

Maryland State  
Higher Education  
Labor Relations Board  
Regulations

(Effective February 2011 and beyond)

COMAR 14.30.01 ~ 11

**Title 14**

**INDEPENDENT AGENCIES**

**SUBTITLE 30 - STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

<b>Chapter 01 – Definitions</b> .....	1
Definitions.....	1
Bargaining unit.....	1
Bargaining unit determination petition.....	1
Board.....	1
Collective Bargaining.....	1
Collective Bargaining Law.....	1
Election.....	1
Election Candidate.....	1
Election Petition.....	2
Employer.....	2
Exclusive Representative.....	2
Executive Director.....	2
Labor Organization.....	2
Person.....	2
Petition.....	2
Petition for Decertification.....	2
Petition for unit clarification.....	2
Petition to contest exclusionary designation.....	2
Petition to intervene.....	2
<b>Chapter 02 – General</b> .....	3
Board Policy.....	3
Computation of Time Periods.....	3
Filing.....	3
Requests for and Inspection of Board Documents.....	4
Petition for Adoption of Regulation.....	4
<b>Chapter 03 – Executive Director</b> .....	5
Executive Director.....	5
<b>Chapter 04 – Petitions</b> .....	6
Filing a Petition.....	6
When to File the Petition.....	6
How to File a Petition.....	6
Form of Petition.....	6
Showing of Interest Forms.....	8
Evaluation of Showing of Interest forms.....	8
Sufficiency, Amendment and Action on Election Petitions and Petitions to Intervene... 10	
Hearing.....	11

Posting of Petitions.....	11
Unit Clarification and/or Contest of Unit Designation in Existing Bargaining Units.....	11
Decertification and Decertification/Election Petitions.....	11
Petition for Declaratory Ruling.....	12
<b>Chapter 05 – Elections.....</b>	<b>13</b>
Scope.....	13
Notice of Election.....	13
Election Procedure.....	15
Ballots.....	16
Voter Eligibility.....	16
Final Election Order.....	16
Voter List.....	17
Conduct of Elections.....	17
Election Observers.....	19
Tally of Ballots.....	19
Challenged Ballots.....	20
Void Ballots.....	20
Majority of Vote Required.....	21
Certification of Election Results.....	21
Runoff Election.....	22
Objections to the Conduct of Election Judges.....	22
Objections to the Conduct of a Party.....	22
Amendment or Certification of Representative.....	22
<b>Chapter 06 – Denial or Revocation of Certification.....</b>	<b>24</b>
Denial or Revocation of Certification.....	24
<b>Chapter 07—Unfair Labor Practices.....</b>	<b>25</b>
Unfair Labor Practices—Employer.....	25
Unfair Labor Practices—Employee/Employee Organization.....	25
Permissible Labor Practices.....	26
Relief from Unfair Labor Practices.....	27
<b>Chapter 08—Permissible Labor Related Activities.....</b>	<b>30</b>
Nondiscrimination and Neutrality.....	30
Equal Access for Employees and Election Candidates.....	30
Content and Viewpoint Neutrality Towards Private Speech.....	30
<b>Chapter 09—Collective Bargaining.....</b>	<b>31</b>
Negotiations.....	31
Memorandum of Understanding.....	32
Procedures for Ratification of Memorandum of Understanding.....	32
<b>Chapter 10—Impasse Procedures.....</b>	<b>35</b>
Notice of Impasse—Contents.....	35
Voluntary Impasse Assistance.....	35
Mediator’s Report.....	35
Negotiations Deadline for Upcoming Fiscal Year.....	35
<b>Chapter 11—Hearings.....</b>	<b>37</b>
Scope.....	37
Definitions.....	37

Delegation of Hearing Authority to the Office of Administrative Hearings.....	37
Delegation of Hearing Authority to the Executive Director or other Person.....	38
Request for Hearing.....	38
Notice of Hearing.....	39
Service.....	39
Representation.....	40
Discovery.....	40
Prehearing Conference.....	40
Stipulations and Affidavits.....	42
Subpoenas.....	42
Motions.....	43
Conduct of Hearings.....	44
Evidence.....	45
Expert Testimony.....	46
Appointment of Interpreter.....	46
Failure to Attend Hearing and Default.....	46
Burdens of Going Forward and Persuasion.....	46
Record of Hearings.....	47
Ex Parte Communications.....	47
Transcripts, Costs.....	48
Proposed Orders; Exceptions.....	48
Final Decision.....	49
Reconsideration.....	50
Judicial Review.....	50

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 01 Definitions**

**Authority: State Personnel and Pensions Article, §§3-2A-05, 3-2A-06, and 3-2A-07,  
Annotated Code of Maryland**

#### **.01 Definitions.**

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Bargaining unit" means a bargaining unit defined in State Personnel and Pensions Article, §3-403(d), Annotated Code of Maryland.

(2) "Bargaining unit determination petition" means a petition to resolve a disagreement over the assignment of classification titles or positions in a bargaining unit.

(3) "Board" means the State Higher Education Labor Relations Board (SHELRB) established by State Personnel and Pensions Article, §3-2A-01, Annotated Code of Maryland.

(4) "Collective bargaining" means:

(a) Good faith negotiations by authorized representatives of employees and their employer with the intention of:

(i) Reaching an agreement about wages, hours, and other terms and conditions of employment; and

(ii) Incorporating the terms of the agreement in a written memorandum of understanding or other written understanding;

(b) Clarifying terms and conditions of employment or the administration of terms and conditions of employment; or

(c) The voluntary adjustment of a dispute or disagreement between authorized representatives of employees and their employer that arises under a memorandum of understanding or other written understanding.

(5) "Collective Bargaining Law" means State Personnel and Pensions Article, Title 3, Annotated Code of Maryland.

(6) "Election" means an election for an exclusive representative of a bargaining unit under State Personnel and Pensions Article, §3-401, Annotated Code of Maryland.

(7) "Election candidate" means a candidate on an election ballot including "no exclusive representative".

(8) "Election petition" means a petition for the election of an exclusive representative of a bargaining unit under State Personnel and Pensions Article, §3-402, Annotated Code of Maryland.

(9) "Employer", except as indicated, means:

(a) A University System of Maryland institution as defined in State Personnel and Pensions Article, §3-101(g), Annotated Code of Maryland;

(b) Morgan State University;

(c) St. Mary's College of Maryland; and

(d) Baltimore City Community College.

(10) "Exclusive representative" means the employee organization certified by the State Higher Education Labor Relations Board under State Personnel and Pensions Article, §3-406, Annotated Code of Maryland.

(11) "Executive Director" means the individual jointly appointed by the State Higher Education Labor Relations Board and the State Labor Relations Board under State Personnel and Pensions Article, §§3-204 and 3-2A-04, Annotated Code of Maryland.

(12) "Labor organization" means an exclusive collective bargaining representative or candidate for an election for an exclusive representative under State Personnel and Pensions Article, Title 3, Annotated Code of Maryland.

(13) "Person" means an individual or organization.

(14) "Petition" means a request for action by the Board or the Executive Director.

(15) "Petition for denial or revocation of certification" means a request that the Board investigate whether a certification as exclusive representative of an employee organization should be revoked for a willful failure to comply with the Collective Bargaining law, the Board's regulations, or the governing documents of the organization.

(16) "Petition for unit clarification" means a request filed by an exclusive representative or employer for clarification of a bargaining unit.

(17) "Petition to contest exclusionary designation" means a petition filed by an employee who claims to be improperly excluded from a bargaining unit or placed in the wrong bargaining unit.

(18) "Petition to intervene" means a petition that a person become a party to:

(a) An election;

(b) A bargaining unit determination proceeding; or

(c) A proceeding to contest an exclusionary designation.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 02 General**

**Authority: State Personnel and Pensions Article, §§3-2A-05—3-2A-07; State Government Article, §§10-122 and 10-123; Annotated Code of Maryland**

#### **.01 Board Policy.**

It is Board policy to encourage the voluntary efforts of the parties to settle or adjust disputes. Such efforts at resolution and any settlements or adjustments reached shall be consistent with the provisions, purposes, and policies of Title 3 of the State Personnel and Pensions Article, Annotated Code of Maryland.

