

PART 6

RULES APPLICABLE UNDER INDEPENDENT DIRECT SUPPORT PROVIDERS LABOR RELATIONS ACT

Article 61 - Scope

Part 6 contains all rules applicable to the Independent Direct Support Providers Labor Relations Act, 21 V.S.A., Chapter 20, §1631-1644 (hereinafter referred to in this part as the "Act"). These Rules are promulgated pursuant to the Act. The purpose of these Rules is to implement and give effect to the intent and requirements of the Act. The effective date of these Rules is June 10, 2013.

Article 62 - General Rules

Section 62.1 Incorporation of Vermont Rules of Civil Procedure

The Vermont Labor Relations Board (hereinafter referred to as the "Board") hereby adopts so much of the following Vermont Rules of Civil Procedure as they are not inconsistent with the laws of the State of Vermont or other specific rule of this Board in accordance therewith substituting the Board where reference is made to "court(s)" or to "judge(s)":

- Rule 5(b) - Service and Filing of Pleadings and Other Papers
- Rule 6(a) - Time Computation
- Rule 25 - Substitution of Parties
- Rule 26 - General Provisions Governing Discovery
- Rule 27 - Discovery Before Action or Pending Appeal
- Rule 28 - Persons Before Whom Depositions May be Taken
- Rule 29 - Stipulations Regarding Discovery Procedure
- Rule 30 - Depositions Upon Oral Examination
- Rule 31 - Depositions Upon Written Questions
- Rule 32 - Use of Depositions in Court Proceedings
- Rule 33 - Interrogatories to Parties
- Rule 34 - Production of Documents and Things and Entry Upon
Land for Inspection and Other Purposes
- Rule 35 - Physical and Mental Examination of Persons
- Rule 36 - Requests for Admission
- Rule 37 - Failure to Make Discovery: Sanctions
- Rule 40 - (sections (c)(2) and (d)) Continuances
- Rule 41 - Dismissal of Actions
- Rule 42 - Consolidation; Separate Trials
- Rule 43 - Evidence
- Rule 44 - Proof of Official Record
- Rule 44.1 - Determination of Local and Foreign Law
- Rule 45 - Subpoena

- Rule 46 - Exceptions Unnecessary
- Rule 52 - Findings By the Court
- Rule 56 - Summary Judgment
- Rule 59 - New trial; Amendment of Judgments
- Rule 60 - Relief from Judgment or Order
- Rule 61 - Harmless Error

Section 62.2 Pleadings; where filed and number

All papers, including the original process and any other papers requesting relief or action from the Board, shall be filed with the Clerk of the Board. The original and four copies shall be filed of any materials filed with the Board.

Section 62.3 Service of Petitions, Grievances, Unfair Labor Practice Charges, Appeals and All Other Materials

Petitions, Grievances, Unfair Labor Practice Charges, Appeals and other original process may be served personally or by mail. The return by the server, setting forth the manner of such service, shall constitute proof of service. Copies of all materials filed with the Board shall be served on the other party or parties to the case, except for the list of independent direct support providers in a proposed bargaining unit which the State is required to file with the Board pursuant to Section 63.8 of these Rules, the showing of interest documentation required by Sections 63.3, 63.4, 63.5, 63.6, and 63.10 of these Rules, and any other materials so ordered by the Board.

Section 62.4 Method of Service

The method of service of all pleadings and other materials shall be in accord with V.R.C.P. 5(b). The signature of the party serving pleadings shall mean that copies have been served on all parties. The Board and all parties shall be notified of any change of address of a party not represented by an attorney who moves while a matter is pending. An attorney or bargaining agent whose address changes shall likewise notify the Board and all parties.

Section 62.5 Parties; Nonjoinder and Misjoinder

No proceeding will be dismissed because of nonjoinder or misjoinder of parties. Upon motion of any party or the Board, parties may be added, dropped or substituted at any stage of the proceedings upon such terms as may be deemed proper by the Board.

Section 62.6 Intervention

A person desiring to intervene in any proceedings, except for representation matters wherein an labor organization or individual may intervene as provided in Section 63.10, shall file with the Board a verified written application setting forth the facts upon which such person claims an interest in the proceeding. Such application must be served on all parties. Applications must be filed with the Board with proof of service at least two days before the 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.

