3510 **Conferences and Hearings; conduct**

253.3611 **Hearings; powers and duties of administrative law judge**

253.3712 **Hearings; rights of parties**

253.3813 **Hearings; stipulations**

253.3914 **Hearings; continuation of**

~~253.40 **Hearings; contemptuous conduct**~~

253.4115 **Hearings; oral argument or briefs; unfair labor practice cases**

253.4216 **Hearings; oral argument or brief; representation cases**

253.4317 **Hearings; variance between pleadings and proof**

253.4418 **Hearings; motions; objections**

253.4519 **Hearings; reopening**

253.4620 **Hearings; evidence as to transactions had at informal conferences**

253.4721 **Decision and order**

253.4822 **Exceptions to the Board**

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

253.24 **Final board action**

253.4925 **Record in proceedings under section 706**

253.5026 **Record in proceedings under section 705**

253.27 **Enforcement**

253.5128 **Public record**

JOINDER

§ 253.1 Parties; nonjoinder and misjoinder.

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

§ 253.2 Joinder of parties; relief.

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

MOTIONS

§ 253.53 Motions during hearing.

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

§ 253.64 Motions before or after hearing.

All motions, other than those made during a hearing, shall be made in writing to the director or the designated administrative law judge, shall briefly state the relief sought and shall be accompanied by ~~papers~~affidavits setting forth the grounds for such motion. The moving party shall serve copies of all motion papers on all other parties and shall within three working days thereafter file either the original and three copies thereof with proof of service with the director or the designated administrative law judge or, if permitted or applicable, filed electronically. Answering [affidavits] ~~papers~~, if any, must be filed and served on all parties, in the same manner in which the moving papers were filed and served. Answering papers must be filed [and the original thereof together with three copies and proof of service shall be filed] with the director or the designated administrative law judge within three working days after service of the moving papers unless directed otherwise. All such motions shall be decided by the director or the designated administrative law judge upon the papers filed with it.

WAIVER

§ 253.105 Objections; waiver.

An objection not duly urged before the board, director or designated administrative law judge shall be deemed waived unless the failure to urge such objection shall be excused by the board because of extraordinary circumstances.

INTERVENTION

§ 253.156 Procedure; contents; filing; service.

A person, employer, or labor organization desiring to intervene in any proceeding shall file with the director or designated administrative law judge a verified written application and three copies thereof, setting forth the facts upon which such person, employer or organization claims an interest in the proceeding. In cases under the FLFLPA involving farm laborers and/or agricultural employers, the application may be supported by the unsworn declaration of the filer, the content of which is declared as true under penalty of perjury. Such application must be served on all parties. Applications must be filed with the director or designated administrative law judge with proof of service at least two working days before the first hearing. Failure to serve or file such application, as above provided, shall be deemed sufficient cause for the denial thereof, unless good and sufficient reason exists why it was not served or filed as herein provided. The director or designated administrative law judge shall rule upon all such applications and may permit intervention to such an extent and upon such terms as ~~he~~ they shall determine may effectuate the policies of SERA.

CONSOLIDATION OR SEVERANCE

§ 253.207 Consolidation; severance.

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

WITNESSES AND SUBPEONAS

§ 253.258 Witnesses; examinations; record; depositions.

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

§ 253.269 Subpoenas.

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

CONFERENCES AND HEARINGS

§ 253.3510 Conferences and hearings; conduct.

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

(b) Hearings shall be conducted by a designated administrative law judge. At any time, an administrative law judge may be designated to take the place of the administrative law judge previously designated to conduct the hearing. All hearings shall be open to the public.

§ 253.3611 Hearings; powers and duties of administrative law judge.

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

§ 253.3712 Hearings; rights of parties.

In any hearing all parties shall have the right to call, examine and cross-examine witnesses, and to introduce documentary or other evidence, subject to the rulings of the administrative law judge, except as otherwise provided in this Subpart.

§ 253.3813 Hearings; stipulations.

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

§ 253.3914 Hearings; continuation of.

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

§ 253.40 Hearings; contemptuous conduct

~~The administrative law judge may exclude from the hearing room or from further participation in the proceeding any person who engages in contemptuous conduct before him.~~

§ 253.4115 Hearings; oral argument or briefs; unfair labor practice cases.

In a proceeding under section 706, the administrative law judge may permit the parties to argue orally at the close of the hearing or to file briefs or written statements. The time for oral argument or filing briefs or memoranda shall be fixed by the administrative law judge. ~~Argument shall not be included in the stenographic report unless the administrative law judge shall so direct.~~

§ 253.4216 Hearings; oral argument or brief; representation cases.

At the close of hearings in a proceeding under section 705, the administrative law judge shall permit the parties to file briefs or written statements. The time for filing such briefs or written statements shall be fixed by the administrative law judge. An original and three copies, with proof of service, must be filed.

§ 253.4317 Hearings; variance between pleadings and proof.

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

§ 253.4418 Hearings; motions; objections.

Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing. ~~Argument shall not be included in the stenographic report unless the administrative law judge shall so direct.~~

§ 253.4519 Hearings; reopening.

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

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

§ 253.4620 Hearings; evidence as to transactions had at informal conferences.

No testimony or evidence shall be given or received at any hearing concerning transactions had or statements or communications made during the conduct or course of any informal conference called and held concerning charges or petitions unless at the hearing all parties shall expressly waive this provision. This provision shall not apply to the giving or receipt of evidence concerning a consent comparison pursuant to section 251.4710 hereof.

§ 253.4721 Decision and order.

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

§ 253.4822 Exceptions to the Board.