#### **.02 Computation of Time Periods.**

A. Time periods in this subtitle refer to calendar days unless otherwise indicated.

B. For purposes of service of any document filed before the Board, absent any evidence to the contrary, it is presumed that any document served by U.S. mail was received by the addressee 3 business days after the date the document was mailed. Thus, a 3-day period shall be added to any time period in which service was effected by mail.

C. A time period is computed beginning with the day after the act or event which initiates the period and concludes with the last day of the period, excluding weekends and State holidays. A time period which would otherwise end on a weekend or State holiday instead ends on the following business day.

D. Enlargement of Time Periods. The Board or the Executive Director may enlarge a time period not prescribed by statute:

(1) Before the initial time period ends, without motion or notice, if good cause for the enlargement is shown; and

(2) After the initial time period ends, upon written motion filed with the Executive Director, if the failure to act was the result of excusable neglect or good cause.

#### **.03 Filing.**

A. A document is filed with the Board when it is received by mail, electronic mail, or hand-delivery by the Executive Director or the Executive Director's designee. Filers using electronic mail shall, within a reasonable time, provide a hard copy to the Executive Director.

B. Official Address of the Board. All filings and other communications with the Board shall be addressed to the State Higher Education Labor Relations Board (SHELRB).

C. Office Hours. The normal business hours of the office shall be from 8:30 a.m. to 5 p.m., Monday through Friday, excluding State holidays.

#### **.04 Requests for and Inspection of Board Documents.**

A. 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. A prescribed format for requests for inspection may not be required. Written requests shall be submitted to the Board at its official address.

B. A person may request in writing slip copies of the Board's reports, decisions, orders, and certifications. A request for public records of the SHELRB shall be provided at cost.

C. Regulations of SHELRB may be purchased from the Division of State Documents, State House, Annapolis, MD 21401, (410) 974-2486, and are online at [www.dsd.state.md.us](http://www.dsd.state.md.us).

#### **.05 Petition for Adoption of Regulation.**

A. An interested person may submit to the Board a petition for consideration of the adoption of a regulation.

B. Within 60 days after the petition is submitted, the Board shall:

(1) In writing, deny the petition and state the reasons for the denial; or

(2) Initiate the procedures for consideration of the regulation.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 03 Executive Director**

**Authority: State Personnel and Pensions Article, §§3-2A-05, 3-2A-06, and 3-2A-07,  
Annotated Code of Maryland**

#### **.01 Executive Director.**

A. The Executive Director shall:

- (1) Operate the offices of the State Higher Education Labor Relations Board and the State Labor Relations Board;
- (2) Keep the official records of the Boards;
- (3) Receive election petitions;
- (4) Rule on the validity of election petitions;
- (5) Conduct elections;
- (6) Organize elections; and
- (7) Perform other duties that either Board may assign.

B. The Executive Director shall be the custodian of:

- (1) Petitions;
- (2) Showing-of-interest forms and related materials; and
- (3) Election materials.

C. Documents relating to an election shall be retained by the Executive Director for 3 years after the filing of the petition, except that certified petitions shall be retained indefinitely.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 04 Petitions**

**Authority: State Personnel and Pensions Article, §§3-2A-05—3-2A-07; State Government Article, §10-304; Annotated Code of Maryland**

#### **.01 Filing a Petition.**

A petition may be filed by:

- A. Any public employee;
- B. Any group of public employees;
- C. Any organization of public employees regardless of whether it is formally organized, on behalf of an individual or a group;
- D. An individual; or
- E. An employer

#### **.02 When to File the Petition.**

A petition may be filed at any time, provided that no election for a bargaining unit may be held for a bargaining unit within 2 years following the date of a previous election for the bargaining unit.

#### **.03 How to File a Petition.**

The original and five copies of a petition or amended petition shall be filed with the Executive Director. The petitioner shall make and maintain a true copy of a petition or amended petition.

#### **.04 Form of Petition.**

A. Every petition shall be in writing and shall contain:

- (1) The name, address, and telephone number of the petitioner and any representative for correspondence other than the petitioner;
- (2) The purpose for the petition;
- (3) The bargaining unit involved in the petition;

- (4) A copy of the most current or recent collective bargaining agreement, if any;
- (5) The known names, addresses, and telephone numbers of any employee organization other than the petitioner claiming to represent any of the employees in the bargaining unit;
- (6) A declaration by the petitioner or the petitioner's representative under the penalties of perjury that the contents of the petition are true and correct to be best of the declarant's information and belief; and
- (7) Any other facts relevant to the petition.

B. In addition to the items required by §A of this regulation, an election petition shall contain:

- (1) The name of the prospective bargaining representative as it will appear on the ballot;
- (2) Showing-of-interest forms furnished by the Executive Director or drafted by the petitioner signed by at least 30 percent of the eligible employees in the appropriate bargaining unit; and
- (3) A copy of the employee organization's governing documents which:
  - (a) Give individual members the right to participate in the activities of the organization;
  - (b) Require periodic elections by secret ballot that are conducted with recognized safeguards to ensure the equal rights of all members to nominate, seek office, and vote in the elections;
  - (c) Direct full and accurate accounting of all income and expenses using standard accounting methods;
  - (d) Require an annual report that is made available to all members of the appropriate bargaining unit; and
  - (e) Contain a certification that the organization:
    - (i) Accepts members without regard to any factor in State Pension and Personnel Article, §2-302(b), Annotated Code of Maryland, to include sexual orientation; and
    - (ii) Will deny membership to an employee only for a reason that is acceptable to the Board.

C. A petition to intervene in an election shall be filed within 15 days of notice of the election petition and shall comply with the requirements of this chapter for an election petition except that showing-of-interest forms need only be signed by 10 percent of the eligible employees in the appropriate bargaining unit.

D. A petition to contest exclusionary designation as an excluded employee shall include the items specified in §A(1) — (3) of this regulation together with a statement of the specific facts upon which the contest regarding the exclusion is based.

E. A petition for unit clarification shall include the items specified in §A(1)—(3) of this regulation together with:

- (1) A description of the present unit and the date of the certification;
- (2) The proposed clarification or amendment of the unit; and
- (3) A statement by petitioner setting forth the reasons as to why clarification or amendment is requested.

F. A petition for denial or revocation of certification shall include the items specified in §A(1)—(3) of this regulation together with a statement of the basis for alleging that there is reason to believe that the exclusive representative has engaged in a willful failure to comply with the Collective Bargaining Law, the Board's regulations, or the governing documents of the organization. If the Board determines to proceed with a denial or revocation of certification proceeding, either based on a petition or on its own motion, it shall offer the exclusive representative a hearing under COMAR 14.30.11.

## **.05 Showing-of-Interest Forms.**

A. The Executive Director shall determine the adequacy of the showing of interest based on the number of eligible employees in the proposed unit by comparing the showing-of-interest form with the eligibility list provided by the employer.

B. Content of Form.

(1) Each showing-of-interest form shall be an original separate document for each eligible employee in the appropriate bargaining unit who supports representation by the petitioner organization. The form shall contain the:

(a) Actual signature of the employee;

(b) Typewritten or printed name of the employee;

(c) Handwritten date the employee signed the form; and

(d) Statement that the employee who signed the form desires to be represented by the petitioner for the purposes of collective bargaining.

(2) A showing of interest form may be in the form of an effective membership or authorization card or statement that satisfies the requirements of §B(1) of this regulation.

(3) A signature on a showing-of-interest form is not valid if:

(a) It is not dated; or

(b) It is dated more than 6 months before the election petition is filed.

C. The Executive Director shall provide sample showing-of-interest forms.

D. The Executive Director shall determine whether showing-of-interest forms submitted by petitioners comply with this regulation.

## **.06 Evaluation of Showing-of-Interest Forms.**

A. The employer shall furnish the Executive Director a list of the employees in each bargaining unit not later than 2 days after a petition for election is filed for that bargaining unit. The list of employees shall:

(1) List the name and address of every employee in the bargaining unit extending back to the end of the last pay period before the presentation of the petition;

(2) Identify each employee the employer contends should be excluded as an eligible voter; and

(3) State the reason the employee is excluded.

**B. Review by Executive Director.**

(1) The Executive Director shall review the showing-of-interest forms.

(2) The review shall be conducted in private by the Executive Director, and the Board staff and consultants as the Executive Director considers appropriate.

