PUBLIC EMPLOYEE RELATIONS BOARD

NOTICE OF FINAL RULEMAKING

The Public Employee Relations Board (Board), pursuant to the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, as amended (D.C. Law 2-139; D.C. Official Code § 1-605.02(11) (2016 Repl.)), hereby gives notice of its adoption of a new Chapter 5 (Rules of the Public Employee Relations Board) of Title 6 (Personnel), Subtitle B (Government Personnel), of the District of Columbia Municipal Regulations (DCMR), effective May 1, 2020.

This rulemaking is necessary to amend procedures of the Board and to implement its authority under D.C. Official Code § 1-605.02(11) (2016 Repl.) to conduct its business and carry out its powers and duties. The amendments improve readability, provide clarity, and ensure consistency with relevant statutes, court decisions, and other provisions of law.

The Board's proposed rulemaking was published in the *D.C. Register* on May 3, 2019, at 66 DCR 5660 to receive comments on the proposed rulemaking. The comment period expired September 30, 2019. On November 18, 2019, a public hearing was held to give commenters an additional opportunity to be heard and to solicit any additional comments. A notice of second proposed rulemaking was published in the *D.C. Register* on January 17, 2020, at 67 DCR 384 to receive comments on revisions made as a result of the Board's consideration of initial comments received. On March 19, 2020, the Board met to consider the comments received during the public comment period and consider recommendations from the Executive Director and staff. After consideration of all comments received, the report and recommendations from the Executive Director and staff, the Board voted to amend the DCMR.

The current Chapter 5 of Title 6-B DCMR will be repealed in its entirety and the following amendments and new rules will be adopted

These rules were adopted as final by the Board on March 19, 2020, and will become effective on May 1, 2020.

Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended to read as follows:

Chapter 5, RULES OF THE PUBLIC EMPLOYEE RELATIONS BOARD, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

500 GENERAL PROVISIONS

500.1 The District of Columbia Public Employee Relations Board ("Board") was established in 1979 by § 501(a) of the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-605.01(a) (2016 Repl.)) ("CMPA"), and administers the Labor-Management Relations Program for the District of Columbia pursuant to §§ 1701–1718 of the CMPA (D.C. Official Code §§ 1-617.01-1-617.18 (2016 Repl.)).

500.2 The five Board members are appointed by the Mayor with the advice and consent of the Council of the District of Columbia. The Board may appoint such employees as may be required to conduct its business.

500.3 These rules should be construed broadly to effectuate the purposes and provisions of the CMPA.

500.4 The Executive Director is the principal administrative officer of the Board and performs duties designated by the CMPA or assigned by the Board, including the investigation of all petitions, requests, complaints, and other matters referred or submitted to the Board.

500.5 The Executive Director is authorized, among other things, to conduct conferences and hearings, administer oaths, issue subpoenas, sign and issue notices and reports, certify copies of papers and documents, consider requests for extensions of time and requests to intervene in a case, and, pursuant to action by the Board or by an authorized panel thereof, sign and issue decisions and orders made by or on behalf of the Board.

500.6 The Executive Director is authorized to dismiss a case on motion of the complainant or petitioner or for any of the following reasons:

(a) Untimeliness evident on the face of the complaint or petition;

(b) Failure to cure a deficiency in an initial pleading within seven (7) days of a notice of the deficiency given under § 502.14;

(c) Failure to allege facts that, if true, would entitle the complainant or petitioner to relief under the CMPA;

(d) Failure to prosecute the case;

(e) Noncompliance with an investigation of the case; or

(f) Any other ground for dismissal that the Board places within the discretion of the Executive Director.

500.7 A decision by the Executive Director will become the final decision of the Board unless within twenty-eight (28) days after issuance of the decision a party files a motion requesting the Board to reconsider the decision.

500.8 Official documents of the Board, including but not limited to notices, subpoenas, and other communications may be signed on behalf of the Board by the Executive Director or any staff members or agents authorized to sign on the Board's behalf.

500.9 Communications may be addressed to the Public Employee Relations Board at its office, 1100 Fourth Street S.W., Suite E630, Washington, D.C. 20024.

500.10 The business hours of the office are from 8:30 a.m. to 4:45 p.m., Monday through Friday, exclusive of holidays recognized by the Government of the District of Columbia.

500.11 The regular meetings of the Board are held on the third Thursday of each month at the Board's office, unless otherwise specified. The Board may hold a special meeting at any time at the request of the Chair, any member of the Board, or the Executive Director.

500.12 The Executive Director must give the public timely notice of all meetings of the Board. The notice must comply with D.C. Official Code § 2-576 (2016 Repl.).

500.13 The official acts of the Board must be recorded in the minutes of the Board. The Executive Director must maintain the minutes of the Board.

500.14 The Board is not bound in any way by any action or statement of an individual member or group of members of the Board, except when that action or statement is authorized by an official act of the Board or the provisions of this chapter.

500.15 Unless specifically provided for by a majority of the Board members present, only members of the Board, the Executive Director, staff, and agents of the Board may address the Board or participate in the discussion of matters at regular monthly, special, or emergency meetings of the Board.

500.16 The Board must make its decisions after consideration of the parties' briefs and the records submitted by the parties. The Board may order additional briefs where it deems appropriate. The Board may also order oral arguments on its own motion or upon motion of a party.

500.17 Three (3) members constitute a quorum. No decision of the Board will be valid unless supported by the majority of a quorum.

500.18 If a Board member cannot attend a meeting in person, that member may participate in the Board meeting via teleconference upon approval of the Chair.

500.19 If a Board member cannot attend a meeting in person or via teleconference, that Board member must provide reasonable notice to the Chair and the Executive Director.

500.20 If the Government of the District of Columbia is closed due to weather or a national emergency or other event, then a meeting of the Board scheduled to occur during the closure is deemed cancelled.

500.21 The public may inspect or copy the rules, decisions, and public records of the Board to the extent and in the manner authorized by the District of Columbia Freedom of Information Act, D.C. Official Code §§ 2-531—2-540.

500.22 A labor organization that represents employees of the District of Columbia Government must send the Board the name, telephone number, email address, and mailing address of each appointed and elected office holder.

501 COMPUTATION AND EXTENSIONS OF TIME

501.1 When an act is required or allowed to be done within a specified time by these rules, the Board, Chair, or the Executive Director may, upon timely request, order the time period extended or reduced to effectuate the purposes of the CMPA, except that no extension may be granted for the filing of initial pleadings.

501.2 A motion for an extension or reduction of time must be in writing and made at least three (3) business days before the expiration of the filing period. The Executive Director may allow exceptions to this requirement for good cause shown by a party.

501.3 A motion for an extension or reduction of time must indicate the purpose and reason for the requested extension or reduction of time and the positions of all interested parties regarding the change.

501.4 Whenever a period of time is measured from the service of a pleading and service is by U.S. mail, five (5) days will be added to the prescribed period.

501.5 In computing any period of time prescribed by these rules, the time begins to run the day after the event occurs. Whenever the last day to file a document falls on Saturday, Sunday, or a District of Columbia holiday, the period extends to the next business day. All prescribed time periods are calendar days, unless specified as business days.

502 FILING AND SERVICE OF PLEADINGS

502.1 All pleadings filed with the Board must be filed electronically through File & ServeXpress, pursuant to § 561, except those filed by a *pro se* party. All pleadings must include the following:

(a) The title of the proceeding (for example, unfair labor practice complaint, standards of conduct complaint, arbitration review request, petition for compensation unit determination, enforcement petition, negotiability appeal, and petition for unit clarification) and the case number, if known;

(b) The name, title, address, and telephone number of the person signing and the date of signing;

(c) The name, mailing address, email address, and telephone number of the representative, if any, of the party filing the pleading; and

(d) A signed certificate of service naming all other parties and attorneys or representatives, if any, on whom concurrent service was made. The certificate must state how and when such service was made.

502.2 As illustrated in the following example, all pleadings must contain a caption setting forth the name of the Board, the title of the proceeding, the case number, if known, and the title of the pleading:

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

[Name of Party] Complainant or Petitioner	)	
v.	)	PERB Case No. ___
[Name of Party] Respondent	)	

[Title of the Proceeding]

502.3 All pleadings submitted to the Board must be typed or legibly hand-written and limited to twenty (20) double-spaced pages. Requests to increase the page limitation must be submitted to the Executive Director at least three (3) business days before the pleading is due. The page limitation of this rule does not apply to pleadings filed with the trier of fact when the trier of fact is not the Board itself.

502.4 An initial pleading must be filed electronically through File & ServExpress, pursuant to § 561, unless filed by a *pro se* party. An initial pleading must include the following:

(a) The name, mailing address, email address, and telephone number of each party filing the pleading and, if known, of each respondent;

(b) A concise statement of the nature of the case, the basis for the claim, and the relief requested;

(c) A concise statement of all information deemed relevant, which must be set forth in numbered paragraphs; and

(d) A statement as to the existence of any related proceedings or other proceedings involving matters related to the complaint, if known, and the status or disposition of those proceedings.