- (a) This Subpart applies to exceptions to the board to decisions, reports, orders, rulings or other appealable findings or determinations.
- (b) Within 15 working days after receipt of a decision, report, order, ruling or other appealable findings or conclusions, a party may file with the board an original and three copies of a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings. An original and three copies of 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. Where electronic filing has been approved for or is otherwise applicable to a case (see § 250.10), compliance with electronic filing protocols as contained in this chapter shall constitute full compliance with all filing requirements.
- (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 an original and three copies of 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, or, if electronic filing is approved by the board or applicable (see § 250.10), may file electronically as provided in this Chapter. Within seven working days after receipt of cross-exceptions, any party may file a response, served and filed in the same manner as the exceptions, ~~an original and three 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 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 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.
- (h) ~~Unless a party files exceptions in accordance with this Subpart, 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 improper practice charge within 20 working days after receipt by the parties of the decision and recommended order.~~

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

- (a) Within ten working days after receipt of any interim decision, order or ruling, a party may, consistent with section 253.22 of this Chapter, file with the board either electronically in conformity with the rules governing electronic filing

and service, with permission of the board, or by filing and serving an original and three copies of a motion seeking leave to file interlocutory exceptions to such interim decision, order or ruling. An original and three copies of a brief in support thereof shall be filed simultaneously as a separate document. A copy of the motion and briefs shall be served simultaneously upon all other parties and proof of such service shall be filed with the board. Should the chairperson authorize electronic filing of such motions and responses thereto, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

- (b) The motion for leave to file interlocutory exceptions shall:
 - (1) identify the alleged extraordinary circumstances warranting the grant of leave to file exceptions which shall include the factual, legal and/or policy reasons why leave should be granted;
 - (2) contain the proposed exceptions that shall meet the requirements of section 253.22 of this Part; and
 - (3) attach copies of pleadings, the decision, order or ruling and relevant excerpts from the record.
- (c) Initial review. After a motion for leave to file exceptions is filed, the deputy chair or agent of the board so designated shall review the motion to determine whether it complies with section 253.23(a) and (b) of this Part.
- (d) Responses to motions for leave to file exceptions: Within five working days after notification from the deputy chair or other agent of the board so designated that the motion for leave will be considered by the board, any other party may file an original and three copies of a response and brief in opposition as a separate document. A copy of the response and brief shall be served simultaneously upon all other parties and proof of such service shall be filed with the board. Should the chairperson authorize electronic filing of such motions and responses thereto, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.
- (e) Board action on motion for leave to file exceptions: The board may grant or deny a motion for leave to file exceptions in a non-final decision. The denial of a motion for leave shall not preclude a party from filing an exception from a final determination by the director, the director of conciliation, an assistant director or administrative law judge.
- (f) Upon the grant of a motion for leave to file exceptions, the board shall issue a schedule for the filing of exceptions, cross-exceptions, responses, and briefs.

§ 253.24 Final board action

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

§ 253.[49]25 Record in proceedings under section 706.

(a) The record in proceedings under section 706 shall consist of the charge or amended charge, the pleadings, notices of hearing, notices of argument, motions, orders, stipulations, stenographic minutes, exhibits, depositions, the administrative law judge's decision and order, exceptions, responses, and the final decision and order.

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

§ 253.5026 Record in proceedings under section 705.

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

§ 253.27 Enforcement

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

(b) Request for enforcement. A party seeking enforcement by the board must file with the office of counsel an original and three copies of a written request stating the reason(s) why a judicial order of enforcement is necessary, supported by an original and three copies of affidavits of persons with personal knowledge of the facts set forth therein, attesting to the alleged refusal or failure to comply with the remedial order. Should the chairperson or counsel authorize electronic filing of such requests, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein

contained. Said request and supporting affidavits shall be accompanied by proof of service on all other parties before the board.

(c) Response. Pursuant to a schedule set by the office of counsel, all other parties before the board may file in the same manner as the request was filed with the office of counsel an original and three copies of a written response to the request for enforcement stating why enforcement is not necessary, supported by affidavits of persons with personal knowledge of the facts set forth therein. Said response and supporting affidavits shall be accompanied by proof of service on all other parties before the board.

(d) Action by the board. Following review of a request for enforcement and the response, the board, by its office of counsel, will determine whether a petition for a judicial order of enforcement pursuant to section 707 of the SERA should be commenced.

§ 253.5128 Public record.

The record as defined in sections 253.4925 and 253.5026 shall constitute the public record of the case and shall be made available for inspection or copying under such conditions as the board may prescribe.

PART 254

DESIGNATION, POWERS AND DUTIES OF BOARD'S AGENTS

(Statutory authority: Labor Law, art. 20)

Sec.

254.1 **Administrative law judges; powers and duties**

254.2 **General**

§ 254.1 Administrative law judges; powers and duties.

All administrative law judges, fact-finders, and any other individuals designated by the board to hold hearings, ~~now or hereafter in the employ of the board, in addition to all powers hereinabove conferred upon them,~~ are hereby designated by the board as its agents:

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

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

§ 254.2 General.

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

PART 255

SERVICE OF PAPERS

(Statutory authority: Labor Law, art. 20)

Sec.

255.1 **Method; proof**

255.2 **Service by a party**

255.3 **Service upon attorney**

§ 255.1 Method; proof.

Charges, petitions, orders and other process and papers of the board, its members, agent or agency, may be served personally, by regular mail, or by leaving a copy at the principal office or place of business of the person to be served. The verified return by the server, setting forth the manner of such service, or the return post office receipt when registered and mailed as aforesaid, shall constitute proof of service. Final orders issued by the board shall be served upon the parties by registered or certified mail, or pursuant to § 250.10 of this Chapter.

§ 255.2 Service by a party.

Service of papers by a party may be made personally or by mail, or pursuant to §250.10 of this Chapter. When service is made by mail, a return post-office receipt, or affidavit of service by mail, shall constitute proof of service.