(3) Each name on the showing-of-interest forms shall be compared with the names on the employer list.

(4) Each valid showing-of-interest form shall be marked in the upper right hand corner in a suitable fashion to show it has been accepted.

(5) Each invalid showing-of-interest form shall be marked as:

(a) "NOL" if the name is not on the employer list;

(b) "Excluded" if named by the employer as an excluded employee; or

(c) "Invalid" if determined invalid by the Executive Director.

(6) Forms marked "excluded" shall show the employer's stated reason for exclusion as follows:

(a) Manager;

(b) Supervisor;

(c) Confidential employee; or

(d) Other stated reason for exclusion.

(7) Forms marked "invalid" shall show the reason for invalidity as follows:

(a) Illegible;

(b) A duplicate showing-of-interest form for the same representative;

(c) Fraudulent; or

(d) Other stated reason for invalidity.

**C.** If an employee files one showing-of-interest form for more than one exclusive representative, one form for each exclusive representative shall be valid if they otherwise comply with this chapter.

**D.** The whole number of employees which constitute 30 percent of the nonexcluded employees on the employer list shall be calculated by rounding up to the next higher whole number.

**E.** The whole number of employees which constitute 10 percent of the nonexcluded employees on the employer list shall be calculated by rounding up to the next higher whole number.

F. The number of accepted showing-of-interest forms shall be tabulated.

G. Candidates for exclusive representative may correct shortfalls in the number of showing-of-interest forms by submitting additional valid showing-of-interest forms within 5 days of receiving notice of a shortfall from the Executive Director.

H. Showing-of-interest forms are confidential and may not be released unless a petition is declared invalid. If a petition is declared invalid, the marked showing-of-interest forms shall be returned to the candidate submitting the petition.

## **.07 Sufficiency, Amendment, and Action on Election Petitions and Petitions to Intervene.**

A. Within 10 days after an election petition or petition to intervene is filed, the Executive Director shall determine the sufficiency of the petition based upon compliance with the requirements of this chapter, and shall, upon review of an election petition, take one of the following actions:

- (1) Declare the petition valid;
- (2) In the discretion of the Executive Director, serve on the employer and the petitioner an offer to the petitioner of an opportunity to show cause why the election petition should not be declared invalid;
- (3) If the Executive Director determines the election petition can be corrected without undue delay, serve on petitioner and employer a notice of errors and insufficiencies; or
- (4) Declare the election petition invalid if it does not comply with the requirements of this chapter or other applicable law.

B. The Executive Director shall notify the petitioner and the employer of the action taken on a petition by mail, within 5 days.

C. If a petitioner fails to file an amended election petition within 10 days of service on petitioner of a notice of errors and insufficiencies, the initial election petition is invalid.

D. The amending of a petition does not affect the timeliness of the original filing. However, when a petition is amended, all relevant time periods that begin with the filing of a petition shall be deemed to begin from the filing of the amended petition.

E. If there is a disagreement, the Board may seek to resolve the following issues through negotiation or mediation:

- (1) The assignment of classification titles;
- (2) Positions in a bargaining unit for which an election is sought; or
- (3) A petition to contest exclusionary designation.

F. The parties to a negotiation or mediation shall be:

- (1) The institution, the University System of Maryland Office, and the union, if the issue is FLSA designation;

(2) The institution and the union, if the issue is the exclusion or inclusion of a position in the bargaining unit; and

(3) The petitioning employee, the union, and the institution, if the issue concerns a petition to contest exclusionary designation.

G. If the issue is not resolved through negotiation or mediation, a party may request a hearing on the issue according to the provisions of COMAR 14.30.11. If the Board is unable to resolve the issue before an election, the Board may decide to postpone the determination of the dispute until after the election. In this case, the Board shall identify the disputed positions and order that the election take place with employees in those positions casting challenged ballots under COMAR 14.30.05.

### **.08 Hearing.**

A petitioner or employer aggrieved by a determination of the Executive Director under this chapter may request a hearing under COMAR 14.30.11 if the request for a hearing is within 10 days of receipt of the notice of the determination.

### **.09 Posting of Petitions.**

As soon as practicable, but not later than 5 days of a determination that an election petition is valid, the Executive Director shall post a true copy of the petition on the Board's official bulletin board, and on the Board's Internet site, showing the date of posting. Posting of a petition under this regulation constitutes notice of a proceeding to interested employee organizations for purposes of Regulation .07 of this chapter. A posted election petition shall remain posted until:

A The requested election is held; or

B. 30 days after a determination by the Board that the petition is not valid.

### **.10 Unit Clarification, Contest of Unit Designation—Existing Bargaining Units.**

A. Petition. A petition filed to clarify or contest exclusions from or inclusion in an existing unit may be filed by the employer, the certified representative of the affected bargaining unit, or an affected employee, and shall be in the same form and contain the same information, as appropriate, required in COMAR 14.30.04 and shall include:

(1) A description of the existing unit; and

(2) A statement of:

(a) Why the proposed clarification is requested; or

(b) Why the existing designation is not correct.

B. Action by Board. The Board shall grant or deny the petition following the appropriate investigation and recommendation to the Board by the Executive Director or hearing in accordance with COMAR 14.30.11.

### **.11 Decertification and Decertification/Election Petitions.**

A. Purpose.

(1) Decertification Petition.

(a) A bargaining unit employee may file a decertification petition with the Board requesting an election to determine if the incumbent certified exclusive representative of the bargaining unit does, in fact, continue to represent a majority of the employees in the bargaining unit.

(b) An employer may not initiate or assist an employee or group of employees in the filing of a decertification petition as provided under §A(1) of this regulation.

(2) Decertification/Election Petition. An employee organization may file a decertification/election petition requesting an election to become the exclusive bargaining representative of a bargaining unit with an incumbent certified exclusive representative.

B. Procedure.

(1) Petitions under §A of this regulation shall meet the requirements of and be processed in accordance with COMAR 14.30.02, 14.30.04, and 14.30.05.

(2) If there is no intervening employee organization in a decertification petition proceeding, an election to decertify an incumbent certified employee organization may not be held if the incumbent provides the Board with a written disclaimer of any representation interest in the unit in response to the Notice of Election required under COMAR 14.30.05.02. If there is an intervenor, an election shall be held if the intervening employee organization proffers a 30 percent showing of interest prior to the date originally scheduled for the election.

(3) If there is no intervening employee organization, an election will not be held if the petitioner provides the Board with a written request to withdraw the petition in accordance with COMAR 14.30.05.02D. When there is an intervenor, an election will be held if the intervening employee organization proffers a 30 percent showing of interest in a reasonable period of time prior to the date originally scheduled for the election.

(4) If a memorandum of understanding is in effect, a valid petition under §A of this regulation may be filed and an election held only if the petition is filed not more than 120 days nor less than 90 days prior to expiration of the memorandum of understanding.

**.12 Petition for Declaratory Ruling.**

Any interested person may petition the Board for a declaratory ruling with respect to the manner in which the Board would apply any regulation, order, or statute enforceable by the Board to any person or property on the facts set forth in the petition.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 05 Elections**

**Authority: State Personnel and Pensions Article, §§3-2A-05—3-2A-07, Annotated  
Code of Maryland**

#### **.01 Scope.**

This chapter governs the procedures for representation elections conducted by the Board.

#### **.02 Notice of Election.**

A. Within 30 days of the filing of a valid petition of election, the Executive Director shall mail or deliver a notice of election indicating that a valid petition has been filed and that an election will be held, to:

- (1) The petitioner;
- (2) Any intervening petitioner; and
- (3) The employer.

B. The notice of election shall provide a sample ballot and identify:

- (1) The employer;
- (2) The bargaining unit;
- (3) Rules concerning the employees' eligibility to vote;
- (4) Choices presented to the voter;
- (5) If it is an on-site election:
  - (a) The election date, which shall be not more than 90 days from the date the election petition is filed;
  - (b) The location of polling places; and
  - (c) The hours the polls will be open;
- (6) If it is a mail ballot election:
  - (a) The date the ballots will be mailed or distributed to the voters, provided that the ballots will be mailed approximately 2 days before the time period for voting;

(b) The 14-day time period in which mail ballots may be postmarked for return to the Executive Director, provided that the first day of the period is not later than 90 days after the election petition is filed; and

(c) The date and time the ballots will be counted;

(7) The place and time of ballot counting; and

(8) Further information that the Executive Director considers appropriate.

