

General Practices and Procedures

Given that the Board administers seven different labor relations statutes and performs a variety of functions under these statutes, practitioners before the Board must be mindful of the particular statute governing their case and the particular type of case which they are bringing before the Board. The Board Rules of Practice reflect the diversity of the Board's jurisdiction as the Rules are divided into seven parts: 1) rules applicable under the State Employees Labor Relations Act,¹ 2) rules under the State Labor Relations Act,² 3) rules applicable under the Municipal Employee Relations Act (and the Labor Relations for Teachers Act as applicable),³ 4) rules applicable under miscellaneous statutory provisions,⁴ 5) rules applicable under the Judiciary Employees Labor Relations Act,⁵ 6) rules applicable under the Independent Direct Support Providers Labor Relations Act,⁶ and 7) rules applicable under the Early Care and Education Providers Labor Relations Act.⁷

There are some general practices and procedures which apply to all types of cases, and which are not specifically discussed in other chapters of this book. They are addressed here.

A. Filing and Copies of Materials

Materials often are required to be “filed” with the Board within certain time frames, specified by statute, Board Rules of Practice, contract provisions or direction of the Board. The Board has indicated in decisions that the meaning of the word “file” is synonymous with “receipt”; that it indicates the receiving party actually has

¹ Articles 11-19A, Board Rules of Practice.

² Articles 21-29, Board Rules of Practice.

³ Article 31-38, Board Rules of Practice.

⁴ Article 41-46, Board Rules of Practice.

⁵ Article 51-59, Board Rules of Practice.

⁶ Article 61 – 69, Board Rules of Practice.

⁷ Article 71 – 78, Board Rules of Practice.

the submitted material in its possession.⁸ This means that materials are not considered filed with the Board until the Board receives them.

The most common mistakes made in filing materials for the Board's consideration are not providing sufficient copies for the Board and not providing the other party to the case with copies of materials. The original, plus four copies, need to be submitted of any materials filed with the Board.⁹ Copies of all materials filed with the Board need to be served on the other party or parties to the case, except for the showing of interest documentation required to be filed to support election petitions and the list of employees in a proposed bargaining unit which the employer is required to submit to the Board when election petitions are filed.¹⁰

B. Intervention in Board Proceedings

A person desiring to intervene in any Board proceedings, except for representation proceedings, needs to file with the Board an application setting forth the facts upon which person claims an interest in the proceeding and otherwise complying with specific requirements of Board Rules.¹¹ An individual or employee organization may intervene in representation proceedings pursuant to specific Board Rules governing representation cases.¹²

C. Amending Actions

The Board may permit amendment of petitions, charges, appeals or grievances as the Board "deems proper".¹³ The Board has permitted amendment of actions

⁸ Grievance of Mason, 15 VLRB 428, 430 (1992). Grievance of Amidon, 6 VLRB 83, 85 (1983).

⁹ Sections 12.2, 22.2, 32.2, 52.2, 62.2, and 72.2, Board Rules of Practice.

¹⁰ Sections 12.3, 22.3, 32.3 52.3, 62.3, and 72.3, Board Rules of Practice.

¹¹ Sections 12.6, 22.6, 32.6 52.6, 62.6, and 72.6, Board Rules of Practice.

¹² Sections 13.10, 23.12, 33.11 53.10, 63.10, and 73.10, Board Rules of Practice.

¹³ Sections 12.7, 22.7, 32.7; Article 41; and Sections 52.7, 62.7, and 72.7, Board Rules of Practice.

where it is not prejudicial to the other party and it is not disruptive to the orderly and efficient processing of cases by the Board.¹⁴

D. Withdrawal of Case

A party may withdraw a case by application to the Board and notice to all interested parties.¹⁵ The Board practice when cases are withdrawn is to issue an order dismissing the case.

E. Issuance of Declaratory Judgments

The Board has indicated that it does not have the authority to issue declaratory judgments given that the Board only has such adjudicatory jurisdiction as is conferred on it by statute, and the Board has not been given statutory authority to give declaratory judgments. The Board stated that “it cannot be in a position to decide a question before the fact”, and indicated that a case may only be filed with the Board in response to the taking of an action.¹⁶

¹⁴ Grievance of Laughlin, 21 VLRB 161, 166-167 (1998). Grievance of Petty, 20 VLRB 44, 53-54 (1997). Grievance of VSEA, West and Cray, 18 VLRB 461, 478-479 (1995). Grievance of VSEA, Barnard, et al, 17 VLRB 203, 225 (1994). Grievance of VSEA (re: Refusal to Provide Information), 15 VLRB 13 (1992). Grievance of Rennie, 16 VLRB 1, 2-4 (1993).

¹⁵ Sections 12.7, 22.7, 32.7, 52.7, 62.7, and 72.7, Board Rules of Practice.

¹⁶ Hinesburg School District and Board of School Directors v. Vermont-NEA, et al, 9 VLRB 1, 3-4 (1986).