



OKLAHOMA
PUBLIC EMPLOYEES RELATIONS
BOARD

ADMINISTRATIVE RULES
OAC 585:2

June 2007

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CHAPTER 2. OPERATIONS UNDER THE FPAA AND THE MECBA

SUBCHAPTER 1. GENERAL PROVISIONS

585:2-1-1. Purpose

These rules have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S. §250 et seq. They are intended as aids to the efficient operation of the Public Employees Relations Board and to the orderly administration of the Fire and Police Arbitration Act (FPAA) and the Municipal Employees Collective Bargaining Act (MECBA). They are also intended to provide meaningful avenues for realizing and enforcing statutory rights and obligations of certain public employees, employee organizations, and the municipal employers of this state.

585:2-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA and the MECBA unless their context clearly indicates otherwise.

585:2-1-3. Additional definitions

The following words or terms, when used in these rules, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 74 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or "PERB" means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"MECBA" means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:2-1-4. Severability

If any section or sections of these Rules are held by a court or by the Attorney General of the State of Oklahoma to be inconsistent with any Oklahoma statute or statutes as they presently exist or are hereafter amended, the partial or total invalidity of any such section or sections shall not affect the remaining valid sections of these Rules.

585:2-1-5. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA and the MECBA.

SUBCHAPTER 3. PROGRAM ADMINISTRATION AND DESCRIPTION

585:2-3-1. PERB Board, description and powers; hearing officer

(a) The Board is an administrative body created by 11 O.S., §51-104 and referred to in 11 O.S., §51-24. The Board consists of three (3) members who are appointed by the Governor, and whose powers and duties are prescribed by the Legislature. The Board has an Administrator to carry out certain designated functions of the Board, including, but not limited to, conducting representation elections.

(b) The Board may appoint a hearing officer to carry out functions of the Board including, but not limited to, conducting representation elections, unfair labor practice charge hearings and prohibited practices hearings.

(c) The Board, on its own motion, may initiate actions when the Board determines that it is necessary to do so in order to accomplish the objectives and to carry out the duties prescribed by the FPAA and the MECBA.

585:2-3-2. Quorum

Two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:2-3-3. Location for information or for filing

Any person may obtain information from, make submission to, or make a request of the Board by writing to the Administrator of the Board, Oklahoma Public Employees Relations Board, at the Board's address and telephone number as published by the State of Oklahoma.

585:2-3-4. Public inspection of documents

(a) The Board shall act at all times in accordance with the provisions of the Oklahoma Open Records Act, 51 O.S., §24A.1 et seq.

(b) The public may obtain information relative to the operation of the Board by submitting written, telephonic, facsimile or other form of requests to the Administrator of the Board. All public records shall be available during normal business hours. A member of the Board's staff shall be available during normal business hours to receive and, as appropriate, respond to requests for record review and copying.

(c) All records of the Board shall be considered public records unless protected by a mandatory or permissive privilege of confidentiality. In the event a request is made for the release of records subject to a permissive privilege of confidentiality, the Administrator of the Board shall determine whether or not disclosure shall be made.

585:2-3-5. Retention of pleadings or documents by the Board

(a) All pleadings and/or documents filed with or presented to the Board shall be retained and disposed of in accordance with the Department of Central Services Consolidated Records Disposition Schedule.

(b) The Board may permit the withdrawal of original pleadings or documents upon the submission of properly authenticated copies to replace such documents.

585:2-3-6. Forms and instructions

(a) The Board shall cause to be created forms and instructions related to bargaining unit determination, certification and decertification process; the filing of unfair labor practice and prohibited practice charges; Final Pre-Hearing Orders and for such other matters related to operations of the Board as deemed necessary by the Board. The parties shall use the appropriate forms and instructions created by the Board.

(b) Forms and instructions shall be maintained at the offices of the Board and shall be available to any person upon request.

585:2-3-7. Failure of Party to Comply with Statutes, Rules or Orders of the Board

Failure of any party to comply with the FPAA, the MECBA, these rules or orders of the Board may result in the Board dismissing a charge, striking a pleading, issuing a preclusion order, staying an action, entering default judgment or taking other appropriate action.

585:2-3-8. Petitions for rulemaking

(a) **General.** Any interested person may petition the Board in writing to promulgate, amend or repeal a rule.

(b) **Permanent docket of petitions for rulemaking.** The Board shall maintain a permanent docket concerning petitions for the promulgation, amendment or repeal of a rule. At the time such a petition is filed, it shall be numbered, and the number of the petition, the date of filing, the designation of the action sought, and the name and address of the person who filed the petition shall be shown. The address shall include the city, state, street number or post office box and zip code.

(c) **Petition filing requirements.** The petition must be filed with the Board in duplicate and shall be typewritten, except as may be waived by the Board upon written request.

(d) **Petition contents.** The petition shall contain the following information as applicable and except as may be waived by the Board:

(1) A statement of the legal authority and jurisdiction under which the petition is filed;

(2) The exact language of the proposed rule, amendment, or repeal requested;

(3) A statement and legal references which show that the requested rule, amendment or repeal is not in conflict with any existing rule, ruling, order or opinion of the Board or any policy or provision of the FPAA, the MECBA or the APA, or that any earlier rule, ruling, order or opinion should be set aside or modified;

(4) A statement of the purpose of the requested rule, amendment or repeal and at least one example or fact situation to which the rule, amendment or repeal will apply; and

(5) The name and address of the person who requested the rule, amendment or repeal. In the event the request is made by an association, the request shall also include the name and address of a contact person at said association who is able to provide meaningful information related to the request.

(e) **Petition study period.** The petition shall be submitted for study for a maximum period of ninety (90) days.

(f) **Additional information for consideration of petition.** The Board, on its own motion or upon the request of any other interested party, may require any petitioner to provide additional information, as may be specified by the Board, for use in the Board's consideration and disposition of a petition. The failure of a petitioner to provide additional requested information shall constitute grounds for the Board to take no action on a petition.

(g) **Public hearing.** Upon completion of the study period, the Board, during a regular or special meeting, shall hold a public hearing and consider the merits and proper disposition of the petition. Not less than ten (10) days prior to such meeting, the Administrator of the Board shall notify the petitioner in writing of the date, time, and place such petition shall be considered, and the Board may request petitioner's presence for purpose of argument or submission of other information related to the petition.

(h) **Hearing of proponents and opponents.** At the time and place designated for the public hearing, proponents and opponents of the proposed rule, amendment or repeal of a rule may be heard in the manner and order set forth by the Board at that time.