#### C. Posting Notice of Election.

(1) A copy of the notice of election and the sample ballot shall be posted at the Executive Director's office at least 30 days before the election.

(2) A copy of the notice of election and the sample ballot shall be posted by the employer at all work locations where notices are customarily posted for the benefit of employees in the bargaining unit for at least 21 days before the election or distribution of mail ballots, through the end of the election.

(3) Posting requirements may be modified by mutual written agreement of all parties filed with and approved by the Executive Director.

(4) The Executive Director may tailor posting requirements to provide adequate notice to employees.

(5) The employer shall take reasonable precautions to ensure that notices of election and sample ballots are not altered, covered, defaced, or removed before the completion of the election.

#### D. Withdrawal from Election.

(1) Before Election: Before Issuance of Order for Election Agreement (without prejudice). Where a request is received prior to the issuance of the order for election, the request shall be granted without prejudice to the subsequent filing of a new petition by the petitioner.

(2) Before Election: After Issuance of Order for Election Agreement (Prejudice Possible).

(a) Election Petition/Petitioner Sole Union Involved Where, after the issuance of an order for election agreement, but before the holding of the election, the petitioning employee organization, the sole employee organization involved, requests timely withdrawal of its petition, the request shall be approved with 1-year prejudice and the election shall be canceled.

(b) Intervenor Desires Election.

(i) If a petitioning employee organization seeks to withdraw the petition after issuance of an order for election, and there is an intervening employee organization that desires the election be held, the intervening employee organization shall submit a petitioner's showing of interest of 30 percent in the unit involved. A reasonable period for procuring and submitting the interest may be given. Upon proper submission by the intervenor, the petitioner shall be dropped from the ballot with prejudice applied, and the election, with the intervenor alone on the ballot, shall be held in accordance with a revised final order for election.

(ii) In the event the intervenor requests to withdraw after the new election order, the election shall be canceled and the request shall be approved with 1 year prejudice.

(c) Decertification Petition.

(i) A timely withdrawal request filed by the decertification petitioner after the issuance of an order of election shall be approved and granted without prejudice.

(ii) If an intervenor other than a certified or recognized incumbent union desires an election, and has, or can obtain within a reasonable period, a petitioner's showing of interest of 30 percent, the election shall be held as scheduled.

(3) Prejudice Period.

(a) Good Cause. A withdrawal with prejudice shall carry the condition that it is granted with prejudice to the filing of a new petition encompassing the same or substantially the same unit of employees involved for a period of 1 year, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration date of the period. Prejudice runs only to the withdrawer and does not preclude petitions filed by other labor organizations.

(b) Intervention During Prejudice Period. Even though a prejudiced employee organization may not file a petition during a given period in the absence of good cause, it may nevertheless intervene during the period in any petition filed by another employee organization and may participate to the extent of its showing of interest.

### **.03 Election Procedure.**

A. An election shall be by secret ballot at the times, places, and conditions that the Executive Director requires.

B. In determining polling sites and voting methods, the Executive Director shall consider:

- (1) The total number of eligible voters;
- (2) The nature of the eligible voters' work stations;
- (3) The location of the eligible voters' work stations;
- (4) The number of eligible voters at each work station; and
- (5) The expressed desire of the parties, if any.

C. The election shall be designed to assure that all eligible employees are able to vote.

D. The Executive Director may require the parties to attend a preelection conference in person or by telecommunications to gather information on relevant election factors to enable the Executive Director to determine the:

- (1) Tentative date of election;
- (2) Time of election;
- (3) Place of election;
- (4) Manner of election; and

(5) Identity of eligible voters.

E. Pre-election conference attendance shall be limited to:

(1) The Executive Director and up to two Board staff members; and

(2) Three representatives for each election process participant.

#### **.04 Ballots.**

A. The Executive Director shall prepare and distribute official ballots.

B. Ballots shall contain the name of each candidate for representative along with a final choice of "no exclusive representative".

C. The order of candidates on the ballots shall be determined by drawing lots under the administration of the Executive Director.

D. Eligible candidates in a runoff election shall be listed as they appeared on the initial ballot.

E. The format of the ballot shall be the same for mail elections as for on-site elections.

#### **.05 Voter Eligibility.**

A. Employees eligible to vote are those employees who:

(1) Are employed on the date of the last payroll period before the issuance of the order of the election;

(2) Are still employed on the date of the election; and

(3) Meet the applicable requirements defining covered employees in State Personnel and Pensions Article, §3-102, Annotated Code of Maryland.

B. Eligible employees who have a reasonable expectation of continued employment are considered to be working on election day despite being on authorized paid or unpaid leave.

#### **.06 Final Election Order.**

A. After gathering and reviewing relevant election factors, at least 30 days before the election date, the Executive Director shall issue a final election order setting forth:

(1) The date of election;

(2) The place of election;

(3) The manner of election; and

(4) Other information and circumstances that the Executive Director may require.

B. The final election order shall be sent by mail by the Executive Director to:

- (1) Eligible bargaining unit employees;
- (2) The petitioner;
- (3) Any intervening petitioner; and
- (4) The employer.

### **.07 Voter List.**

A. Within 7 days after the final election order is issued, the employer shall deliver an up-to-date voter list to the Executive Director.

B. The voter list shall contain the following information for each employee in the unit eligible to vote:

- (1) Full name;
- (2) Department;
- (3) Job title;
- (4) Worksite campus street address; and
- (5) Electronic mail address.

C. The Executive Director shall promptly provide the voter list to the petitioner and all other employee organizations included in the election.

D. The employer shall make available to an employee organization certified as eligible for the election a means to have campaign materials or literature mailed by a third party mail house to eligible voters, in a timely manner that maintains the confidentiality of employees' addresses and phone numbers. The employee organization shall bear the cost of the mailing. Mailed materials shall be identified as being prepared by the organization and shall clearly state that employee addresses were made available by the institution pursuant to the Board's regulations.

### **.08 Conduct of Elections.**

A. The anonymity of ballots shall be maintained to the greatest extent possible.

B. On-Site Elections.

(1) Voting shall be scheduled during the work day whenever possible and polling places and voting times shall permit reasonable access by voters, so that no voter will have to travel an unreasonable distance to vote. State higher education employers shall grant reasonable release time to employees so that they can vote during their workday or shift.

(2) The Executive Director shall normally oversee the election. At the discretion of the Executive Director, the election may be overseen by an election judge who shall be a Board member or other designated individual who is selected based upon his or her qualifications and integrity.

(3) The Executive Director or election judge shall be solely responsible for:

- (a) The conduct of the election;
- (b) The regulation of the polling site and immediate environs including the designation of the boundaries of the polling areas;
- (c) The maintenance of voting materials including ballots;
- (d) The counting of ballots and recording of the results; and
- (e) The certification of the accuracy of the ballot count.

(4) There shall be no electioneering of any kind within the marked and designated polling areas. The Board may set aside an election outcome favorable to a party who substantially and materially violates this provision.

(5) If there is more than one polling place, the Executive Director or election judge shall sequester ballots from each location until counted. Sequestered ballots shall be sealed in an envelope or other appropriate container and delivered to the counting location.

(6) The final certification of the accuracy of the ballot count shall be by the Executive Director.

#### C. Mail Ballot Elections.

(1) On the scheduled date for mailing ballots, the Executive Director shall mail to each eligible voter:

- (a) An official ballot;
- (b) A "Secret Ballot Envelope";
- (c) A "Mail Ballot Envelope"; and
- (d) Voting instructions.

(2) The voting instructions shall instruct the voter to return the ballot to the Board in the two envelopes as follows:

- (a) The voted ballot shall be placed in the smaller envelope marked "Secret Ballot Envelope", which contains the name of the bargaining unit and any additional instructions required by the Executive Director;
- (b) The smaller envelope shall then be placed in the larger "Mail Ballot Envelope"; and
- (c) The "Mail Ballot Envelope" is then to be mailed or delivered to the Executive Director.

