

## **PUBLIC EMPLOYEE RELATIONS BOARD**

### **NOTICE OF FINAL RULEMAKING**

The Public Employee Relations Board (“Board”), pursuant to D.C. Official Code § 1-605.02(11)(2001 ed. & Supp. 2014), hereby gives notice of its intent to amend Chapter 6-B5 of Title 6-B (Government Personnel) of the District of Columbia Municipal Regulations (DCMR), entitled “Rules of the Public Employee Relations Board,” effective October 1, 2015.

This rulemaking is necessary to amend procedures of the Board and to implement its authority under D.C. Official Code § 1-605.02(11)(2001 ed. & Supp. 2014) to conduct its business and carry out its powers and duties. The final rulemaking amends the rules to clarify ambiguities, to improve readability, and to increase efficiency of operations. Election procedures were created to resolve ambiguities in representation proceedings. Filing deadlines and date calculations were revised to make the agency more efficient and to provide more clarity to filers. The rules were also amended to reflect the adoption of electronic filing and to resolve conflicting requirements in the rules’ prior amendments, regarding electronic filing.

The Board’s proposed rulemaking was published in the *D.C. Register* on June 5, 2015, at 62 DCR 9852 to receive comments on the proposed rulemaking. The comment period expired July 31, 2015. On August 20, 2015, the Board met to consider the comments submitted during the public comment period and consideration 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 Board decided to reject several new proposed rules based on the comments received from the public. In particular, the Board decided not to adopt proposed Rule 507 in its entirety, proposed Rule 550.6, and some language changes in Rule 515, Rule 527.2 (moving language from 532.1), Rule 560.1, and Rule 561.7(b). No substantive changes were made to the proposed rules.

These rules have been adopted as final by the Board, and will become effective October 1, 2015.

**Title 6-B DCMR, Rules of the Public Employee Relations Board, is amended to read as follows:**

#### **CHAPTER 6-B5      Rules of the Public Employee Relations Board**

##### **500      GENERAL PROVISIONS**

500.1      The District of Columbia Public Employee Relations Board (“Board”) was established in 1979 by section 501 of D.C. Law 2-139, D.C. Official Code § 1-605.01 (2001 ed. & Supp. 2014), and administers the Labor-Management Relations Program for the District of Columbia pursuant to the Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, section 1701 *et seq.* (“CMPA”), which is codified as D.C. Official Code § 1-617.01 *et seq.* (2001 ed. & Supp. 2014).

- 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 The Executive Director shall be the principal administrative officer of the Board and performs such duties as designated by the CMPA or as assigned by the Board, including the investigation of all petitions, requests, complaints, and other matters referred or submitted to the Board.
- 500.4 The Executive Director shall be authorized, among other things, to conduct conferences, investigations and hearings, administer oaths, issue subpoenas, sign and issue notices and reports, certify copies of papers and documents, consider timely requests for extensions of time 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. A decision made by the Executive Director shall become final unless a party files a motion for reconsideration within thirty (30) days after issuance of the Executive Director's decision.
- 500.5 The duly authorized and official documents of the Board of every description and without exception, including but not limited to decisions, orders, notices, subpoenas and other communications, may be signed on behalf of the Board by the Executive Director or any staff members or agents empowered to sign on the Board's behalf.
- 500.6 The Board shall have the authority to retain legal counsel to represent it in relation to enforcing its orders and otherwise carrying out its powers and duties under the CMPA.
- 500.7 All communications may be addressed to the PUBLIC EMPLOYEE RELATIONS BOARD, 1100 Fourth Street, SW, Suite E630, Washington, D.C. 20024.
- 500.8 The business hours of the office shall be from 8:30 a.m. to 4:45 p.m., Monday through Friday, exclusive of District of Columbia holidays.
- 500.9 The regular meetings of the Board shall be held on the third Thursday of each month unless otherwise scheduled, and shall be held at the Board's offices, unless otherwise specified.
- (a) The official acts of the Board shall be recorded in the minutes of the Board, which shall be certified and maintained by the Executive Director.
  - (b) The Board shall not be 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.

- (c) Unless specifically provided for by a majority of the Board members present or under waiver of the rules, only the following may address the Board or participate in the discussion of matters at regular monthly, special, or emergency meetings of the Board: Members of the Board, the Executive Director, staff, and agents of the Board.
  - (d) Notice of Meetings. The Executive Director shall give timely notice of all meetings of the Board to the public, and such notice shall contain the time, date, and location of the meeting and the purpose or agenda of the meeting.
- 500.10 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.
- 500.11 Three (3) members shall constitute a quorum. No decision of the Board shall be valid unless supported by the majority of a quorum.
  - (a) If a Board member cannot attend a meeting in person, that member may participate in the Board meeting via teleconference upon notice three (3) or more days prior to the Board meeting.
  - (b) If a Board member cannot attend a meeting in person or via teleconference, that Board member will provide reasonable notice to the Chair and the Executive Director.
  - (c) The Chair will designate one Board member to take notes during any Executive Session.
  - (d) If the Government of the District of Columbia is closed due to weather or a national emergency or other event, then a meeting by the Board scheduled to occur during the closure is deemed cancelled.
- 500.12 The public may inspect the rules, decisions, and public records of the Board upon written request filed within a reasonable time period in advance of inspection. There shall be no prescribed form for requests for inspection. Written requests shall be submitted to the Executive Director.
- 500.13 Opinions, decisions, and orders of the Board shall be forwarded for publication in the D.C. Register within sixty (60) days of issuance, pursuant to D.C. Official Code § 1-605.04 (2001 ed.).
- 500.14 Any person may request in writing copies of slip opinions of the Board's opinions, decisions, orders, certifications, or other documents, in accordance with D.C. Official Code §§ 2-531 - 2-540 (2001 ed. & Supp. 2014).

- 500.15 The parties to a collective bargaining agreement may submit copies of the agreement to the Board for informational purposes after final execution of the agreement.
- 500.16 A labor organization that represents employees of the District of Columbia Government shall transmit to the Board the name(s), telephone number(s), and mailing address(es) of each appointed and elected office holder.
- 500.17 No party shall engage in any *ex parte* communication with a hearing officer or with any member of the Board regarding proceedings pending before the Board.
- 500.18 *Ex parte* communications, which involve the merits of the case or those which violate other rules requiring submissions to be in writing, are prohibited. Interested parties may make inquiries to the Executive Director about such matters as the status of a case, when it will be heard, and the method of transmitting evidence to the Board. Parties may not make a submission orally, which is required to be in writing, or inquire about such matters as what defense they should use or whether their evidence is adequate.
- 500.19 Except during settlement discussions, *ex parte* communications concerning the merits of any matter before the Board for adjudication, or communications which otherwise violate rules requiring written submission, are prohibited from the time the persons involved have knowledge that the matter may be considered by the Board until the Board has rendered a final decision.
- 500.20 If a prohibited oral communication occurs, the Hearing Examiner or other presiding official shall describe that occurrence on the record with notice to the parties either by filing a memorandum or by making a statement. If a prohibited communication occurs in writing, the Hearing Examiner or presiding official shall file any writing delivered to him or her.
- 500.21 If a Hearing Examiner or the Executive Director determines that a party has initiated a prohibited *ex parte* communication, the Hearing Examiner or the Executive Director may impose such procedural sanctions or remedial actions as may be appropriate under the circumstances.
- 500.22 Opinions, certifications, authorizations, decisions and orders of the Board are final, unless otherwise stated therein, for purposes of judicial review pursuant to D.C. Official Code §§ 1-617.13(c) and 1-605.02(12) (2001 ed. & Supp. 2014).

## **501 CONSTRUCTION, COMPUTATION AND EXTENSIONS OF TIME, FILING AND SERVICE OF DOCUMENTS**

- 501.1 The rules of the Board shall be construed broadly to effectuate the purposes and provisions of the CMPA. When an act is required or allowed to be done within a specified time by these rules, the Board, Chair or the Executive Director shall have the discretion, upon timely request, to order the time period extended or reduced to

effectuate the purposes of the CMPA, except that no extension shall be granted for the filing of initial pleadings.