502.5 A *pro se* party may file an initial pleading by personal delivery during the Board's business hours established in § 500.10. A *pro se* party may utilize the Board's public access terminal to upload the document free of charge.

502.6 An initial pleading must be served on the respondent or respondents by personal delivery, commercial delivery, or U.S. mail.

502.7 An initial pleading that is filed will be assigned a filing date and case number. The Board or its designated representative will review the pleading to determine whether it was filed in accordance with the procedural requirements of the CMPA and these rules.

502.8 An initial pleading may be amended as a matter of course before an answer is filed. Once an answer is filed, the initial pleading may be amended by motion. Unless the Board orders otherwise, an answer to an amended pleading must be made within the time remaining to respond to the original pleading or no later than fourteen (14) days after service of the amended pleading, whichever is later.

502.9 A complainant or petitioner may withdraw an initial pleading without prejudice at any time before an answer is filed. After an answer is filed, an initial pleading may be withdrawn only by order of dismissal by the Board or the Executive Director. Unless the order states otherwise, the dismissal is without prejudice.

502.10 Once a respondent has filed a notice of appearance, subsequent pleadings must be filed with the Board electronically through File & ServeXpress. A party submitting a subsequent pleading to the Board must concurrently serve a copy of the pleading on every other party, unless otherwise directed by these rules or by instructions from the Board. If a party is represented by an attorney or other representative, serving the attorney or representative is sufficient.

(a) A *pro se* party must be served by personal delivery, commercial delivery, or U.S. mail, unless a *pro se* party has waived such method of service in writing and agreed to be served by email or electronically or has used File & ServeXpress for a filing in the case. A *pro se* party may serve a party by File & ServExpress, personal delivery, commercial delivery, or U.S. mail.

502.11 A party named as a respondent in an initial pleading must file an answer no later than fourteen (14) days after service of the initial pleading, unless otherwise stated in these rules. An answer must contain a statement of its position with respect to the allegations set forth in the initial pleading. An answer must also include a statement of any affirmative defenses.

502.12 An answer must include a specific admission, denial, or statement that the respondent is without knowledge to admit or deny each allegation in the initial pleading. A statement of a lack of knowledge to admit or deny will operate as a denial. Admissions or denials may be made to all or part of an allegation but must address every allegation.

502.13 A respondent who fails to file a timely answer may be deemed to have admitted the material facts alleged in the initial pleading and to have waived a hearing. A failure to deny an allegation may also be deemed an admission of that allegation.

502.14 If review of a pleading reveals that the pleading does not comply with the procedural requirements of the CMPA or these rules, the Executive Director will notify the party or the party's representative of the deficiencies in the pleading and allow seven (7) days from the date of notice for the deficiencies to be cured. Failure to cure deficiencies in an initial pleading within that time may result in dismissal of the case without further notice. An amended pleading filed to cure deficiencies pursuant to a notice from the Executive Director relates back to the date of the original pleading.

502.15 An interested party who wishes to intervene in a pending proceeding must promptly file a request to intervene and state the grounds for intervention.

502.16 The Board or the Executive Director may grant or deny a request for intervention, taking into consideration the nature of the interests of the intervenor, whether those interests will be adequately protected by existing parties, and the timeliness of the intervenor's request.

502.17 When there is a change in representation, the new representative of a party must promptly file a notice of appearance in the case and serve a copy on all parties to the proceeding.

503 EXCLUSIVE RECOGNITION AND NONCOMPENSATION UNIT DETERMINATION

503.1 A labor organization seeking exclusive recognition as the representative for an appropriate unit may file a "recognition petition." The recognition petition must include the following:

(a) A description of the proposed unit, including the name, address, and telephone number of the employing agency (and agency subdivision, if any), the number of employees in the proposed unit, and the general classifications of employees;

(b) The name, address, and telephone number of any other labor organization known to the petitioner that claims recognition as a representative of any employees in the proposed unit;

(c) A statement as to whether there is a collective bargaining agreement in effect covering the proposed unit or any part of it, including the effective date and expiration date of any such agreement;

(d) A statement as to how the employees in the proposed unit share a community of interest, by virtue of such common factors as skills, working conditions, supervision, physical location, organizational structure, distinctiveness of functions performed, or the existence of integrated work processes;

(e) A roster of the petitioner's officers and representatives, a copy of its constitution, articles of incorporation, and bylaws, if any, and a statement of its objectives; and

(f) A statement that the petitioning labor organization subscribes to the standards of conduct for labor organizations, as set forth in § 1703(a) of the CMPA, D.C. Official Code § 1-617.03(a) (2016 Repl.).

503.2 A petition for exclusive recognition must be supported by a showing of interest, not more than one year old, that at least thirty percent (30%) of the current employees in the proposed unit desire representation by the petitioner. Evidence of the employees' showing of interest must be submitted to the Board by commercial delivery, U.S. mail, or personal delivery to the Board's office. Forms of evidence may include the following:

(a) Current dues deduction authorizations;

(b) Notarized membership lists;

(c) Membership cards;

(d) Individual authorization cards or petitions signed and dated by employees indicating their desire to be represented by the labor organization; or

(e) Other evidence as determined appropriate by the Board.

503.3 Upon service of the recognition petition by the petitioner, the agency must prepare an alphabetical list of all employees in the proposed unit for the last full pay period before the filing of the petition. The list must distinguish between professional and nonprofessional employees. This list, along with any comments concerning the petition, must be served on the Board no later than fourteen (14) days after the agency's receipt of the petition. The Executive Director may request additional payroll records from the agency in order to properly investigate the showing of interest.

503.4 The Board or its designee must determine whether the petitioner's evidence adequately shows that at least thirty percent (30%) of the employees in the proposed unit desire representation by the petitioner. While signed and dated authorization cards, in accordance with § 503.2, will always be accepted as adequate evidence, other forms of evidence may be considered adequate by the Board as prescribed under § 503.2 and § 503.12. The showing of interest determination may not be subject to appeal.

503.5 If the petition is amended to seek to represent a unit different from that in the original petition, the amended petition must be accompanied by a thirty percent (30%) showing of interest in the new unit.

503.6 In cases where an agency's staffing fluctuates due to the seasonal nature of the work or in cases where a unit is expanding, a showing of interest is required only among those employees employed at the time the petition was filed.

503.7 If the status of employees in the proposed unit or the appropriateness of the unit is disputed, the Executive Director may conduct proceedings to resolve the dispute.

503.8 If the Executive Director is unable to resolve issues concerning the eligibility of employees or unit appropriateness, a hearing may be ordered in the matter. If the hearing examiner recommends a change in the unit, the petitioner may submit additional evidence to establish a showing of interest in the changed unit, no later than seven (7) days after the issuance of the hearing examiner's report and recommendation.

503.9 The Board must maintain the confidentiality of the showing of interest submitted in support of a petition filed under this section or § 506, and this evidence will not be available for public access.

503.10 If the requirements of §§ 503.1, 503.2, and 503.3 are met, the Executive Director must prepare a notice of recognition petition to be posted by the agency in conspicuous places on all employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's service of the notice and keep it posted for fourteen (14) consecutive days. The notice must include the following:

(a) The name of the petitioner;

(b) A description of the proposed unit;

(c) The date the notice was posted;

(d) The name of any other labor organization currently representing employees in the proposed unit; and

(e) The requirements for intervention by any other labor organization.

503.11 A labor organization may file an intervention petition within the period required by the notice. The intervention petition must contain the same information as required of a petitioner under § 503.1.

503.12 An intervention petition must be accompanied by:

(a) A showing of interest that at least ten percent (10%) of the employees in the bargaining unit set forth in the petition for exclusive recognition wish to be represented by the intervening labor organization, unless a different unit is proposed by the intervenor, in which case a showing of interest of at least thirty percent (30%) must accompany the intervenor's petition; or

(b) Where applicable, a statement that the intervenor is the incumbent exclusive representative of the employees in the proposed unit. The incumbent labor organization must be allowed to intervene as a matter of right without submitting any showing of interest.

503.13 If the intervenor's showing of interest is insufficient, the request for intervention will be denied.

503.14 A petition for exclusive recognition will be barred if:

(a) During the previous twelve (12) months, a valid majority status determination has been made for substantially the same bargaining unit, a certification of representative has been issued, or the Board has determined the compensation unit placement; or

(b) A collective bargaining agreement is in effect covering all or some of the employees in the bargaining unit unless:

(1) The agreement is of three (3) years or shorter duration and the petition is filed between one hundred twenty (120) and sixty (60) days before the scheduled expiration date or after the stated expiration of the contract; or

(2) The agreement has a duration of more than three (3) years and the petition is filed after the contract had been in effect for nine hundred seventy-five (975) days.

503.15 Upon the filing of a petition under § 503.1 or § 503.11, the Executive Director may conduct a preliminary investigation. Thereafter, the Board must take appropriate action, which may include any one or more of the following:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Holding a hearing;

(e) Conducting an election; or

(f) Approving the petition certifying the labor organization pursuant to § 503.17.