§ 255.3 Service upon attorney.

If a party appears by attorney, all papers other than the charge or petition and notice of original hearing may be served as hereinabove provided upon such attorney, or pursuant to § 250.10 of this Chapter, with the same force and effect as though served upon the party.

PART 256

CERTIFICATION AND SIGNATURE OF DOCUMENTS

(Statutory authority: Labor Law, art. 20)

Sec.

256.1 Executive director; certification of papers; notices and reports

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

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

PART 257

CONSTRUCTION, AMENDMENT AND APPLICATION OF RULES

(Statutory authority: Labor Law, art. 20)

Sec.

257.1 **Construction**

257.2 **Amendments**

~~257.3 **Application**~~

§ 257.1 Construction.

These rules and regulations shall be liberally construed and shall not be deemed to limit the powers conferred on the board by SERA.

§ 257.2 Amendments.

Any rule or regulation may be amended or rescinded by the board at any time, but such amendment or rescission shall not be effective until published by filing with the Secretary of State.

~~**§ 257.3 Application.**~~

~~—These rules and regulations and any amendments thereto shall govern all proceedings filed with the board on and after July 12, 2013. They shall also govern all proceedings then pending, except to the extent that in the judgment of the board their application to such pending proceedings would not be feasible or would work injustice, in which event the general rules and regulations effective on February 1, 1943, as amended on August 1, 1963, shall apply.~~

PART 258

CONCILIATION

(Statutory authority, Labor Law, art. 20)

Sec.

- 258.1 **Impasses in Collective Bargaining and Assignment of Mediators**
- 258.2 **Voluntary interest arbitration**
- 258.3 **Resolution of Labor Disputes**
- 258.4 **Policy regarding grievance arbitration**
- 258.5 **Panel of arbitrators**
- 258.6 **Agreement to arbitrate**
- 258.7 **Demand for arbitration; submission to arbitrate**
- 258.8 **Determination of jurisdiction**
- 258.9 **Arbitrability**
- 258.10 **Selection process**
- 258.11 **Notice of designation**
- 258.12 **Status of arbitrator after designation; conduct of proceedings**
- 258.13 **Stenographic record and transcript**
- 258.14 **Award upon settlement**
- 258.15 **Expedited rendition of award**
- 258.16 **Form of award and time rendered**
- 258.17 **Time extension**
- 258.18 **Expenses and fees**

§258.1 Impasses in Collective Bargaining and Assignment of Mediators.

In the event that an employer and a labor organization have failed to achieve an agreement, either the employer or and the labor organization, or both acting jointly, may ~~jointly~~ notify the board in writing of the existence of an impasse. The notification, or declaration of impasse, must be signed by the representative of the declaring party, or where the parties are jointly declaring impasse, the representative of each party~~both the labor organization representative and the employer representative~~. An original and one copy of the notification shall be filed with the director of conciliation. Where electronic filing has been approved for or is otherwise applicable (see § 250.10), compliance with electronic filing protocols shall constitute full compliance with all filing requirements. Upon receipt of the notification of an impasse in collective bargaining, the board may appoint a mediator from a list of qualified persons maintained by the board to assist the parties to effectuate a voluntary resolution of the impasse. It is the policy of SERA that the board shall consider and make the parties aware of the availability of federal and other mediation services, and shall give priority in providing mediation services to those parties without access to those other services.

§258.2 Voluntary interest arbitration.

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

(b) The written request shall be accompanied by a copy of the submission.

(c) An arbitrator shall be designated pursuant to the selection process established by the director of conciliation, which process will give the parties an opportunity to participate in the selection of the arbitrator.

§258.3 Resolution of Labor Disputes.

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

§258.4 Policy regarding grievance arbitration.

It is the policy of SERA for the board to have the power at the request of the parties to a collective bargaining agreement between an employer and a labor organization to assist them in the arbitration of ~~arbitrate~~ such grievances as may arise under the agreement and to establish panels of qualified persons to be available to serve as arbitrator of such grievances. In furtherance of this policy, the following voluntary arbitration rules of procedure are provided to (a) insure an efficient and orderly procedure for grievance arbitration, (b) assist the parties in remedying procedural deadlocks, and (c) effectuate the rapid adjudication of disputes and controversies.

§258.5 Panel of arbitrators.

(a) The board shall maintain a panel of arbitrators who qualify and meet the board's standards and criteria of professional competence, impartiality and acceptability. All applicants requesting inclusion on the panel shall be reviewed by the board on the basis of their education, experience and expertise in the field of labor arbitration or its equivalent, and general reputation in the practice of labor-management relations. Careful evaluation, subject to the above standards and criteria, shall be made before an applicant is included on the panel of arbitrators.

(b) Inclusion in good standing on the panel shall be conditioned on the arbitrator assuming the responsibility of keeping the director of conciliation immediately informed of any changes in address, availability limitations, per diem rate, and occupation. The board shall periodically review the panel of arbitrators and shall at any time take appropriate action, including removal of the arbitrator from the panel, where the arbitrator has not adhered to the board's policies and this Subpart.

§258.6 Agreement to arbitrate.

Either party or both parties to a written agreement may request the director of conciliation to commence the administration of these voluntary arbitration rules of procedure if, in their agreement, the parties have provided for arbitration. The voluntary arbitration rules of procedure shall apply in the form in effect ~~obtaining~~ at the time the arbitration is initiated.

§258.7 Demand for arbitration; submission to arbitrate.

(a) *Demand for arbitration (request made by one party to the other).* Petitioner shall serve on the respondent a demand for arbitration which shall serve as notice of intention to arbitrate pursuant to CPLR section 7503. Such notice shall be served in the same manner as the summons or by registered or certified mail, return receipt requested. In addition, two copies of the demand for arbitration shall be filed with the director of conciliation together with proof of service on the respondent.