Section 62.7 Withdrawal or Amendment of Grievances, Charges, Appeals or Petitions

Withdrawals or Amendments: The Board, upon application by the moving party and by notice to all interested parties, may permit withdrawal of the petition, charge, appeal or grievance, in whole or in part, and may permit amendment thereof as it deems proper.

Section 62.8 Subpoenas, Application for

An attorney representing a party who seeks issuance of a subpoena shall comply with the provisions of V.R.C.P. 45. A party not represented by an attorney may apply to the Board for the issuance of subpoenas or subpoenas duces tecum. Such application shall be timely. It shall specify the name of the witness or the documents or things the production of which is desired, with such particularity as will enable such documents to be identified for purposes of production, the return date desired, and the general nature of the facts to be proved by the witness or the documents or things sought to be produced. Such application shall be filed with the Board and shall be served on all other parties. The Board may grant or deny such application in whole or in part and may make such subpoena returnable at any time. The Board may issue subpoenas at any time requiring persons, parties or witnesses to attend and be examined or give testimony, and to produce any document or thing that relates to any matter under investigation or question before the Board.

Section 62.9 Officer and Witness Fees

Officers who serve subpoenas issued by the Board and witnesses attending hearings shall receive fees and compensation at the same rates as officers and witnesses in causes before a district court. Such fees and compensation are to be paid by the party requesting the subpoena.

Section 62.10 Pleadings, Construction

All pleadings shall be liberally construed.

Section 62.11 Continuances

The Board shall designate times and places of hearings. All hearings shall be open to the public. After the Board has set a matter for hearing, the grounds for a continuance shall be the same as specified in Rule 40(c)(2) and 40(d) of the Vermont Rules of Civil Procedure. In granting or denying a motion for a continuance, the Board may grant such other relief as it deems just and necessary.

Section 62.12 Pre-hearing Conference

Upon order of the Board setting a pre-hearing conference, upon its own initiative or the motion of a party, the Board or Board's agent shall hold a pre-hearing conference for the purpose of clarifying issues and stipulating to facts and applicable law. At the pre-hearing conference, the Board's agent will have the authority to establish pre-hearing procedures.

Section 62.13 Exhibits, Evidence, Pre-filed testimony

Any party intending to submit documentary exhibits shall provide the opposing party with a copy of the proposed exhibit(s) and file the original and four copies with the Board not less than five days before the first day of hearing. The filing of documentary exhibits shall not constitute acceptance into evidence by the Board or any admission by the other party of relevance, accuracy or materiality and the opposing party may object to their admission into evidence when offered. Documentary evidence which has not been pre-filed as required herein shall not be admitted into evidence by the Board except upon good cause shown. Impeachment exhibits need not be pre-filed. The Board may require pre-filed testimony at its discretion.

Section 62.14 Hearings

In all hearings, unless specifically provided otherwise by law, Board hearings are *de novo* and the Board acts as an impartial trier of facts and as such is not limited to hearing evidence presented in earlier administrative proceedings, nor is it bound by any findings or conclusions made during the course of earlier administrative proceedings.

Section 62.15 Briefs and Requested Findings

The Board may require that requests for findings of fact be filed before a hearing. Any party shall be entitled upon request made before the close of the hearing to file a brief or requests for findings of fact and conclusions of law, or both, within such time as may be fixed by the Board. The Board may direct the filing of briefs when it deems the submission of briefs warranted by the nature of the proceedings or the particular issue therein. If requests for findings are required to be filed before a hearing, supplementary requests may be filed subsequent to the hearing within time limits established by the Board. Briefs and requested findings and conclusions of law shall be filed with the Board and copies served on all other parties. Failure to file a brief when due shall mean the Board will consider the party to have waived its right to file a brief and such brief shall not be considered by the Board. The Board may for good cause shown grant a request for an extension of time to file a brief with due notice to all parties.

Section 62.16 Hearings; Reopening

Motions for leave to reopen a hearing because of newly discovered evidence shall be timely made. The Board may, in its discretion or on its own motion, reopen a hearing and take further testimony at any time.

Section 62.17 Board Decision

After the close of an evidentiary hearing, the Board shall prepare its decision which shall contain, but not be limited to:

- (A) Findings of Fact;
- (B) Opinion; and
- (C) Order.

