

PART 3

RULES APPLICABLE UNDER MUNICIPAL EMPLOYEE RELATIONS ACT

Article 31 - Scope

Part 3 contains rules specific to the Municipal Employee Relations Act, 21 VSA §1721-1735 (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.

Article 32 - General Rules

Section 32.1 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 32.2 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 32.3 Service of Petitions, Unfair Labor Practice Charges

Petitions, unfair labor practice charges 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 parties to the case, except for the list of employees in a proposed bargaining unit which the employer is required to file with the Board pursuant to Section 33.9 and 33.10 of these Rules, and the showing of interest documentation required by Sections 33.3, 33.4, 33.5 and 33.6 of these Rules.

Section 32.4 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 32.5 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 32.6 Intervention

A person desiring to intervene in any proceedings, except for representation matters wherein an employee organization or individual may intervene as provided in Section 33.11, 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 32.7 Withdrawal or Amendment of Charges 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 or charge, in whole or in part, and may permit amendment thereof as it deems proper.

Section 32.8 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 32.9 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 32.10 Pleadings, Construction

All pleadings shall be liberally construed.

Section 32.11 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 32.12 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 32.13 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 32.14 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 32.15 (Deleted)

Section 32.16 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 32.17 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 32.18 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 32.19 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 32.20 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 1729(d), 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 32.21 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 33 - Representation Proceedings

Section 33.1 Petition Filing

- (A) A petition for the election of a collective bargaining representative may be filed by an employee or group of employees or any individual or labor organization purporting to act in their behalf.
- (B) A petition for an election to decertify a collective bargaining representative may be filed by an employee or group of employees or any individual or labor organization purporting to act in their behalf.

Section 33.2 Contract Bar

If a collective bargaining agreement is in effect which covers any or all of the employees to be covered by the petition, a petition shall normally be considered timely only if filed during the period 90 to 60 days prior to the expiration date of the collective bargaining agreement, or after the expiration thereof 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 33.3 Petition for Election of Collective Bargaining Representative

A petition for election of a collective bargaining representative 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 employer;
- (C) The general nature of the employer's operation and the approximate total number of employees;
- (D) A detailed description of the types, classifications or groups of employees in the bargaining unit(s) thought to be appropriate and the total number of such employees in each bargaining unit or units;
- (E) An allegation that not less than 30 percent of the employees of the appropriate bargaining unit desire to be represented for collective bargaining by the petitioner or some other representative, and that the employer declines to recognize the representative. In the event there is an individual or employee 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 the 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 33.4 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 employee organization or individual 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 employer;
- (D) The general nature of the employer's operation and the approximate total number of employees;
- (E) The types, classifications or groups of employees which constitute the bargaining unit or units thought to be appropriate; and the total number of employees in each bargaining unit or units;
- (F) An allegation that not less than 30 percent of the employees in the bargaining unit assert that the individual or employee organization currently certified as bargaining agent is no longer supported by a majority of the employees 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 33.5 Decertification Petition; Showing of Interest

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

Section 33.6 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 employees 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 33.7 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 33.8 Posting of Petition

Upon receipt of a petition from the Board, the employer shall immediately post copies of the petition at a place normally used for employer-employee communications.

Section 33.9 Employer Response to Representation Petition

Upon receipt of a valid petition for the election of a collective bargaining representative, where there is no incumbent bargaining representative or the incumbent bargaining representative is seeking to expand the existing bargaining unit, the Board shall request the employer to file with the Board within a specified time, but not less than seven days, a list of the names of the employees proposed by the petitioner to be included in the bargaining unit, or added to the existing bargaining

unit, employed as of the date the petition was filed with the Board. This list will be used by the Board in determining whether a sufficient showing of interest has been made by the petitioner. Also, the Board shall request the employer to notify the Board within a specified time, but not less than 15 days, of the employer response to the petition among the following three options:

- (A) The employer can voluntarily recognize the petitioner and the unit named in the petition provided the employee organization demonstrates the support of a majority of the bargaining unit it seeks to represent, no rival employee organization seeks to represent employees in the unit, and the bargaining unit is appropriate under the standards set forth in Section 1724(c) of the Act.
- (B) The employer can agree to a consent election. A consent election does not imply recognition of petitioner for collective bargaining purposes, but it does require agreement the proposed unit is appropriate.
- (C) The employer can raise a question of unit determination or representation, which question(s) shall be specified.