503.16 Hearings under § 503.15(d) are investigatory and not adversarial.

503.17 If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the Board may approve the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than fifty percent (50%) support for the petitioning labor organization), such as documentary proof not more than one year old, indicating that a majority of employees wish to be represented by the petitioning labor organization. The Executive Director must determine majority status and must recommend to the Board whether certification should be granted without an election.

(a) If the proposed unit contains professionals and nonprofessionals, recognition without an election may be permitted only if a majority of the professional employees petition for inclusion in the unit.

503.18 If the choice available to employees in an appropriate unit includes two (2) or more labor organizations, the Board must order an election in accordance with these rules.

504 COMPENSATION UNIT DETERMINATION

504.1 An agency, a labor organization, or a group of labor organizations may file a "petition for compensation unit determination" seeking determination of an appropriate unit for the purpose of negotiations for compensation.

504.2 The Board may on its own motion initiate proceedings for the determination of units for compensation bargaining absent the filing of a petition by any party.

504.3 A petition for the determination of a compensation unit must include the following:

(a) The name and address of each personnel authority, agency, and labor organization that might be affected by the petition;

(b) A description of the proposed unit, setting forth the numbers and types of employees to be included;

(c) A list of the pay, retirement, and other compensation systems to be included in the proposed unit; and

(d) A showing that the proposed unit consists of broad occupational groups so as to minimize the number of pay systems.

504.4 Upon the filing of a petition or commencement of proceedings by the Board on its own motion for the determination of a compensation unit, the Executive Director must prepare an official notice to be posted by the employing agency in conspicuous places on employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's transmittal of the notice and keep it posted for fourteen (14) consecutive days thereafter. The notice must indicate the following:

(a) The party or parties that filed the petition or initiated the proceedings;

(b) Each labor organization that might be affected by the proposed unit;

(c) The proposed unit description;

(d) A list of the compensation systems proposed to be included;

(e) The date the notice was posted; and

(f) A statement that within fourteen (14) days after posting of the notice any interested labor organization or person may file written comments.

504.5 A labor organization may file a request to intervene in the case and any party may file comments concerning the proposed unit.

504.6 The Executive Director must serve a copy of the notice on each labor organization that has exclusive recognition for any employees in the proposed unit and on each affected agency or its representative.

504.7 Any labor organization that has exclusive recognition for any employees in the proposed unit must be permitted to intervene.

504.8 After the filing of a petition or upon commencement of a proceeding, the Executive Director may conduct a preliminary investigation.

504.9 In making its determination regarding an appropriate compensation unit, the Board may take any one or more of the following actions:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Conducting a hearing; or

(e) Granting the petition or determining a unit.

504.10 Hearings under § 504.9(d) are investigatory and not adversarial.

505 MODIFICATION OF UNITS

505.1 A petition for unit modification of either a compensation or non-compensation unit may be filed by a labor organization or by a labor organization and an agency jointly. A unit modification may be sought for any of the following purposes:

(a) To reflect a change in the identity or statutory authority of the agency;

(b) To add to an existing unit unrepresented classifications or employee positions created since the recognition or certification of the exclusive representative;

(c) To delete classifications that are no longer in existence or that, by virtue of changed circumstances, are no longer appropriate to the established unit; or

(d) To consolidate two (2) or more bargaining units within an agency that are represented by the same labor organization.

505.2 A petition for unit modification must include the following:

(a) The names and addresses of all labor organizations and agencies affected by the proposed change;

(b) A description of each existing unit and the proposed unit, including the name and address of the employer, the number of employees in the existing and proposed units, and the personnel and payroll classifications of the employees;

(c) The date of recognition or certification of each labor organization for the affected units;

(d) A copy of the documentation evidencing any existing recognition or certification; and

(e) A statement of the reasons for the proposed modification.

505.3 Upon the filing of a petition for unit modification, the Executive Director must prepare an official notice to be posted by the agency in conspicuous places on employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's service of the notice and keep it posted for fourteen (14) days thereafter. The notice must indicate the following:

(a) The party or parties who filed the petition or initiated the proceedings;

(b) The names and addresses of all labor organizations that would be affected by the proposed modification;

(c) The existing and the proposed unit descriptions;

(d) A list of the compensation systems proposed to be included;

(e) The date the notice was posted; and

(f) A statement that, within fourteen (14) days after posting of the notice, any labor organization or person that would be affected may file written comments.

505.4 An affected labor organization may file a request to intervene in the case and any party may file comments concerning the proposed modification. All comments or requests to intervene must meet the requirements of § 502.

505.5 Upon the filing of a petition under this section, the Board may direct a preliminary investigation and thereafter must take appropriate action, which may be any one or more of the following:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Holding a hearing; or

(e) Granting the modification sought.

505.6 Hearings under § 505.5(d) are investigatory and not adversarial.

506 CLARIFICATION OF UNITS

506.1 A petition filed for clarification of an existing unit may be filed by the agency or by the exclusive representative of the unit. The petition must include the following:

(a) A description of the existing unit;

(b) A copy of the documentation evidencing any existing recognition or certification; and

(c) A statement of why a clarification of the existing unit is requested.

506.2 The Board must grant or deny the petition following an appropriate investigation and recommendation to the Board by the Executive Director or a hearing examiner.

507 DECERTIFICATION PETITIONS

507.1 The purpose of a decertification proceeding is to determine whether a majority of the employees in a bargaining unit maintain their desire to be represented by the existing exclusive bargaining representative.

507.2 A petition to decertify an exclusive representative of a bargaining unit may be filed with the Board by the District or by an employee or employees in the bargaining unit. The petition must be served on the exclusive representative in accordance with § 502.6 and must include the following:

(a) The name, address, and telephone number of the petitioner and of the petitioner's representative if any. (A petitioner's representative under this rule may not be a labor organization.)

(b) The name, address, and telephone number of the exclusive representative.

(c) The name, address, and telephone number of the employer;

(d) A specific and detailed description of the bargaining unit including employee classifications or job titles;

(e) The approximate number of employees in the bargaining unit;

(f) The date that the exclusive representative was recognized and the method of recognition, if known; and

(g) A brief description of any collective bargaining agreements covering any employees in the bargaining unit, including the expiration dates of the agreements.

507.3 A petition for decertification filed by an employee or employees must be accompanied by a showing that at least thirty percent (30%) of the employees in the bargaining unit no longer desire to be represented by the exclusive representative.

507.4 An employing agency may not assist an employee or group of employees in the filing of a decertification petition.

507.5 A petition for decertification filed by the District must be accompanied by a sworn statement and supporting evidence of lack of activity by the exclusive representative.

507.6 The exclusive representative may file a response to the decertification petition no later than fourteen (14) days after the date of service of the petition. If the exclusive representative does not file a timely response indicating that it desires to continue to represent the employees, the Board may issue a decertification order.

507.7 If the exclusive representative files a timely response indicating that it desires to continue to represent the employees and the requirements of § 507.2 and § 507.3 or § 507.5 have been met, the Board must order an election to determine majority status.

507.8 The Board will not entertain a decertification petition in the following circumstances:

(a) Within the preceding twelve (12) months, the Board has certified the results of an election among all or some of the employees in the bargaining unit or has determined the compensation unit placement;

(b) The exclusive representative of the employees in the bargaining unit was voluntarily recognized within the preceding twelve (12) months and the recognition was certified by the Board; or

(c) A collective bargaining agreement is in effect covering employees in the bargaining unit except in the following circumstances:

(1) The agreement is of three (3) years or shorter duration and the petition is filed between one hundred twenty (120) and sixty (60) days before the scheduled expiration date or after the stated expiration of the contract; or

(2) The agreement has a duration of more than three (3) years and the petition is filed after the contract had been in effect for nine hundred seventy-five (975) days.

507.9 Upon receiving a timely response from the exclusive representative pursuant to § 507.6, the Board must transmit a copy of the decertification petition to the agency. The agency must prepare an alphabetical list of all employees in the unit for the last full pay period before the filing of the petition. This list, along with any comments concerning the petition, must be served on the Board no later than fourteen (14) days after the Board's service of the petition on the agency.

507.10 The Board or its designee must determine the adequacy of the showing of interest.

507.11 If the requirements of §§ 507.2, 507.3 and 507.9 are met, the Executive Director must prepare a notice to be posted by the agency in conspicuous places on all employee bulletin boards at work sites of employees in the unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's service of the notice and keep it posted for fourteen (14) consecutive days. The notice must include the following:

(a) The name of the petitioner;

(b) A description of the unit;

(c) The date the notice was posted;

(d) The name of the labor organization currently representing employees in the unit; and

(e) The requirements for intervention by any other labor organization.

507.12 A labor organization may file an intervention petition within the period required by the notice. The petition must contain the same information as required under § 507.2.

507.13 An intervention petition must be accompanied by a showing of interest that at least ten percent (10%) of the employees in the bargaining unit set forth in the decertification petition wish to be represented by the intervening labor organization, unless a different unit is proposed by the intervenor, in which case a showing of interest of at least thirty percent (30%) must accompany the intervenor's petition.