(b) *Contents of demand for arbitration.* A demand for arbitration shall include the following:

(1) date;

(2) name of petitioner;

(3) name of respondent;

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

(5) effective date and expiration date of agreement;

(6) identification of the provision(s) in the agreement providing for arbitration, together with a copy thereof;

(7) identification of the provision(s) in the agreement claimed to be violated, together with a copy thereof;

(8) a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name of the grievant);

(9) the following language, quoted verbatim:

"THE UNDERSIGNED, A PARTY TO A WRITTEN AGREEMENT WHICH PROVIDES FOR ARBITRATION AS DESCRIBED HEREWITH, HEREBY DEMANDS ARBITRATION. YOU ARE HEREBY NOTIFIED THAT COPIES OF THIS DEMAND FOR ARBITRATION ARE BEING FILED WITH THE DIRECTOR

OF CONCILIATION, NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, P.O. BOX 2074, EMPIRE STATE PLAZA, AGENCY BUILDING 2, FLOOR 20, ALBANY, NEW YORK, 12220-0074 WITH THE REQUEST THAT THE ADMINISTRATION OF THE VOLUNTARY ARBITRATION RULES OF PROCEDURE BE COMMENCED.

PURSUANT TO THE NEW YORK ARBITRATION LAW, ARTICLE 75, SECTION 7503, CIVIL PRACTICE LAW AND RULES, YOU HAVE TWENTY (20) DAYS FROM DATE OF SERVICE OF THIS DEMAND TO APPLY TO STAY THE ARBITRATION OR BE PRECLUDED FROM SUCH APPLICATION."

(10) signature and title of the representative serving the demand for arbitration.

(c) *Submission to arbitrate (joint request)*. Parties to an arbitration agreement may jointly request arbitration by forwarding a submission to arbitrate to the director of conciliation.

(d) *Contents of submission to arbitrate*. A submission to arbitrate shall include the following:

(1) date;

(2) name of ~~public~~ employer and labor organization;

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

(4) identification of the provision(s) in the agreement claimed to be violated, together with a copy thereof;

(5) a clear and concise description of the nature of the dispute(s) to be arbitrated and the remedy(ies) sought (include the name of the grievant);

(6) the following language, quoted verbatim:

"THE PARTIES NAMED HEREIN HEREBY JOINTLY REQUEST BINDING ARBITRATION OF THE DISPUTE DESCRIBED HEREIN UNDER THE VOLUNTARY ARBITRATION RULES OF PROCEDURE OF THE NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD."

(7) signatures and titles of the representatives filing the submission to arbitrate.

§258.8 Determination of jurisdiction.

(a) Where this Subpart has been incorporated by reference into an agreement to arbitrate, it shall be deemed binding on the parties as a valid part of such agreement.

(b) Where no agency's rules of procedure for arbitration have been incorporated by reference into an agreement to arbitrate, the board's jurisdiction will not attach in the matter until a submission to arbitrate has been received by the director of conciliation or until the respondent has been served with a demand for arbitration and the time limit to apply for a stay of arbitration, as provided in CPLR section 7503, has expired. In the event no application for a stay is made within the specified time limit, the board's jurisdiction shall attach and this Part shall be deemed binding on the parties as a valid part of their agreement to arbitrate.

§258.9 Arbitrability.

(a) Should either party contest the arbitrability of a grievance, the director of conciliation shall make no determination as to whether the grievance is a proper subject for arbitration. The director of conciliation's responsibilities throughout the application of this Subpart are administrative and, therefore, commencement of the administration of this Subpart shall be construed as compliance with a request.

(b) The board encourages parties to submit arbitrability questions to the arbitrator for determination. However, should the party served with a demand for arbitration pursue the legal remedies for a stay of arbitration in accordance with CPLR section 7503, a copy of the application to stay arbitration shall be filed with the director of conciliation within 20 days of service of the demand for arbitration.

(c) Upon timely receipt of a copy of the application to stay arbitration, the director of conciliation shall hold in abeyance the designation of the arbitrator pending final court determination of the arbitrability question. Absent timely receipt, the administrative responsibilities of the director of conciliation shall be carried out pursuant to this Part.

§258.10 Selection process.

After receipt of a demand for arbitration or submission to arbitrate, the director of conciliation shall forward to the representatives named therein two copies of an identical panel list of seven arbitrators selected from the panel of arbitrators. A resume, including per diem fee, of each arbitrator on such panel list shall be provided for the parties' review. Each party shall have 10 working days from date of the letter containing the panel list in which to select, rank and return their selections to the director of conciliation.

(a) *Selection and preferential ranking.* Unless the parties have provided for their own method of selecting an arbitrator in their agreement to arbitrate, the following process for the selection of an arbitrator shall be employed: if more than four names on the panel list are acceptable, those names shall be ranked in order of the party's preference and the remaining name, if any, shall be stricken. Otherwise the party shall strike no more than three names from the panel list and indicate a preference among those names remaining by ranking them (1), (2), (3) and (4).

(b) *Additional lists.* If a party determines that more than three names on a panel list are unacceptable, a request by such party for an additional panel list shall be filed with the director of conciliation within the 10-day time period established for selection and preferential ranking. A copy of such request shall be sent to the other party simultaneously. Each party shall have the right to request one additional list, and consequently, no party shall receive more than three panel lists. Pursuant to the selection process, if the parties fail to select an arbitrator after the submission of a third panel list, the director of conciliation shall take whatever steps are necessary to designate an arbitrator.

(c) *Designation of the arbitrator.* (1) Timely receipt of selections. Upon timely receipt of each party's selections and consistent with their selected order of preference, the director of conciliation shall designate the arbitrator. If the designated arbitrator declines or is unable to serve, the director of conciliation shall reserve the right to designate an arbitrator without the submission of an additional panel list. In no case, however, will an arbitrator be designated whose name was stricken by either or both parties.