(i) **Board's decision.** At the conclusion of the public hearing, the Board shall render its decision on the petition. In the event the Board concurs with the action indicated in the petition, it shall take immediate steps to adopt, amend, or revoke the subject rule. In the event the Board does not concur with the requested action, it shall notify the petitioner of its nonconcurrence in writing, specifying the reason or reasons for nonconcurrence.

(j) **Rehearing, reopening or reconsideration of petition.** Dissatisfied parties may request a rehearing, reopening or reconsideration within ten (10) days from the date the action was taken by the Board in the manner allowed by the APA at 75 O.S., §317, or its successor statute.

(k) **Notice of proposed rule changes mailing list.** Any person who desires notice of proposed rule changes may contact the Board office for inclusion on a mailing list. Such persons shall be notified of the time and place of the public hearing.

585:2-3-9. Petitions for declaratory rulings

(a) **Request for declaratory ruling.** Any person who desires a ruling as to the application of any rule or order of the Board may file a petition with the Administrator of the Board, in writing, to request such ruling.

(b) **Issuance of declaratory ruling.** Unless the Board requests a formal opinion of the Attorney General, the Board shall issue its declaratory ruling on the matter. The declaratory ruling shall consist of:

- (1) A restatement of the question posed in the petition;
- (2) An answer to the question posed in the petition; and
- (3) The reason or reasons for the answer given.

(c) **Notice of declaratory ruling.** A copy of the declaratory ruling shall be mailed to the person who requested the declaratory ruling immediately after its issuance by the Board.

(d) **Public inspection of declaratory ruling.** Copies of all declaratory rulings shall be placed in a permanent file at the offices of the Board for public inspection, copying and/or mechanical reproduction during regular business hours.

(e) **Notice by petitioning party.** The petitioning party shall make a good faith effort to notify all parties, and shall provide notice to all persons on the mailing list created by Subsection 585:2-3-8(k).

SUBCHAPTER 5. PROCEDURES

585:2-5-1. Filing of documents

(a) **General.** All complaints, pleadings, submissions, petitions, reports, exceptions, motions, briefs, memoranda, and other papers required to be filed with the Board shall be filed at the Board's office. Such documents shall be served on all other parties on the same day that they are filed with the Board. Such documents shall be served by the filing party on all other parties on the same day that they are filed with the Board.

(b) **Method of filing.** Such papers may be sent by mail or hand-delivered to the Board's office within the time limit, if any, for such filing.

(c) **Document filing date.** The date on which the papers are actually received by the Board shall be deemed to be the date of filing.

(d) **Execution of documents.** All papers shall be signed in ink by the party, by a duly authorized officer of the party, or by its attorney. The signature of the person signing the document constitutes a certification that such person has read the document; that to the best of such person's knowledge, information, and belief every statement contained in the instrument is true and correct and no such statements are misleading; and that the document is not interposed for delay. If any document submitted is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and

false and the proceeding may continue as though the document had not been served or filed.

(e) **Number of copies to be filed.** Unless otherwise specifically provided by a particular rule or order of the Board, the original and six copies of the papers, with certificate of service on all parties, shall be filed.

(f) **Identification of person(s) to be served.** The documents initiating any proceeding shall state on the first page thereof the name, mailing address, and telephone number of the person or persons who may be served with any documents filed thereafter in the proceeding.

(g) **Late filing.** Documents not timely filed with the Board shall not be accepted by the Administrator of the Board for filing unless specific permission for a late filing is granted by the Chair of the Board.

585:2-5-2. Computation of time

The time within which an act is to be performed under these Rules shall be computed by excluding the first day and including the last. When the last day for the doing of an act required by these Rules falls on a Saturday, Sunday or state legal holiday then the required act may be performed on the next regular business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and state legal holidays shall be excluded from the computation.

585:2-5-3. Requests for extensions of time

(a) The Board, for good cause shown, and with notice to all interested parties, may extend any time prescribed in these Rules. However, requests for extensions of time are not encouraged, and leave for additional time will not be freely given. All motions for extension of time shall be filed before the due date and shall state:

- (1) the date the act is due to occur without the requested extension;
- (2) whether previous motions for extensions have been made and the disposition of said requested extensions;
- (3) specific reasons for such requested extension to include an explanation why the act was not done within the originally allotted time;
- (4) whether the opposing counsel or party agrees or objects to the requested extension;
- (5) the impact, if any, on the scheduled hearing or other deadlines; and
- (6) the precise relief requested by the motion.

(b) All such motions shall be accompanied by a proposed order for the Board's use if such relief is granted. The proposed order, which shall not differ in any respect from the relief requested in the motion, shall state specifically the events being extended and the new dates for the deadlines.

585:2-5-4. Docketing

The Board shall maintain a docket of all proceedings and each proceeding shall be assigned a case number.

585:2-5-5. Filing of complaint and answer

Proceedings against a party alleging an unfair labor practice under the FPAA or a prohibited practice under the MECBA shall be commenced by filing a written charge with the PERB within six (6) months of the alleged violation, or knowledge thereof, and causing a copy of the charge to be served upon the accused party by certified mail, return receipt requested. The accused party shall have ten (10) days from the date of service to file with the PERB and serve on the complainant a written answer to the charge.

585:2-5-6. Scheduling of deadlines

(a) **Scheduling conference.** A scheduling conference shall be conducted in all proceedings alleging an unfair labor practice under the FPAA or a prohibited practice under the MECBA. The scheduling conference may be conducted by telephone when the mutual convenience of the parties so requires. The Board may designate the Administrator of the Board, a hearing officer, or its legal counsel to conduct the scheduling conference. Unless otherwise ordered, the Administrator of the Board shall conduct the scheduling conference.

(b) **Party representation.** Parties shall be represented by attorneys unless appearing pro se.

(c) **Written scheduling order.** At the scheduling conference, a written scheduling order will be prepared by the person conducting the conference addressing the following items:

- (1) Date for discovery to be completed;
- (2) Date for exchange of preliminary witness and exhibit lists;
- (3) Date for filing Final Pre-Hearing Order (filed by Complainant's counsel five (5) days prior to the final pre-hearing conference);
- (4) Date for completion of any mediation or other form of alternative dispute resolution (before date of final pre-hearing conference); and
- (5) Date of final pre-hearing conference.

585:2-5-7. Final pre-hearing conference

(a) **Final pre-hearing conference.** A final pre-hearing conference shall be conducted in all proceedings alleging an unfair labor practice under the FPAA or a prohibited practice under the MECBA. The final pre-hearing conference may be conducted by telephone when the mutual convenience of the parties so requires. The Board may designate the Administrator of the Board, a hearing officer, or its legal counsel to conduct the final pre-hearing conference. Unless otherwise ordered, the Administrator of the Board shall conduct the final pre-hearing conference.

(b) **Party representation.** Parties shall be represented by attorneys unless appearing pro se.