507.14 Upon the filing of a petition pursuant to § 507.2 or § 507.12, the Executive Director may conduct a preliminary investigation. Thereafter, the Board must take appropriate action, which may include any one or more of the following:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Holding a hearing;

(e) Conducting an election.

507.15 Hearings under § 507.14(d) are investigatory and not adversarial.

507.16 When there is no intervening labor organization, an election to decertify an incumbent exclusive representative is not held if the incumbent provides the Executive Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election is held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

510 ELECTION PROCEDURES: GENERAL

510.1 Representation elections will be conducted by the Board or by an impartial body selected by the mutual agreement of the parties. The parties to a representation election must inform the Board as to whether they have selected by mutual agreement an impartial body to conduct the election. If they inform the Board that they have not selected an impartial body, the Board will conduct the election.

510.2 All elections must be by secret ballot.

510.3 The agent of the Board or other impartial body conducting the election must furnish to the agency and to the labor organization(s) that are parties to the proceeding an official notice setting forth the details of the election. This notice must be posted not less than seven (7) days before the date of the election and must remain posted until after the election. Copies of the Notice must be distributed in a manner by which notices are normally distributed.

510.4 In any election, each party to the election may be represented at each polling place by an equal, predesignated number of poll watchers of its choice, subject to limitations that are either prescribed by the agent of the Board or other impartial body or mutually agreed upon by the parties and approved by the Board.

510.5 Each party must submit the names(s) of its designated observer(s) to the agent of the Board or other impartial body before the day of the election. The observers represent their principals, challenging voters and generally monitoring the election process.

510.6 When an election involves a bargaining unit containing professional and non-professional employees, all professional employees must be given two (2) ballots: one for indicating whether they desire a combined professional/nonprofessional unit and a second for indicating the choice of representative, if any.

510.7 If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the employing agency has submitted a written waiver of a hearing, and the Board cannot determine whether a majority of the proposed bargaining unit wish to be represented by the petitioning labor organization or the employing agency chooses not to voluntarily recognize the appropriate unit, an election pursuant to §§ 512 or 513 will be conducted.

510.8 Parties are encouraged to enter into election agreements. If the parties are unable to agree on procedural matters—specifically, the eligibility period, method of election, dates, hours, or locations of the election—the Executive Director will decide election procedures and issue a direction of election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

510.9 When there is no intervening labor organization, an election will not be held if the petitioner provides the Executive Director with a written request to withdraw the petition. When there is an intervenor and the petitioner provides the Executive Director with a written request to withdraw the petition, an election will be held if the intervenor presents a thirty percent (30%) showing of interest within the time period established by the Executive Director.

510.10 The parties may consent to an election without holding a hearing on the appropriateness of the unit.

511 ELECTION PROCEDURES: ELIGIBILITY

511.1 To be eligible to vote in an election, an employee must have been employed in the bargaining unit during the pay period before the date on which the Board ordered the election or as otherwise determined by the Board or consented to by the parties and must still be employed in the bargaining unit on the date of the election.

511.2 The employer must file with the Board and the labor organization(s) a list of employees eligible to vote in the election no later than seven (7) days after approval of an election agreement or seven (7) days after the Board or the Executive Director has directed an election, whichever occurs first. Such list must also include the home addresses of the eligible employees.

511.3 To be eligible to vote in a runoff election, an employee must have been eligible to vote in the original election and still be employed in the bargaining unit on the date of the runoff.

511.4 The agent of the Board agent or other impartial body or any authorized observer may challenge the eligibility of any voter and in so doing must state the reason for the challenge. A voter whose identity has been challenged may establish identity by showing any piece of identification acceptable to the agent of the Board or other impartial body.

511.5 An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the agent of the Board or other impartial body are unable to resolve the challenged ballot(s) before the tally of ballots, the agent of the Board or other impartial body will impound and preserve the unresolved challenged ballot(s) until the Executive Director or the Board makes a determination regarding the eligibility of the voter.

511.6 A challenged ballot must be placed in a "challenged ballot" envelope. The envelope must be sealed by the agent of the Board or other impartial body and initialed by the observers. The agent of the Board or other impartial body must write the reason for the challenge and the voter's name on the envelope and place the envelope in the ballot box.

511.7 The agent of the Board or other impartial body should attempt to resolve ballot challenges to the satisfaction of both parties before the ballots are counted.

512 ELECTION PROCEDURES: ON-SITE ELECTIONS

512.1 The procedures set forth in this section apply to an election conducted on-site, unless otherwise agreed to by the parties and approved by the Board.

512.2 The agent of the Board or other impartial body must designate the areas in proximity to the polling place in which electioneering will be prohibited.

512.3 The agent of the Board or other impartial body must examine the ballot box in the presence of the observers immediately before opening the polls and must seal the ballot box following the observers' inspection of the polls and the ballot box. The seal must allow for only one opening on the top of the ballot box for voters to insert their ballots.

512.4 A voter casts a ballot by marking an (X) or a (√) in a circle or block designating the voter's choice in the election.

512.5 If a voter inadvertently spoils a ballot, the voter may return the ballot to the agent of the Board or other impartial body who must give the voter another ballot. The spoiled ballot must be placed in a "spoiled ballot" envelope. The envelope must

be sealed by the agent of the Board or other impartial body and initialed by the observers. The agent of the Board or other impartial body must place the envelope in the ballot box.

512.6 A voter should fold the ballot so that no part of its face is exposed and on leaving the voting booth deposit the ballot in the ballot box.

512.7 Each ballot box must be sealed by the agent of the Board or other impartial body and initialed by the observers after each election session and so kept until the re-opening of the polls and must remain in the custody of the agent of the Board or other impartial body until the tallying of the ballots.

512.8 Upon request of a voter, the agent of the Board or other impartial body may privately assist the voter to mark the ballot.

512.9 Upon conclusion of the polling, ballots will be tallied in accordance with § 514.

512.10 If there is only one polling location, ballots will be tallied at the polling site. If there is more than one polling location, the agent of the Board or other impartial body must, upon conclusion of the voting, seal the ballot boxes, each of which must be initialed by the observers. The agent of the Board or other impartial body must transport them to a predetermined central location. When all of the ballot boxes have arrived, the agent of the Board or other impartial body must open the ballot boxes in the presence of observers and commingle the ballots for tallying.

513 ELECTION PROCEDURES: MAIL BALLOTS

513.1 Taking into consideration the desires of the parties, the Executive Director may direct an election to be conducted by mail when the schedules, shifts, or work sites of employees prevent them from being present at a common location at common times.

513.2 Unless otherwise agreed to by the parties and approved by the Board, the procedures in this section apply to an election conducted by mail ballot.

513.3 When an election is conducted by mail, the agency must, at least fourteen (14) days before the date of the election, provide to the Board a copy of the employee list in the form of mailing labels or in a format in which the information can be readily transferred to mailing labels. The list must distinguish between professional and nonprofessional employees.

513.4 The agent of the Board or other impartial body must mail each eligible voter a packet containing a ballot, ballot envelope, pre-addressed stamped return envelope, and instructions.

513.5 The instructions must advise the voter to mark the ballot with an (X) or a (√) in the circle or block designating a choice in the election without identifying marks, place the ballot in the ballot envelope, seal the ballot envelope, place the ballot envelope in the return envelope, seal the return envelope, sign the return envelope, and mail the return envelope to the designated post office box or address provided in the instructions. The instructions must also advise the voter of the date by which envelopes must be received. Ballots not returned by U.S. mail will not be accepted.

513.6 When the election includes a vote on a combined professional/nonprofessional unit, the agent of the Board or other impartial body must mail the professional and nonprofessional employees separate ballots and ballot envelopes for unit preference and for choice of representative. The instructions must advise these voters to mark the ballots separately, to place them in their respective ballot envelopes, and to place both ballot envelopes in the return envelopes.

513.7 The parties may designate an equal number of representatives, as set by the Board, to observe the tallying of the ballots. The ballots will be tallied on a date and location set by the Board.

513.8 Ballots must remain unopened and be kept in the custody of the agent of the Board or other impartial body until the date set for tallying. On the date set for tallying, the representatives and the Agent may challenge any ballots before the opening of the return envelopes.

513.9 Only ballots received prior to the tally will be counted.

513.10 Challenged ballots must be handled in accordance with § 511.6.

513.11 All ballots that have not been challenged must be separated from their return envelopes and commingled before tallying. The ballots will be tallied in accordance with § 514.

514 ELECTION PROCEDURES: TALLYING

514.1 Representation will be determined by the majority of the valid ballots cast. Each party may designate representative(s) to observe the tallying of the ballots. Ballots must be tallied in the presence of the parties' observers. The count must proceed as set forth in this section.

514.2 The agent of the Board or other impartial body must segregate the challenged ballots. The challenged ballots will be opened and counted only if the challenges have been resolved to the satisfaction of the parties and the challenged ballots could be determinative of the outcome of the election.