(3) The "Mail Ballot Envelope" shall be:

- (a) Preaddressed;
- (b) Postage paid; and
- (c) Contain a space to identify:

- (i) The voter by name;
  - (ii) The employer;
  - (iii) The bargaining unit;
  - (iv) The voter's signature; and
  - (v) Other information that the Executive Director may require.
- (4) A ballot shall be disqualified if the voter fails to provide or destroys any required identity information on the "Mail Ballot Envelope".
- (5) Each "Mail Ballot Envelope" shall be authenticated against the list of eligible voters when the ballots are counted.
- (6) "Secret Ballot Envelopes" shall be removed from authenticated "Mail Ballot Envelopes" and deposited in a suitable container with other "Secret Ballot Envelopes" to preserve anonymity.
- (7) After all of the authenticated "Secret Ballot Envelopes" are collected, the ballots shall be removed and counted at random and recorded in the presence of election observers.
- (8) All challenges to mail ballots due to the identity or eligibility of the voter shall be raised before the removal of the "Secret Ballot Envelope" from the "Mail Ballot Envelope".

## **.09 Election Observers.**

A. Each union participating in an on-site election may be represented by one observer per unit at each polling place, who has no supervisory power over employees who are voting, to observe:

- (1) The voting activities; and
- (2) The counting of the ballots and the certification of the accuracy of the ballot count.

B. The institution president or governing board may designate an observer who is not a supervisor of any of the employees who are eligible to vote in the election, to observe:

- (1) The voting activities; and
- (2) The counting of the ballots and the certification of the accuracy of the ballot count.

C. The participating unions and the institution president or governing board shall provide the Executive Director, at least 3 days before the election, with the names of their designated observers and no more than two alternate observers for each one, unless otherwise agreed to by the parties and the Executive Director, who may observe in place of, but not in addition to, a designated observer.

D. Each party to a mail ballot election and the institution president or governing board may be represented by one representative to observe the counting of the ballots and the certification of the accuracy of the ballot count. The Executive Director shall arrange for the opportunity for this observation.

## **.09-1 Tally of Ballots.**

A. Ballots shall be counted at a place and time prescribed by the Executive Director, or the Executive Director's designee, and shall be open to the public viewing.

B. The Executive Director, or the Executive Director's designee, shall undertake the counting of the ballots. Present at the table, with the Executive Director, or the Executive Director's designee, for the official tally of the ballots, shall be:

- (1) An additional Board staff observer;
- (2) One observer from each party to the election; and
- (3) One observer from the employer/institution.

### **.10 Challenged Ballots.**

A. A voter may be challenged for cause by a designated observer described in Regulation .09 of this chapter.

B. If a voter is challenged for cause, the challenged voter may vote and then:

- (1) Place the ballot in an envelope marked only "Secret Ballot";
- (2) The "Secret Ballot Envelope" shall next be sealed in a separate envelope marked "Challenged Ballot Envelope", which identifies on the outside:
  - (a) The identity of the challenged voter;
  - (b) The name of the person making the challenge; and
  - (c) The reason for the challenge.
- (3) The challenged voter shall then report to the Board representative at the election who shall allow the challenged voter to place the "Challenged Ballot Envelope" into the container with the regularly cast ballots.
- (4) If a mail ballot election, the Board representative shall write on the outer envelope the cause of the challenge and set the challenged ballot aside.

### **.11 Void Ballots.**

A. The Executive Director or the election judge shall determine a ballot void if:

- (1) The ballot does not reveal the intent of the voter due to:
  - (a) Mutilation;
  - (b) Soiling; or
  - (c) Any other reason;
- (2) In the case of a mail ballot, it is returned without all required voter identification.

B. A void ballot may not be counted as favoring any alternative proposition appearing on the ballot.

C. The Executive Director or election judge shall liberally view ballots in favor of validity by focusing on the objective of determining the intent of the voter.

### **.12 Majority Vote Required.**

A. In all elections a majority of the valid votes cast shall determine the outcome of the election.

B. The Executive Director shall certify "no exclusive representative" if there is a tie vote in an election that affords only a choice between one representative and no exclusive representative.

### **.13 Certification of Election Results.**

A. Service to Parties. Within 5 days of the election, the Executive Director shall prepare and serve on the parties a report of the election results which shall include the official tally of the ballots and a certificate of service.

B. Objections. Within 10 days after the report of election results 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 and any supporting evidence.

C. Determinative Challenges. In any election where there are sufficient unresolved challenges to affect the election results, within 10 days after the report of election results has been served, the party or parties making the challenges shall file with the Board a statement of reasons for each challenge and any supporting evidence.

D. Certification of Representative. The Board shall certify the results of the election within 15 working days after the report of election results and, within 5 days after the certification of election results has been served, the Board shall issue to the parties a certification of representatives if:

(1) The challenged ballots are insufficient in number to affect the results of the election;

(2) No objections have been filed; and

(3) No runoff election is required.

E. Investigation of Determinative Challenges or Objections. 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 make a report and recommendation of findings to the Board on the merits of the objections filed or the validity of any determinative challenges.

F. Hearings. If the Board has reason to believe that the allegations or challenges may be valid, the Board shall order a hearing, if necessary, and make a determination on the findings made in the Executive Director's or the Executive Director's designee's report.

G. Final Board Action. After consideration of the findings made by the Executive Director and any hearing held, the Board shall certify the results of the election, issue a certification of representative, or overturn the results of the election and order a new election, as appropriate. The procedures of COMAR 14.30.11 shall apply to any hearing ordered.

## **.14 Runoff Election.**

- A. The Executive Director shall conduct a runoff election when no choice receives a majority of ballots cast except in the circumstances described in Regulation .13B of this chapter.
- B. A runoff election shall be held at least 10 days, and not later than 30 days, after the Board resolves all relevant and properly filed objections.
- C. Only employees who were eligible to vote in the initial election and who remain in the bargaining unit on the date of the runoff election are eligible to vote in the runoff election.
- D. The ballot in a runoff election shall provide for a choice between the choices receiving the two largest numbers of votes in the initial election.
- E. The order of appearance of the choices on a runoff ballot shall be the same as on the initial ballot.
- F. Regulations .08—.12 of this chapter, together with other relevant provisions of this subtitle, apply to the runoff election. The Executive Director may reconvene the parties for a preelection conference before issuance of the runoff election order.

## **.15 Objections to the Conduct of Election Judges.**

At any time before the eighth day following the report of the election results from the Executive Director, a party may object to any action of the Executive Director, election judge, or other Board staff in conducting an election as having been inconsistent with the Collective Bargaining Act or these regulations and having materially prejudiced the party and likely changed the outcome of the election.

## **.16 Objections to the Conduct of a Party.**

- A. At any time before the eighth day following the report of the election results to the Executive Director, a party to the election who objects to prejudicial conduct of another party may file an objection with the Executive Director.
- B. Activities of a party to an election which materially compromise the secret ballot process, effectively disenfranchise eligible voters, or otherwise substantially interfere with a free and fair election are grounds for an objection.

## **.17 Amendment of Certification of Representative.**

A. Contents. A certified exclusive representative shall file a petition with the Board to amend its certification if there is a change in the name or affiliation of the exclusive representative that does not raise a question concerning representation such as, whether the employees have designated a particular organization as their bargaining agent. A petition to amend a certification of representative shall meet the requirements of COMAR 14.30.04, and shall contain the following:

- (1) A copy of the certification of representative or certification case number;
  - (2) The name, address, and telephone number of the employer, as shown in the certification;
  - (3) The name, address, and telephone number of the exclusive representative, as shown in the certification;
- and

(4) A description of the proposed amendment to the certification of representative.

