

Public Employment Relations Board

Proposed Permanent Rules Relating to Public Employees; Unfair Labor Practices

7325.0010 PURPOSE AND CONSTRUCTION.

This chapter is established to comply with and administer the provisions of Minnesota Statutes, chapter 179A and section 179.35, and shall be liberally construed to effectuate their purposes.

7325.0020 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Board.** "Board" means the governing body of the Public Employment Relations Board.

Subp. 3. **Charged party.** "Charged party" means a party charged with an unfair labor practice charge.

Subp. 4. **Charging party.** "Charging party" means a party alleging an unfair labor practice charge.

Subp. 5. **Charge or unfair labor practice charge.** "Charge" or "unfair labor practice (ULP) charge" means a statement filed with the board in which a person alleges that another person or entity has committed an unfair labor practice.

Subp. 6. **Days.** "Days" means a calendar day unless it is stated as "working days."

Subp. 7. **Legal holiday.** "Legal holiday" has the meaning given in Minnesota Statutes, section 645.44, subdivision 5.

Subp. 8. **Public Employment Relations Board or PERB.** "Public Employment Relations Board" or "PERB" means the board established under Minnesota Statutes, section 179A.041.

Subp. 9. **Respondent.** "Respondent" means a party subject to an unfair labor practice complaint.

Subp. 10. **Working day.** "Working day" means a day which is not a Saturday, Sunday, or legal holiday.

7325.0100 FILING AND SERVICE GENERALLY.

Subpart 1. **Filing.** For the purposes of this chapter:

A. Filing is accomplished by in-person delivery to the board before 4:30 p.m. on a working day, first class United States mail with postage prepaid, facsimile, or as an attachment to an e-mail.

B. Anything filed with the board, unless otherwise specifically directed by the board, a hearing officer, or the general counsel, must also be served on all other parties.

C. A filing by United States mail is deemed filed on the date of its postmark. A filing occurring on a Saturday, Sunday, or legal holiday is deemed to be filed on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

Subp. 2. **Service.** For the purposes of this chapter, service is accomplished by in-person delivery, first class United States mail with postage prepaid, facsimile, or as an attachment to an e-mail. If service is by United States mail it shall be effective on the date of its postmark. A party served by United States mail shall have three additional days for responding or taking other action from the date of service. If service is by facsimile or e-mail and it is accomplished after 4:30 p.m. local Minnesota time, then the parties served shall have one additional day added to any prescribed period for responding or taking other action from the date of service.

FILING AND INVESTIGATION

7325.0110 FILING, SUPPORTING, AND RESPONDING TO A CHARGE.

Subpart 1. **Charge form.** A party must file a charge in writing using the form provided by the board.

Subp. 2. **Form information.** The charge form must include the following information:

- A. the name, address, and telephone number of the party filing the charge;
- B. the name, address, and telephone number of the agent or attorney representing the charging party;
- C. the name, address, and telephone number of the charged party;
- D. the name, address, and telephone number of the agent or attorney representing the charged party, if known;
- E. a clear and concise statement of each charge of an unfair labor practice including the dates, times, and places of the alleged unfair labor practice and the name of the person, entity, or both that allegedly committed the unfair labor practice;
- F. the specific section of the law, either Minnesota Statutes, section 179.11, 179.12, or 179A.13, alleged to have been violated;
- G. the specific remedy being sought for each unfair labor practice alleged; and
- H. a statement that the charging party has served a complete copy of the charge on each party named as a charged party.

Subp. 3. **Obtaining a charge form.** Unfair labor practice charge forms may be obtained from the board in person or on the board's official Web site.

Subp. 4. **Serving a form on charged party.** The charging party shall serve a complete copy of the charge or amended charge on each party named as a charged party.

Subp. 5. **Receipt of a charge.** Upon receipt of a charge, the charge must be docketed, assigned a case number, and served on the parties by the board or its designee.