514.3 When the election includes a vote on a combined professional/nonprofessional unit, the ballots on unit preference must be tallied first. If a majority of the professional employees casting valid ballots votes for a combined unit, the ballots on choice of representative, if any, must be tallied with the ballots of nonprofessional employees. If a majority of professional employees voting fails to vote for a combined unit, the ballots on choice of representative, if any, must be tallied separately.

514.4 The Board must preserve all ballots until the conclusion of any related proceedings.

514.5 The participants in the tally are the agent of the Board or other impartial body and official observers, in the numbers necessary. Members of the press and other interested persons may be present to the extent permitted by the physical facilities and the permission of the owner of the premises being used. The agent in charge of the election has discretion to limit the number of participants.

514.6 The intent of the voter, if clearly ascertainable from the ballot itself, must be followed in assessing the marking of the ballot.

514.7 If the ballot is defaced, torn, or marked in a manner that makes it not understandable or that identifies the voter, the ballot must be declared void.

514.8 If challenges to ballots have not been resolved to the satisfaction of the parties and the challenges are sufficient in number to affect the outcome of the election, the Board must resolve the challenges in accordance with §§ 515.3 and 515.4.

515 CERTIFICATION OF ELECTION RESULTS

515.1 The Executive Director must prepare a report of election results that includes a tally of the ballots. The Executive Director must serve the report on each party, attaching a certificate of service.

515.2 No later than seven (7) days after the tally of ballots has been served, any party to the election proceeding may file with the Board objections to the election procedure or to any conduct that might have improperly affected the results of the election. The objecting party must include a specific statement of the reasons for each objection.

515.3 If the challenged ballots are sufficient in number to affect the results of the election or if objections are filed, the Executive Director, or other person designated by the Board, must conduct an investigation and make a report of findings to the Board. If the Board has reason to believe that such allegations or challenges may be valid, the Board must order a hearing on the matter within two (2) weeks after the date of receipt of the objections. Any hearing held pursuant to this subsection is investigatory and not adversarial.

515.4 Following its consideration of all challenges and objections, the Board may:

(a) Set aside the election and order that a new election be conducted;

(b) Issue a certification of representative; or

(c) Issue a certification of results that no union has been selected.

515.5 Except as provided in D.C. Official Code § 1-617.10(d), the Executive Director, on behalf of the Board, must certify the results of each election no later than ten (10) business days after the tally of ballots has been served.

515.6 Where there are three (3) or more choices on the ballot, an election in which (after any determinative challenges have been resolved) none of the choices receives a majority of the valid votes cast is considered an inconclusive election. In such case, the Board must order that another election be conducted between the two (2) choices on the original ballot that received the highest and next highest number of votes. In the event of a tie in the second election, the Board must certify the election results indicating that no representative was selected.

516 PETITIONS TO AMEND CERTIFICATION

516.1 An exclusive representative may file a petition with the Board to amend its certification when there is a change in the identity of the exclusive representative that does not raise a question concerning representation (*e.g.*, whether the employees have designated a particular organization as their bargaining agent). A change in the identity of the representative that does not raise a question concerning representation may include a change in the name of the labor organization.

516.2 The petition must contain the following:

(a) The name, address, and telephone number of the employer as shown in the certification;

(b) The name, address, and telephone number of the exclusive representative, as shown in the certification;

(c) The name, address, and telephone number of the petitioner's representative; and

(d) A description of the proposed amendment.

516.3 The Board may grant or deny the petition following an appropriate investigation, which may include a hearing and recommendation to the Board by the Executive Director.

520 UNFAIR LABOR PRACTICE COMPLAINTS

520.1 The rules in this section detail the procedures for initiating, processing, and resolving complaints that the agency, employees, or a labor organization has committed or is committing an unfair labor practice in violation of D.C. Official Code § 1-617.04 (2016 Repl.).

520.2 An unfair labor practice complaint may be filed with the Board by a labor organization, an agency, or an aggrieved person. An unfair labor practice complaint and any answer thereto must be filed in accordance with § 502.

520.3 Unfair labor practice complaints must include a clear and complete statement of the facts constituting the alleged unfair labor practice, including the date, time, and place of occurrence of each particular act alleged, the date the complainant became aware of such an act if that date is later than the date on which the act occurred, and the manner in which D.C. Official Code § 1-617.04 (2016 Repl.) is alleged to have been violated.

520.4 An unfair labor practice complaint must be filed no later than one hundred twenty (120) days after the date on which the alleged violation occurred or the date the complainant knew or should have known of the alleged violation, if later.

520.5 An amended complaint and any answer thereto must be filed in accordance with § 502.8. An amended complaint may allege an additional violation if the amended complaint is filed no later than one hundred twenty (120) days after the date on which the alleged additional violation occurred or the date the complainant knew or should have known of the alleged additional violation, if later.

520.6 If a review of the complaint and any response thereto reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.

520.7 The Executive Director must investigate each complaint. The investigation may include an investigatory conference with the parties. When requested by the Executive Director, the parties must submit to the Executive Director evidence relevant to the complaint. Such evidence may include affidavits or other documents. If the evidence a complainant submits to the Executive Director is insufficient to establish the existence of an essential element of the complainant's case as to which it has the burden of proof, the Executive Director may dismiss the case.

520.8 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Executive Director must issue a notice of hearing and serve it upon the parties.

520.9 The Board may order preliminary relief. A request for preliminary relief must be accompanied by affidavits or other evidence supporting the request. Preliminary relief may be granted where the Board's ultimate remedy may be inadequate and the Board finds that the conduct is clear-cut and flagrant, the effect of the alleged unfair labor practice is widespread, the public interest is seriously affected, or the Board's processes are being interfered with.

526 IMPASSE RESOLUTION PROCEEDINGS: COMPENSATION NEGOTIATIONS

526.1 A notice of impasse under D.C. Official Code §§ 1-617.17(f)(2) or (3) (2016 Repl.) may be filed by one or both of the parties and must include the following:

(a) The name of the chief negotiator for each party;

(b) The expiration date of the existing collective bargaining agreement (if any);

(c) A description of the unit affected by the impasse, including the approximate number of employees in the unit;

(d) The date when negotiations commenced and the date of the last meeting; and

(e) The nature of the matters in dispute and any other relevant facts, including a list of specific demands upon which impasse has been reached. Any bargaining proposal included with the notice of impasse must be filed in a manner consistent with D.C. Official Code § 1-617.17(h) (2016 Repl.).

526.2 Upon receipt of a notice of impasse concerning compensation negotiations, other than an automatic impasse as prescribed under D.C. Official Code § 1-617.17(f)(2) (2016 Repl.), the Executive Director must verify with the other party (unless jointly filed) that the parties are at impasse.

526.3 Upon receipt of a notice of impasse and, if required, verification thereof, the Executive Director must consult with the parties regarding their choice of mediator, if any. If the parties are unable to agree upon a mediator, the Executive Director must appoint one or request that the Federal Mediation and Conciliation Service provide one.

526.4 Any information disclosed by the parties to a mediator, including all records, reports and documents prepared or received by the mediator in the performance of duties is confidential.

526.5 If impasse is not resolved through mediation within thirty (30) days, using a method of their choosing, the parties may recommend an arbitrator or board of arbitration to be appointed by the Executive Director.

526.6 If the parties do not make a recommendation, an arbitrator will be selected in the following manner:

(a) The Executive Director must submit to the parties a list of at least five (5) names of arbitrators.

(b) The parties must confer in person or by telephone and select an arbitrator by means of alternate striking of names from the list until one remains.

(c) The parties must give the remaining name to the Executive Director, who will appoint that individual as the arbitrator.

(d) If the appointed arbitrator declines or is unable to serve, the above process will be repeated.

526.7 No later than seven (7) days after appointment, the arbitrator and the parties, with the assistance of the Executive Director, if necessary, must jointly select a date, time, and place for the hearing.

526.8 Arbitration awards must be in writing and signed by the arbitrator and must be served on the parties no later than forty-five (45) days after the arbitrator has been appointed, unless otherwise agreed to by the parties. A statement of the arbitrator's fee and expenses should be submitted with the award.

527 IMPASSE RESOLUTION PROCEEDINGS: NONCOMPENSATION NEGOTIATIONS

527.1 Upon receipt of a request for impasse resolution concerning terms and conditions of employment other than compensation, or upon its own motion, the Executive Director may declare an impasse when the following has occurred:

(a) After a reasonable period of negotiations, further negotiation appears to be unproductive; or

(b) An impasse is declared in compensation negotiations covering the same employees as the terms and conditions negotiations.

527.2 A request for resolution of an impasse concerning terms and conditions of employment other than compensation must include the following:

(a) The name of the chief negotiator for each party;

(b) The expiration date of the existing collective bargaining agreement (if any);

(c) A description of the unit affected by the impasse, including the approximate number of employees in the unit;

(d) The date when negotiations commenced and the date of the last meeting; and

(e) The nature of the matters in dispute and any other relevant facts, including a list of specific demands upon which impasse has been reached.