(c) **Settlement; mediation or other alternative dispute resolution.** Prior to the final pre-hearing conference, each side shall confer with the client and discuss:

- (1) the possibility of settlement; and
- (2) the party's willingness to participate in mediation or some other form of alternative dispute resolution prior to the final pre-hearing conference.

(d) **Proposed Final Pre-Hearing Order.** Prior to the final pre-hearing conference, the parties shall confer and prepare a proposed Final Pre-Hearing Order. The complainant has the responsibility of submitting to the Board the proposed order not less than five (5) days before the scheduled pre-hearing conference. The proposed order shall include:

- (1) a brief preliminary statement;
 - (2) a statement of relevant facts, to include facts to which the parties stipulate and facts in dispute;
 - (3) legal issues presented by each party, including defenses, and authority relied on;
 - (4) a final list of exhibits, including objections;
 - (5) a final list of witnesses, including addresses, telephone numbers and proposed testimony;
- and,
- (6) the possibility of settlement.

(e) **Pre-hearing actions.** At the final pre-hearing conference, the parties shall cooperate to attempt to simplify or resolve issues, stipulate, determine if a hearing is necessary or if

the matter can be resolved on briefs, settle the case or take other action in furtherance of the proper resolution of the case.

(f) **Discovery.** Discovery, as authorized by the Administrative Procedures Act, shall be completed prior to the final pre-hearing conference.

(g) **Deadlines for cases decided on stipulated facts.** At the pre-hearing conference, the person conducting the hearing will enter the following deadlines for cases decided on stipulated facts:

- (1) date for filing statement of stipulated facts, list of exhibits stipulated to and six (6) copies of these exhibits;
- (2) date Complainant's brief is due; and
- (3) respondent's brief is due within eighteen (18) days of the filing with the Board of the Complainant's brief.

(h) **Deadlines for cases decided with disputed facts.** At the pre-hearing conference, the person conducting the hearing will enter the following deadlines for cases decided with disputed facts:

- (1) Date for filing joint statement of relevant facts to which parties can stipulate [(10 days before hearing) See 585:2-7-14.];
- (2) Date for each party to file a statement of relevant facts in dispute [(10 days before hearing) See 585: 2-7-14];
- (3) Date for filing joint list of admissible exhibits [(10 days before hearing) See 585:2-7-14];
- (4) Date for filing list of exhibits to which the parties can not stipulate and the opposing party's objections thereto [(10 days before hearing) See 585:2-7-14];
- (5) Date for filing final witness lists [(10 days before hearing) See 585:2-7-14];
- (6) Date for exchange of exhibits and for filing the original and six (6) copies of each exhibit [(7 days before hearing) See 585:2-7-14];
- (7) Date for filing hearing briefs [(7 days before hearing) See 585:2-7-14];
- (8) Date for filing any motions in limine [(7 days before hearing) See 585:2-7-14];
- (9) Hearing date;
- (10) Date for each party to refile its statement of disputed facts with citations to the record added for each disputed fact [(15 days after hearing) See 585:2-7-14]; and,
- (11) Any other deadlines.

(i) **Final Pre-Hearing Order.** The Final Pre-Hearing Order shall be issued and signed by the person conducting the pre-hearing conference. The Final Pre-Hearing Order supersedes all pleadings and shall not be amended except by order of the Board.

(j) **Default.** Failure to prepare and/or timely file the proposed Final Pre-Hearing Order, failure to be prepared for the final pre-hearing conference, or failure to participate in or participate in good faith in the pre-hearing conference may result in sanctions. These sanctions may include:

- (1) dismissing the charge;
- (2) striking a pleading;
- (3) issuing a preclusion order;
- (4) staying the action;
- (5) entering default judgment;
- (6) removal of a party's attorney from the case; or,
- (7) other sanctions appropriate to the misconduct.

585:2-5-8. Amicus curiae

(a) A brief of an amicus curiae which is confined to the issues raised by the parties may be filed if it is accompanied by written consent of all the parties.

(1) If consent is denied by any of the parties, the amicus curiae may file a motion, with certificate of service on all parties, which concisely discloses the nature and extent of the applicant's interest, states any facts or questions of law which may not be presented adequately by the litigants, and explains the relevancy of these facts or questions of law to its disposition of the case.

(2) If an objection to the motion is not filed within ten (10) days of its filing with the Board, consent to file the amicus brief shall be deemed to have been granted. If an objection is filed, the Board shall review the motion and the objections to determine whether to allow the filing of the amicus brief.

(b) The disposition of a case will not be delayed pending action on a motion for leave to file an amicus brief or to await the filing of an amicus brief. If the filing of an amicus brief is allowed either by the consent of the parties or by the Board, it must be filed within the briefing schedule set for the party supported.

(c) Leave may be sought by any party in the case to file a response to the amicus brief.

585:2-5-9. Transcripts

The parties shall schedule a court reporter to be present at the hearings, and the parties shall be responsible for the payment of the court reporter. The parties shall file a copy of the transcript with the Board, and this copy will become the official written transcript of the hearing.

585:2-5-10. Impasse arbitration

In the event of an impasse in negotiations under the MECBA, if the parties are unable to jointly agree on an arbitrator, they may request from the Board a list of seven (7) arbitrators as provided in 11 O.S., §51-214 and 585-2-1-3. The Board shall provide a list of seven (7) arbitrators as defined in 585:2-1-3.

585:2-5-11. Rights of parties at hearings

Any party shall have the right to appear at any hearing in person or by counsel duly licensed to practice law in the State of Oklahoma, and any party and the Board shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence.

SUBCHAPTER 7. HEARINGS**585:2-7-1. Hearings to be conducted by Board or hearing officer**

All hearings shall be conducted by the Board unless the Board finds it necessary or desirable to appoint a hearing officer to conduct a hearing. The Board may confer upon such hearing officer the necessary powers, subject to the Oklahoma Administrative Procedures Act, to conduct such hearing and/or any procedural matters related thereto. This Subchapter does not apply to scheduling or pre-hearing conferences.

585:2-7-2. Open hearings

The Board shall comply with the Open Meeting Act in all hearings. The Board may enter executive session, in compliance with the Open Meeting Act, as appropriate.