Section 62.18 Appeals, Completion of Record

The transcript of a hearing, if necessary for review, shall be ordered within the time provided in V.R.A.P. 10. The estimated cost of the transcript shall be as determined by the Board. One-half that sum shall be forwarded with Appellant's order for the transcript.

Section 62.19 Stay of Board Orders Pending Appeal

If a party seeks a stay of all, or a part, of a Board order pending appeal, pursuant to

21 V.S.A. Section 1642(b), the request for a stay shall be filed with the Board within ten days of the filing of the notice of appeal of the Board order. The request for stay shall be accompanied by a memorandum of law justifying the stay request, and a statement indicating whether an evidentiary hearing is requested on the stay request. The other party or parties to the case shall file, within ten days of being served with a copy of the stay request, a memorandum of law in response to the stay request, and include therein a statement indicating whether an evidentiary hearing is requested by that party.

Section 62.20 Severability

If any provision of these rules shall be held invalid by a decision of the Vermont Supreme Court or made invalid by a statutory change, such decision or statutory change shall not affect the validity of the remainder of these rules.

Article 63 - Representation Proceedings

Section 63.1 Petition Filing

A petition for election of a collective bargaining representative and a petition for an election to decertify a collective bargaining representative may be filed by an independent support provider or group of independent direct support providers, or any labor organization purporting to act in their behalf.

Section 63.2 Contract Bar

If a collective bargaining agreement is in effect which covers the independent direct support providers covered by the petition, a petition shall normally be considered timely only if filed during the period 150 to 120 days prior to the date the General Assembly convenes in regular session for the year during which the collective bargaining agreement expires or if filed after the expiration date of the agreement if a successor agreement has not become effective. A petitioner filing a petition at any other time shall justify why the normal time period should be waived.

Section 63.3 Petition for Election of Collective Bargaining Representative

A petition for election of a collective bargaining representative, when filed by an labor organization, employee(s) or individuals shall be filed with the Board on a form provided by the Board and shall contain the following information:

- (A) The name and address of the petitioner;

- (B) The name and address of the State;
- (C) The general nature of the State's operation and the approximate total number of independent direct support providers;
- (D) A detailed description of the types, classifications or groups of independent direct support providers in the bargaining unit thought to be appropriate and the total number of such independent direct support providers in the bargaining unit;
- (E) An allegation that not less than 30 percent of the independent direct support providers of the appropriate bargaining unit desire to be represented for collective bargaining by the petitioner or some other representative. In the event there is a labor organization which has been certified or is being currently recognized as the bargaining representative, the date and result of the last election, and the name and address of the currently-recognized or certified bargaining representative, must be set forth. A copy of the collective bargaining contract, if one exists, should be included with the petition; and
- (F) A request that the Board determine whether a question of representation exists, and, if so, that the Board conduct an election by secret ballot and certify the results to the parties.

The petition shall be signed and verified before any person authorized to administer an oath. The petition, or supporting signature cards requesting representation by a collective bargaining representative, shall be signed by not less than 30 percent of the persons in the proposed bargaining unit. The signature cards shall be solely for the Board's use in determining whether there is sufficient interest as required by statute.

Section 63.4 Petition for Decertification of Collective Bargaining Representative

A petition for an election to decertify a collective bargaining representative, where the petitioner is not seeking the election of another labor organization as bargaining representative, shall be filed with the Board on a form provided by the Board, together with the collective bargaining contract, if one exists, and shall contain the following information:

- (A) The name and address of the petitioner;
- (B) The name and address of the currently-certified or currently-recognized bargaining representative;

- (C) The name and address of the State;
- (D) The general nature of the State's operation and the approximate total number of independent direct support providers;
- (E) The types, classifications or groups of independent direct support providers which constitute the appropriate bargaining unit; and the total number of independent direct support providers in the bargaining unit.
- (F) An allegation that not less than 30 percent of the independent direct support providers in the bargaining unit assert that the labor organization currently certified as bargaining agent is no longer supported by a majority of the independent direct support providers in the bargaining unit; and
- (G) A request that the Board determine whether a question of representation exists, and, if so, that the Board conduct an election by secret ballot and certify the result to the parties.

The petition shall be signed and verified before any person authorized to administer an oath.