Section 33.10 Response to Other Petitions

Upon receipt of a valid petition for election of a collective bargaining representative, where there is an incumbent bargaining representative, or a petition to decertify a collective bargaining representative, the Board shall request the employer to file with the Board within a specified time, but not less than seven days, a list of the names of the employees included in the bargaining unit, employed as of the date the petition was filed with the Board. This list will be used by the Board in determining whether a sufficient showing of interest has been made by the petitioner. Also, the Board shall request the employer 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 unit determination or representation exist, which questions shall be specified.

Section 33.11 Intervenors

Upon the filing of a petition for election of a collective bargaining representative, an individual or employee organization wishing to appear on the election ballot may petition to intervene upon filing a petition signed by employees or supported by signature cards signed by 10 percent of the employees in the proposed bargaining unit and otherwise containing the information set forth in Section 33.3. Such petition shall be filed with the Board within 10 days of the date the employer posted the notice of petition pursuant to Section 33.8. 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 employees or does not respond to the petition.

Section 33.12 Voluntary Recognition

Upon notification that an employer has voluntarily recognized an employee organization as the exclusive bargaining representative of employees of a bargaining unit, the Board shall issue a Certification of Voluntary Recognition certifying the employee organization as the exclusive bargaining representative of such employees provided the voluntary recognition is consistent with the Act.

Section 33.13 Investigation; Notice of Hearing

The Board shall cause any election petition to be investigated as provided by statute. If in the course of its investigation the Board determines that a question of unit determination or representation exists, it shall schedule a hearing before the Board.

Section 33.14 Informal Settlement of Unit Determination or Representation Questions

A Board member or agent may be assigned by the Board to informally assist the parties in resolving questions of unit determination or representation prior to the commencement of any hearings before the Board.

Section 33.15 Consent Election

The parties may waive a unit determination hearing and enter into a consent election agreement after 15 days from the date of the filing of the petition for the election of a collective bargaining representative. Such agreement shall consist of the composition of the appropriate bargaining unit and an agreement the employees in the unit shall vote in a representation election.

Section 33.16 Notice of Election

If the Board, after investigation and any necessary hearing, determines that a representation election is appropriate, or upon consent of all the parties, 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 date(s), time(s) and place(s) of the election; and voting instructions. These notices shall be posted immediately by the Employer in a place normally used for employer-employee communications to ensure that all employees have sufficient warning of the date, time and location.

Section 33.17 Content of Ballot

Generally, employees eligible to vote in an election vote only on the question of whether they wish to be represented by a particular employee organization, and do not generally vote on the composition of the bargaining unit. There may be more than one employee organization included on the ballot. An exception to this general rule exists with respect to professional

employees. Professional employees may not be included in a bargaining unit with non-professional employees unless a majority of professional employees vote for inclusion in the unit. Professional employees are given two votes in an election; one to determine whether they wish to be included in the unit with non-professional employees, and the other whether they wish to be represented by a particular employee organization. Also, the Board may, in its discretion, require that a separate vote be taken among any particular class or type of employee within a proposed unit to determine specifically if the class or type wishes to be included.

Section 33.18 Mail Ballot; Elections

The Board may conduct an election in whole or in part by mail ballot if it is not practical or reasonable to hold an election at which employees may vote in person.

Section 33.19 Absentee Ballots

The Board may permit employees to vote by absentee ballot if they will not be present at the time and place set forth for the election for particular reasons agreed to by the parties or determined by the Board. Absentee ballots will be commingled with other ballots cast before the ballots are counted to preserve the confidentiality of the vote.