585:2-7-3. Motions

- (a) **Recognized motions.** The Board recognizes all motions permitted under the Oklahoma Pleading Code, 12 O. S., §201 et seq. as well as a party's motion requesting the Board to defer to either pending or completed grievance arbitration.
- (b) **Recorded motions.** All motions made during a hearing shall be made part of the record of the proceedings.
- (c) **Motion requirements.** All motions, other than those made during a hearing, shall be subject to the following:
- (1) **General contents.** Such motions shall be made in writing to the Board, shall briefly state the relief sought, and shall be combined with a brief containing a statement of relevant facts and legal argument with citations to relevant legal authority.
 - (2) **Format; size; filing date of certain motions.**
 - (A) No combined motion/brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.
 - (B) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.
 - (C) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given.
 - (D) A motion to file a combined motion/brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the motion/brief is due.
 - (3) **Required appendix to motion/brief.** Each party shall attach to that party's motion/brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.
 - (4) **Affidavits.** Affidavits regarding factual matters may be attached to the motion/brief if necessary.
 - (5) **Deadlines.** Deadlines for filing motions are set in the Final Pre-Hearing Order.
 - (6) **Service of motion/brief by moving party.** The moving party shall, concurrently with filing with the Board, serve a copy of the motion/brief on all other parties.
 - (7) **Response or objection to motion/brief.** Any response or objection to the motion/brief shall be subject to the same requirements as motions/briefs, shall be filed with the Board within eighteen (18) days from the date the motion/brief was filed with the Board and shall be served on all parties.
 - (8) **Board hearing of oral argument or testimony.** The Board may decide to hear oral argument or testimony thereon, in which case the Board shall notify the parties of such fact and of the time and place of such argument or the taking of such testimony.
- (d) **Board's lack of jurisdiction or necessary legal authority.** In the event that the Board determines that it lacks jurisdiction or necessary legal authority to rule upon any filed motion, it shall promptly so advise the parties.

585:2-7-4. Discovery

Discovery may be conducted as authorized by the Administrative Procedures Act. Additional procedures for discovery may be undertaken as agreed upon by the parties. The parties shall cooperate fully and in good faith to comply with discovery requests. The Board may impose sanctions for the failure or refusal of a party to comply with a proper discovery request.

585:2-7-5. Subpoenas

(a) **Issuance of subpoena by Board.** The Board may issue subpoenas to require the attendance of witnesses in this State and the production of books and papers at a hearing or deposition held pursuant to the rules of this chapter.

(b) **Application for subpoena.** Any party may file a written application for a subpoena and the proposed subpoena with the Board before the hearing or disposition. Any subpoena requested and issued by the Board shall be served by the applicant with the witness fees and mileage required by the Administrative Procedures Act.

(c) **Filing of a motion to quash.** No person served with a valid subpoena issued by the Board shall refuse or neglect to appear, to testify, or to produce books and papers relevant to such investigation, inquiry, or hearing as commanded in such subpoena without the timely filing with the Board of a motion to quash a subpoena. A motion to quash a subpoena may be filed with the Board not later than seven (7) days from the date of service of the subpoena. The movant shall serve a copy of the motion to quash on the applicant for the subpoena.

(d) **Quash of subpoena by Board.** The Board may quash a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought; or that the evidence sought from the witness is privileged under the law or the provisions of these Rules. The Board shall make a statement as to the basis for its ruling. An aggrieved party may request that the motion to quash a subpoena, the response thereto, if any, and the Board's statement of the basis for its ruling be made part of the record.

(e) **Default.** A failure to comply with, or neglect of, a valid subpoena issued by the Board may be certified by the Board to a court of competent jurisdiction for an order of compliance.

585:2-7-6. Rules of evidence

(a) **Technical rules of evidence.** In any proceeding before the Board, the Board shall not be bound by technical rules of evidence. The Board may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

(b) **Exclusions.** All irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(c) **Rules of privilege.** The Board shall give effect to the rules of privilege recognized by law.

(d) **Documentary evidence.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original.

(e) **Cross-examination.** Each party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence.

(f) **Judicially cognizable facts.** The Board may take notice of judicially cognizable facts.

(g) **Cognizable technical or scientific facts.** The Board may take notice of generally cognizable technical or scientific facts within its specialized knowledge; however, parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

585:2-7-7. Contemptuous conduct

The refusal of a witness at any hearing to answer any question which has been ruled to be proper may, in the discretion of the Board, be grounds for striking all testimony previously given by such witness on related matters.

585:2-7-8. Amendment of pleadings or documents

(a) **Proposed amendment of pleading or document.** Any pleading or document filed in a proceeding may be amended, in the discretion of the Board, at any time prior to the issuance of a final order thereon. A party moving for amendment of a pleading or document shall file a motion for leave to amend together with the proposed amended pleading or document.

(b) **Insubstantial conformity of pleading or document.** If a pleading or document is not in substantial conformity with the applicable rules of the Board as to the contents thereof, or is otherwise insufficient, the Board, on its own initiative or upon motion of a party, may strike or dismiss such pleading or document, or require its amendment.

(c) **Effective date.** If amended, the pleading or document shall be effective as of the date of the original filing, if it relates to the same proceeding.

585:2-7-9. Substitution of parties

Upon motion and for good cause shown, the Board may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.

585:2-7-10. Consolidation

The Board, on its own initiative or upon motion, may consolidate for hearing or other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues if it finds that such consolidation of proceedings or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

585:2-7-11. Intervention in proceeding

(a) **Petition to intervene.** Any third party having a legitimate interest in any representation proceeding may file a petition to intervene setting forth facts sufficient to establish such interest.

(b) **Contents of petition to intervene.** In any proceeding other than a representation proceeding, a petition to intervene and become a party thereto shall be submitted in writing to the Board. The petition shall contain the following:

- (1) Nature of petitioner's statutory or other right;
- (2) Nature and extent of petitioner's interest;
- (3) Effect of any decision in the proceeding on petitioner's interest;
- (4) Other means available whereby petitioner's interest may be protected;
- (5) Extent petitioner's interest may be represented by existing parties;
- (6) Extent petitioner's participation can assist in development of a sound record;
- (7) Extent petitioner's interest in the proceeding differs from that of the general public; and
- (8) How the petitioner's intervention would serve the public interest.

(c) **Filing of petition to intervene.** The original and six copies of a petition to intervene, with certificate of service on all parties, shall be filed with the Board. Any party objecting to the intervention shall file its written objection with the Board within five (5) days of service of the petition.

(d) **Granting of intervention.** Intervention shall not be granted except on averments which are reasonably pertinent to the issues already presented but do not unduly broaden

them. If intervention is granted, the petitioner thereby becomes an intervener and a party to the proceeding to the degree indicated by the order allowing intervention.

585:2-7-12. Burden of proof

The charging party, in asserting an unfair labor practice under the FPAA or a prohibited practice under the MECBA, shall have the burden of going forward and of proving the allegations by a preponderance of the evidence. The party raising any subsequent issue shall have the burden of proving that issue by a preponderance of the evidence.