**B. Action by Board.** The Board shall grant or deny a petition following the appropriate investigation and recommendation to the Board by the Executive Director, or hearing in accordance with COMAR 14.30.11.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 06 Denial or Revocation of Certification**

**Authority: State Personnel and Pensions Article, §§3-2A-05, 3-2A-06, and 3-2A-07,  
Annotated Code of Maryland**

#### **.01 Denial or Revocation of Certification.**

After notice and an opportunity for a hearing, the Board may deny or revoke certification as exclusive representative of an employee organization for willful failure to comply with:

- A. The Collective Bargaining Law;
- B. Regulations adopted by the Board; or
- C. The governing documents of the organization.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 07 Unfair Labor Practices**

**Authority: State Personnel and Pensions Article, §§3-2A-05—3-2A-07, Annotated Code of Maryland**

#### **.01 Unfair Labor Practices—Employer.**

A. Except as provided in §B of this regulation, the following acts by an employer, or its agents or representatives, are unfair labor practices:

- (1) Interfering with, restraining, or coercing employees in the exercise of rights under the Collective Bargaining Law;
- (2) Dominating, interfering with, contributing financial or other support to, or assisting in the formation, existence, or administration of any labor organization;
- (3) Granting administrative leave to employees for the purpose of attending employer-sponsored or employer-supported meetings or events about an election or a specific labor organization or labor organizations in general unless the employer also grants employees at least the same amount of administrative leave to attend labor organization sponsored or supported meetings or employee meetings;
- (4) Discriminating in hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (5) Discharging or discriminating against an employee because of the signing or filing of an affidavit, petition, or complaint, or giving any information or testimony in connection with matters under this subtitle;
- (6) Failing to provide all employee organizations involved in an election the same rights of access as prescribed by the Board or otherwise violating the access regulations adopted by the Board in COMAR 14.30.07 or elsewhere;
- (7) Engaging in surveillance of union activities;
- (8) Refusing to bargain in good faith with the exclusive bargaining representative; or
- (9) Engaging in a lockout.

B. Where statutory language addresses issues in this chapter, the statutory provisions shall take precedence over this chapter.

#### **.02 Unfair Labor Practices—Employee Organizations.**

A. Except as provided in §B of this regulation, the following acts by an employee organization, or its agents or representatives, are unfair labor practices:

- (1) Interfering with, restraining, or coercing employees in the exercise of rights under the Collective Bargaining Law;
- (2) Causing, or attempting to cause, an employer to discriminate in hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (3) Engaging in, inducing, or encouraging any person to engage in a strike, which includes the following types of activities by employees when intended to induce, influence, coerce, or enforce demands for a change in wages, hours, terms, or other conditions of employment:
  - (a) Refusal or failure to report to work;
  - (b) Refusal or failure to perform employment duties;
  - (c) Withdrawal from work;
  - (d) Work stoppage;
  - (e) Work slowdown; or
  - (f) Other concerted job action;
- (4) Interfering with the statutory duties of the State or an employer; or
- (5) If an exclusive representative:
  - (a) Refusing to bargain collectively in good faith; or
  - (b) Not fairly representing employees in collective bargaining or any other matter for which the employee organization has the duty of fair representation.

B. Where statutory language addresses issues in this chapter, the statutory provisions shall take precedence over this chapter.

### **.03 Permissible Labor Practices.**

It is not an unfair labor practice for:

- A. An employer to permit employees to negotiate or confer with an employer during working hours without loss of time or pay;
- B. An employer to negotiate with the exclusive bargaining representative concerning exclusive rights such as access to State facilities;
- C. An employer to refuse to bargain over rights not subject to negotiation under the Collective Bargaining Law;

D. Any person to express or disseminate any views, arguments, or opinions, whether in written, printed, graphic, or visual form, if the expression or dissemination does not contain:

- (1) A threat of reprisal;
- (2) A threat of force;
- (3) A promise of benefit; or
- (4) A misrepresentation of fact; or

E. An employee or group of employees to engage in concerted activities for purposes of other mutual aid or protection, in addition to collective bargaining.

#### **.04 Relief from Unfair Labor Practices.**

A. A party alleging an unfair labor practice may request relief from the Board by filing a petition with the Executive Director, within 90 days of knowledge of the occurrence, under the procedures set forth in COMAR 14.30.11 except as otherwise modified by this regulation.

B. The petition shall:

- (1) Accurately describe the issues;
- (2) Provide a clear and concise statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged act, the dates and places of the alleged occurrence, and the specific unfair labor practice under this chapter;
- (3) Contain the name, address, and telephone number of the petitioner, respondent, and any other party named therein, including the name and title of the petitioner's representative, if any, and the representative of any other named party; and
- (4) Include a declaration by the petitioner under the penalty of perjury that the allegations are true and correct to the best of the declarant's information and belief.

C. A copy of the petition shall be served on all other parties.

D. Withdrawal. A petition or a part of a petition may be withdrawn or amended. The refiling or amendment of a part of a petition is subject to §A of this regulation.

E. Response. Within 20 days of service of a petition or an amendment of a petition, a respondent shall file a written response to the petition or amendment, signed by the respondent or designated representative, and serve a copy on the petitioner. The response shall include any defenses to the alleged unfair labor practices.

F. Investigation. Pursuant to State Personnel and Pensions Article, §§3-2A-05(b)(1) and 3-2A-07(a), Annotated Code of Maryland, the Board authorizes and directs the Executive Director to, subject to final review and approval by the Board:

- (1) Consider properly filed petitions to determine if an unfair labor practice has been alleged and, if so, commence an investigation of the facts;
- (2) Dismiss the petition if the Executive Director, subject to final review and approval by the Board:

(a) Finds that the petition fails to state an actionable claim under the Maryland Collective Bargaining Law, State Personnel and Pensions Article, Title 3, §§3-101—3-602, Annotated Code of Maryland, or regulations under this chapter; or

(b) Determines that the Board holds no jurisdiction over the claims presented; and

(3) Establish appropriate internal procedures, as considered necessary, to further implement §F(1) or (2) of this regulation, subject to final review and approval by the Board.

G. Written Report. The results of the investigation shall be set forth in a written report and served on all parties to the unfair labor practice petition. The report shall set forth the Executive Director's recommendations to the Board as to:

(1) Whether, based on the totality of the factual circumstances ascertained during the investigation and known at the time of the determination, probable cause exists to believe that the alleged unfair labor practice has occurred; and

(2) The disposition of the alleged unfair labor practice, including any need for a hearing.

H. Board Action.

(1) For a written report containing a finding of no probable cause, the petitioner shall be given 15 days from service of the report to request that the Board reconsider the finding and recommended disposition. The Board shall take final action, as appropriate.

(2) For a written report containing a finding of probable cause, the respondent shall be given fifteen (15) days from service of the report to request that the Board reconsider the finding and recommended disposition.

(3) If no request for reconsideration of a written report containing a finding of no probable cause is filed, or, in the case of a written report finding probable cause, the written report shall be transmitted to the Board for final or further action, respectively, on the recommendations made in the report.

I. Only the unfair labor practices set forth in this chapter and specified in the petition shall be considered in the proceeding.

J. In hearing held to resolve the issues raised by the petition, the party filing the petition shall have the burden of proof by the preponderance of the evidence.

K. If the Board finds an unfair labor practice has been or is being committed, the Board shall take the action that it deems necessary to remedy the unfair labor practice including:

(1) Issuing a cease-and-desist order;

(2) Requiring a party to make reports from time to time showing the extent of compliance with the Board's order or ruling;

(3) Reinstatement;

(4) Communicating directly with employees about their rights; and

(5) Such further action as the Board may require.

L. If it has not been shown by a preponderance of the evidence that a party has engaged in or is engaging in an unfair labor practice, then the Board shall state its findings of facts and conclusions of law and issue an order dismissing the petition.

M. The Executive Director shall notify the parties by U.S. Mail when a petition is dismissed.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 08 Permissible Labor-Related Activities**

**Authority: State Personnel and Pensions Article, §§3-2A-05, 3-2A-06, and 3-2A-07,  
Annotated Code of Maryland**

#### **.01 Nondiscrimination and Neutrality.**

As a general principle, the First Amendment rights of free speech, expression, and association apply on campus to all employees exercising rights under the Collective Bargaining Law. Employers shall allow all lawful labor-related expressive activities under principles of fair and neutral access.

#### **.02 Equal Access for Employees and Election Candidates.**

A. Eligible employees and election candidates shall enjoy the right of reasonable access to college and university facilities, including grounds, rooms, bulletin boards, campus mail, and other common areas and forums for the purpose of conducting speech activities under this subtitle.

B. An employer may not alter or revise existing speech access rules or practices for the campus community or general public in order to unfairly limit or prevent employees or election candidates in organizing for collective bargaining.

C. A privilege extended to one election candidate shall be extended equally to other election candidates by the employer.