Section 63.5 Decertification Petition; Showing of Interest

The decertification petition, or supporting signature cards indicating the independent direct support providers no longer desire to be represented by the incumbent bargaining representative, shall be signed by at least 30 percent of the independent direct support providers in the established bargaining unit.

Section 63.6 Sufficiency of Showing of Interest

- (A) The determination whether a showing of interest requirement to support a petition for election of collective bargaining representative, a petition for decertification of collective bargaining representative, or a petition for intervention in a representation proceeding has been satisfied shall be made administratively by the Board. The Board shall not disclose the identities of independent direct support providers whose signature cards or petitions are filed in support of the petition.
- (B) If the Board finds a sufficient showing of interest has not been made, the petitioner shall be given notice by the Board of such finding and shall be allowed a reasonable amount of time, but not less than 10 days, to submit a further showing of interest. If sufficient showing of interest is not made in the specified time, the Board will dismiss the petition.

Section 63.7 Notice of Petition

Upon the filing of a valid petition for election of a collective bargaining representative or a petition for decertification of a collective bargaining representative, the Board shall provide copies to the other parties designated in the petition.

Section 63.8 Response to Election Petition

- (A) Upon receipt of a valid petition for election of collective bargaining representative, or a petition to decertify a collective bargaining representative, the Board shall request the State to file with the Board within a specified time, but not less than seven days, a list of the names of the independent direct support providers proposed by the petitioner who have been paid for providing for providing home and community based services to service recipients within the previous 180 days. This list will be used by the Board in determining whether a sufficient showing of interest has been made by the petitioner.
- (B) Upon receipt of a valid petition for election of collective bargaining representative, where there is no incumbent bargaining representative, the Board shall request the State to notify the Board within a specified time, but not less than 15 days, whether the State believes there is a question of representation. If the State takes the position there is a question of representation, the State shall specify its reasons for that position.
- (C) Upon receipt of a valid petition for election of collective bargaining representative, where there is an incumbent bargaining representative, or a petition for an election to decertify a collective bargaining representative, the Board shall request the State and the incumbent bargaining representative to notify the Board within a specified time, but not less than 15 days, whether any collective bargaining agreement is in effect which would bar an election or whether any questions of representation exist, which questions shall be specified.

Section 63.9 Posting of Petition

Upon receipt of a petition from the Board, the State shall immediately provide copies of the petition by posting it on the Vermont Department of Disabilities, Aging and Independent Living website, and the State shall request that the petition be posted on the website of the payroll processor for independent direct support providers. The Board also shall post the petition on its website.

Section 63.10 Intervenors

Upon the filing of a petition for election of a collective bargaining representative, a labor organization wishing to appear on the election ballot may petition to intervene upon filing a petition signed by independent direct support providers or supported by signature cards signed by 10 percent of the independent direct support providers in the proposed bargaining unit and otherwise containing the information set forth in Section 63.3. Such petition shall be filed with the Board within 10 days of the date the State posted the notice of petition pursuant to Section 63.9. An incumbent bargaining representative shall not be required to file a petition to intervene in response to a petition filed to decertify it as bargaining representative but shall appear on the election ballot unless it disclaims any interest in remaining the representative of independent direct support providers or does not respond to the petition.

Section 63.11 Investigation

The Board shall cause any election petition to be investigated as provided by statute.

Section 63.12 Notice of Election

If the Board, after investigation and any necessary hearing, determines that a representation election is appropriate, the Board shall issue a Notice of Election. Such notice shall include, but not be limited to, a description of the appropriate bargaining unit; a sample ballot; the details of a mail ballot election; and voting instructions. These notices shall be communicated immediately by the State pursuant to order of the Board to ensure that all independent direct support providers have sufficient warning of the details of the election.

Section 63.13 Content of Ballots

In situations where there is no incumbent bargaining representative, independent direct support providers voting in an election vote on the question of representation. They vote on whether they desire to be represented by a particular labor organization. On the question of representation, there may be more than one labor organization included on the ballot. When petitions are filed to decertify the incumbent bargaining representative or replace the incumbent bargaining representative with another labor organization as bargaining representative, independent direct support providers in an election vote on the question of representation.

Section 63.14 Mail Ballot; Elections

Any election shall be conducted by mail ballot pursuant to 21 V.S.A. Section 1635(b).