585:2-7-13. Cases decided on stipulated facts

At the pre-hearing conference, the parties shall notify the Board that they can stipulate to all relevant facts. A briefing schedule shall then be set, and the case shall be decided on stipulated facts as follows:

- (1) **Deadlines for statement of stipulated facts and brief.** At the pre-hearing conference, the parties shall be given a deadline for filing the statement of stipulated facts. A list of exhibits stipulated to and six (6) copies of these exhibits shall also be filed with the statement of stipulated facts. At the pre-hearing conference, the Complainant shall be given a deadline for filing its brief with the Board and service on the Respondent.
- (2) **Filing of response by Respondent.** The Respondent shall file with the Board and serve on the Complainant its response within eighteen (18) days of the filing with the Board of the Complainant's brief.
- (3) **Contents; format; size; filing date of certain motions.**
 - (A) Each brief shall contain:
 - (i) a brief background of the case and the issues to be decided; and,
 - (ii) a legal argument with citations to relevant legal authority.
 - (B) No brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.
 - (C) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.
 - (D) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given. A motion to file a brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the brief is due.
 - (E) Each party shall attach to that party's brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.
- (4) **Additional briefing.** Additional briefing may be requested by the Board. No oral argument will be heard on cases decided on stipulated facts unless specifically requested by the Board.

585:2-7-14. Cases decided on disputed facts

At the pre-hearing conference, the parties shall notify the Board that they can not stipulate to all relevant facts. The case shall then be set for hearing and shall be decided on disputed facts as follows:

- (1) **Statement of relevant facts.** Ten (10) days before the hearing the parties shall jointly file a statement of relevant facts to which they can stipulate. At this time, each party shall also file a statement of relevant facts in dispute.

(2) **List of exhibits.** Ten (10) days before the hearing the parties shall stipulate to admissible exhibits and file a list of these exhibits. Exhibits stipulated to shall be admitted into evidence at the hearing. A list of the exhibits to which the party can not stipulate and the opposing party's objections thereto shall also be filed. The proponent of the exhibits shall ask for the Board's ruling on their admissibility at the hearing.

(3) **Witness list.** Ten (10) days before the hearing each party shall file its final witness list. This list shall include the address and telephone number and statement of anticipated testimony of each witness.

(4) **Exhibits.** Seven (7) days before the hearing each party shall exchange and file the original and six (6) copies of each exhibit.

(5) **Brief filing; contents; format; size; filing date of certain motions.**

(A) Seven (7) days before the hearing each party shall file a brief.

(B) Each brief shall contain:

(i) a brief background of the case and issues to be decided; and

(ii) a legal argument with citations to relevant legal authority.

(C) No brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(D) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(E) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given. A motion to file a brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the brief is due.

(F) Each party shall attach to that party's brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(6) **Motions in limine.** Seven (7) days before the hearing each party shall file any motions in limine.

(7) **Presentation time by parties at hearing.** At the hearing, each party will be given one (1) hour to present evidence and twenty (20) additional minutes that may be divided between opening and closing statements, unless otherwise extended by the Board. Requests for additional time shall be made at least seven (7) days before the hearing. Requests for additional time are not encouraged, and leave for additional time will not be freely given.

(8) **Refiling statement of disputed facts.** Within fifteen (15) days after the hearing, each party shall refile its statement of disputed facts with citations to the record added for each disputed fact. If a party briefs a legal issue(s) not previously briefed by the opposing party, within fifteen (15) days after the hearing, the opposing party may also file a response brief not to exceed five (5) pages in length.

585:2-7-15. Final agency orders of the Board

(a) Every final agency order rendered by the Board shall be in writing and shall include findings of fact and conclusions of law and may include an opinion. Parties shall be notified either personally or by certified mail, return receipt requested, of any final agency order and the order shall be released for public information.

(b) Copies of final agency orders shall be available for public inspection in the office of the Board or may be obtained upon request and upon payment of costs, if any.

585:2-7-16. Unauthorized ex parte communications

(a) Unauthorized ex parte communications are defined as private communications, other than those permitted elsewhere in these Rules, with members of the Board or counsel for the Board, as to the merits of a proceeding, i.e., any finding of fact or conclusion of law, with a view towards influencing the outcome of the case, except that the following classes of ex parte communications shall not be prohibited:

- (1) Those which relate to matters which a Board member is authorized to dispose of on an ex parte basis;
- (2) Requests for information with respect to the status of a proceeding;
- (3) Those which all parties to the proceeding agree, or which the Board has formally ruled, may be made on an ex parte basis; and
- (4) Those with representatives of any news media on matters intended to inform the general public.

(b) No public employee, employee organization, public employer, or any other person or organization, whether or not a party to a proceeding before the Board, shall make any unauthorized ex parte communication about the proceeding to any member of the Board or to counsel for the Board.

CHAPTER 30. UNFAIR LABOR PRACTICE AND PROHIBITED PRACTICE CHARGES

585:30-1-1. Purpose

The rules of this chapter have been adopted for the purpose of providing information concerning the filing of unfair labor practice charges and prohibited practice charges, answers, counterclaims and motions, and the informal disposition of such claims, pursuant to Section 51-104b of the FPAA and Section 51-29 of the MECBA.

585:30-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA, the MECBA and these Rules unless their context clearly indicates otherwise.

585:30-1-3. Additional definitions

The following words or terms, when used in these rules, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 74 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or "PERB" means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"MECBA" means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous

vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:30-1-4. Complaint

(a) **General.** A complaint that any person, organization, or municipal employer has engaged in or is engaging in an unfair labor practice under the FPAA or a prohibited practice under the MECBA may be filed by any person, employee organization or municipal employer. See 585:2-5-5.

(b) **Execution; format.** A complaint shall be in writing and signed in accordance with 585:2-5-1, and shall be in a form authorized by the Board.

(c) **Number of copies.** The complaint and six (6) copies shall be filed with the Board.

(d) **Required contents.** The complaint shall include the following:

(1) The name and address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint.

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

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice or the prohibited practice, including the names of the individuals involved in the alleged act, the dates and places of the alleged occurrence, and the specific section or sections of the FPAA or the MECBA alleged to have been violated. The purpose of the complaint is to apprise the respondent fairly of the substance of the complaint against it. The sufficiency of a complaint may be challenged by motion, answer or other responsive pleading.

585:30-1-5. Answer

(a) **Filing; filing time limit.** A respondent shall file a written answer, or other responsive pleading permitted by these rules, with certificate of service, to an unfair labor practice complaint filed under the FPAA or to a prohibited practice complaint filed under MECBA within ten (10) days after service of the complaint.

(b) **Contents.** The answer shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, respondent shall so state and that statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation.

(2) A specific and appropriately detailed statement of any defense.