#### **.03 Content and Viewpoint Neutrality Towards Private Speech.**

An employer may not discriminate against an employee's private speech in the workplace based on its labor-related content or viewpoint, no matter what medium is being used for communication.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 09 Collective Bargaining**

**Authority: State Personnel and Pensions Article, §§3-2A-05, 3-2A-06, and 3-2A-07,  
Annotated Code of Maryland**

#### **.01 Negotiations.**

A. The designated representatives of the employer and of the exclusive representative shall:

- (1) Establish ground rules for negotiations;
- (2) Identify the participants for negotiations;
- (3) Establish the amount of release time for negotiating;
- (4) Set a tentative schedule and agenda for negotiations;
- (5) Establish any other matter deemed pertinent and necessary before beginning any other negotiation activities;
- (6) Meet at reasonable times and locations agreeable to all parties;
- (7) Negotiate a memorandum of understanding by collective bargaining in good faith as required by State Personnel and Pensions Article, §3-501, Annotated Code of Maryland; and
- (8) Negotiate a memorandum of understanding in closed sessions.

B. Negotiations shall address:

- (1) Wages;
- (2) Hours of work; and
- (3) Other terms and conditions of employment.

C. A party to collective bargaining negotiations may not be compelled to:

- (1) Agree to a proposal; or
- (2) Make a concession.

D. An employer may not be required to negotiate over any matter that is inconsistent with applicable law, but an employer may reach agreement with regard to any such matter if it is understood that the agreement with respect to the matter cannot become effective unless the applicable law is amended by the General Assembly.

## **.02 Memorandum of Understanding.**

A. When the parties to collective bargaining negotiations have reached agreement, a written memorandum of understanding shall be executed as required under State Personnel and Pensions Article, §3-601, Annotated Code of Maryland, containing all matters of agreement signed by:

(1) The exclusive representative; and

(2) The institution president or president's designee in the case of a University System of Maryland institution as defined in the State Personnel and Pensions Article, §3-101(g), Annotated Code of Maryland, or the governing board or governing board's designee in the case of Morgan State University, St. Mary's College of Maryland, or Baltimore City Community College.

B. To the extent matters in a memorandum of understanding require legislative approval, the legislation shall be recommended to the Governor for submission to the General Assembly.

C. A memorandum of understanding is not valid if it extends for less than 1 year or for more than 3 years.

D. As provided in State Personnel and Pensions Article, §3-601(c), Annotated Code of Maryland, a memorandum of understanding is not effective until it has been ratified by the institution's governing board and by a majority of votes cast by the employees in the bargaining unit. No portion of the memorandum of understanding shall be implemented until all provisions are approved by all parties.

E. The parties to a memorandum of understanding (MOU) negotiated in accordance with §§A—C of this regulation shall file a copy of the MOU with the Board within 30 days after it has become effective as provided under §D of this regulation.

## **.03 Procedures for Ratification of Memorandum of Understanding.**

A. At the close of collective bargaining negotiations, the exclusive representative shall promptly present the proposed agreement to the employees in the bargaining unit for consideration and ratification, and shall conduct the ratification vote through either a ratification meeting or a mail in ballot, as provided in this regulation.

B. The exclusive representative shall give notice of the ratification process to all employees in the bargaining unit, sufficiently in advance of the ratification vote to permit the employees in the bargaining unit a reasonable opportunity to consider the matters to be voted upon prior to the vote. The notice shall be communicated to the employees in the bargaining unit by any means which may reasonably be expected to come to the attention of the employees in the bargaining unit, including but not limited to the following:

(1) Posting in conspicuous places where notices to employees in the bargaining unit are customarily posted, including but not limited to posting on the exclusive representative's website;

(2) Personal delivery to the employees in the bargaining unit;

(3) Delivery through interoffice mail;

(4) Mailing to the employees in the bargaining unit;

(5) Advertisement in an employee newsletter distributed to the employees in the bargaining unit or in a newspaper of general circulation in the community where the employees in the bargaining unit are employed; or

(6) Electronic mailing to the employees in the bargaining unit.

C. The exclusive representative may hold ratification meetings.

D. The notice sent to employees regarding a ratification meeting shall contain the following information:

(1) The date, time, and place of the meetings;

(2) That the meeting is open to all employees in the bargaining unit regardless of membership in the employee organization;

(3) That all employees in the bargaining unit are eligible to vote;

(4) That a copy of the terms of the proposed collective bargaining agreement is available for inspection at specified locations in the geographic area encompassed by the bargaining unit;

(5) That a copy of the terms of the agreement is available for inspection on the website of the exclusive representative; and

(6) The means through which employees in the bargaining unit will be permitted to ask questions of the exclusive bargaining representative regarding the proposed agreement, in advance of the ratification vote.

E. The vote taken at a ratification meeting shall be by secret ballot of all employees in the bargaining unit attending the meeting.

F. At the conclusion of voting, the votes shall be publicly counted and the results announced, or, in the event circumstances prevent a public tally of the votes, the results shall be announced within 3 days of the tally.

G. If it is necessary to conduct more than one ratification meeting:

(1) Each meeting shall be conducted pursuant to the foregoing requirements; and

(2) The combined results of voting conducted at the several meetings shall be announced within 3 days after the final ratification meeting.

H. The exclusive representative may use mail ballots for the ratification vote in lieu of ratification meetings. The notice sent to employees regarding ratification by mail ballots shall contain the following information:

(1) The mail ballot;

(2) A return envelope addressed to the exclusive representative containing the employee's State issued position identification number to be used by employees to return their ballots;

(3) The last date for returning ballots;

(4) That all employees in the bargaining unit are eligible to vote regardless of membership in the employee organization serving as the exclusive representative;

(5) That a copy of the terms of the proposed collective bargaining agreement is available for inspection at specified locations in the geographic area encompassed by the bargaining unit;

(6) That a copy of the terms of the agreement is available for inspection on the website of the exclusive representative;

(7) The means through which employees in the bargaining unit will be permitted to ask questions of the exclusive bargaining representative regarding the proposed agreement, in advance of the ratification vote; and

(8) When and where the exclusive representative will conduct a tally of the ballots.

I. Ballots returned to the exclusive representative by any other means than in the preaddressed envelope provided may not be counted.

J. Ballots postmarked later than the last date for returning ballots may not be counted.

K. The tally shall be open to all employees in the bargaining unit regardless of membership in the employee organization.

L. At the conclusion of the tally of the ballots, the results shall be announced and posted on the exclusive representative's website.

M. The ballots shall be retained by the exclusive representative for a period of 30 days after the final tally and shall be available for inspection within 3 business days of receipt of a written request by an employee in the bargaining unit.

N. The majority of votes cast by all those voting shall prevail.

O. The exclusive representative shall immediately notify the employer of the results of the ratification vote.

P. The exclusive representative shall maintain a written record of the results of the vote.

Q. The parties to a memorandum of understanding (MOU) negotiated and ratified pursuant to the requirements of this chapter shall file a copy of the MOU with the Board within 30 days after it has become effective following ratification.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 10 Impasse Procedures**

**Authority: State Personnel and Pensions Article, §§3-2A-05, 3-2A-06, and 3-2A-07, Annotated Code of Maryland**

#### **.01 Notice of Impasse—Contents.**

If it appears that an impasse has been reached during collective bargaining negotiations and the parties do not have a ground rule or other agreement providing for the resolution of the impasse, the executive director may be notified in writing by one or both of the parties. The notice of impasse shall include the following:

- A. The names of the chief negotiators 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 matters at impasse and any other relevant facts, including a list of specific labor organization or employer demands or both, upon which impasse has been reached.

#### **.02 Voluntary Impasse Assistance.**

Upon receipt of a notice of impasse, the executive director shall initiate an informal inquiry. Unless jointly filed, the executive director shall verify with the other party that the parties are at impasse. Upon confirmation or receipt of a joint notice of impasse, the parties may voluntarily agree to mediate the impasse and select a mediator. If the parties are unable to mutually agree on the selection of a mediator, the chairman or executive director shall advise the parties of third-party mediation options, which may include a member of the Board, or may request mediation by a third-party mediation service. The parties shall bear any cost associated with the use of third-party mediation services.