Section 63.15 Voter Eligibility List

After the issuance of a Notice of Election, the Board shall require the State to file with the Board, by a specified date prior to the election, a list of the names and mailing addresses of the eligible independent direct support providers in the bargaining unit who have been paid for providing home-based and community-based services to service recipients within the previous 180 days. The State shall provide a copy of this list to the other party or parties at the time the list is provided to the Board, and the Board shall give the parties an opportunity to file any objections to this list by a specified date prior to the election. If objections are not filed, the Board will consider that list final and no additions or deletions will thereafter be permitted unless agreed to by the parties. At the time the voter eligibility list is filed, the State also shall post copies of the list providing the names, but excluding the mailing addresses, of independent direct support providers eligible to vote in the election as ordered by the Board.

Section 63.16 Observers

Each party to an election shall be permitted to have one observer of its own selection at the counting of the ballots.

Section 63.17 Spoiled Ballots

A ballot marked in an election so that the choice is indeterminable shall be considered a spoiled ballot which expresses no choice, does not contribute to the results of the election and shall not be considered a vote cast.

Section 63.18 Challenging Voters

Any prospective voter may be challenged at the time and place designated for the counting of ballots for cause except for questions of eligibility which shall be raised as set forth in Section 63.15. The Board agent conducting the election shall rule on the challenges and the agent's decision shall be final.

Section 63.19 Majority Vote Requirement

A labor organization must receive a majority of valid votes cast in an election to become certified or remain certified as exclusive bargaining representative.

Section 63.20 Runoff Election

A runoff election shall be conducted by the Board when an election, in which the ballot provides for no less than three choices (i.e., at least two representatives and "neither"), results in no choice receiving a majority of the valid votes cast. The Board shall not conduct a runoff election when only two choices appear on the ballot and the result is a tie. In that case, the Board will issue an order providing the labor organization is not certified or is decertified as bargaining representative, as applicable. In a runoff election, the Board shall issue a Notice of Election as set forth in Section 63.12 and shall require the State to file a voter eligibility list as set forth in Section 63.15. The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast.

Section 63.21 Objection to Election Conduct

Any interested party may file with the Board, within 10 days of the election, an objection to the conduct of the election.

- A. Contents of the objection: The objection shall set forth the following:
- (1) The results of the election;
 - (2) Factual allegations to support the objection to the conduct of the election, including the names or identities of the persons or organizations charged and the independent direct support providers affected; and
 - (3) A request that the Board investigate the objection. The complainant may also request the Board to set aside the election.
- B. Service of copy: The Board shall forthwith send by certified or registered mail a copy of the objection to each person or organization named in the objection, and to all other persons who appear to the Board to have an interest in the subject matter of the objection, including all parties involved in the election.
- C. Answer: In the discretion of the Board, one or more of the persons or organizations named in the objection may be directed to file an answer to the objection, within such time as may be established by the Board.

- D. Investigation: The Board may delegate to an agent the authority to conduct an investigation with respect to the objection.

Section 63.22 Order Certifying Results of Election

Subsequent to expiration of the period for objecting to the conduct of the election, and if the Board has not set aside the election as a result of any objection filed, the Board shall issue an order of certification, non-certification or decertification of the bargaining representative, as applicable.

Section 63.23 Affiliation of Independent Labor organization; Amendment of Certification

A request for amendment of certification may be filed with the Board in the event that an independent labor organization serving as existing bargaining representative of independent direct support providers affiliates with another labor organization. The Board may find appropriate an amendment of certification, recognizing the affiliation, if the following requirements are met: 1) there is a guarantee of continuity of representation, 2) sufficient democratic standards were met to determine whether support existed among independent direct support providers for affiliation, and 3) the originally certified organization does not remain a presently, functioning viable entity after the affiliation.

Article 64 - Unit Clarification Petition

Section 64.1 Petition Filing

A petition for clarification of an existing bargaining unit may be filed by a collective bargaining representative or the State where no question concerning the majority status of the exclusive bargaining representative is pending at the time the unit clarification petition is filed. Such a petition may be filed where there is a dispute over the unit inclusion or exclusion of employee(s), or where there has been an accretion to or reorganization of the work force.