(3) A clear and concise statement of the facts and matters of law relied upon constituting any grounds of defense.

(c) **Default.** If the respondent fails timely to file an answer or other permitted or required responsive pleading, such failure is subject to the sanctions set out in 585:2-3-7. In extraordinary circumstances, as determined by the Board, the Board may extend the time within which the answer shall be filed.

585:30-1-6. Informal disposition

(a) Any unfair labor practice case or prohibited practice case commenced with the Board may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties in writing.

(b) Evidence of any proposed offer of settlement of an unfair labor practice complaint or prohibited practice complaint shall be inadmissible at the hearing thereon.

585:30-1-7. Violation of the FPAA and the MECBA

Violation of the FPAA or violation of the MECBA may result in enforcement pursuant to state statute.

585:30-1-8. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA and the MECBA.

CHAPTER 35. CERTIFICATION CASES

SUBCHAPTER 1. GENERAL PROVISIONS

585:35-1-1. Purpose

The rules of this chapter provide procedures for filing representation and decertification petitions; set out the requirements for the content of petitions and for show of interest; the responsibilities of corporate authorities; bars to an election; unit determination; and other matters concerning representation petitions; pursuant to 11 O.S., §51-103 of the Fire and Police Arbitration Act (FPAA) and 11 O.S., §51-211 and §51-212 of the Municipal Employees Collective Bargaining Act (MECBA).

585:35-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA, the MECBA and these Rules unless their context clearly indicates otherwise.

585:35-1-3. Additional definitions

The following words or terms, when used in these rules, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 74 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or "PERB" means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"MECBA" means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous

vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:35-1-4. Violation of the FPAA and the MECBA

Violation of the FPAA and the MECBA may result in enforcement pursuant to state statute.

585:35-1-5. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA and the MECBA.

SUBCHAPTER 3. REPRESENTATION PETITIONS UNDER THE FPAA

585:35-3-1. Petition filing and contents

- (a) **Filing.** A representation or decertification petition may be filed with the Board by:
- (1) A labor organization alleging that thirty percent (30%) of the firefighters or police officers in a municipality wish to be represented for collective bargaining by an employee representative;
 - (2) A labor organization or an employee in the bargaining unit alleging that thirty percent (30%) of the firefighters or police officers in a municipality assert that the designated exclusive employee representative is no longer the representative of the majority of the employees in the unit; or,
 - (3) An employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive employee representative in an appropriate unit.
- (b) **Contents.** Contents of a petition shall contain the following:
- (1) A statement as to whether the petition is filed by a bargaining agent, by a corporate authority, or by an employee in the bargaining unit;
 - (2) The name and address of all other parties proper to the proceeding; and
 - (3) Any other relevant fact or facts.
- (c) **Petition filed by bargaining agent; additional contents.** When a petition is filed by a bargaining agent, the petition shall additionally contain:
- (1) A description of the bargaining unit which the petitioner claims to be appropriate and a statement that the petitioner is authorized to represent at least thirty percent (30%) of the employees within the claimed bargaining unit and has sufficient authorization cards or other evidence to substantiate it;
 - (2) The names and addresses of any other bargaining agents, known to the petitioner, who claim to represent any employees within the alleged appropriate unit;
 - (3) The number of employees in the alleged appropriate unit;
 - (4) The name, affiliation, if any, and the address of the petitioner; and
 - (5) Any other relevant fact or facts.
- (d) **Petition for decertification filed by employee; additional contents.** When a petition for decertification is filed by an employee in the bargaining unit, the petition shall additionally contain:
- (1) A statement setting forth that thirty percent (30%) of the firefighters or police officers in a municipality assert that the designated exclusive employee representative is no longer the representative of the majority of the employees in the unit;
 - (2) A description of the unit and the number of employees in the unit;
 - (3) The name, affiliation, if any, and the address of the petitioner; and
 - (4) Any other relevant fact or facts.

(e) Petition for decertification filed by corporate authority; additional contents.

When a petition for decertification is filed by a corporate authority, the petition shall additionally contain:

- (1) A brief statement setting forth that one or more bargaining agents claim to be the exclusive bargaining agent of all employees within the unit claimed to be appropriate;
- (2) A description of such unit;
- (3) The number of employees in the unit;
- (4) A statement as to whether the petitioner agrees or disagrees as to the nature and scope of the bargaining unit claimed to be appropriate;
- (5) The name or names, affiliation, if any, and addresses of the bargaining agent known to the petitioner making claims for recognition as an exclusive bargaining agent;
- (6) A statement as to whether the petitioner has contracts with any bargaining agent, and, if so, the expiration date of the contract; and,
- (7) Any other relevant fact or facts.

585:35-3-2. Bars to an election

Notwithstanding the filing or pendency of an election petition, the Board shall conduct no representation election when one or more of the following conditions exist:

- (1) **Election bar.** During the one (1) year period following the date of certification, decertification or noncertification subsequent to a valid representation election.
- (2) **Existence of collective bargaining agreement.** Whenever a collective bargaining agreement exists, provided such agreement is written and executed by the parties to it. This contract bar shall not apply to a representation election in a unit clarification case.
- (3) **Decertification elections.** Petitions for decertification which are filed with the Board not less than one hundred eighty (180) nor more than two hundred forty (240) days prior to the stated expiration date of an otherwise valid collective bargaining agreement shall be processed by the Board notwithstanding the provisions of (2) of this subsection, and any election ordered by the Board pursuant to 11 O.S., §51-103, shall be conducted not more than one hundred eighty (180) days nor less than one hundred fifty (150) days prior to the expiration of the collective bargaining agreement.
- (4) **Disclaimer of representation.** Notwithstanding the provisions of (3) of this subsection, the Board will process a valid decertification petition accompanied by an adequate show of interest as required by 585:35-3-1 at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization wishes to disclaim representation of the employees in the certified bargaining unit.

585:35-3-3. Evidence of representation or legitimate interest; authorization cards

Evidence of representation or legitimate interest may be either individual authorization cards, membership records, or petition. In any case, the petition, membership records, or authorization cards must show the address and be signed and dated by the employee expressing an intent to be represented by a specific bargaining agent. Cards shall be considered valid if the dates thereon, and other evidence provided to the Board, indicate a regularity of continuing interest by the employees signing the petition or authorization cards. Such evidence of interest shall be presumed if the cards or other evidence of interest are signed within 180 days of the filing date.

585:35-3-4. Showing of interest; determination of adequacy

The showing of interest submitted to the Board shall not be furnished to any of the opposing parties. The Board alone shall determine the adequacy of the showing of interest, and the Board's decision shall not be subject to collateral attack at a hearing before the Board.