(2) Failure to timely return selections. If a party fails to timely return its selections to the director of conciliation, all names submitted in the panel list shall be deemed acceptable to such party and the designation of the arbitrator shall be made according to the preferences of the party whose selections have been timely received.

§258.11 Notice of designation.

(a) The parties shall be notified forthwith by the director of conciliation of the name of the designated arbitrator.

(b) The arbitrator, upon notification of designation by the director of conciliation, shall immediately communicate directly with the parties to make arrangements for preliminary matters such as the date, time and place of the arbitration hearing. If the arbitrator cannot schedule a hearing and determine the issues promptly, the arbitrator shall notify the director of conciliation forthwith. The director of conciliation shall take such action, consistent with this Part, as the director of conciliation deems appropriate.

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

After designation, the legal relationship of the arbitrator is with the parties, rather than the board. While the board shall maintain a continuing interest in the proceedings, the designated arbitrator shall not be considered an agent or representative of the board. The conduct of the arbitration proceeding shall be under the arbitrator's exclusive jurisdiction and control, subject to such rules of procedure as the parties may jointly agree upon. The arbitrator shall have all of the power specified in CPLR sections 7505, 7506 and 7509 insofar as these sections may be applicable. The arbitrator's conduct shall conform to applicable laws.

§258.13 Stenographic record and transcript.

(a) Either party or the arbitrator may request that a stenographic record of testimony be taken and that party shall be responsible for arrangements for such stenographic record.

(b) The party or parties requesting the record shall pay the cost thereof, including the cost of a transcript to be furnished to the arbitrator. If the arbitrator orders that testimony be recorded, the cost of recording the testimony shall be mutually shared by the parties, including the cost of a transcript to be furnished to the arbitrator. Any other party to the arbitration shall be entitled to obtain a transcript upon payment therefor. The arbitrator shall indicate whether or not the transcript taken shall serve as the official record of the proceeding.

§258.14 Award upon settlement.

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

§258.15 Expedited rendition of award.

(a) Should the parties mutually agree to an expedited rendition of the arbitrator's award, notice in the form of a joint request in writing shall be received by the director of conciliation before the designation of the arbitrator.

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

§258.16 Form of award and time rendered.

(a) The award shall be in writing, signed and affirmed by the arbitrator, and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested. If 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 ~~207.12~~258.15 of this Part, an award shall be rendered within 30 days after the arbitrator has declared the hearing closed, unless this time period has been extended by the parties and so confirmed by them in writing.

(b) If no award has been rendered within 60 days after the arbitrator has been designated, it shall be the responsibility of the arbitrator to inform the director of conciliation of the status of the case. In any case, the parties shall notify the director of conciliation of any undue delay.

§258.17 Time extension.

Except as prescribed by statute, upon request of any party, with notice to the other party, the director of conciliation, for good cause shown, may extend any time limit in this Part except the time limit for rendering an award.

§258.18 Expenses and fees.

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

(b) The arbitrator's per diem fee, certified in advance by the arbitrator to the board and listed on the arbitrator's resume, shall be the rate charged to the parties. Compensation for the services of an arbitrator, including required travel and other necessary and incidental expenses, shall be borne completely by the parties. Each party shall pay 50 percent of such fees and expenses, unless otherwise mutually agreed upon in writing by the parties.

(c) An arbitrator who requires the payment of an adjournment fee in the event of a postponement or cancellation of a scheduled hearing by either or both parties, shall give explicit~~proper~~ notice of this requirement on his or her resume. Unless otherwise mutually agreed upon in writing by the parties, the party responsible for such adjournment shall pay the entire fee, and in the case where both parties require adjournment, each party shall pay 50 percent of such adjournment fee.

(d) Since the designated arbitrator is not an agent or representative of the board, all matters involving arbitrator payments and compensation are to be resolved between the parties and the arbitrator directly.

PART 259

SETTLEMENT OF LABOR DISPUTES PURSUANT TO § 702-a

(Statutory authority: Labor Law, art. 20)

Sec.

259.1 Settlement of Labor Disputes

259.1 Settlement of Labor Disputes

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

PART 260

IMPASSE RESOLUTION PROCEDURES FOR AGRICULTURAL EMPLOYERS AND FARM LABORERS

(Statutory authority: Labor Law, art. 20)

Sec.

260.1 Impasse Resolution Procedures for Agricultural Employers and Farm Laborers

260.2 Impasse arbitration; petition

260.3 Impasse arbitration; response and cross-response

260.4 Objections to arbitrability

260.5 Selection of the neutral arbitrator

260.6 Powers and duties of the arbitrator and conduct of the arbitration proceeding

260.7 Determination and award

260.1 Impasse Resolution Procedures for Agricultural Employers and Farm Laborers

(a) Filing of declaration of impasse. In the event that an agricultural employer and a certified or recognized labor organization have failed to achieve an agreement by the end of a forty-day period from the date of certification or recognition of an labor organization or from the expiration date of a collective bargaining agreement, either the employer or the labor organization, or both acting jointly, may notify the board in writing of the existence of an impasse by filing a declaration of impasse. An original and one copy of the declaration shall be filed with the director of conciliation, and another shall be served upon all other parties to the negotiations. Where electronic filing has been approved for or is otherwise applicable (see § 250.10), compliance with electronic filing protocols shall constitute full compliance with all filing requirements. Such declaration shall specify:

(1) the name, affiliation, if any, and address, telephone number, fax number, and electronic mail address, if any, of the person issuing the declaration;

(2) the name or names and address(es), telephone number, fax number, and electronic mail address, if known, of the other parties to the collective negotiations;

(3) a statement that the labor organization involved is either certified or recognized;

(4) the number of employees in the negotiating unit, together with a list of the job titles represented in that unit;

(5) the expiration date of the present agreement, if any;

(6) a clear and concise history of negotiations leading to the impasse, including the number and dates of the negotiation sessions;

(7) a list of all presently unresolved issues;

(8) a statement that a copy of the declaration has been served upon the other parties to the collective negotiations;

(9) a statement that the individual filing the declaration has authority to do so on behalf of the filing party; and

(10) a clear and concise statement of any other relevant facts.