Section 33.20 Voter Eligibility List

After the issuance of a Notice of Election, the Board shall require the employer to file with the Board, by a specified date prior to the election, a list of the names and mailing addresses of the eligible employees in the bargaining unit as of a specified payroll period. The employer 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 employer also shall post copies of the list providing the names, but excluding the mailing addresses, of employees eligible to vote in the election next to where the Notice of Election was posted.

Section 33.21 Observers

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

Section 33.22 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 33.23 Challenging Voters

Any prospective voter may be challenged at the polling place prior to casting a vote or, in the case of absentee ballots, 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 33.20. The Board agent conducting the election shall rule on the challenges and the agent's decision shall be final.

Section 33.24 Majority Vote Requirement

An employee organization must receive a majority of valid votes cast in an election to become certified as exclusive bargaining representative. In a decertification election, there must be a majority of valid votes cast against the incumbent bargaining representative for the incumbent representative to be decertified as bargaining representative.

Section 33.25 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 a "no union"), 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 the case of a tie in an initial representation election, the Board will issue an order providing that the employee organization is not certified as the bargaining representative. In the case of a tie in a decertification election, the Board will issue an order providing that the incumbent bargaining representative remains certified as bargaining representative. In a runoff election, the Board shall issue a Notice of Election as set forth in Section 33.16 and shall require the employer to file a voter eligibility list as set forth in Section 33.20. 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 33.26 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 date and place of the contested election;
 - (2) The results of the election;

- (3) 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 employees affected; and
 - (4) 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 33.27 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 33.28 Affiliation of Independent Employee Organization; Amendment of Certification

A request for amendment of certification may be filed with the Board in the event that an independent employee organization serving as existing bargaining representative of employees affiliates with another employee 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 employees for affiliation, and 3) the originally certified organization does not remain a presently, functioning viable entity after the affiliation.

Article 34 - Unit Clarification Petition

Section 34.1 Petition Filing

A petition for clarification of an existing bargaining unit may be filed by a collective

bargaining representative or an employer 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 1) there is a dispute over the unit inclusion or exclusion of employee(s), or 2) there has been an accretion to or reorganization of the workforce, or 3) the collective bargaining representative or employer seeks a reorganization of the existing structure of a bargaining unit or units.

Section 34.2 Contents of Petition

A petition for clarification shall contain the following:

- (A) The names of the employer and the collective bargaining representative, and their addresses;
- (B) The general nature of the employer's business;
- (C) A description of the existing bargaining unit, and if the bargaining unit is certified, 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 names and addresses of any other individuals or employee organizations who claim to represent any employee affected by the proposed clarification, and a copy of any collective bargaining agreement covering any such employees; and
- (F) The number of employees in the present bargaining unit and in the unit proposed under the clarification.

Section 34.3 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 in support of or in opposition to the unit clarification proposed by the petitioner.

Article 35 - Unfair Labor Practices

Section 35.1 Charge

A charge that any employee organization, or its agents, or employer, or its agents, has engaged in or is engaging in an unfair labor practice may be made by an employee, employee

organization or employer.

Section 35.2 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 35.3 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 employee organization, or its agent, or employer, 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 35.4 Service

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

Section 35.5 Conformity of Charge with Rules

If the filed charge does not conform to Section 35.2 and Section 35.3, 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 35.6 Board Assistance

The Board may assist a party in drafting a charge in order to ensure its compliance with Sections 35.2 and 35.3.

Section 35.7 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 35.8 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 35.9 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 35.10 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 35.11 Answer; Filing; Service

The respondent shall have the right to file an answer within 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 35.12 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 35.13 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 35.14 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 36 - Mediation

A collective bargaining representative and an employer who do not have timely access to the services of the Federal Mediation and Conciliation Service may request mediation assistance from the Board if they reach impasse during negotiations over the terms of a collective bargaining agreement or if they seek a mediator to assist in resolving grievances. If such a request is made jointly by the employer and the bargaining representative, the Board may appoint a Board Member, its Executive Director or other qualified individual to mediate the dispute.

Article 37 - 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 employee 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.

Article 38 - 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.