- 501.2 A request for an extension of time shall be in writing and made at least three (3) business days prior to the expiration of the filing period. Exceptions to this requirement may be granted for good cause shown as determined by the Executive Director.
- 501.3 The request for an extension of time shall indicate the purpose and reason for the requested extension of time and the positions of all interested parties regarding the extension. With the exception of the time limit for the filing of the initial pleading that begins a proceeding of the Board, the parties may waive all time limits established by the Board by written agreement in order to expedite a pending matter.
- 501.4 Whenever a period of time is measured from the service of a pleading and service is by first-class U.S. mail, five (5) days shall 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 date to file a document falls on Saturday, Sunday, or a District of Columbia holiday, the period shall extend to the next business day. All prescribed time periods are calendar days, unless specified as business days.
- 501.6 All pleadings filed with the Board shall be in the form designated by these rules. If the Board has not designated a form, the party seeking action by the Board shall use only 8 1/2 x 11 inch plain white paper and shall include the following:
- (a) The name, address, and telephone number of each party, if known;
  - (b) The title of the proceeding and the case number, if known;
  - (c) The name, title, address, and telephone number of the person signing and the date of signing; and
  - (d) A certificate of service.
- 501.7 As illustrated in the following example, all pleadings shall 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, )  
)

v.	)	PERB Case No. ____
	)	
[Name of Party],	)	
Respondent.	)	

### UNFAIR LABOR PRACTICE COMPLAINT

501.8 Every pleading that is filed to initiate a proceeding with the Board shall include the following:

- (a) A concise statement of the nature of the case, the relief requested, and the basis for entitlement; and
- (b) A concise statement of all information deemed relevant, which shall be set forth in numbered paragraphs.

501.9 Pleadings submitted to the Board shall be typed or legibly hand-written, and limited to twenty (20) double-spaced pages. Requests to increase the page limitation shall be timely submitted to the Executive Director. 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.

501.10 Repealed

501.11 An initial pleading shall not be considered filed with the Board, unless it is received electronically pursuant to § 561.

- (a) Exception: A *pro se* individual, acting on his or her own behalf, shall file an initial pleading by personal delivery during business hours as defined in § 500.8. A *pro se* individual may utilize the Board's public access terminal to upload the document free of charge.
- (b) An initial pleading must be served on the other party or parties by personal delivery, commercial delivery, or U.S. mail.

501.12 Non-initial pleadings must be filed with the Board electronically pursuant to § 561. A party submitting a non-initial pleading to the Board shall 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, it shall be sufficient to serve the attorney or representative. Every pleading filed with the Board shall include a signed certificate of service naming all other parties and attorneys or representatives, if any, on whom concurrent service was made, and shall state how and when such service was made.

- (a) All non-initial pleadings must be electronically served on every other party through File & ServeXpress, except for service on a *pro se*

individual, acting on his or her own behalf. A *pro se* individual may serve a party by personal delivery, commercial delivery, or U.S. mail. Instances where a party has not yet signed up for File & ServeXpress, service on that party may be made through personal delivery, commercial delivery, or U.S. mail.

- (b) A *pro se* individual, acting on his or her own behalf, must be served by personal delivery, commercial delivery, or U.S. mail, unless the *pro se* individual has waived such method of service in writing and agreed to be served by email or electronically.

501.13 An initial pleading that is filed will be assigned a filing date and case number. The Board or its designated representative shall review the pleading to determine whether it was filed in accordance with the procedural requirements of the CMTA and these rules. If the review reveals that the pleading was not filed in accordance with the CMTA or these rules, the Executive Director shall notify the party or the party's representative and allow seven (7) days from the date of notice for the filing deficiencies to be cured. Failure to cure deficiencies shall result in dismissal without further notice.

501.14 Interested persons who wish to intervene in a proceeding shall promptly direct such requests to the Executive Director. The request shall be filed electronically pursuant to § 561 and shall state the grounds for intervention.

501.15 The Board or its designee shall have discretion to grant or deny a request for intervention, basing the decision on 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.

501.16 Repealed.

501.17 Repealed.

501.18 Where there is a change in representation, a representative for a party shall enter a notice of appearance in a case and serve a copy on all parties to the proceeding.

## **502 EXCLUSIVE RECOGNITION AND NON-COMPENSATION UNIT DETERMINATION**

502.1 A labor organization seeking exclusive recognition as the representative for an appropriate unit shall file a "Recognition Petition," electronically pursuant to §§ 501 and 561. 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. The Recognition Petition shall 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; and
- (e) A roster of the Petitioner's officers and representatives, a copy of its constitution, its articles of incorporation and bylaws, if any, and a statement of its objectives. The Petitioner shall include a statement that the petitioning labor organization subscribes to the standards of conduct for labor organizations, as set forth in the Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139 and 1703; D.C. Official Code § 1-617.03 (2001 ed.).

502.2 A petition for exclusive recognition shall be supported by a showing of interest, not more than one (1) year old, that at least thirty percent (30%) of the current employees in the proposed unit desire representation by the Petitioner. 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.

502.3 Upon service of the recognition petition by the Petitioner, the employing agency shall prepare an alphabetical list of all employees in the proposed unit for the last full pay period prior to the filing of the petition. This list, along with any comments



concerning the petition, shall be transmitted to the Board within fourteen (14) days of 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.

502.4 The adequacy of the showing of interest shall be determined administratively by the Board or its designee. While signed and dated authorization cards, in accordance with § 502.2, will always be accepted as adequate evidence, other forms of evidence may be considered adequate by the Board as prescribed under § 502.2 above and 502.8(a) below. The showing of interest determination shall not be subject to appeal.

- (a) If the petition is amended so as 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. 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 is filed.
- (b) If the status of employees in the proposed unit is disputed, the Executive Director may conduct such proceedings as are necessary to determine the adequacy of the showing of interest.
- (c) 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 results in a change to the unit, the Executive Director will provide the petitioner with seven (7) days after the issuance of the Hearing Examiner's Report and Recommendation to procure additional evidence of a showing of interest in the changed unit.

502.5 The Board shall maintain the confidentiality of the showing of interest submitted in support of a petition filed under this section or § 505, and this evidence shall not be available for public access.

502.6 Provided that the requirements of §§ 502.1, 502.2, and 502.3 are met, the Executive Director shall prepare a Notice of Recognition Petition to be posted by the employing 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 Notice shall be posted within seven (7) days of the Board's transmittal of the Notice and shall remain posted for fourteen (14) consecutive days. The Notice shall 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.

502.7 A labor organization may file an intervention petition within the period required by the Notice and said petition shall contain the same information as required of a petitioner under § 502.1.

502.8 Intervention petition(s) shall be accompanied by the following:

(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%) shall 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 shall be allowed to intervene as a matter of right without submitting any showing of interest.

(c) If the intervenor's showing of interest is insufficient, the request for intervention will be denied, absent withdrawal.

502.9 A petition for exclusive recognition shall be barred if:

(a) During the previous twelve (12) months, a valid majority status determination has been made for substantially the same bargaining unit, or if during this same period a certification of representative has been issued, or the Board has determined the compensation unit placement, whichever is later.

(b) A collective bargaining agreement is in effect covering all or some of the employees in the bargaining unit and the following conditions are met:

(i) The agreement is of three years or shorter duration; provided, however, that a petition may be filed between the 120th day and the 60th day prior to the scheduled expiration date or after the stated expiration of the contract; or

(ii) The agreement has a duration of more than three years; provided, however, that a petition may be filed after the contract has been in effect for 975 days.

- 502.10 Upon the filing of a petition pursuant to § 502.1 or 502.7, the Board shall direct such preliminary investigation as it deems necessary and thereafter shall 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) Taking an action as prescribed by §§ 512 and 513.
- 502.11 Hearings under § 502.10(d) are investigatory and not adversarial. The purpose of hearings under § 502 shall be to develop a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.
- 502.12 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 permit the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than 50%), such as documentary proof not more than one (1) year old, indicating that employees wish to be represented by the petitioning labor organization. In a case of voluntary recognition by the employer, the Executive Director shall review the evidence of majority status and shall 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 if a majority of the professional employees petition for inclusion in the unit.
- 502.13 If the choice available to employees in an appropriate unit includes two (2) or more labor organizations, the Board shall order an election in accordance with these rules.

### **503 COMPENSATION UNIT DETERMINATION**

- 503.1 An agency, a labor organization, or a group of labor organizations may file a "Petition for Compensation Unit Determination" seeking a determination of an appropriate unit for the purpose of negotiations for compensation. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561.
- 503.2 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.