(b) Assignment of mediator. Upon receipt of the declaration of impasse, the director of conciliation shall determine its sufficiency, and thereafter may appoint a mediator from a list of qualified persons maintained by the board to assist the parties to effect a voluntary resolution of the impasse. Nothing herein shall preclude an impasse from being deemed to exist on motion of the director of conciliation or the board.

260.2 Impasse arbitration; petition

(a) Filing. An original and three copies of a petition requesting the director of conciliation to refer an impasse to a neutral arbitrator may be filed by a labor organization or agricultural employer after 30 days have elapsed following appointment of a mediator to such impasse by the director of conciliation. A copy of the petition shall also be served upon the other party to the impasse simultaneously. Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

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

(1) The name and address of the employer and the labor organization involved in the impasse.

(2) The name, title, address, telephone number, fax number and electronic mail address, if known, of the representative of each party to whom correspondence shall be directed.

(3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:

(i) terms and conditions of employment that have been agreed upon; and

(ii) petitioner's most recent position regarding terms and conditions of employment not agreed upon.

Proposed contract language presented during negotiations must be attached.

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

(5) Proof of service upon the respondent party.

260.3 Impasse arbitration; response and cross-response

(a) Response. A response shall be filed in the same manner as was the petition within 10 working days of receipt of the petition requesting arbitration. A copy of the response shall also be served simultaneously upon the petitioning party.

(b) Contents of response. Such response shall contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position. Proposed contract language presented during negotiations shall be included. If the respondent has filed a declaratory ruling petition related to neutral arbitration under section 260.4 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 260.4(b) of this Part 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.

260.4 Objections to arbitrability

(a) Objections to arbitrability. Objections to the arbitrability of any matter set forth in the petition or response may only be raised by the filing of a declaratory ruling petition pursuant to the requirements of this section. Objections as to arbitrability may include, but not be limited to, the following circumstances:

(1) a matter proposed is not a mandatory subject of negotiations;

(2) a matter proposed was not the subject of negotiations prior to the petition;

(3) a matter proposed had been resolved by agreement during the course of negotiations.

(b) 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 Part 261 of this Chapter. 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 260.3 of this Part; if filed by the petitioner, such a petition may not be filed more than 10 working days after its receipt of the response.

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

260.5 Selection of the neutral arbitrator

(a) If the parties are unable to agree upon the arbitrator within seven working days of receipt of the petition, either party may request the board to submit a list of qualified persons for selection of the arbitrator. Within seven working days after receipt of such request, the director of conciliation shall submit to each party an identical list of nine arbitrators from its panel of arbitrators. A resume and billing disclosure statement of each arbitrator on such list shall be enclosed for the parties' review.

(b) Selection. Within ten working days after receipt of the list, the parties will notify the director of conciliation of the identity of a qualified arbitrator they have mutually agreed upon, or, if unable to agree, shall be required to meet and make their selection in the following manner: Each party shall alternately strike from the list one of the names with the order of striking determined by lot until one person remains, who shall be designated as the arbitrator. If either party so desires, a representative of the board will be present during the name striking process. The name striking process must be completed within five working days of receipt of the list from the director of conciliation. The director of conciliation must be immediately notified of the person selected as the arbitrator. Upon the failure of one party to participate in the selection process, all names on the list shall be deemed acceptable to it, and the other party will be entitled to have its selection designated as the arbitrator.

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

260.6 Powers and duties of the arbitrator and conduct of the arbitration proceeding

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

260.7 Determination and award

The determination and award of the arbitrator shall be in writing, signed and acknowledged, and shall be delivered to the parties by registered or certified mail, return receipt requested, or, upon request of both parties, by electronic mail. Within five working days of rendering the determination and award, the arbitrator shall file two copies of the determination and award with the director of conciliation. Should the chairperson or the director of conciliation authorize electronic filing, electronic filing of

the determination and award shall fulfill the requirement of filing with the director of conciliation.

PART 261

DECLARATORY RULINGS

(Statutory authority: Labor Law, art. 20)

Sec.

261.1 Petition; filing

261.2 Processing by the director

§ 261.1 Petition; filing

(a) Filing of petition. Any person, labor organization, or employer may file with the director an original and three copies of a petition for a declaratory ruling with respect to the scope of negotiations under the SERA. The petition shall be in writing on a form provided by the director and shall be signed and sworn to before any person authorized to administer oaths, except in cases under the FLFLPA involving farm laborers and/or agricultural employers, which may be supported by the unsworn declaration of the filer, the content of which is declared as true under penalty of perjury. Should the chairperson authorize electronic filing of the petition, the filing of a signed paper original consistent with this section and electronic filing and service of a copy shall constitute compliance with the filing and service requirements herein contained.

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

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

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

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

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

§ 261.2 Processing by the director

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

(b) The director or administrative law judge shall send a copy of the petition to any persons, labor organizations or employers, in addition to those listed in the petition, whom the director or administrative law judge deems to have interests that are reasonably likely to be affected by the ruling, together with a notice that they may at their option, become parties to the proceeding by filing in the same manner as the petition was filed a response to the petition within 10 working days from their receipt thereof. Such response may challenge any of the allegations in the petition and, whether or not petitioner has done so, it may propose a ruling.