Subp. 6. **Submission of evidence.** The charging party must submit evidence in support of each alleged unfair labor practice as well as any documents that support its position to the assigned investigator. This submission must be provided within seven days of the date the charge or amended charge is filed, unless an extension is granted for good cause. The assigned investigator may request the charging party to submit additional evidence to support its charge when the assigned investigator determines additional evidence is necessary to evaluate the charge.

Subp. 7. **Submission of a response.** The charged party must submit a response to each alleged unfair labor practice in the charge as well as any evidence that supports its position to the assigned investigator. This submission must be provided within 14 days of the date the charge or amended charge is served by the board, unless an extension is granted by the assigned investigator. The assigned investigator may request the charged party to submit additional evidence when the assigned investigator determines additional evidence is necessary to evaluate the charge.

7325.0120 MEDIATION.

Whenever it would advance the possibility of a mutual resolution, the board or its designee shall:

- A. work with the commissioner of mediation services to assign a mediator; and
- B. undertake an effort to conciliate or recommend mediation with the assigned Bureau of Mediation Services mediator.

7325.0130 INVESTIGATION.

Subpart 1. **Informal conferences.** A designated board staff member may conduct an informal conference or conferences during the course of the investigation to clarify

issues or to explore voluntary resolution. The board staff member holding the settlement conference must not disclose or discuss any settlement discussions with the board or any hearing officer who may be assigned to hear the case.

Subp. 2. **Withdrawal of charge.** If, after the investigation, the charge is found to have no reasonable basis in law or fact, the board must advise the charging party of this fact and give the charging party the opportunity to withdraw the charge.

7325.0140 AMENDING OR WITHDRAWING CHARGE.

The charging party may amend or withdraw a charge at any time prior to the issuance of a complaint or notice of dismissal.

7325.0150 DISMISSAL OF CHARGES.

Subpart 1. **Dismissal.** If, at any time, the board determines that the charge has no reasonable basis in law or fact, the board must dismiss the charge.

Subp. 2. **Notification.** If the board dismisses the charge, it must provide written notification to all parties to the case. The charging party may request that the Minnesota Court of Appeals review the board's decision in accordance with Minnesota Statutes, section 179A.052.

HEARINGS

7325.0200 COMPLAINT.

The board shall issue and process ULP complaints in accordance with Minnesota Statutes, section 179A.13.

7325.0210 ANSWER.

The respondent has a right to file an answer to the complaint or amended complaint with the board and serve copies on all parties within seven days after service of the complaint or amended complaint or three days prior to the hearing, whichever is sooner.

7325.0220 SCOPE OF HEARING.

The hearing must address the issues in the complaint or amended complaint. Evidence need not be presented with regard to facts stipulated by the parties.

7325.0230 BURDEN OF PROOF.

The charging party has the burden of proving the unfair labor practice allegation in the complaint by a preponderance of the evidence under Minnesota Statutes, section 179A.13, subdivision 1, paragraph (g). The respondent may present evidence in support of the respondent's defense. A party asserting an affirmative defense has the burden of proving it by a preponderance of the evidence.

7325.0240 HEARING OFFICER DUTIES.

The hearing officer shall:

A. regulate the proceedings of the case and the conduct of the parties during the proceedings;

B. receive testimony and evidence;

C. rule on requests for continuances;

D. sequester witnesses;

E. issue subpoenas and rule upon motions to revoke subpoenas;

F. rule on objections, motions, and questions of procedure;

G. authorize the submission of briefs and set the time for their filing;

H. hear closing arguments; and

I. render and serve the recommended decision and order to the board and the parties to the proceeding under Minnesota Statutes, section 179A.13, subdivision 1, paragraphs (i) and (j).

7325.0250 PREHEARING CONFERENCES.

Subpart 1. **Conference.** The hearing officer assigned to the case shall schedule a prehearing conference, at which the parties may be required to submit prehearing information, if it would promote a fair and efficient process.