- 503.3 A petition for the determination of a compensation unit shall meet the requirements of §§ 501 and 561 and shall also include the following:
- (a) The name and address of each personnel authority, agency, and labor organization that may 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.
- 503.4 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 shall 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 Notice shall be posted within seven (7) days of the Board's transmittal of the Notice and shall remain posted for fourteen (14) consecutive days thereafter. The Notice shall 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 of a petition or proceedings for an appropriate compensation bargaining unit, any interested labor organization or person may file written comments. A labor organization may submit a request with the Executive Director to intervene concerning the proposed unit. Any comments or requests to intervene shall meet the requirements of §§ 501 and 561.
- 503.5 The Executive Director shall transmit a copy of the Notice to each labor organization that has exclusive recognition for any employees in the proposed unit and to each affected agency or its representative.

- 503.6 Any labor organization that has exclusive recognition for any employees in the proposed unit shall be permitted to intervene.
- 503.7 Subsequent to the filing of a petition or upon commencement of a proceeding, the Board shall order such preliminary investigation as it deems necessary.
- 503.8 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.
- 503.9 Hearings under § 503.8 shall be investigatory and not adversarial. The purpose of hearings under this section shall be to ascertain the facts of the matter(s) at issue by developing a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.
- 503.10 A hearing for the purpose of taking evidence in a unit determination matter may be conducted by the Board or any individual(s) designated by the Board.
- 503.11 If the Board pursuant to § 503.8(d), decides to hold a hearing, the Executive Director shall issue a Notice of Hearing to each personnel authority, agency, and labor organization that may be affected by the unit determination at fourteen (14) days prior to the date of the hearing. The Notice of Hearing shall include the following:
- (a) A statement of the time, place and nature of the hearing;
  - (b) The name of the agency and any other party; and
  - (c) A description of the proposed unit.

## **504 MODIFICATION OF UNITS**

- 504.1 A petition for unit modification of either a compensation or non-compensation unit may be filed by a labor organization, by an employing agency, or by both jointly. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. 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 employing 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 no longer in existence or which, 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.

504.2 A petition for unit modification shall meet the requirements of §§ 501 and 561 and shall also 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 setting forth the specific reasons for the proposed modification.

504.3 Upon the filing of a petition for unit modification, the Executive Director shall 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 Notice shall be posted within seven (7) days of the Board's transmittal of the Notice and shall remain posted for fourteen (14) days thereafter. The Notice shall 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. Within said fourteen (14) days, any affected labor organization may file with the Executive Director a request to intervene concerning the proposed modification.

504.4 All comments or requests to intervene shall meet the requirements of § 501.

504.5 Upon the filing of a petition pursuant to § 504, the Board shall direct such preliminary investigation as it deems necessary and thereafter shall 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.

504.6 Hearings under § 504 shall be investigatory and not adversarial. The purpose of hearings under this section shall be to develop a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.

## **505 DECERTIFICATION PETITIONS**

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

505.2 A petition to decertify an exclusive representative may be filed with the Board by an employer, an employee, or employees in the certified or recognized unit of an agency. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. The petition shall be served on the exclusive representative pursuant to § 501.11 and shall state 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.

505.3 A petition for decertification filed by an employee shall 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.

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

505.5 A petition for decertification filed by an agency shall be accompanied by a sworn statement and supporting evidence of lack of activity by the exclusive representative.

505.6 The exclusive representative shall be given fourteen (14) days from the date of service of the petition to file a response to the decertification 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.

505.7 If the exclusive representative files a timely response indicating that it desires to continue to represent the employees and the requirements of §§ 505.2, 505.3 or 505.5 have been met, the Board shall order an election to determine majority status.

505.8 Decertification petitions shall not be entertained in the following circumstances:

- (a) The Board has certified within the preceding twelve (12) months the results of an election among all or some of the employees in the bargaining unit or the Board has determined the compensation unit placement, whichever is later.



- (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; provided, however, that decertification petitions may be filed between the 120th day and 60th day prior to the scheduled date of expiration of an agreement of three (3) years or less duration, or after the expiration of such an agreement, or at any time after an agreement of more than three years duration has been in effect for 975 days.
- 505.9 Upon receiving a timely response from the exclusive representative pursuant to § 505.7, a copy of the decertification petition shall be transmitted to the employing agency. The employing agency shall prepare an alphabetical list of all employees in the unit for the last full pay period prior to the filing of the petition. This list, along with any comments concerning the petition, shall be transmitted to the Board within fourteen (14) days of the Board's transmittal of the petition to the agency.
- 505.10 The adequacy of the showing of interest shall be determined administratively by the Board or its designee. The showing of interest determination shall not be subject to appeal.
- 505.11 Provided that the requirements of §§ 505.2, 505.3 and 505.9 are met, the Executive Director shall prepare a Notice to be posted by the employing 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 Notice shall be posted within seven (7) days of the Board's transmittal of the Notice and shall remain posted for fourteen (14) consecutive days. The Notice shall 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.
- 505.12 A labor organization may file an intervention petition within the period required by the Notice, and said petition shall contain the same information as required under § 505.2.

- 505.13 Intervention petition(s) shall 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%) shall accompany the intervenor's petition.
- 505.14 Upon the filing of a petition pursuant to § 505.2 or 505.12, the Board shall direct such preliminary investigation as it deems necessary and thereafter shall 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) Taking an action as prescribed by §§ 512 and 513.
- 505.15 Hearings under § 505.14(d) are investigatory and not adversarial. The purpose of hearings under § 505 shall be to develop a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.
- 505.16 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.

## **506 CLARIFICATION OF UNITS**

- 506.1 A petition filed for clarification of an existing unit may be filed by the agency or by the labor organization which is party to the certification. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. In addition, the petition shall be in the same form and contain the same information (as appropriate) that is required by § 502 or 503; plus:
- (a) A description of the existing unit; and
  - (b) A statement of why the proposed clarification is requested.
- 506.2 The Board shall grant or deny the petition following an appropriate investigation and recommendation to the Board by the Executive Director or a Hearing Examiner.

## **510 ELECTION PROCEDURES: GENERAL**

- 510.1 Representation elections shall be conducted by the Board or by an impartial body selected by the mutual agreement of the parties and approved by the Board.
- 510.2 All elections shall be by secret ballot.
- 510.3 The Board or other impartial body conducting the election shall furnish an official Notice setting forth the details of the election to the employing agency and to the labor organization(s) that are parties to the proceeding. This Notice shall be posted not less than seven (7) days before the date of the election and shall remain posted until after the election. Copies of the Notice shall 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 mutually agreed upon by the parties and approved by the Board, or are prescribed by the Board.
- (a) Each party must submit the names(s) of its designated observer(s) to the Executive Director prior to the day of the election.
  - (b) The observers represent their principals, challenging voters and generally monitoring the election process.
- 510.5 Where an election involves a bargaining unit containing professional and non-professional employees, all professional employees shall be given two ballots: one for indicating whether they desire a combined professional/nonprofessional unit and a second for indicating the choice of representative, if any.
- 510.6 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.
- 510.7 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.
- 510.8 When there is no intervening labor organization, an election is not 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 is held if the intervening labor organization presents a thirty percent (30%) showing of interest within the time period established by the Executive Director.

- 510.9 The parties may consent to an election prior to the holding of a hearing on the appropriateness of the unit. A ballot cast by an employee whose eligibility status is challenged will be segregated from the remainder of the ballots cast and will not be tallied unless the challenged ballot(s) is/are determinative of the election and after a hearing on the employee's eligibility has been concluded and a determination is made that the employee is eligible to vote.