Section 64.2 Contents of Petition

A petition for clarification shall contain the following:

- (A) The names of the State and the collective bargaining representative, and their addresses;
- (B) The general nature of the State's operation;

- (C) A description of the existing bargaining unit, and an identification of existing certification;
- (D) A statement by the petitioner setting forth the composition of the proposed bargaining unit and reasons why the petitioner seeks clarification of the unit;
- (E) The number of independent direct support providers in the present bargaining unit and in the unit proposed under the clarification.

Section 64.3 Response to Petition

Upon receipt of the petition for clarification, the Board shall notify the other party involved and require the party to file a response to the petition within a specified time, but not less than 15 days. The response shall include a specific admission or denial of each claim made in the petition and a concise statement setting forth the reasons for support of or in opposition to the unit clarification proposed by the petitioner.

Article 65 - Unfair Labor Practices

Section 65.1 Charge

A charge that any labor organization, or its agents, or the State, or its agents, has engaged in or is engaging in an unfair labor practice may be made by an independent direct support provider, labor organization or the State.

Section 65.2 Charge; Form; Filing

A charge shall be in writing. The original shall be signed and verified before any person authorized to administer an oath.

Section 65.3 Contents of Charge

A charge shall contain:

- (A) The full name and address of the person or organization making the charge;
- (B) The full name and address of the labor organization, or its agent, or the State, or its agent, against whom the charge is made; and
- (C) A concise statement alleging the applicable sections of the Act which are alleged to have been violated and a brief statement of facts concerning the alleged violations.

Section 65.4 Service

Upon the filing of a charge, the charging party shall serve a copy upon the respondent or respondents.

Section 65.5 Conformity of Charge with Rules

If the filed charge does not conform to Section 65.2 and Section 65.3, the Board shall notify the charging party of the defects of the charge and provide the party with a reasonable amount of time, but not less than 10 calendar days, to amend the charge. If the charge is not amended within the stated time, the Board shall dismiss the charge.

Section 65.6 Board Assistance

The Board may assist a party in drafting a charge in order to ensure its compliance with Sections 65.2 and 65.3.

Section 65.7 Answer to Charge

Upon receipt of a valid charge, but prior to issuance of a complaint, the Board may require the respondent(s) to file an answer to the charge stating the position of respondent(s), within a time specified by the Board.

Section 65.8 Board Investigation

The Board may assign a Board member or agent to conduct an informal conference or conferences in furtherance of the Board's investigation of the charge, for clarifying issues and to explore the possibility of voluntary resolution of the case. The Board member or agent so assigned shall not make known to the Board any discussions with the parties relating to voluntary resolution of the case. A Board member so assigned shall not be assigned to any subsequent evidentiary hearing on the charge or participate in the post-hearing decision.

Section 65.9 Scope of Bargaining Disputes

Where the primary basis of the dispute between the parties in an unfair labor practice case is alleged to be disagreement as to whether a particular issue or issues is a

mandatory subject of bargaining, either party may request that the Board expedite the matter. After investigation by an assigned Board member or agent, the Board shall inform the parties whether it will expedite the matter.

Section 65.10 Complaint; Notice of Hearing

After a charge has been filed, if it appears to the Board that a formal proceeding should be instituted, the Board may issue and have served upon the parties a complaint in the name of the Board, containing a concise statement as to the alleged violations of the Act and a notice of hearing at a time and place fixed therein.

Section 65.11 Answer; Filing; Service

The respondent ordinarily shall have the right to file an answer within 10 days after service of the complaint. The Board may shorten the time within which the respondent shall have the right to file an answer in cases in which a hearing is set in less than 10 days after service of the complaint. The answer shall admit or deny each specific allegation of the complaint, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief. An allegation in the complaint not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and shall be so found by the Board. Allegations of new matter in the answer shall be deemed denied by the party filing the charge without the necessity of a reply.

Section 65.12 Stipulation of Facts

After the issuance of a complaint by the Board, the parties may submit to the Board a signed stipulation of facts and a request for a decision by the Board without an evidentiary hearing. The request shall state whether the parties desire to present oral argument and/or file briefs.

Section 65.13 Burden of Going Forward

In hearings before the Board in unfair labor practice cases, the charging party shall have the burden of going forward with the evidence.

Section 65.14 Joinder of Parties; Relief

All persons alleged to have engaged in any unfair labor practices may be joined as parties and a decision may be rendered against one or more of them.