527.3 Upon receipt of a request for impasse resolution procedures for noncompensation matters, the Executive Director must initiate an informal inquiry. If the Executive Director determines that the parties have reached an impasse, despite diligent efforts, the Executive Director must consult with the parties regarding their choice of impasse resolution procedures. These include mediation, fact-finding, and arbitration, either exclusively or some combination thereof. The parties may decide, by mutual agreement, to engage in any of the impasse resolution procedures outlined in D.C. Official Code §§ 1-617.02(c) and 1-617.17(f)(3A) (2016 Repl.).

527.4 If the parties are unable to agree on the type of impasse resolution procedures to be utilized, the Executive Director will appoint a mediator.

527.5 If the parties are unable to agree upon a mediator, the Executive Director must appoint one or request that the Federal Mediation and Conciliation Service provide one.

527.6 Any information disclosed by the parties to a mediator, including all records, reports and documents prepared or received by the mediator in the performance of mediation duties is confidential.

527.7 The Executive Director may direct fact-finding using the following procedures:

(a) The parties may jointly request the assignment of a specific fact-finder or fact-finder arb or designate the mediator to serve as the fact-finder or as a member of a fact-finding panel;

(b) If the parties are unable to make a selection from a list supplied by the Executive Director, the Executive Director must assign a fact-finder;

(c) The fact-finder must review the positions of the parties with a view toward focusing attention on the issues in dispute and resolving differences as to facts;

(d) The fact-finder must meet with the parties within seven (7) days after appointment, hold conferences and hearings, if necessary, to facilitate the fact-finding process, and take any other steps necessary to investigate and to effect settlement of the impasse through fact-finding;

(e) The fact-finder must make a written report of findings of fact and recommendations for resolution of the impasse. The Board may set a deadline for the submission of the report, which must be submitted confidentially to the parties and to the Board, unless the parties resolve the dispute before the submission of the written report; and

(f) If the parties are unable to resolve the dispute within seven (7) days after the Board receives the report and recommendations, the Board may make the report and recommendations public using the news media or other appropriate means.

527.8 Upon joint request of the parties, the Executive Director may appoint an arbitrator to resolve the impasse. The parties may jointly request the assignment of a particular arbitrator, or the use of a particular arbitrator selection service. The parties may request as an arbitrator for noncompensation matters, an arbitrator or Board of Arbitration currently appointed to consider compensation matters at impasse between the parties.

527.9 If the parties do not make a recommendation, an arbitrator will be selected in the following manner:

(a) The Executive Director must submit to the parties a list of at least five (5) names of arbitrators.

(b) The parties must confer in person or by telephone and select an arbitrator by means of alternate striking of names from the list until one remains.

(c) The parties must give the remaining name to the Executive Director, who will appoint that individual as the arbitrator.

(d) If the appointed arbitrator declines or is unable to serve, the above process will be repeated.

527.10 No later than seven (7) days after appointment, the arbitrator and the parties, with the assistance of the Executive Director, if necessary, must jointly select a date, time, and place for the hearing.

527.11 Arbitration awards must be in writing and signed by the arbitrator and must be served on the parties no later than forty-five (45) days after the arbitrator has been appointed, unless otherwise agreed to by the parties. A statement of the arbitrator’s fee and expenses must be submitted with the award.

527.12 Fact-finding or arbitration proceedings directed by the Board may proceed in the absence of any party who, after due notice, fails to be present and fails to obtain an adjournment.

532 NEGOTIABILITY APPEAL PROCEEDINGS

532.1 If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board. If a negotiability issue exists at the time the Executive Director determines that an impasse has occurred, a negotiability appeal must be filed with the Board no later than seven (7) days after the Executive Director's determination as to the existence of an impasse. Unless otherwise ordered by the Board, impasse proceedings will not be suspended pending the Board's determination of a negotiability appeal.

532.2 Except as provided in § 532.1, a negotiability appeal must be filed no later than thirty-five (35) days after a written communication from the other party to the negotiations asserting that a matter is nonnegotiable or otherwise not within the scope of collective bargaining under the CMPA.

532.3 A negotiability appeal must include the following:

(a) The name, title, mailing address, email address, and telephone number of the chief negotiator for each party;

(b) A clear and complete statement of the negotiability issue(s), including a copy of the proposed or existing provisions at issue and specific reference to any applicable statute, regulation, or collective bargaining agreement provision; and

(c) Any written communication from the other party to the negotiation asserting that a proposal is nonnegotiable.

532.4 The respondent may file an answer and supporting brief to the negotiability appeal within fourteen (14) days after the date of service of the appeal. The response must state in clear and complete terms the respondent's position on each negotiability issue raised in the appeal.

532.5 The petitioner may file a reply brief within fourteen (14) days after the date of service of the answer.

532.6 Following final submission on the matter, the Board may issue a written decision or, if necessary, hold a hearing. A hearing pursuant to this subsection is investigatory and not adversarial.

538 GRIEVANCE ARBITRATION REVIEW REQUEST

538.1 A party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file with the Board a request for review of the award no later than twenty-one (21) days after service of the award. Service of the arbitration award on a party occurs when the award is personally delivered during business hours; deposited in the U.S. mail, properly addressed, first class postage prepaid; sent through commercial delivery; or served by email or facsimile. Whenever an award is served by U.S. mail, five (5) days will be added to the prescribed period of time to file an arbitration review request.

538.2 The arbitration review request must include the following:

(a) The name, address, and telephone number of the arbitrator;

(b) A brief requesting the Board to set aside, remand, or modify an award on one or more of the grounds set forth in D.C. Official Code § 1-605.02(6);

(c) A copy of the award;

(d) An affidavit or other proof of the date of service of the award; and

(e) Any other portion of the arbitration record upon which the petitioner relies in the arbitration review request.

538.3 A brief in opposition to the arbitration review request may be filed with the Board by the other party to the arbitration proceeding no later than fourteen (14) days after service of the request. The respondent may file with its opposition any portion of the arbitration record not submitted by the petitioner.

538.4 The Board must make its decision after consideration of the review request, the parties' briefs and the record submitted by the parties.

544 STANDARDS OF CONDUCT COMPLAINTS

544.1 The provisions of D.C. Official Code § 1-617.03 (2016 Repl.), concerning the standards of conduct for labor organizations, must govern the conduct of any labor organization that has been accorded exclusive recognition under D.C. Official Code § 1-617.10(a) or § 1-617.11(b) (2016 Repl.) or that is seeking to be certified as an exclusive representative by the Board.

544.2 Any individual aggrieved because a labor organization has failed to comply with the standards of conduct for labor organizations set forth in D.C. Official Code § 1-617.03(a) may file a complaint with the Board. A standards of conduct complaint and any answer thereto must be filed in accordance with § 502.

544.3 A standards of conduct complaint must include:

(a) A clear and complete statement of the facts constituting the alleged standards of conduct violation, including date, time and place of occurrence of each particular act alleged;

(b) The date the complainant became aware of each such act if that date is later than the date on which the act occurred; and

(c) The manner in which D.C. Official Code § 1-617.03 (2016 Repl.) is alleged to have been violated.

544.4 A complaint alleging a violation under this section must be filed no later than one hundred twenty (120) days from the date the alleged violation occurred or the date the complainant knew or should have known of the alleged violation, if later.

544.5 An amended complaint and any answer thereto must be filed in accordance with § 502.8. An amended complaint may allege an additional violation if the amended complaint is filed no later than one hundred twenty (120) days from the date the alleged additional violation occurred or the date the complainant knew or should have known of the alleged additional violation, if later.

544.6 A complainant may withdraw a complaint without prejudice at any time before an answer is filed.

544.7 The Executive Director must investigate each complaint. The investigation may include an investigatory conference with the parties. When requested by the Executive Director, the parties must submit to the Executive Director evidence relevant to the complaint. Evidence may include affidavits or other documents.

544.8 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Executive Director will issue a notice of hearing and serve it upon the parties.

544.9 The Board may order preliminary relief. A request for preliminary relief must be accompanied by affidavits or other evidence supporting the request. Preliminary relief may be granted where the Board's ultimate remedy may be inadequate and the Board finds that the conduct is clear-cut and flagrant, the effect of the alleged violation is widespread, the public interest is seriously affected, or interference with the Board's processes.

549 *EX PARTE* COMMUNICATIONS

549.1 For purposes of this section, the phrase "*ex parte* communication" means any oral or written communication between decision-making personnel and a party in a proceeding, the party's representative, or any other person who might be affected

by the outcome of a proceeding without the participation of the other parties to the proceeding. Decision-making personnel include, for example, any hearing examiner, employee, or member of the Board who reasonably may be expected to participate in the decision-making processes of the Board.

549.2 No party or representative of a party may engage in any *ex parte* communication with a hearing examiner or with any member of the Board regarding proceedings pending before the Board.

549.3 Except during settlement discussions or mediations, *ex parte* communications with an employee of the Board that involve the merits of a case or that violate other rules requiring submissions to be in writing are prohibited until the Board has rendered a final decision in the case. Interested parties may make inquiries to the Executive Director about such matters as the status of a case and when it will be heard. Parties must not make orally a submission that is required to be made in writing or inquire about such matters as what defense they should use or whether their evidence is adequate.