## **511 ELECTION PROCEDURES: ELIGIBILITY**

- 511.1 To be eligible to vote in an election, an employee shall have been employed in the bargaining unit during the payroll period immediately prior to the date on which the Board ordered the election or as otherwise determined by the Board or consented to by the parties and shall still be employed in the bargaining unit on the date of the election. A list of employees eligible to vote in the election will be provided to designated election officials within seven (7) days of approval of an election agreement or seven (7) days after the Executive Director has directed an election, whichever occurs first. Where the election will be conducted by mail, the employing agency must provide 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.
- 511.2 To be eligible to vote in a runoff election, an employee shall have been eligible to vote in the original election and still be employed in the bargaining unit on the date of the runoff.
- 511.3 The Board's agent or any authorized observer may challenge the eligibility of any voter, and in so doing shall state the reason for the challenge. A voter whose identity has been challenged may establish his or her identity by showing any piece of identification acceptable to the Board's agent.
- (a) An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Board's agent are unable to resolve the challenged ballot(s) before the tally of ballots, the Board's agent will impound and preserve the unresolved challenged ballot(s) until the Board or the Executive Director makes a determination regarding the eligibility of the voter.
- 511.4 A challenged ballot shall be placed in a "challenged ballot" envelope. The envelope shall be sealed by the Board's agent and initialed by the observers. The reason for the challenge and the voter's name shall be marked on the envelope and the envelope shall be placed in the ballot box.

- 511.5 The Board's agent shall attempt to resolve ballot challenges before the ballots are counted.

**512 ELECTION PROCEDURES: MAIL BALLOTS**

- 512.1 When an election is to be conducted by mail ballot, the procedures in this section shall apply, unless otherwise agreed to by the parties and approved by the Board.
- 512.2 Each eligible voter shall be mailed a packet containing a ballot, ballot envelope, pre-addressed stamped return envelope, and instructions.
- 512.3 The instructions shall advise the voter to mark his or her ballot without identifying marks, place the ballot in the ballot envelope, seal the ballot envelope and place it in the return envelope, seal the return envelope, which shall be signed by the voter, and mail it to the designated post office box or address provided in the instructions. The instructions shall also advise the voter of the date by which envelopes must be received. Ballots not returned by U.S. mail will not be accepted.
- 512.4 When the election includes a vote on a combined professional/nonprofessional unit, the appropriate voters shall be mailed separate ballots and ballot envelopes for unit preference and for choice of representative. These voters shall be instructed to mark the ballots separately, place them in their respective ballot envelopes, and place both ballot envelopes in the return envelopes.
- 512.5 The parties may designate an equal number of representatives, as set by the Board, to observe the tallying of the ballots. Ballots shall be tallied on a date set by the Board.
- 512.6 Ballots shall remain unopened and be kept in the custody of the Board's agent until the date set for tallying. On the date set for tallying, the representatives and the Board's agent shall have an opportunity to challenge any ballots prior to the opening of the return envelopes.
- 512.7 A voter shall mark an (X) or a (√) in the circle or block designating his or her choice in the election. The intent of the voter, if clearly ascertainable from the ballot itself, shall be followed in assessing the marking of the ballot.
- 512.8 If the ballot is defaced, torn, or marked in such a manner that it is not understandable or identifies the voter, the ballot shall be declared void. Only ballots received prior to the tally will be counted.
- 512.9 Challenged ballots shall be handled in accordance with § 511.4.
- 512.10 All ballots that have not been challenged shall be separated from their return envelopes and commingled prior to tallying. The ballots shall be tallied in accordance with § 514.

## **513 ELECTION PROCEDURES: ON-SITE ELECTIONS**

- 513.1 The procedures set forth in this section shall apply to an election conducted on-site, unless otherwise agreed to by the parties and approved by the Board.
- 513.2 The Board's agent or another impartial entity, mutually selected by the parties and approved by the Board, shall designate the areas in proximity to the polling place in which electioneering shall be prohibited.
- 513.3 A ballot box shall be examined in the presence of the observers immediately prior to the opening of the polls and shall be sealed following the observers' inspection of the polls and the ballot box. The seal shall allow for one opening on the top of the ballot box for voters to insert their ballots.
- 513.4 A voter shall mark an (X) or a (√) in a circle or block designating his or her choice in the election. The intent of the voter, if clearly ascertainable from the ballot itself, shall be followed in assessing the marking of the ballot.
- 513.5 If the ballot is defaced, torn, or marked in such a manner that it is not understandable or identifies the voter, the ballot shall be declared void.
- 513.6 If the voter inadvertently spoils a ballot, the ballot may be returned to the Board's agent who shall give the voter another ballot. The spoiled ballot shall be placed in a "spoiled ballot" envelope. The envelope shall be sealed by the Board's agent and initialed by the observers, and the Board's agent shall place the envelope in the ballot box.
- 513.7 A voter shall fold his or her ballot so that no part of its face is exposed, and on leaving the voting booth, shall deposit the ballot in the ballot box.
- 513.8 Each ballot box shall be sealed by the Board's agent and initialed by the observers after each election session and so kept until the re-opening of the polls and shall remain in the custody of the Board's agent until the tallying of the ballots.
- 513.9 The Board's agent may, upon request of a voter, privately assist the voter to mark his or her ballot.
- 513.10 Each party may designate representative(s) to observe the tallying of the ballots.
- 513.11 Upon conclusion of the polling, ballots shall be tallied in accordance with § 514.
- 513.12 If there is only one polling location, ballots shall be tallied at the polling site. If there is more than one polling location the Board's agent, upon conclusion of the voting, shall seal the ballot boxes, each of which shall be initialed by the observers, and transport them to a predetermined central location. When all of the ballot boxes have

arrived, they shall be opened by the Board's agent in the presence of observers and the ballots shall be commingled for tallying.

#### **514 ELECTION PROCEDURES: TALLYING**

- 514.1 Representation will be determined by the majority of the valid ballots cast. Ballots shall be tallied in the presence of the parties' observers. The count shall proceed as set forth in this section.
- 514.2 The Board's agent shall segregate the challenged ballots. The challenged ballots shall be opened and counted only if they have been resolved by the parties and they could be determinative of the outcome of the election.
- 514.3 If challenged ballots have not been resolved, and if the challenges could affect the outcome of the election, the Board shall treat the challenges in the same manner as objections to the election. (See § 515.)
- 514.4 When the election includes a vote on a combined professional/nonprofessional unit, the ballots on unit preference shall 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, shall be tallied together. If the majority of professional employees voting fails to vote for a combined unit, the ballots on choice of representative, if any, shall be tallied separately.
- 514.5 The Board shall preserve all ballots until the conclusion of any related proceedings.
- 514.6 The participants in the tally are the Board's agents 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 Board agent in charge of the election has discretion to limit the number of participants.

#### **515 CERTIFICATION OF ELECTION RESULTS**

- 515.1 Each party to the election shall be served with a copy of the report of election results prepared by the Executive Director, which shall include the tally of ballots and a certificate of service.
- 515.2 Within 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 which may have improperly affected the results of the election. The objecting party shall include a specific statement of the reasons for each objection.
- 515.3 The Board shall certify the results of each election within fourteen (14) days after the final tally of ballots and, within seven (7) days after the certification of election

results has been served, the Board shall issue to the parties a certification of representative if:

- (a) The challenged ballots are insufficient in number to affect the results of the election;
- (b) No objections have been filed; and
- (c) One labor organization has received a majority of the ballots cast.

515.4 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, shall conduct an investigation and, if necessary, hold a hearing, 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 shall hold a hearing on the matter within two (2) weeks after the date of receipt of the objection. Any hearing held pursuant to this section shall be considered investigatory and not adversarial. The purpose of hearings under this section shall be to ascertain the facts by developing a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.

515.5 If the Board determines that the challenge(s), if any, have been properly resolved and/or that the objections, if any, are without merit or insufficient to warrant setting aside the election, the Board shall issue a certification of representative, if appropriate, or a certification that no union has been selected.

515.6 A runoff may not be held until the Board or the Executive Director has ruled on objections to the election and determinative challenged ballots. An election shall be declared “inconclusive” if there are no challenges that affect the results, but none of the choices on the ballot receives a majority of the valid ballots cast.

515.7 If an election is declared inconclusive, the Board shall declare the election null and void and order that another election be conducted providing for a selection from among the original choices, except that if in the inconclusive election there were three or more choices on the ballot, only the two choices that received the most votes shall appear on the ballot in the subsequent election. In the event of a tie in the second election, the Board shall certify the election results indicating that no representative has been selected.

## **516 PETITIONS TO AMEND CERTIFICATION**

516.1 An exclusive representative shall file a petition with the Board to amend its certification whenever 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. A petition raising a question concerning representation shall also meet the requirements of § 502. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. The petition shall meet the requirements of §§ 501 and 561 and shall also 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 petitioner's representative; and
- (d) A description of the proposed amendment.