Article 66 - Mediation and Fact-Finding

Section 66.1 Mediation Petition

Whenever the representatives of the independent direct support providers in the collective bargaining unit and the representatives of the State, after a reasonable period of negotiation, reach an impasse with respect to any dispute existing between them during the course of collective bargaining on subjects governed by 21 V.S.A. §1634, pursuant to 21 V.S.A. §1636, either or both of the parties may petition the Board for authorization to submit their differences to mediation.

Section 66.2 Mediation Petition; Form; Filing

A petition shall be in writing. The original shall be signed by the representative of independent direct support providers in the bargaining unit or the representative of the State.

Section 66.3 Appointment of Mediator by Agreement

If both parties are in agreement an impasse has occurred pursuant to 21 V.S.A. §1636, the Board shall within five days of filing the petition appoint a mediator.

Section 66.4 Investigation of Mediation Petition Where Disagreement Exists as to Impasse

If one party requests the appointment of a mediator and the other party disagrees an impasse has occurred, the Board shall initiate an informal inquiry concerning the request for a mediator. If the Board determines the parties have been unable to reach agreement despite diligent efforts, the Board shall appoint a mediator within five days of that determination.

Section 66.5 Appointment of Particular Mediator

The parties may jointly request the assignment of a particular person to serve as mediator and such mediator shall be appointed by the Board if such person agrees to serve as mediator. The Board reserves the authority to assign a person of its choice if the parties are unable to agree upon a person to serve as mediator. The costs of a mediator, if any, shall be shared equally by the parties.

Section 66.6 List of Mediators and Fact-Finders

- (A) The Board shall establish and maintain a list of persons qualified to act as grievance mediators, contract negotiations mediators, and/or fact-finders. Persons seeking inclusion on the list shall file a written application with the Board.
- (B) The application shall include the following information:

The name, occupation, residence, business address, e-mail address and telephone numbers of the applicant; a brief statement of the applicant's related experience and education which would serve as qualifications for appointment as a mediator and/or fact finder; any relevant professional, civic or social association memberships of the applicant; and the name, address, telephone number and e-mail address of at least four references supporting the applicant's acceptability as an impartial, two of which shall be labor organization references and two of which shall be employer references.
- (C) The Board shall investigate the availability, qualifications and acceptability of applicants, and then make a determination whether to place the applicant on the list of mediators and fact-finders. The Board at its discretion may require training and/or the shadowing of a mediator or fact-finder for inclusion on the list. Persons included on the list of mediators and/or fact-finders shall be placed on the list for a term of three years. At the conclusion of the three years, the Board shall determine whether to include the person on the list for another term of three years. The Board may remove persons from the list during a three-year term for good cause.
- (D) Mediators employed by the Federal Mediation and Conciliation Service shall be considered to be on the list of mediators.
- (E) Members of the Board who so desire shall be included on the list of mediators. A Board member who has served as a mediator in a case shall not be involved in any subsequent Board consideration of the matter.
- (F) Parties in grievance and contract negotiations disputes may make a joint request to the Board seeking the services of a grievance mediator, contract negotiations mediator or fact-finder to assist in resolving a negotiations impasse between the parties or a grievance. The parties may by mutual agreement select a mediator or fact-finder to intervene in the impasse or grievance from the list of mediators and fact-finders, and if the parties are unable to so agree the Board shall make an appointment from such list. The parties are responsible for equally sharing the costs of the mediator or fact-finder.

Section 66.7 Fact-Finding

Upon certification by the mediator that an impasse continues, the Board shall within five days appoint a fact-finder. The fact-finder shall designate a time and place for hearing. The hearing(s) before the fact-finder will be governed by Article 62 of these Rules; in which case "fact-finder" will be substituted in place of "Board".

Article 67 - Grievances

Section 67.1 Jurisdiction

The Board shall hear and finally determine the grievances brought before it, provided that such grievances are appealed pursuant to the procedures contained in an existing collective bargaining agreement and are filed within 30 days after receipt of notice of final decision of the State, unless the collective bargaining agreement provides for a different time period.

Section 67.2 Grievance Filing and Service

A grievance shall be in writing and signed by the exclusive bargaining representative.