549.4 If a prohibited *ex parte* communication is made orally, the hearing examiner or other presiding official must describe that occurrence on the record with notice to the parties either by filing a memorandum or by making a statement. If a prohibited *ex parte* communication is made in writing, the hearing examiner or presiding official must file into the record of the proceeding any writing delivered to him or her.

549.5 A Board member who receives an *ex parte* communication that violates § 549.2 must promptly report the communication to the chairperson of the Board and to the Executive Director.

549.6 The Executive Director must promptly report to the Board any *ex parte* communications he or she receives that violate § 549.3. Any other employee of the Board who receives an *ex parte* communication that violates § 549.3 must promptly report the communication to the Executive Director.

549.7 Upon determining that a party has initiated a prohibited *ex parte* communication, the hearing examiner, the Executive Director, or the Board may impose procedural sanctions or take remedial actions that are appropriate under the circumstances.

550 HEARINGS

550.1 The purpose of a hearing is to develop a full and factual record upon which the Board may make a decision. A party with the burden of proof must carry that burden by a preponderance of the evidence.

550.2 In any proceeding when a hearing is to be held, the Executive Director or any authorized agent of the Board may meet with the parties to conduct one or more pre-hearing conferences to do any one or more of the following:

(a) Delineate the issues;

(b) Agree on facts, matters, and procedures that will facilitate and expedite the case; and

(c) Exchange lists of witnesses and exhibits.

550.3 No statement or communication made during the course of a pre-hearing conference may be offered as evidence in the same or a subsequent proceeding except upon agreement by all parties.

550.4 When a hearing has been directed by the Board or Executive Director, unless otherwise provided by these rules or directed by the Board, the Executive Director must issue a notice of hearing to all parties to the proceeding at least fourteen (14) days before the scheduled date of the hearing. The hearing will be conducted at the time and place specified in the notice of hearing and will be open to the public.

550.5 The Executive Director may postpone a hearing for good cause shown by a party. A request for postponement must propose alternate dates for the hearing and state the positions of all other parties on the postponement and on the alternate dates.

550.6 Except under extraordinary circumstances, no request for postponement may be granted during the seven (7) days immediately preceding the date of a hearing.

550.7 Any party intending to introduce documentary exhibits at a hearing must make every effort to furnish a copy of each proposed exhibit to each of the other parties at least seven (7) days before the hearing.

550.8 When a copy of an exhibit has not been tendered to the other parties because it was not available before the opening of the hearing, a copy of the exhibit must be furnished to each of the other parties at the outset of the hearing.

550.9 One copy of each documentary exhibit must be submitted to the hearing examiner at the time the exhibit is offered into evidence at the hearing, unless otherwise requested by the hearing examiner.

550.10 Objections to an exhibit are reserved until the exhibit is offered into evidence.

550.11 Any party intending to call witnesses to testify at a hearing must furnish a list of proposed witnesses to each of the other parties at least seven (7) days before the hearing. The party calling the witness is responsible for notifying the witness of

the time and place of the hearing and, for witnesses who are employees of the District, so informing the representative of record for the District in the proceeding.

550.12 Hearings will be presided over by a hearing examiner, who is a representative of the Board. A hearing examiner will have full authority to conduct a hearing unless restricted by the Board.

550.13 Hearing examiners must conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings, and maintain order. To those ends, hearing examiners are authorized to:

(a) Administer oaths and affirmations;

(b) Request the issuance of subpoenas;

(c) Rule upon motions;

(d) Compel discovery of evidence ruled competent, relevant, material, and not cumulative;

(e) Regulate the course of the proceeding, fix the time and place of any continuance of a hearing or conference, and exclude persons from such hearings or conferences for contumacious conduct;

(f) Call and examine witnesses and introduce or exclude documentary or other evidence;

(g) Recommend to the Board dismissal of a case based on a settlement agreement reached by the parties; and

(h) Take any other appropriate action authorized by statute, these rules, or the Board.

550.14 All objections to evidence must be raised before the hearing examiner. Any objection not made before the hearing examiner is waived unless the failure to make such objection is excused by the Board because of extraordinary circumstances.

550.15 Strict compliance with the rules of evidence applied by the courts is not required. The hearing examiner may admit and consider proffered evidence that possesses probative value. Evidence that is cumulative or repetitious may be excluded.

550.16 The hearing examiner may impose procedural sanctions upon the parties as necessary to serve the ends of justice, including, but not limited to, the instances set forth in §§ 550.17, 550.18, and 550.19 below.

550.17 If a party fails to comply with an order for the production of evidence within the party's control or for the production of witnesses, unless for good cause, the hearing examiner may:

(a) Draw an inference in favor of the requesting party with regard to the information sought;

(b) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(c) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(d) Strike any part of the pleadings or other submissions of the party failing to comply with such request that relate to the requested information.

550.18 If a party fails to prosecute an action, the hearing examiner may recommend that the Board or Executive Director dismiss the action with prejudice or rule against the defaulting party.

550.19 The hearing examiner or Executive Director may refuse to consider any motion or other action that is not filed timely in compliance with this section.

550.20 The Board must reach its decision upon a review of the entire record. The Board may adopt the recommended decision of a hearing examiner to the extent that it is supported by the record, reasonable, and consistent with the Board's precedent.

552 CLOSING ARGUMENTS AND BRIEFS

552.1 Any party is entitled, upon request, to a reasonable time for oral argument before the close of the hearing. Upon the agreement of all parties or at the direction of the hearing examiner, the parties may make oral or written closing arguments instead of filing post-hearing briefs.

552.2 Except as provided in § 552.1, any party may submit to the hearing examiner a brief meeting the requirements of §§ 502 and 561. Briefs must be filed no later than thirty-five (35) days after the transcript becomes available and the parties are so informed. The Executive Director may, for good cause shown, extend the time for the filing of briefs.

553 HEARING EXAMINER'S REPORT/EXCEPTIONS

553.1 Following a hearing, the hearing examiner must submit a report and recommendations to the Executive Director and the parties no later than thirty-

five (35) days following the submission of post-hearing briefs, if any, or following the conclusion of closing arguments. Upon request of the hearing examiner, the Executive Director may extend the time for submission of the report and recommendations.

553.2 A party may file exceptions and a brief in support of the exceptions no later than fourteen (14) days after service of the hearing examiner's report and recommendations. A response or opposition to the exceptions may be filed by a party no later than fourteen (14) days after service of the exceptions. A party may file a request for oral argument before the Board, stating the reasons for the request.

554 SUBPOENAS

554.1 An application for issuance of a subpoena requiring a person to appear and testify at a specific place and time or to produce designated documents must be made in writing to the Executive Director. All requests for *subpoenas ad testificandum* must clearly identify the person subpoenaed and, except for employees of the Government of the District of Columbia, be accompanied by a forty dollar ($40) per diem consisting of a certified check or money order payable to each person subpoenaed.

554.2 An application for issuance of a subpoena requiring a person to produce documents (including writings, drawings, graphs, charts, photographs, electronic records and other recordings, and other data compilations from which information may be obtained) at a specific time and place must be made in writing to the Executive Director.

554.3 An applicant for a subpoena must arrange for service. A subpoena may be served in either of two (2) ways:

(a) Personal service. Service of a subpoena may be made by any person who is not a party to the proceeding and who is at least eighteen (18) years of age. The person making such service must attest to the service of the subpoena in an affidavit. The attesting affidavit must state the date, time, and method of service.

(b) Service by certified mail. Service of a subpoena may be made by certified mail. If the subpoena is served by certified mail, the subpoena must be mailed to the address of the person or business entity to be served, at the person's residence, principal office, or place of business. The return receipt will serve as proof of service of the document.

554.4 Any motion to limit or quash the subpoena must be filed no later than seven (7) days after service of the subpoena or on the date for compliance with the subpoena, whichever is earlier. The motion must set forth all assertions of

privilege, burdensomeness, irrelevance, or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits, and other supporting documentation.

554.5 In the case of contumacy or failure to obey a subpoena, the Board may request enforcement of the subpoena in the Superior Court of the District of Columbia pursuant to D.C. Official Code § 1-605.02(16) (2016 Repl.).

554.6 Board members and employees may not be subpoenaed.

554.7 When an employee of the District receives a subpoena to appear and testify or to produce designated documents, the employing agency must make the employee available to respond to the subpoena, pursuant to D.C. Official Code § 1-605.02(8). When responding to a subpoena, a witness will be on official duty status and must not be required to use leave.

555 MOTIONS

555.1 Motions must briefly state the relief sought and set forth with particularity the grounds for the motion. A motion, other than one made at a hearing, must be filed with the Board and meet the requirements of §§ 502 and 561.

555.2 Any response to a written motion must be in writing and filed no later than fourteen (14) days after service of the motion or no later than two (2) days after service in the case of a motion for an extension of time filed under § 501.2 or a motion to increase the page limit filed under § 502.3. The Executive Director may allow additional responses by the moving or responding party upon a request made no later than seven (7) days after service of a pleading.