516.2 The Board shall grant or deny the petition following the 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 an employer, employees, or a labor organization has committed or is committing an unfair labor practice in violation of D.C. Official Code § 1-617.04 (2001 ed.).

520.2 An unfair labor practice complaint may be filed with the Board by a labor organization, an agency, or an aggrieved person.

- (a) The complaint shall be filed electronically with the Board pursuant to §§ 501 and 561.
- (b) Exception: In accordance with § 501.11, a *pro se* individual, acting on his or her own behalf, shall file a complaint by personal delivery during business hours as defined in § 500.8. An individual acting *pro se* may utilize the Board's public access terminal to upload the document.

520.3 Unfair labor practice complaints shall be filed according to the procedures under §§ 501 and 561, shall be signed by the complainant, and shall contain the following:

- (a) The name, address, and telephone number of the complainant;
- (b) The name, address, and telephone number of the respondent;

- (c) The name, address, and telephone number of the complainant's representative, if any;
- (d) A clear and complete statement of the facts constituting the alleged unfair labor practice, including date, time and place of occurrence of each particular act alleged, and the manner in which D.C. Official Code § 1-617.04 (2001 ed.) of the CMPA is alleged to have been violated;
- (e) A statement of the relief sought;
- (f) A statement as to the existence of any related proceedings or other proceedings involving matters related to the complaint, and the status or disposition of those proceedings; and
- (g) A copy of the collective bargaining agreement, if any.

520.4 Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred. A complaint may be amended as a matter of course prior to the filing of an answer. Once an answer is filed, a complaint may be amended by motion. Any new allegations raised in the amended complaint shall be filed not later than 120 days after the date on which the alleged violations occurred.

520.5 A complainant may withdraw a complaint without prejudice at any time prior to the filing of an answer. If a complainant fails to prosecute a complaint, the Executive Director may dismiss the complaint with prejudice, after providing the complainant with notice.

520.6 A respondent shall file, within fourteen (14) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint. The answer shall also include a statement of any affirmative defenses, including, but not limited to, allegations that the complaint fails to allege an unfair labor practice or that the Board otherwise lacks jurisdiction over the matter.

The answer shall include a specific admission or denial of each allegation or issue in the complaint or, if the respondent is without knowledge thereof, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall clearly meet the substance of the allegation.

520.7 A respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing. The failure to answer an allegation shall be deemed an admission of that allegation.

- 520.8 The Board or its designated representative shall investigate each complaint. The investigation may include an investigatory conference with the parties. The parties shall submit to the Board or its designated representative evidence relevant to the complaint. Such evidence may include affidavits or other documents, and any other material matter.
- 520.9 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board or its designated representative shall issue a Notice of Hearing and serve it upon the parties.
- All parties shall be given at least fourteen (14) days notice of the hearing, except where the Board determines that this notice period should be abbreviated.
- 520.10 If the investigation 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.
- 520.11 The purpose of hearings under this section is to develop a full and factual record upon which the Board may make a decision. The party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The procedures of §§ 550 - 557 shall apply to the hearing.
- 520.12 Following a hearing, the hearing examiner shall submit a report and recommendations to the Board not later than thirty-five (35) days following the submission of post-hearing briefs, if any, or following the conclusion of closing arguments.
- 520.13 Parties may file exceptions and briefs in support of the exceptions not 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 not later than fourteen (14) days after service of the exceptions. A party may request oral argument before the Board, stating the reasons for the request. The Board may grant the request if in the Board's view such argument would be helpful.
- 520.14 The Board shall reach its decision upon a review of the entire record. The Board may adopt the recommended decision to the extent that it is supported by the record.
- 520.15 The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.

**526 IMPASSE RESOLUTION PROCEEDINGS: COMPENSATION NEGOTIATIONS**

- 526.1 When it appears that an impasse has been reached during collective bargaining negotiations regarding compensation matters, the Executive Director may be notified in writing by one or both of the parties. The notice of impasse shall meet the requirements of §§ 501 and 561 and shall include, in addition, the following:
- (a) The name(s) of the chief negotiator(s) 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 labor organization and/or employer demands upon which impasse has been reached.
- 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) (2001 ed.), the Executive Director shall verify with the other party (unless jointly filed) that the parties are at impasse. Upon verification or receipt of a joint notice of impasse, the Executive Director shall consult with the parties regarding their choice of mediator, if any.
- 526.3 If the parties are unable to agree upon a mediator, the Executive Director shall appoint one or request that the Federal Mediation and Conciliation Service provide one.
- 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 his or her duties shall be deemed confidential.
- 526.4 If mediation does not resolve an impasse within thirty (30) days or any shorter period designated by the mediator, the Executive Director shall appoint a Board of Arbitration as required by D.C. Official Code § 1-617.17 (2001 ed.); provided, however, that the appointment of a Board of Arbitration under D.C. Official Code §§ 1-617.17 (f)(2) and (3) (2001 ed.), shall only be upon the request of a party.

526.5 Arbitration awards shall be in writing, and served on all parties within forty-five days after the board of arbitration has been established. The award shall in all respects conform to D.C. Official Code § 1-617.17(f) (1), (2), and (3) (2001 ed.).

**527 IMPASSE RESOLUTION PROCEEDINGS: NON-COMPENSATION 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 Board 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 Upon receipt of a request for impasse resolution procedures for non-compensation matters, the Executive Director shall initiate an informal inquiry. If the Executive Director determines that the parties have been unable to reach agreement, despite diligent efforts, the Executive Director shall consult with the parties regarding their choice of impasse resolution procedures. 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) (2001 ed.).

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

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 his or her duties shall be deemed confidential.

527.4

- (a) If the parties have not reached agreement on the type of impasse resolution procedures to be utilized, the Board may direct fact-finding procedures in the following manner:
  - (i) The parties may jointly request the assignment of a specific fact-finder, fact-finder selection service, or request that the designated mediator also serve as the fact-finder or as a member of a fact-finding panel;

- (ii) If the parties are unable to make a selection from a list supplied by the Board, the Board shall assign a fact-finder or panel of its choice or fact-finder selection service;
- (b) The fact-finder shall provide the services defined under the term “fact-finding” in § 599;
- (c) The fact-finder shall meet with the parties within seven (7) days after appointment, hold conferences and hearings, if necessary, to facilitate the fact-finding process and take such other steps as necessary to investigate, and to effect settlement of the impasse through fact-finding;
- (d) The fact-finder shall 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 shall be submitted confidentially to the parties and to the Board, unless the parties resolve the dispute prior to the submission of the written report; and
- (e) 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.

527.5 The Board may direct that interest arbitration procedures for non-compensation matters be utilized as follows:

- (a) The parties may jointly request the assignment of a particular arbitrator, or the use of a particular arbitration selection service. If the parties do not make such a request(s), the Executive Director shall submit to each of the parties a list of at least five (5) names of arbitrators;
- (b) Each party shall have seven (7) days from the date of the submission in which to examine the list, cross off as many as two (2) names, number the remaining names in order of preference and return the list to the Executive Director;
- (c) The Executive Director shall appoint an arbitrator with due consideration for the order of preference indicated by the parties;
- (d) If the appointed arbitrator declines or is unable to serve, the Executive Director may appoint another arbitrator from the original list who was not previously rejected by either party;
- (e) Parties to any negotiations may, by agreement, provide for an alternative method for the selection of one or more arbitrators. In such instances, §

527.5 (a-d) shall apply only in the event of the failure to select an arbitrator by the alternative method;

- (f) Within seven (7) days after appointment, the arbitrator and the parties, with the assistance of the Executive Director, if necessary, shall jointly select a date, time, and place for the hearing; and
- (g) Arbitration awards shall be in writing and signed by the arbitrator and shall be served on the parties within thirty (30) days after the arbitrator has been appointed, unless otherwise agreed to by the parties. A statement of the arbitrator's fee and expenses shall be submitted with the award.

527.6 When fact-finding and arbitration proceedings are directed by the Board in non-compensation matters, they 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. The appeal shall be filed electronically with the Board pursuant to §§ 501 and 561. If the Board or its designee determines that an impasse has occurred regarding non-compensation matters, and an issue of negotiability exists at the time of such impasse determination, the negotiability issue must be withdrawn or a negotiability appeal filed with the Board within seven (7) days of the Board's determination as to the existence of an impasse. Except when otherwise ordered by the Board in its discretion, impasse proceedings shall not be suspended pending the Board's determination of a negotiability appeal.