Section 67.3 Contents of Notice

The notice of grievance shall contain:

- (A) The full name and address of the exclusive bargaining representative filing the grievance;
- (B) The full name and address of the State;
- (C) A concise statement of the nature of the grievance, including a statement of the date the matter leading to such grievance arose;
- (D) Specific references to the pertinent section or sections of the collective bargaining agreement, if applicable, or the pertinent rule(s) or regulation(s), if applicable, which are alleged to be violated; and
- (E) A brief statement of the facts concerning the grievance.

Section 67.4 Answer; Filing; Service

All parties in interest shall have the right to file an answer within 20 days after service of the grievance. Upon application, the Board may extend the time within which the answer shall be filed.

Section 67.5 Contents of Answer; Denials

The answer shall admit or deny each specific allegation contained in the grievance or shall indicate any lack of knowledge or information thereof sufficient to form a belief. An allegation in the grievance not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and shall be so found by the Board. Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

Section 67.6 Admission by Failure to Answer

Failure to file a timely answer may be deemed by the Board to constitute an admission of the material facts alleged in the grievance and a waiver by the party of an evidentiary hearing, leaving a question of alleged contract violation(s), or alleged violation(s) of a rule or regulation, to be determined by the Board.

Section 67.7 Stipulation of Facts

After the filing of an answer, the parties may submit to the Board a signed stipulation of facts and a request for a decision by the Board without an evidentiary hearing. The request shall state whether the parties desire to present oral argument and/or file briefs.

Section 67.8 Grievance Mediation

The parties to a grievance filed with the Board may request the Board to appoint a mediator to assist in resolving the grievance. If all parties make such request, the Board may appoint a Board member, its Executive Director or other qualified individual to mediate the dispute. A mediator may be selected from the list of grievance mediators established pursuant to Section 66.6 of these Rules.

Article 68 - Dispute Concerning the Amount of Collective Bargaining Service Fee

Any dispute concerning the amount of a collective bargaining service fee may be grieved to the Board by affected nonmember(s) of an labor organization in accordance with the Board's rules concerning grievances pursuant to 21 V.S.A. Section 1634(d). Accordingly, such dispute will be heard by the Board provided that any nonmember(s) objecting to the amount of the collective bargaining service fee files notice of such dispute with the Board within 30 days after receipt of the final decision of the labor organization addressing the objection of the nonmember(s) to the amount of the collective bargaining service fee. Proceedings before the Board with respect to such disputes shall conform to the following provisions:

(A) A notice of dispute shall be in writing and signed by the person(s) filing the dispute or such person(s)' representative.

(B) The notice of dispute shall contain:

(1) The full name and address of the person(s) filing the notice of dispute;

(2) The full name and address of the labor organization involved;

(3) A concise statement of relevant facts and the nature of the dispute, including the amount of the collective bargaining fee assessed by the labor organization; the particular expenditures of the labor organization which are disputed, if known by the disputant; and the disputant's position as to what amount is appropriate to assess for the collective bargaining service fee; and

(4) the date the disputant received the final decision of the labor organization addressing the objection of the nonmember(s) to the amount of the collective bargaining service fee.

(C) The labor organization shall have the right to file an answer within 20 days after service of the notice of dispute. Upon application, the Board may extend the time within which the answer shall be filed.

(D) The answer shall admit or deny each specific allegation contained in the notice of dispute or shall indicate any lack of knowledge or information thereof sufficient to form a belief. An allegation in the notice of dispute not specifically denied in the answer, unless the party asserts it is without knowledge or information thereof sufficient to form a belief, shall be deemed admitted and shall be so found by the Board. Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

(E) Failure to file a timely answer may be deemed by the Board to constitute an

admission of the material facts alleged in the notice of dispute and a waiver by the labor organization of an evidentiary hearing, leaving a question or questions of law to be determined by the Board.

Article 69 - Hearing Officer

The Board may appoint one of its members, the Board Executive Director or other qualified individual to act as a hearing officer to determine the relevant facts of a particular case and to issue a recommended opinion and order, or to determine the relevant facts of a case without issuing a recommended opinion and order. Hearings before the hearing officer shall be informal. Parties shall be given the opportunity to file exceptions to facts found and any recommended opinion and order. If exceptions to facts are filed, the Board shall hold an evidentiary hearing to determine facts in dispute. If no exceptions to facts are filed and the case remains unresolved, the Board shall give the parties an opportunity to argue orally before the Board and to submit written briefs. Subsequently, the Board shall issue a written decision.