

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 Quorum (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.