532.2 A negotiability appeal shall meet the requirements of §§ 501 and 561 and shall include the following:

- (a) The name, title, address, and telephone number of the chief negotiator for each party;
- (b) A short and plain statement of the negotiability issue(s), including a copy of the proposal(s) at issue and specific reference to any applicable statute, regulation(s), or collective bargaining agreement provisions; and
- (c) Any written communication from the other party to the negotiation asserting that a proposal is nonnegotiable.

532.3 An answer to a negotiability appeal shall state in short and plain terms the party's position on each negotiability issue raised in the appeal.

532.4 Negotiability Appeal and Answer – Filing

Except as provided in § 532.1, a negotiability appeal shall be filed within thirty-five (35) days after a written communication from the other party to the negotiations asserting that a proposal is nonnegotiable or otherwise not within the scope of collective bargaining under the CMPA. An answer to the negotiability appeal, if any, shall be filed within fourteen (14) days after the date of service of the appeal.

532.5 Upon the expiration of the period for filing the appeal and response with the Board, the Executive Director shall:

- (a) Make a prompt preliminary determination whether to require expedited briefing of the matter, with written briefs to be submitted within no more than fourteen (14); and
- (b) Refer the matter to the Board, either without such briefing or after receipt of the briefing, provided for in paragraph (a).

532.6 In deciding whether to require expedited briefing of the matter prior to submission of the matter to the Board, the Executive Director shall take into consideration the potential value of such briefing to the prompt resolution of the case by the Board and any potential delay in Board consideration that such briefing may cause.

532.7 After receiving a case under § 532.5(b), the Board shall expeditiously take one or more of the following actions:

- (a) Issue a written decision;
- (b) If no briefing has yet been received, order the submission of written briefs to be submitted within fourteen (14) days;
- (c) Order oral argument in the matter, to be scheduled, without written briefs, within fourteen (14) days;
- (d) Order a hearing which may include briefs and arguments; or
- (e) Direct the parties to informal mediation or conference with the Executive Director or any staff members or agents empowered to conduct informal mediation on the Board's behalf.

532.8 Notice of any hearing ordered pursuant to § 532 shall be issued at least seven (7) days prior to the date of the hearing. The hearing shall be conducted in accordance with §§ 550-557.

532.9 The Board shall issue a decision on negotiability as soon as possible following final submission of the matter.



## **538 GRIEVANCE ARBITRATION REVIEW REQUEST**

538.1 A party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Board not later than twenty-one (21) days after service of the award. The review request shall be filed electronically with the Board pursuant to §§ 501 and 561. Service of the arbitration award on a party shall be deemed completed by the Board upon personal delivery during business hours, depositing the document in the United States mail, properly addressed, first class postage prepaid, electronic mail, or by facsimile transmission. Whenever an award is served by U.S. mail, five (5) days shall be added to the prescribed period of time to file a request for review with the Board. The arbitration review request shall be designated “Arbitration Review Request” and shall contain the following information, set forth in numbered paragraphs:

- (a) The name, address, and telephone number of the agency (or agency subdivision) involved, including the name of the person to contact;
- (b) The name, address, and telephone number of the labor organization having exclusive recognition, including the name of the person to contact;
- (c) The name, address, and telephone number of the arbitrator;
- (d) A statement of the reasons for requesting review of the award;
- (e) A copy of the award and affidavit or other proof of the date of service of the award; and
- (f) Any other portion of the arbitration record upon which parties intend to rely in the arbitration review request.

538.2 An opposition to the arbitration review request may be filed with the Board by the other party to the arbitration proceeding not later than fourteen (14) days after service of the request. The Board may issue a Decision and Order requiring the parties to submit additional briefs. The parties will then have fourteen (14) days from the issuance of the Board’s Decision and Order to file briefs concerning the matter. Oral arguments may be permitted at the discretion of the Board.

538.3 In accordance with D.C. Official Code § 1-605.02(6) (2001 ed. & Supp. 2014), the only grounds for an appeal of a grievance arbitration award to the Board are the following:

- (a) The arbitrator was without authority or exceeded the jurisdiction granted;
- (b) The award on its face is contrary to law and public policy; or

- (c) The award was procured by fraud, collusion or other similar and unlawful means.

538.4 The Board, after consideration of the review request, the opposition, and briefs and oral arguments, if any, shall make a determination which may reject the request for lack of jurisdiction or sustain, set aside or remand the award in whole or in part. The parties to an arbitration review request are responsible for preparing and filing with PERB any portion of the arbitration record, in addition to the arbitration award, upon which they intend to rely in the arbitration review request. The Board will base its decision on the record submitted by the parties, subject to the Board's limited authority to review arbitration awards pursuant to D.C. Official Code § 1-605.02(6) (2001 ed. & Supp. 2014) and § 538.3.

#### **544 STANDARDS OF CONDUCT COMPLAINTS**

544.1 The provisions of D.C. Official Code § 1-617.03 (2001 ed.), concerning the Standards of Conduct for labor organizations, shall apply to any labor organization that has been accorded exclusive recognition pursuant to D.C. Official Code §§ 1-617.10(a) or 1-617.11(b) (2001 ed.), or that is seeking to be certified as an exclusive representative by the Board.

- (a) The complaint shall be filed electronically with the Board pursuant to §§ 501 and 561.
- (b) Exception: In accordance with § 501.11, a *pro se* individual, acting on his or her own behalf, shall file a complaint by personal delivery during business hours as defined in § 500.8. A *pro se* individual may utilize the Board's public access terminal to upload the document.

544.2 Any individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations may file a complaint with the Board for investigation and appropriate action. The Standards of Conduct set forth in D.C. Official Code § 1-617.03(a) (2001 ed.) are as follows:

- (a) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;
- (b) The exclusion from office in the organization of any person identified with corrupt influences;
- (c) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;

- (d) Fair elections; and
- (e) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

544.3 A standards of conduct complaint shall be designated “Standards of Conduct Complaint,” shall meet the requirements of §§ 501 and 561, and shall contain the following information:

- (a) The name, address, and telephone number of the complainant(s), including the name of the person to contact;
- (b) The name, address, and telephone number of the labor organization having or seeking exclusive recognition, including the name of the person to contact;
- (c) A statement of the reasons for the complaint, including the date, time, place, and person(s) involved in each occurrence;
- (d) A statement of the relief sought.

544.4 A complaint alleging a violation under this section shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred. A complaint may be amended as a matter of course prior to the filing of an answer. Once an answer is filed, a complaint may be amended by motion. Any new allegations raised in the amended complaint shall be filed not later than 120 days from the date the alleged violation(s) occurred.

544.5 A complainant may withdraw a complaint without prejudice at any time prior to the filing of an answer. If the complainant fails to prosecute a complaint, the Executive Director may dismiss the complaint with prejudice, after providing the complainant with notice.

544.6 A respondent shall file, within fourteen (14) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint. The answer shall also include a statement of any affirmative defenses, including, but not limited to, allegations that the complaint fails to allege a standards of conduct violation or that the Board otherwise lacks jurisdiction over the matter.

The answer shall include a specific admission or denial of each allegation or issue in the complaint or, if the respondent is without knowledge thereof, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be

made to all or part of an allegation but shall clearly meet the substance of the allegation.

- 544.7 A respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing. The failure to answer an allegation shall be deemed an admission of that allegation.
- 544.8 The Board or its designated representative shall investigate each complaint. The investigation may include an investigatory conference with the parties. The parties shall submit to the Board or its designated representative evidence relevant to the complaint. Such evidence may include affidavits or other documents, and any other material matter.
- 544.9 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board or its designee shall issue a Notice of Hearing and serve it upon the parties.
- All parties shall be given at least fourteen (14) days notice of the hearing, except where the Board determines that this notice period should be abbreviated.
- 544.10 If the investigation 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.
- 544.11 The purpose of hearings under this section is to develop a full and factual record upon which the board may make a decision. The party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The procedures of §§ 550-557 shall apply to the hearing.
- 544.12 Not later than thirty-five (35) days following a hearing and the submission of post-hearing briefs or the conclusion of closing arguments, if any, the hearing examiner shall submit a report and recommendation to the Board.
- 544.13 Parties may file exceptions and briefs in support of the exceptions not 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 not later than fourteen (14) days after service of the exceptions. A party may request oral argument before the Board, stating the reasons for the request. The Board may grant the request if in the Board's view such argument would be helpful.
- 544.14 The Board shall reach its decision upon a review of the entire record. The Board may adopt the recommended decision to the extent that it is supported by the record.
- 544.15 The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may

be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged violation is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.