(c) The matter shall be processed in accordance with the procedures set forth in Part 253 of this Chapter, except that the director or administrative law judge shall issue a decision, which may be reviewed pursuant to section 253.22 of this Chapter. Such declaratory ruling will be final and binding on all parties as to the negotiability of the subject or subjects, and may be reviewed along with the final decision of the administrative law judge or the board as part of a petition pursuant to article 78 of the civil practice law and rules.

PART 262

ACCESS TO RECORDS OF THE BOARD

(Statutory authority: Labor Law, art. 20)

Sec.

262.1 Records available for public inspection and copying

262.2 Designation of records access officer and appeals officer

262.3 Procedures for inspection and copying of records

262.4 Denials and appeals

§ 262.1 Records available for public inspection and copying

The records of the board available for public inspection and copying, in accordance with the procedures hereinafter set forth, are those described by section 87 of the Public Officers Law.

§ 262.2 Designation of records access officer and appeals officer

(a) A records access officer shall be designated by the board's executive director for purposes of this Part. The name, title, business address and business phone number of such designee will be posted on the agency's website.

(b) An appeals officer shall be designated by the board's executive director for purposes of this Part. The name, title, business address and business phone number of such designee will be posted on the agency's website.

§ 262.3 Procedures for inspection and copying of records

(a) A request to inspect or copy any record shall be made in writing to the board's executive director at P.O. Box 2074 Empire State Plaza, Agency Building 2, 18th Floor, Albany, NY 12220-0074, or at such other address the board shall designate on the agency's website, who will make suitable arrangements for such inspection during regular office hours at the offices of the board in Albany, New York City or Buffalo, unless the location of a particular record may require its inspection at a particular office, in which case inspection shall occur at such office. Office hours will be provided on the agency's website.

Note: Most records of the board available for inspection may also be found in the published volume entitled Official Decisions, Opinions and Related Matters of the Public Employment Relations Board, sets of which are kept in various libraries, including the library of the Court of Appeals, the four Appellate Divisions and the board's libraries.

(b) A fee of 25 cents per page will be charged for all print copies made upon request by anyone other than a member of a board panel, to whom one copy of a document may be

given without charge. The board will make every effort to comply with requests for such copies as expeditiously as possible.

(c) Stenographic services at hearings held by the board are provided pursuant to arrangements under which the stenographer has exclusive right to reproduce and sell copies of minutes at hearings. While the minutes of hearings may be inspected at the offices of the board, any person desiring a copy of minutes must make arrangements directly with the stenographer. The name and address of the stenographer will be furnished by the executive director upon request.

(d) The records access officer may, in his or her discretion, waive all or any portion of the fees authorized by this section for any record or class of records.

§262.4 Denials and appeals

(a) Denial of access to records shall be in writing stating the reason therefor and advising the requester of the right to appeal to the individual established to determine appeals, who shall be identified by name, title, business address and business phone number.

(b) Appeals may be taken in accordance with section 89 of the Public Officers Law.

PART 263

MISCONDUCT BEFORE THE AGENCY

(Statutory authority: Labor Law, art. 20)

Sec.

263.1 Misconduct by any person

263.2 Suspension or other sanctions

§ 263.1 Misconduct by any person

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

§ 263.2 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 an administrative law judge imposing discipline under this section will be appealable to the board as part of an appeal of the ultimate disposition of the underlying proceeding pursuant to section 253.22 of this Chapter.

PART 264

PRIVACY PROTECTION AND ACCURACY OF PERSONAL DATA

(Statutory authority: Labor Law, art. 20)

Sec.

264.1 Statement of purpose

264.2 Definitions

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

264.4 Requests for records

264.5 Fees for copying records

264.6 Inspection and copying records

264.7 Appeals of denial of access to records

264.8 Procedures governing the correction or amendment of records

264.9 Appeals of denial of correction or amendment of records

§ 264.1 Statement of purpose

The purpose of this Part is to set forth the methods and procedures governing the availability, location and nature of those records of the board subject to the provisions of article 6-A of the Public Officers Law, known as the Personal Privacy Protection Law.

§ 264.2 Definitions

As used in this Part, the following words and terms shall have the indicated meanings:

Note: The meaning of the words or term “data subject”, “disclose”, “personal information”, “record”, “system of records”, and “routine use” shall be as set forth in the Personal Privacy Protection Law article 6-A of the Public Officers Law.

(a) Privacy compliance officer means the board’s executive director, whose business address is Public Employment Relations Board, PO Box 2074, Empire State Plaza, Agency Building 2, 18th Floor, Albany, NY 12220-0074, or such other address as the board may designate on the agency’s website.

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

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

(a) Records shall be available for inspection and copying by data subjects or their authorized representatives on every day that the offices of the board are open for the transaction of business between the hours of 8:30 a.m. and 4:45 p.m.

(b) Records may be inspected at the locations designated by the privacy compliance officer.

(c) The identity of a data subject requesting access to his or her record may be verified as follows:

(1) Before being given access to personal information, an individual shall provide reasonable verification of his or her identity. No individual need verify his or her identity when seeking access to records which are otherwise available to any member of the public under the Freedom of Information Law.

(2) In the case of an individual who seeks in-person access to or amendment of record(s), an employee identification card, a driver's license, or other similar document shall constitute reasonable verification of identity.

(3) When access to or amendment of record(s) is requested by mail, the requirement for verification of identity shall be met if the individual provides minimum identifying data, such as date of birth and some item of information in the record that only the concerned individual would likely know.

§ 264.4 Requests for records

All requests to inspect and/or copy records, subject to disclosure as provided by this Part, are to be made to the privacy compliance officer.