Subp. 2. **Prehearing information.** Prehearing information includes a detailed written statement of the issues, a list of witnesses and the nature of their testimony, and all other information the hearing officer requests.

Subp. 3. **Holding conferences.** Prehearing conferences may be held in person, by telephone, or by other electronic means.

Subp. 4. **Record.** The hearing officer shall enter any stipulations reached into the record.

7325.0260 SUBPOENAS.

The party requesting a subpoena shall submit a request to the hearing officer or the board if no hearing officer has been assigned and serve copies on all other parties.

7325.0270 PROTECTIVE ORDERS.

Subpart 1. **Issuing protective orders.** The hearing officer, or the board or its designee if no hearing officer has been assigned, shall issue protective orders, including orders to control the disclosure and use of private, sensitive, or protected data.

Subp. 2. **Closing a hearing.** The hearing officer may close a portion or portions of the hearing only to the extent necessary to protect private, sensitive, or protected data.

7325.0280 TESTIMONY.

A party may present evidence and witnesses, rebuttal testimony, and argument on the issues, and to cross-examine witnesses under Minnesota Statutes, section 179A.13, subdivision 1, paragraph (b). A party may be a witness or may present witnesses at the hearing. Oral testimony must be under oath or affirmation.

7325.0290 CONTINUANCES.

The charging party or respondent may request a continuance or postponement of a hearing. If the hearing officer is unavailable to consider the request, the request must be directed to the board. The hearing officer must consider the following in determining whether to grant the request:

- A. whether there is mutual agreement among the parties to the request;
- B. whether the moving party can substantiate cause for the request; and
- C. whether the rights of a party will be substantially affected if the request is denied.

7325.0300 CONSOLIDATION.

The board must consolidate one or more hearings if it determines that consolidation will serve the purposes of this chapter.

7325.0310 INTERVENTION.

Subpart 1. **Requests to intervene.** Interested parties who wish to intervene in the hearing shall direct requests to the hearing officer, or to the board if no hearing officer has been assigned, with copies to all other parties.

Subp. 2. **Form of requests.** A request to intervene shall be in writing and shall state the grounds for the intervention.

Subp. 3. **Allowing interventions.** The decision by the hearing officer or board to allow intervention shall be based upon the interests of the intervenor and shall consider objections, if any, raised by the parties, whether those interests will be adequately protected by the existing parties, and the timeliness of the intervenor's request.

7325.0320 RECORD.

Subpart 1. **Digital transcription.** The board shall provide a digital transcription of the hearing to the parties.

Subp. 2. **Matters in dispute.** The hearing officer shall inquire into all matters in dispute, and shall obtain a full and complete record by evidentiary hearing or stipulation.

Subp. 3. **Record contents.** The hearing officer shall obtain the following to constitute a full and complete record of the proceedings:

A. all pleadings, motions, and orders;

B. evidence received;

C. offers of proof, objections, and rulings on objections;

D. all memoranda or data submitted by any party in connection with the case;

and

E. a digital transcript of the hearing.

Subp. 4. **Transfer of records.** Upon issuance of the hearing officer's recommended decision and order, the hearing officer shall transfer the record of the proceeding to the board.

APPEALS AND REVIEW

7325.0400 EXCEPTIONS.

Subpart 1. **Appeals from decisions of the commissioner.** Appeals from decisions of the commissioner of the Bureau of Mediation Services under Minnesota Statutes, section 179A.12, subdivision 11, regarding unfair labor practices found to occur in the course of a representation election are subject to review by the board in the same manner as recommended decisions and orders of board hearing officers.

Subp. 2. **Number of copies.** Whenever this part requires a document to be submitted to the board, four paper copies and an electronic copy must be submitted to the board and the document must be served upon all other parties to the proceeding.

Subp. 3. **Content of statement of exceptions.** A party filing exceptions or cross-exceptions under Minnesota Statutes, section 179A.13, subdivision 1, paragraph (k), must specifically identify in its statement of exceptions the portions of the hearing officer's decision and order to which each exception is made and the grounds for each exception.