## **550 HEARINGS**

550.1 In any proceeding when a hearing is to be held, the Executive Director or any other 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) Delineating the issues;
- (b) Agreeing on such facts, matters, and procedures as will facilitate and expedite the case; and
- (c) Exchanging lists of witnesses and exhibits.

550.2 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.

550.3 A party to a proceeding before the Board may be represented by a designated representative. The representative shall file a notice of appearance with the Board. Once a notice of appearance has been filed, the provisions applicable to a party under § 501.12 are applicable to a party's representative.

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 shall issue a Notice of Hearing to all parties to the proceeding at least fourteen (14) days prior to the scheduled date of the hearing. The hearing shall be conducted at the time and place specified in the Notice of Hearing and shall be open to the public.

550.5 Postponements of hearings shall not be granted except for sufficient cause as determined by the Executive Director. Requests for postponements shall comply with §§ 501 and 561 and shall also meet the following requirements:

- (a) Alternate dates for any rescheduled hearings shall be given; and
- (b) The positions of all other parties regarding the postponement requested shall be ascertained in advance by the requesting party and set forth in the request.

550.6 Except under extraordinary circumstances, no request for postponement shall 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 shall 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 Where a copy of an exhibit has not been tendered to the other parties because it was not available prior to the opening of the hearing, a copy of such exhibit shall be furnished to each of the other parties at the outset of the hearing.
- 550.9 One (1) copy of each documentary exhibit shall be submitted to the hearing examiner at the time the exhibit is offered in evidence at the hearing, unless otherwise requested by the hearing examiner.
- 550.10 Objections to an exhibit shall be reserved until the exhibit is offered into evidence.
- 550.11 Any party intending to call witnesses to testify at the hearing shall 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 Government, so informing the representative of record for the District Government in the proceeding.
- 550.12 Hearings shall be presided over by a Hearing Examiner, who is a representative of the Board. Hearing Examiners shall have full authority to conduct a hearing unless restricted by the Board.
- 550.13 Hearing Examiners shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. Hearing Examiners shall have all powers necessary to that end including, but not limited to, the power to:
- (a) Administer oaths and affirmations;
  - (b) Request the issuance of subpoenas;
  - (c) Rule upon motions;
  - (d) Compel discovery of evidence ruled competent, relevant and 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 with prejudice 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 shall be raised before and presented to the Hearing Examiner. Any objection not made before the Hearing Examiner shall be deemed waived unless the failure to make such objection is excused by the Board because of extraordinary circumstances.
- 550.15 Unless otherwise specified in the CMPA or in these rules, a party with the burden of proof shall carry that burden by a preponderance of the evidence.
- 550.16 In hearings before Hearing Examiners, strict compliance with the rules of evidence applied by the courts shall not be required. The Hearing Examiner shall admit and consider proffered evidence that possesses probative value. Evidence that is cumulative or repetitious may be excluded.
- 550.17 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 below.
- 550.18 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.
- 550.19 If a party fails to prosecute a cause of action, the Hearing Examiner may recommend that the Board or Executive Director dismiss the action with prejudice or rule against the defaulting party.
- 550.20 The Hearing Examiner or Executive Director may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this section.

- 550.21 If a hearing has been held, 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.

## **551 RECORDING OF HEARINGS**

- 551.1 When a hearing is directed by the Board, the Board shall make arrangements for the hearing to be recorded by stenographic or other means that adequately preserves the record. The parties may order transcripts and shall bear the cost of any transcripts that they order. Transcripts shall be available for review at the Board's offices upon appropriate arrangements being made.

## **552 SUBPOENAS**

- 552.1 Application for issuance of a subpoena requiring a person to appear and testify at a specific place and time shall be made in writing to the Executive Director. All requests for *subpoenas ad testificandum* shall clearly identify the person subpoenaed and be accompanied by a forty dollar (\$40) per diem consisting of a certified check or money order payable to each person subpoenaed.
- 552.2 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 shall be made in writing to the Executive Director.
- 552.3 An applicant for a subpoena shall arrange for service. The following rules shall apply to service of subpoenas:
- (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. Service of the subpoena shall be attested to in an affidavit by the person making such service. The attesting affidavit shall 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, a copy of the document shall be addressed to the person or business entity to be served, at his or her residence, principal office or place of business. The return receipt shall be proof of service of the document.
- 552.4 Any motion to limit or quash the subpoena shall be filed within seven (7) days after service of the subpoena or on the date for compliance with the subpoena, whichever is earlier. Such motions shall set forth all assertions of privilege, burdensomeness,



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

552.5 In the case of contumacy or failure to obey a subpoena issued, the Board, pursuant to D.C. Official Code § 1-605.02(16) (2001 ed. & Supp. 2014), may request enforcement of the subpoena in the Superior Court of the District of Columbia.

552.6 Board employees may not be subpoenaed.

552.7 When an employee of the District of Columbia government receives a subpoena to appear as a witness on behalf of any party in connection with a proceeding before the Board under the CMPA, the employing District of Columbia agency shall make the employee available to furnish sworn statements or affirmation or to appear as a witness at hearings. When providing such statements or testimony, a witness shall be on official duty status and shall not be required to use annual leave.

### **553 MOTIONS**

553.1 All motions shall briefly state the relief sought and shall set forth, with particularity, the grounds therefor. A motion, other than one made at a hearing, shall be filed with the Board and meet the requirements of §§ 501 and 561.

553.2 Any response to a written motion shall be in writing and filed within seven (7) days after service of the motion. The Executive Director may allow additional responses by the moving or responding party upon a request made within seven (7) days of service of a pleading.

553.3 The Executive Director may refer motions made prior to the issuance of the Hearing Examiner's Report and Recommendation to the Hearing Examiner. Motions made during a hearing shall be ruled on by the Hearing Examiner, except when the Hearing Examiner refers the matter to the Board. All rulings on motions shall be in writing, except that such rulings made at the hearing may be stated orally on the record.

### **554 INTERLOCUTORY APPEALS**

554.1 Unless expressly authorized by the Board, interlocutory appeals to the Board of rulings by the Executive Director, Hearing Examiner or other Board agents shall not be permitted. Exceptions to such rulings shall be considered by the Board when it examines the full record of the proceeding.

### **555 ORAL ARGUMENTS/BRIEFS AND SUBMISSIONS**

555.1 Any party shall be entitled, upon request, to a reasonable time for oral argument prior to the close of the hearing, except that upon the agreement of all parties or at

the direction of the hearing examiner, the parties may submit written closing arguments instead of post-hearing briefs.

- 555.2 Any party may submit to the Hearing Examiner a brief, which meets the requirements of §§ 501 and 561. Briefs or written closing arguments shall be filed not 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.

## **556 HEARING EXAMINER'S REPORT/EXCEPTIONS**

- 556.1 In all proceedings conducted by a Hearing Examiner, the Hearing Examiner shall prepare a Report and Recommendation after the close of the hearing and the receipt of briefs, if any, and shall submit it to the Executive Director.
- 556.2 Copies of the Hearing Examiner's Report and Recommendation shall be forwarded to the parties' representatives by the Executive Director.
- 556.3 Within fourteen (14) days after service of the Report and Recommendation, any party may file precise, specific, written exceptions with the Board. Written exceptions shall meet the requirements of §§ 501 and 561.
- 556.4 An opposition to exceptions may be filed within fourteen (14) days after service of the exceptions.
- 556.5 The Board may order additional briefs where it deems appropriate. The Board may also order oral argument on its own motion or upon motion of a party.

## **557 DISQUALIFICATION**

- 557.1 A Hearing Examiner or Board member shall withdraw from proceedings whenever that person has a conflict of interest.
- 557.2 In any case in which a Hearing Examiner fails to withdraw from a proceeding as has been requested by a party, the Hearing Examiner shall state the reason for his or her decision on the record. The Board shall consider the request at the time the entire case is transmitted and shall take appropriate action.