585:35-3-5. Responsibilities of corporate authority

The corporate authority shall furnish the Board, within twenty (20) days of receipt of a notice from the Board, an alphabetical list of names, addresses, departments and job titles of all employees within the proposed bargaining unit as described in the petition. The list of employees shall be as shown by the payroll for the period immediately preceding the date on which the petition for representation was filed with the Board. The corporate authority shall designate, by notation on the list, those persons it considers to be permanent, paid employees. Failure by the corporate authority to furnish such a list within the time allowed may be deemed to be an admission of the sufficiency of the petitioner's showing of interest.

585:35-3-6. Determination of collective bargaining unit

(a) The Board shall decide in each case before it, in which the issue is raised, the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, and other working conditions for the employees involved, the history of collective bargaining for the proposed unit, if any, and the desires of the employees.

(b) For a unit of firefighters or police officers, the terms "firefighters" and "police officers" shall mean the permanent paid members of any fire department or police department in any city, town or municipality within the State of Oklahoma but shall not include the chief of police and an administrative assistant and the chief of the fire department and an administrative assistant. The administrative assistant shall be that person so designated by the chief of police and that person so designated by the chief of the fire department.

585:35-3-7. Investigation

Subsequent to the filing of a petition for decertification, the Board may direct an investigation of all questions concerning representation, including, if applicable, whether the showing of interest requirement, as set forth in the FPAA, has been met; whether one or more bargaining agents seek to represent some or all of the employees in the allegedly appropriate unit; and whether there is an agreement among the parties as to the appropriateness of the unit.

585:35-3-8. Hearing

The Board may direct a hearing following the filing of a petition for decertification, and any such hearing shall be conducted under the rules prescribed in Chapter 2, Subchapter 7 of this Title.

585:35-3-9. Petition for consent election

(a) Where a question of representation exists, the parties involved may petition the Board to hold an election to determine the exclusive bargaining agent, if any, for such unit.

(1) The consent election shall be conducted under the direction and supervision of the Board.

(2) An election shall not be directed in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held.

(b) Within seven (7) days of notice that a consent election has been set, the corporate authority shall furnish to the Board, and to each party to the proceedings, an alphabetical list of the names, addresses, departments and job titles of the permanent paid employees in the appropriate unit on the eligibility payroll date who were on the payroll on the date

of the filing of the petition and who are on the payroll at the time of the submission of the list. Failure of the corporate authority to furnish the above described list shall be good cause for the Board to exercise its discretion in ordering that a free and untrammelled election cannot be conducted and certifying a bargaining agent as the exclusive bargaining agent for the appropriate unit.

(c) In cases of a Board-ordered election, the eligibility payroll date shall be determined by the Board.

SUBCHAPTER 5. REPRESENTATION PETITIONS UNDER THE MECBA

585:35-5-1. Petition for bargaining unit determination

(a) A petition for Board determination of an appropriate bargaining unit shall be filed by an employee organization.

(b) The petition shall state the name of the organization seeking unit determination and the description of the unit. The petition shall be accompanied by written evidence of interest defined as submission of cards indicating interest from at least thirty (30%) percent of the employees in the proposed unit.

(c) Petitions to determine a separate bargaining unit from a unit previously certified by the Board shall follow the same procedures as set out herein.

585:35-5-2. Petition for certification or decertification

(a) **Filing.** A certification or decertification petition may be filed with the Board by:

(1) A municipal employee or employee organization alleging that at least thirty (30%) percent of the non-fire and police municipal employees in an appropriate bargaining unit wish to be represented for collective bargaining by an employee organization; or

(2) A municipal employee or employee organization alleging that fifty (50%) or more percent of the municipal employees in an appropriate bargaining unit assert that the designated exclusive employee organization no longer represents the majority of the municipal employees in the unit.

(b) **Petition for certification with an election contents.** A petition for certification with an election shall contain the following:

(1) The name, affiliation, if any, telephone number and address of the petitioner;

(2) A statement as to whether the petition is filed by an employee organization or by a municipal employee;

(3) The names and addresses of all other parties proper to the proceeding;

(4) A description of the bargaining unit which the petitioner claims to be appropriate;

(5) Written evidence that the bargaining agent is authorized to represent at least thirty percent (30%) of the employees within the claimed bargaining unit;

(6) The number of employees in the alleged appropriate unit;

(7) The names and addresses of any other employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit; and

(8) Any other relevant facts.

(c) **Petition for certification without an election contents.** A petition for certification without an election shall contain the following:

(1) The name, affiliation, if any, telephone number and address of the petitioner;

(2) A statement as to whether the petition is filed by a bargaining agent or by a municipal employee;

(3) The name and address of all other parties proper to the proceeding;

(4) A description of the bargaining unit which the petitioner claims to be appropriate;

- (5) Written evidence that the bargaining agent is authorized to represent a majority of the employees within the claimed bargaining unit;
- (6) The number of employees in the alleged appropriate unit;
- (7) The names and addresses of any other employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit; and
- (8) Any other relevant fact or facts.

(d) **Petition for decertification.** A petition for decertification shall contain a description of the bargaining unit subject to the petition and a statement, accompanied by written evidence that fifty percent (50%) of the employees [within the claimed bargaining unit] do not want to be represented by the exclusive bargaining representative or seek certification of a different employee organization.

(e) **Board's notice of receipt of petition.** The Board shall give reasonable notice of the receipt of the petition to all municipal employees, employee organizations, and municipal employers named or described in such petitions or interested in the representation question.

585:35-5-3. Bargaining unit determination

(a) The Board shall determine whether the cards received establish interest from at least thirty (30%) percent of the employees in the proposed unit. If the petitioner and the municipal employer agree on the organizational structure of the appropriate unit but disagree as to which employees are included in the appropriate unit based on the duties of the individual employee(s) (such as, but not limited to, supervisory, confidential, or management official designations), the Board shall first determine the appropriate bargaining unit and then determine whether the cards received establish interest from at least thirty percent (30%) of the employees in the unit.

(b) If the dispute as to which employees are included in the appropriate unit does not affect the petitioner's majority status, the Board shall issue a certification without an election and then determine if the challenged employees are included in the appropriate unit. If the bargaining unit dispute affects the employee organization's majority status, the Board shall determine the appropriate bargaining unit and subsequently determine majority status.

585:35-5-4. Disposition

(a) If the Board does not receive a claim for representation accompanied by a thirty percent (30%) showing of interest from a rival employee organization within fifteen (15) days of the filing of the initial petition, it shall issue a certification of representation upon validating that a majority of employees in an appropriate bargaining unit have authorized the employee organization to represent them for purposes of collective bargaining.

(b) If the Board receives a valid claim for representation by a rival employee organization within the fifteen (15) day period, it shall consider the initial petition for certification without an election as a petition for a representation election.