§ 264.5 Fees for copying records

(a) Fees for certification of copies and supplying transcripts of all documents and records under the seal of the board shall be the fees as prescribed by the applicable regulation of the board.

(b) Fees for photocopies or data printouts of records available pursuant to this Part shall be 25 cents per page.

(c) Except where fees are established by law, rule or regulation, no fee shall be charged for:

(1) inspection of a record;

(2) record searches;

(3) certification pursuant to this Part; and

(4) amendment or correction of an agency record found to be in error.

(d) Fees shall be paid in full or a valid offer made to pay established fees prior to issuance of copies, transcripts or certification of records.

(e) Payment shall be made in the form of a check, bank draft, or money order payable to Public Employment Relations Board.

§ 264.6 Inspection and copying records

Inspection and copying of records shall be subject to the following process:

(a) Request for access to records must be in writing, and shall identify or reasonably describe the records sought. Such a request may be submitted by electronic mail to an email address designated by the board, and posted on the agency's website. All responsive communications to such a request, when submitted by electronic mail, shall also be in electronic mail, provided that the request does not seek a response in another form.

(b) The privacy compliance officer shall, within five working days after receipt of a request:

(1) make requested records available;

(2) deny the request in writing and in such denial:

(i) explain the reason for denial;

(ii) set forth the right of appeal to the privacy compliance appeals officer;

(iii) provide the name, title, business address and telephone number of the privacy compliance appeals officer; or

(3) furnish written acknowledgment of the request and the approximate date when the request will be granted or denied.

(c) If access is approved, the privacy compliance officer shall cause a search for the records requested.

(d) If the record cannot be found after diligent search, the privacy compliance officer shall so notify the requestor.

(e) Upon request, the privacy compliance officer will certify that the record is a true copy.

(f) Confidentiality questions concerning records in the possession of the board which originated in any other state or federal agency shall be referred to such originating agency for resolution.

(g) Persons inspecting a record shall be allowed to copy it by any means which will not damage the record.

§ 264.7 Appeals of denial of access to records

(a) Any person who has been denied access to records by the privacy compliance officer may appeal such denial within 30 days to the privacy compliance appeals officer, by submitting a written request, which shall set forth:

- (1) the date of the request for records;
- (2) the records to which the requestor was denied access;
- (3) the name and return address of the requestor; and
- (4) the requestor's position, concisely stated, setting forth the reason why the decision of the privacy compliance officer should be changed.

(b) The time for deciding on an appeal by the privacy compliance appeals officer shall commence upon receipt of the written appeal.

(c) The privacy compliance appeals officer shall, within seven working days of the receipt of a written appeal, review the matter and affirm, modify or reverse the denial.

(d) If the privacy compliance appeals officer determines that the denial of access was erroneous, such officer shall instruct the privacy compliance officer to allow prompt inspection or copying of the record as requested.

(e) If the privacy compliance appeals officer affirms or modifies the denial, such officer shall communicate the reasons in writing by either first class mail or certified mail, return receipt requested, to the person making the appeal and inform such person of the right of judicial review.

(f) The privacy compliance appeals officer shall immediately forward to the Committee on Open Government a copy of such appeal and the determination thereon.

§ 264.8 Procedures governing the correction or amendment of records

The correction or amendment of records shall be subject to the following process:

(a) A request for the correction or amendment of a record shall be made in writing and shall identify or reasonably describe such record. Such a request may be submitted by electronic mail to an email address designated by the board, and posted on the agency's website. All responsive communications to such a request, when submitted by electronic mail, shall also be in electronic mail, provided that the request does not seek a response in another form.

(b) The privacy compliance officer shall within 30 working days after receipt of a request:

(1) make requested correction or amendment in whole or part and advise the individual that upon request, parties to whom such data has been disclosed in accordance with section 94.3(c) of the Public Officers Law, will be advised of such correction or amendment;

(2) deny the request in writing. Such denial shall:

(i) explain the reason for the denial;

(ii) set forth the right of appeal to the privacy compliance appeals officer; and

(iii) provide the name, title, business address and telephone number of the privacy compliance appeals officer.

§ 264.9 Appeals of denial of correction or amendment of records

(a) Any person whose request for correction or amendment of records has been denied by the privacy compliance officer may appeal such denial within 30 working days to the privacy compliance appeals officer. Such a request may be submitted by electronic mail to an email address designated by the board, and posted on the agency's website. All responsive communications to such a request, when submitted by electronic mail, shall also be in electronic mail, provided that the request does not seek a response in another form. Such appeal shall be in writing and shall set forth:

(1) the date of the request for records;

(2) the records whose correction or amendment was denied and the requestor's justification for changes sought; and

(3) the name and return address of the requestor.

(b) The time for deciding on an appeal by the privacy compliance appeals officer shall commence upon receipt of the written appeal.

(c) The privacy compliance appeals officer shall, within 30 working days of the receipt of a written appeal, review the matter and affirm, modify or reverse the denial.

(d) If the privacy compliance appeals officer determines that the denial was erroneous, such officer shall instruct the privacy compliance officer to allow correction or amendment of the record as requested and notify appropriate parties, if requested, by the requestor.

(e) If the privacy compliance appeals officer affirms or modifies the denial, such officer shall communicate the reasons in writing by either first class mail or certified mail, return receipt requested, to the person making the appeal and inform such person of the right of judicial review. In addition, the records appeals officer shall notify the requestor of its right to file with the board a statement of reasons for disagreement with its determination, and that the board will attach requestor's statement to the disputed record. Upon an individual's request, such statement will be provided to parties to whom such data has been disclosed in accordance with section 94.3(c) of the Public Officers Law together, if

appropriate, with a concise statement of the board's reasons for not making the requested amendment.

(f) The privacy compliance appeals officer shall immediately forward to the Committee on Open Government a copy of such appeal and the determination thereon.