555.3 The Executive Director may refer to a hearing examiner motions made before the issuance of a hearing examiner's report and recommendations. Motions made during a hearing will be ruled on by the hearing examiner, except when the hearing examiner refers the matter to the Board.

555.4 All rulings on motions must be in writing, except that rulings made at a hearing may be stated orally on the record.

556 INTERLOCUTORY APPEALS

556.1 Unless authorized by the Board, interlocutory appeals to the Board from rulings by the Executive Director, a hearing examiner, or other Board agents are not permitted. The Board will consider objections to such rulings when it examines the record of the proceeding.

557 DISQUALIFICATION

557.1 A hearing examiner or Board member must withdraw from proceedings whenever that person has a conflict of interest.

557.2 When a party requests a hearing examiner to withdraw and the hearing examiner does not withdraw, the hearing examiner must state the reason for the decision on the record. The Board must consider the request when it examines the record of the proceeding.

558 MEDIATION AND SETTLEMENT OF DISPUTES

558.1 It is Board policy to encourage voluntary efforts of parties to settle disputes involving issues of representation, unfair labor practices, standards of conduct, or issues arising during negotiations.

558.2 Parties' efforts at resolution and any settlements or adjustments reached must be consistent with the provisions, purposes, and policies of the CMPA.

558.3 No admissions or offers of settlement made during efforts toward resolution may be used in any proceeding as evidence or as an admission of a violation of any law or regulation.

558.4 Parties filing pleadings before the Board may be required to submit to the mediation program established by the Board. The Executive Director may schedule a disputed case for mediation or for a settlement conference.

558.5 The Executive Director will designate the mediator in each matter scheduled for mediation.

558.6 The parties must make a good faith effort in all mediations to resolve the issues in dispute. Party representatives at mediation proceedings must have settlement authority of the party.

558.7 Parties must inform the Executive Director when they have multiple pending cases that raise common issues. The Board encourages the resolution and consolidation of multiple cases for the purpose of mediation and other resolution.

558.8 If mediation does not resolve a dispute within a reasonable period of time, the Executive Director may terminate mediation and continue proceedings for resolution of the matter pursuant to these rules and the CMPA.

559 ISSUANCE AND RECONSIDERATION OF ORDERS

559.1 A decision and order of the Board is final upon service on the parties either through File & ServeXpress or as provided in § 502.10(a). The Board may reopen a case on its own motion within fourteen (14) days after issuance of the decision, unless the order specifies otherwise.

559.2 A party may file a motion for reconsideration of an order of the Board no later than fourteen (14) days after issuance of the order.

559.3 The Board will not entertain a motion to reconsider a ruling on a motion for reconsideration filed under § 559.2.

560 ENFORCEMENT

560.1 A prevailing party in a case may petition the Board to seek judicial process to enforce an order of the Board issued in the case if:

(a) The respondent in the case has failed to comply with the order;

(b) Neither a motion for reconsideration nor a request for judicial review is pending in the case; and

(c) No timely request for reconsideration or judicial review of the order remains available.

560.2 A party named as a respondent may file an answer to the petition no later than fourteen (14) days after service of the petition.

561 ELECTRONIC FILING

561.1 All pleadings, motions, memoranda of law, orders, or other documents to be filed in connection with a case must be filed electronically through File & ServeXpress, except for documents excluded by these rules, including §§ 502.5 and 502.10(a), or by order of the Executive Director.

561.2 Unless the Board orders otherwise, an original of a document filed electronically, including original signatures, must be maintained by the party filing the document and must be made available, upon reasonable notice, for inspection by another party or the Board.

561.3 Any pleading filed electronically is deemed filed with the Board at the time the transaction is completed. Any document filed with the Board before midnight Eastern Time is deemed filed with the Board on that date; however, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Board is not open for business must be deemed to have been filed on the day and at the time of the next opening of the Board for business.

561.4 File & ServeXpress is the Board agent for the electronic filing, receipt, service, or retrieval of any pleading or document filed electronically. Upon filing and receipt

of a document, File & ServeXpress issues a confirmation that the document has been received. The confirmation serves as proof that the document has been filed.

561.5 If the electronic filing is not filed with the Board because of: (1) an error in the transmission of the document to File & ServeXpress, which was unknown to the sending party; (2) File & ServeXpress's failure to process the electronic filing upon receipt; or (3) other technical problems that the filer might experience, the Board or Executive Director may upon satisfactory proof file an order permitting the document to be filed *nunc pro tunc* on the date it was first attempted to be filed electronically.

561.6 Documents filed electronically must be formatted as an 8½-inch by 11-inch document with black print on a white background.

561.7 Every pleading, document, and instrument electronically filed must be deemed to have been signed by the representative or *pro se* party and must bear a facsimile or typographical signature of such person, along with the name, address, and telephone number. Typographical signatures must be styled "/s/ name" and must be treated as personal signatures for all purposes under these rules.

561.8 When cases are consolidated, all parties must file a notice of appearance in the designated lead case. A single filing in the lead case is deemed to be filed in all cases consolidated with it.

561.9 The Board may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of this section.

561.10 Documents may be filed under seal if leave is granted by the Executive Director upon motion of a party. Redacted copies of documents filed under seal may be filed and served electronically. Documents filed under seal containing confidential information may be filed conventionally (in physical form) or as a sealed electronic document.

566 LIST OF NEUTRALS

566.1 The Board must establish and maintain on its website a list of persons qualified to act as neutrals in resolving disputes. The list must specify, for each person, the capacities for which that person is qualified (for example, mediator, fact-finder, arbitrator, hearing examiner). Unless otherwise specified by these rules or by the parties' mutual agreement, the selection of mediators, fact-finders, and arbitrators must be made in order from the list of neutrals maintained by the Board, assuming the availability of the selected neutral.

566.2 Nomination of a person to the list referred to in this section may be made by a member of the Board, the Executive Director, or any other person including the

nominee, by writing to the Executive Director. A nomination must include the following information:

(a) The name, occupation, residence, business address, and telephone number of the nominee;

(b) A resume, which includes any relevant professional memberships; and

(c) A statement of any association the nominee has or had, other than as a neutral, with an agency or with a labor organization that represents or seeks to represent employees of the Government of the District of Columbia.

566.3 In making appointments to the list, the Board must consider such factors as experience and training, membership on other recognized mediation or arbitration panels, education, prior published awards, current advocacy in employment relations matters, potential conflicts of interest, letters of recommendations supporting the application, and any other relevant material supplied by the applicant or requested by the Board. Special consideration will be granted to applicants who are residents of the District of Columbia who meet the above qualifications.

566.4 Every person appointed to the list must file a fee schedule with the Board. An individual on the list who is selected to serve in a case as a mediator, fact finder or arbitrator, must not charge a fee greater than that listed in the fee schedule the individual has filed with the Board. A minimum of thirty (30) days prior written notice must be given to the Board of changes in fee schedules.

567 AMENDMENTS TO RULES

567.1 Whenever the Board deems amendment of these rules to be in the public interest, it must give notice of the proposed amendments in accordance with the requirements in the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-505. Copies of the proposed amendments must be posted as appropriate and published in the *D.C. Register*.

567.2 Any interested person may petition the Board in writing for amendments to any portion of the rules and may provide specific proposed language together with a statement of grounds in support of the amendments.

567.3 Any person desiring to comment on a proposed amendment may do so within the time specified by the Board in the notice of the proposed amendment published in the *D.C. Register*. Comments must be in writing unless otherwise stated in the notice.

599 DEFINITIONS

599.1 As used in this chapter, the following terms and phrases must have the meanings ascribed:

Agency - Any unit of the Government of the District of Columbia required by law, by the Mayor of the District of Columbia, or by the Council of the District to administer any law, rule, or any regulation adopted under authority of law. The term "agency" must also include any unit of the Government of the District of Columbia created by the reorganization of one or more of the units of an agency and any unit of the Government of the District of Columbia created or organized by the Council of the District of Columbia as an agency. The term "agency" does not include the Council of the District of Columbia.

CMPA - the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01 to 1-636.03 (2016 Repl.)).

Days - Calendar days, unless otherwise specified.

Board - The District of Columbia Public Employee Relations Board.

Impasse - The point in collective bargaining negotiations at which no further progress can be made by the parties without the intervention of a neutral third party, except as otherwise defined by the CMPA for compensation bargaining.

Party - A person, employee, organization, agency, or agency subdivision initiating a proceeding authorized by these rules or named as a participant in a proceeding or whose intervention in a proceeding has been granted or directed under the authority of the Board.

Pleading - A complaint, petition, appeal, notice of impasse, request for review or resolution, motion, exceptions, briefs, or a response to one of the foregoing.

***Pro se* party -** A party who is neither represented by legal counsel nor represented in proceedings before the Board by a representative from a labor organization.

Showing of Interest - Documents offered to the Board to establish that a percentage (as defined by these rules) of employees in a proposed or existing bargaining unit desires representation by a petitioner seeking exclusive recognition or by another labor organization seeking to intervene in a representation proceeding, or that the unit employees no longer desire representation by a labor organization.