## **558 VOLUNTARY AND MANDATORY SETTLEMENT OR ADJUSTMENT OF DISPUTES**

- 558.1 It is Board policy to encourage voluntary efforts of parties to settle or adjust 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 shall be consistent with the provisions, purposes, and policies of the CMPA.
- 558.3 No admissions, offers of settlement, or proposals of adjustment made during such 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 At the discretion of the Board, all parties filing pleadings before the Board shall submit to the mandatory mediation program established by the Board.
- 558.5 The Board or its designee shall designate the mediator in each matter.
- 558.6 The parties shall make a good faith effort in all mediations before the Board to resolve the issues in dispute as identified in the pleadings submitted to the Board. Party representatives at the mandatory mediation proceedings must have the settlement authority of the party.
- 558.7 Parties must inform the Board when they have multiple cases pending, which raise common issues. The Board encourages the resolution and consolidation of multiple cases for the purpose of mediation.
- 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 FINALITY OF BOARD DECISION AND ORDER**

- 559.1 The Board's Decision and Order shall become final thirty (30) days after issuance unless the Order specifies otherwise. Issuance is considered completed upon service on the parties in the matter.
- 559.2 The Board's Decision and Order shall not become final if any party files a motion for reconsideration within fourteen (14) days after issuance of the Decision, or if the Board reopens the case on its own motion within fourteen (14) days after issuance of the Decision, unless the Order specifies otherwise.
- 559.3 Upon issuance of an Opinion on any motion for reconsideration of a Decision and Order, the Board's Decision and Order shall become final.
- 559.4 Administrative remedies are considered exhausted when a Decision and Order becomes final in accordance with this section.

## **560 ENFORCEMENT**

- 560.1 If any respondent fails to comply with the Board’s Decision within the time period specified in § 559.1, the prevailing party may petition the Board to enforce the Order.
- (a) The petition shall be filed electronically with the Board pursuant to §§ 501 and 561.
- (b) Exception: In accordance with § 501.11, a *pro se* individual, acting on his or her own behalf, shall file a petition by personal delivery during business hours as defined in § 500.8. A *pro se* individual may utilize the Board’s public access terminal to upload the document.
- 560.2 The responding party shall have fourteen (14) days from service to respond to the petition.
- 560.3 Failure by the responding party to file an answer may be construed as an admission of the petitioner’s allegations.

## **561 ELECTRONIC FILING**

- 561.1 All pleadings, motions, memoranda of law, orders, or other documents shall be filed electronically through File & ServeXpress, except for such documents as may be excluded by these rules or by order of the Board or Executive Director.
- 561.2 Repealed.
- 561.3 Unless the Board orders otherwise, an original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document and shall be made available, upon reasonable notice, for inspection by other counsel or the Board. From time to time, it may be necessary to provide the Board with a hard copy of an electronically filed document.
- 561.4 Any pleading filed electronically shall be considered filed with the Board at the time the transaction is completed (“authorized date and time”). 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 shall be deemed to have been filed on the day and at the time of the next opening of the Board for business.
- 561.5 File & ServeXpress is hereby appointed the Agent of the Board as to the electronic filing, receipt, service, and/or retrieval of any pleading or document maintained electronically. Upon filing and receipt of a document, File & ServeXpress shall issue a confirmation that the document has been received. The confirmation shall serve as proof that the document has been filed. A filer will receive an email notification of

document(s) that the Board subsequently rejects, and may be required to refile the document(s) to meet necessary filing requirements.

561.6 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 enter an order permitting the document to be filed *nunc pro tunc* to the date it was first attempted to be filed electronically.

561.7 Documents filed electronically shall comply with the following requirements:

- (a) In accordance with § 501, all electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings, and in such other and further format as the Board may require from time to time;
- (b) Every pleading, document, and instrument electronically filed shall be deemed to have been signed by the attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, and telephone number. Typographical signatures shall be styled "/s/ name" and shall be treated as personal signatures for all purposes under these rules; and
- (c) Where counsel is filing a pleading in consolidated cases, a single filing in the lead case is deemed to be filed in all cases consolidated with it.

561.8 Repealed.

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

561.11 A motion to file documents under seal shall be filed and served electronically. 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 shall establish and maintain a list of persons qualified to act as neutrals in resolving disputes. The list shall specify, for each person, the capacities (i.e. mediator, fact-finder, arbitrator, hearing examiner) for which that person is qualified. Unless otherwise specified by these rules or the parties' mutual agreement, the selection of mediators, fact-finders and arbitrators shall be made in order from the list of neutrals maintained by the Board, assuming the availability of the selected

neutral. 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. The nomination shall include the following information:

- (a) The name, occupation, residence, and business address and telephone numbers of the nominee;
- (b) A brief statement of the nominee's related experience and education that serve as qualifications for appointment;
- (c) Any relevant professional, civic, or social association memberships of the nominee;
- (d) The name, address, telephone number and occupation of the nominator (if different from the nominee);
- (e) A statement of the association between the nominator and the nominee (where they are different persons) and of its duration; and
- (f) 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 in the District of Columbia Government.

566.2 In making appointments to the list, the Board shall 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.

566.3 Every person appointed to the list shall 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, shall not charge a fee greater than that listed in the fee schedule he or she has filed with the Board. A minimum of thirty (30) days prior written notice shall be given to the Board of changes in fee schedules.

566.4 Requests for panels from the Board's list shall be submitted on a form developed by the Board and shall include the following:

- (a) The name, address, and telephone number of the party or parties submitting the request and of any other party to the matter;
- (b) The name, address, and telephone number of a party or all parties' representative;

- (c) The type of service requested; and
- (d) A brief description of the nature of the dispute, including unresolved issues, to the extent known.

566.5 Whenever the Board provides parties with a panel selected from the list, the Board shall also provide copies of the biographical sketches and fee schedules of the panelists.

566.6 Parties may jointly request that panels submitted to them contain or omit specific individuals. No party may unilaterally make such a request.

## **567 AMENDMENT TO RULES**

567.1 Whenever the Board deems amendment of these rules to be in the public interest, it shall give notice of the proposed amendments to all labor organizations and personnel authorities of the District of Columbia Government. Copies of the proposed amendments shall 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 regulations and provide specific proposed language together with a statement of grounds in support of the amendment.

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. Comments shall be in writing and shall meet the requirements of § 501, or as otherwise stated in the Notice.

## **599 DEFINITIONS**

599.1 As used in this Chapter, the following terms and phrases shall have the meanings ascribed:

**Agency** - Any entity that is so defined in the CMPA.

**Arbitrator** - A neutral person selected by the parties or appointed by the Board or by the Executive Director to resolve disputed labor-management issues by issuing a final and binding decision after presentation by the parties of evidence and argument.

**Days** - Calendar days, unless otherwise specified.

**Board** - The District of Columbia Public Employee Relations Board.

**Decision-making personnel** - Any Hearing Examiner, employee, or Board Member of the Board who reasonably may be expected to participate in the decision-making process of the Board.

**Ex parte Communication** - Any oral or written communication between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties the opportunity to participate.

**Fact-finding** - The procedure in which one or more neutral persons review the positions of the parties in a negotiation impasse with a view towards focusing attention on the issues in dispute and resolving differences as to facts.

**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.

**Interested party** - Any party or representative of a party involved in a proceeding before the Board; or any other person who might be affected by the outcome of a proceeding before the Board.

**Issuance** - The date of service on one or more parties of a decision, order, or correspondence from the Board.

**Mediation** - The procedure in which a neutral person is selected or appointed to attempt to persuade the parties to a labor-management dispute to compromise or otherwise settle their differences by a solution which they reach themselves.

**Panel** - Either three members of the Board who have been designated to hear a particular matter brought before the Board or a tripartite committee of arbitrators who have been appointed to hear a particular matter.

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

**Pleadings** - Complaint(s), petition(s), appeal(s), request(s) for review or resolution, motion(s), exception(s), brief(s), and responses to the foregoing.

**Pro se individual** – A party who is not represented by legal counsel nor represented in proceedings before the Board by a representative from a labor organization.

**Showing of Interest** - Proof offered to the satisfaction of the Board establishing that a percentage (as defined by these rules) of employees in a proposed or existing 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.