(c) Whenever a petition for an election is filed by an employee or employee organization with evidence of representation or legitimate interest of at least thirty percent (30%) of the municipal employees in an appropriate bargaining unit, or with evidence of representation or legitimate interest of at least fifty percent (50%) of the municipal employees in an appropriate unit in the case of decertification, the Board shall conduct a secret ballot representation election to determine whether the municipal employees in the appropriate bargaining unit wish to be represented by an exclusive bargaining representative.

585:35-5-5. Bars to an election

Notwithstanding the filing or pendency of an election petition, the Board shall conduct no representation election when either of the following conditions exist:

(1) **Election bar; existence of collective bargaining agreement.** A petition for decertification or certification of an exclusive bargaining representative shall not be considered by the Board for a period of one (1) year from the date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement unless the petition for decertification is filed not more than ninety (90) days prior to the expiration of the collective bargaining agreement; or

(2) **Disclaimer of representation.** Notwithstanding the provisions of (1) of this subsection, the Board will process a valid decertification petition accompanied by an adequate show of interest as required by 585:35-5-2 at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization wishes to disclaim representation of the employees in the certified bargaining unit.

585:35-5-6. Evidence of representation or legitimate interest; authorization cards

Evidence of representation or legitimate interest may be by individual authorization cards, membership records, or by petition. In any case, the petition, membership records, or authorization cards must show the address and be signed and dated by the employee expressing an intent to be represented by a specific bargaining agent. Cards shall be considered valid if the dates thereon, and other evidence provided to the Board, indicate a regularity of continuing interest by the employees signing the petition or authorization cards. Such evidence of interest shall be presumed if the cards or other evidence of interest are signed within 180 days of the filing date.

585:35-5-7. Showing of interest; determination of adequacy

The showing of interest submitted to the Board shall not be furnished to any of the opposing parties. The Board alone shall determine the adequacy of the showing of interest and the Board's decision shall not be subject to collateral attack.

585:35-5-8. Responsibilities of municipal employer

The municipal employer shall furnish the Board, within twenty (20) days of receipt of a notice from the Board, an alphabetical list of names, departments and job titles of all employees within the proposed bargaining unit as described in the petition. The list of employees shall be as shown by the payroll for the period immediately preceding the date on which the petition for representation was filed with the Board. Failure by the municipal employer to furnish such a list within the time allowed may be deemed to be an admission of the sufficiency of the petitioner's showing of interest.

SUBCHAPTER 7. ELECTIONS

585:35-7-1. Election procedure

The following procedure shall be followed when conducting an election to determine the exclusive bargaining agent for a unit:

(1) **General.** All elections shall be by secret ballot, at times, places, and in such manner as the Board may direct, and may be conducted by the Administrator of the Board or a designated agent of the Board, whose determination of all questions arising shall be final, subject, however, to review by the Board.

(2) **Ballots.**

(A) Ballots shall be prepared and issued by the Board. The color of the ballot must not be disclosed to any of the parties prior to the opening of the polls. Ballots

shall contain the name of each bargaining agent and a choice of "no representative" in inclusive elections.

(B) The places on the ballot shall be based on agreement among the parties if there is an agreement and on chance if there is no agreement among the parties.

In the case of a run-off election involving two bargaining agents, their position on the ballot shall be the same as their position on the ballot during the first election.

(3) **Observers.** Each party to an election shall be entitled to be represented by an equal number of observers at each polling place. Observers on behalf of a bargaining agent shall be employees eligible to vote or other appropriate employees not on the list of eligible voters, but excluding supervisors and administrative officials except in cases of a supervisory unit.

(4) **Polling area; electioneering.** Prior to the commencement of the election, the agent of the Board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of the rule by any party or its representative or agent may be grounds for setting aside the election.

(5) **Challenged ballots.** Any prospective voter may be challenged for cause. A challenged voter shall be permitted to vote but the ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the Board, and then inserted in a special identifiable form envelope provided by the Board for that purpose, and then placed in the ballot box.

(6) **Pre-election conference.**

(A) A pre-election conference shall be held before the election to check the eligibility list.

(i) Employee organizations may examine the eligibility list, and raise any questions concerning listings or omissions.

(ii) Names may be added or deleted from the list.

(I) Where an employee organization asserts that a name should be added and the municipal employer disagrees, the name shall not be added to the list, but it shall be understood that the individual may appear at the voting place to present a challenged ballot.

(II) Where an employee organization contends that a name should be stricken from the list, but no agreement is reached, the organization's observer may challenge the voter, but it shall be understood that the individual may appear at the voting place to present a challenged ballot.

(B) After the list has been checked, all parties should initial the list, and the initialed list will be the official eligibility list. Initialing is not to be construed as a waiver of the right of challenge.

(7) **Majority.** In all elections, a majority of the valid votes cast shall determine the exclusive bargaining agent designated or selected by the employees in the defined appropriate unit; or the determination that no representative has been designated.

(8) **Canvass.** Each party to the election shall be permitted to observe the canvass of the ballots.

(9) **Objections.** All objections to any party's conduct during an election and all exceptions to the Board's conduct of an election, shall be filed within five (5) days of the closing of the polls with copies of the same being mailed to all parties in the proceeding, with postage prepaid thereon. The Board shall take such action as is reasonably calculated to accomplish the objectives and to carry out the duties prescribed by the FPAA and the MECBA.

(10) **Run-off election.** The Board shall conduct a run-off election when an election in which the ballot provided for not less than three (3) choices, i.e., at least two representatives, resulted in no choice receiving a majority of the valid ballots cast.

The ballot in the run-off election shall provide for a selection between the two choices receiving the largest number of votes. The Board shall conduct the run-off election expeditiously.

585:35-7-2. Certification of election results

(a) If the challenged ballots are insufficient in number to affect the result of an election to determine an exclusive bargaining agent, and if no run-off election is to be held, the Board shall forthwith issue to the parties a certification of the results of the election, including certification of an exclusive bargaining agent, where appropriate.

(b) If the challenged ballots are sufficient in number to affect the results of an election, the Board shall determine the adequacy of the challenged ballots. Once the Board has made a ruling on the challenged ballots, they shall be counted accordingly and the Board shall then certify the results of the election.

(c) The Board's certification as to the result of the election and the exclusive bargaining agent shall be final, subject only to being modified, revoked, or sustained in a hearing on any objections to the conduct of the parties or conduct of the Board. Time for appeal shall not commence to run until such time as the Board issues an order on any objections filed as to the conduct of the parties or conduct of the Board.

(d) The Board may also certify a labor organization as the exclusive bargaining agent if it determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practice or prohibited practice.