Subp. 4. **Brief supporting exceptions.** The party filing exceptions or cross-exceptions must submit with the statement of its exceptions a brief supporting its exceptions. The brief shall reference any exhibits, offers of proof, or the identity of any witnesses whose testimony supports its exceptions or cross-exceptions.

Subp. 5. **Request for oral argument.** A request to present oral argument to the board must be filed with the statement of exceptions or cross-exceptions. The board shall grant a request for oral argument if it finds oral argument would be helpful to its decision-making process.

Subp. 6. **Response to exceptions.** Within 15 days of service of the excepting party's exceptions, all nonexcepting parties to the hearing must file with the board and serve upon all other nonexcepting parties their responses to the excepting party's exceptions, any cross-exceptions they wish to submit, their brief, and any request for oral argument before the board.

Subp. 7. **Response content.** All responses to exceptions and any cross-exceptions must state with specificity the portions of the hearing officer's decision to which responses to exceptions or cross-exceptions are directed and the grounds for each response to an exception and the grounds for any cross-exceptions.

Subp. 8. **Responses to cross-exceptions.** Within 15 days of service of any cross-exceptions, all nonexcepting parties may submit to the board and serve upon all other nonexcepting parties a response to any cross-exceptions filed stating their position with regard to the cross-exceptions. Any response to cross-exceptions shall reference any

exhibits, offers of proof, or the identity of any witnesses whose testimony supports its position.

Subp. 9. **Request to file an amicus brief.** A person or entity seeking to submit an amicus brief to the board must submit to the board a request to file an amicus brief within ten days of the first filing of exceptions in any pending matter. A request to the board to submit an amicus brief must include identification of the person or entity seeking to file the amicus brief, reasons for wishing to file the amicus brief, and any requests for an oral argument.

Subp. 10. **Granting an amicus brief request.** If the board grants the request to submit the amicus brief, it shall state in its order the deadline for submission of the brief and whether the amicus will be permitted to present an oral argument.

Subp. 11. **Invitation of amicus briefs.** The board may invite the submission of amicus briefs on any pending matter if it finds receipt of arguments of other persons or entities would be helpful in its decision-making process. If the board invites the submission of amicus briefs, it shall state in its order the deadline for the submission of briefs and whether the invited amicus will be permitted to present an oral argument. Oral argument must be permitted if it would be helpful to the board in its decision-making process.

7325.0410 PROCEEDINGS BEFORE THE BOARD.

Subpart 1. **Board initiated review of recommended decision and order.** The board may, in the absence of the submission of any exceptions, review a recommended decision and order on its own motion when:

A. the board believes the hearing officer's recommended decision and order may be inconsistent with the law or the facts;

B. a board decision on the case would assist the public by clarifying the law on a particular issue; or

C. persons or entities not parties to the case may be adversely affected in the absence of board review of the recommended decision and order.

Subp. 2. **Notice of intent to review.** If the board decides to review a recommended order and decision on its own motion, it shall prepare a notice of intent to review specifying the grounds for such review and serve the notice of intent to review on all parties to the case no later than 45 days following the date on which the hearing officer's decision and order was served upon the parties to the case.

Subp. 3. **Submissions in response to board's intent to review.** The board's order deciding to review shall afford all parties the opportunity to submit briefs within 30 days of its notice of intent to review. Parties desiring to present oral argument regarding the matters identified in the board's notice of intent to review must submit a request for oral argument within 30 days of service of the board's notice of intent to review.

Subp. 4. **Means of obtaining evidence.** If the board requires the submission of additional evidence under Minnesota Statutes, section 179A.041, subdivision 7, the board must obtain the evidence using the following means:

A. presentation of evidence in documentary form;

B. remand to a hearing officer for the presentation of evidence; or

C. an evidentiary hearing conducted by the board.