#### **.03 Mediator's Report.**

If, upon exhaustion of mediation efforts, the dispute remains unresolved, upon agreement of both parties, the mediator may file a fact finding and objective status report with the Board outlining the matters that were resolved and those that remain outstanding.

#### **.04 Negotiations Deadline for Upcoming Fiscal Year.**

A. If parties do not conclude negotiations for the upcoming fiscal year before October 25, either party may request that a fact finder be employed to resolve the issues.

B. The fact finder shall be employed not later than November 1.

C. The fact finder shall be a neutral party appointed by alternate striking from a list by the parties provided:

(1) By the Federal Mediation and Conciliation Service; or

(2) Under the Labor Arbitration Rules of the American Arbitration Association.

D. The fact finder:

(1) May give notice and hold hearings in accordance with the Administrative Procedure Act;

(2) May administer oaths and take testimony and other evidence;

(3) May issue subpoenas; and

(4) Before November 20, shall make written recommendations regarding wages, hours, working conditions, and any other terms or conditions of employment that may be in dispute.

E. The written recommendations of the fact finder shall be delivered by the Secretary on or before December 1, to the Governor, the exclusive representative, the President of the Senate, and the Speaker of the House of Delegates.

# **Title 14 INDEPENDENT AGENCIES**

## **Subtitle 30 STATE HIGHER EDUCATION LABOR RELATIONS BOARD**

### **Chapter 11 Hearings**

**Authority: State Personnel and Pensions Article, §§3-2A-05—3-2A-07, Annotated Code of Maryland**

#### **.01 Scope.**

A. This chapter contains procedures for administrative hearings concerning matters before the Board.

B. A hearing before an administrative law judge of the Office of Administrative Hearings shall be conducted in accordance with the rules of procedure of the Office of Administrative Hearings in COMAR 28.02.01, and this chapter. To the extent that this chapter conflicts with COMAR 28.02.01, this chapter prevails.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative law judge" has the meaning stated in COMAR 28.02.01.02.

(2) "Party" means an individual, organization, institution, or agency, including the Board, named in an administrative proceeding before the Board.

#### **.03 Delegation of Hearing Authority to the Office of Administrative Hearings.**

A. The Board may conduct a hearing or may delegate authority to conduct a hearing to the Office of Administrative Hearings in accordance with State Government Article, §10-205(a), Annotated Code of Maryland.

B. Scope of Delegation. The Board, or the Executive Director acting on behalf of the Board, may delegate authority to the Office of Administrative Hearings in accordance with State Government Article, §10-205(b), Annotated Code of Maryland.

C. Authority to Revoke Delegation. The Board, or the Executive Director acting on behalf of the Board, may revoke all or part of a delegation to the Office of Administrative Hearings if the case:

(1) Involves novel or unanticipated factual or legal issues;

(2) Has significant social or fiscal consequences;

(3) Involves policy issues of general applicability;

(4) Is likely to have precedential value; or

(5) Requires especially expeditious decision.

#### D. Procedures for Revocation.

(1) The Board or the Executive Director shall provide written notice of a revocation of hearing authority to all parties and the Office of Administrative Hearings. The written notice shall contain a brief statement of the reason for the revocation.

(2) Delegation of authority to hear a contested case may be revoked at any time before the earlier occurrence of the following:

(a) The issuance of a ruling by the administrative law judge on a substantive issue; or

(b) The taking of oral testimony from the first witness.

(3) The notice of revocation shall specify whether all or part of the delegation to hear a contested case has been revoked.

(4) If only part of the delegation has been revoked, the notice of revocation shall specify the portions of the contested case for which delegation is revoked.

(5) A decision issued by the Board shall reflect the fact that delegation to the Office of Administrative Hearings was revoked and a copy of the revocation notice shall be included as part of the record.

E. Procedures upon Revocation. If the Board, or the Executive Director acting on behalf of the Board, revokes the delegation to hear a contested case, the hearing shall be conducted by the Board in accordance with this chapter within 90 days of the issuance of the revocation.

F. Settlement Conferences by the Executive Director. The Board delegates to the Executive Director the authority to convene a settlement conference for the purpose of settling any matter before a hearing held in accordance with this chapter.

### **.04 Delegation of Hearing Authority to the Executive Director or other Person.**

A. The Board in its discretion may delegate the hearing of any matter to the Executive Director or other individual not employed by the Office of Administrative Hearings with the prior written approval of the Chief Administrative Law Judge under State Government Article, §10-205 (a), Annotated Code of Maryland.

B. If the Board delegates a hearing to the Executive Director or other individual not employed by the Office of Administrative Hearings, the hearing shall proceed before that individual as it would have proceeded before the Office of Administrative Hearings.

### **.05 Request for Hearing.**

A. A written request for a hearing shall be filed with the Executive Director not later than 15 days from the date of the notice of the action unless a different time is otherwise provided in this subtitle.

B. The request shall include the following:

(1) The name, mailing address, and telephone number of the person filing the request and the person's attorney or other representative, if any;

(2) The action, sanction, decision, or order being contested, including any pertinent documents and information such as time, date, location, and the names of the parties involved in the matter which is the subject of the hearing request;

(3) A statement of the basis for the request for a hearing, including but not limited to the specific provision or provisions of this subtitle allegedly violated, and other information required by law; and

(4) A description of the remedy sought.

C. A request for hearing shall be signed by the party or the party's attorney or other representative.

D. If a hearing request is received without the necessary information, or is otherwise improper, the Executive Director may:

(1) Reject the request;

(2) Require submission of supplemental information; or

(3) Require an amended request.

E. In any matter that has been delegated to the Office of Administrative Hearings, within 7 days of receiving a request for a hearing, the Executive Director shall forward the request to the Office of Administrative Hearings.

F. In any matter that has not been delegated to the Office of Administrative Hearings, the Executive Director shall forward the request to the chairman of the Board within 7 days.

## **.06 Notice of Hearing.**

The Board, the Executive Director, or Office of Administrative Hearings, as appropriate, shall give written notice of the hearing of a contested case to the parties in accordance with State Government Article, §10-208, Annotated Code of Maryland.

## **.07 Service.**

A. Unless otherwise required by law, service of the following documents shall be made by personal delivery, or by certified mail:

(1) Notice of the hearing;

(2) Default orders;

(3) Prehearing orders;

- (4) Final decisions;
- (5) Exceptions to proposed decisions; and
- (6) Appeals of final decisions.

B. Service upon or filing with the Board may be made by delivering the document to the Executive Director at the Office of the Executive Director.

C. Proof of Service. The individual serving a document shall certify:

- (1) To whom the document was sent or delivered;
- (2) The address to which the copy was sent or delivered;
- (3) The date the copy was sent or delivered;
- (4) The manner of service; and
- (5) The name of the person who sent or delivered the document.

D. Absent evidence to the contrary, it is presumed that any document served by mail in accordance with this chapter was received by the addressee 3 days after the date the document was mailed.

### **.08 Representation.**

A. In contested case proceedings, a party with standing to file a complaint or petition may appear and be heard on the party's own behalf, or by the party's attorney (State Government Article, §10-206.1, Annotated Code of Maryland).

B. Any attorney appearing before the Board shall be licensed to practice in the State of Maryland (Maryland Rule 16-812, MRCP 5.5).

C. In the event that an out-of-State attorney wishes to represent a client before the Board, the attorney shall apply for admission pro hac vice, pursuant to Maryland Rule 14, and Business Occupations and Professions Article, §10-215, Annotated Code of Maryland. \

### **.09 Discovery.**

There shall be no formal discovery.

### **.10 Prehearing Conference.**

A. The Board, the Executive Director, or the administrative law judge, as appropriate, may hold a prehearing conference to resolve matters preliminary to the hearing.

B. The Board, the Executive Director, or the administrative law judge, as appropriate, may require the parties to submit information before the prehearing conference.

C. The Board, the Executive Director, or the administrative law judge, as appropriate, may order that each party make available to the other parties the names and written reports of experts and other witnesses the party expects to call as well as copies of the documents that will be used for direct examination during the hearing. Failure to comply in good faith with this order is grounds to refuse to admit:

- (1) A report of, or testimony by, that expert or witness; or
- (2) Any document not furnished to the other parties.

D. A prehearing conference may be convened to address the following matters:

- (1) Factual and legal issues;
- (2) Stipulations and admissions of fact;
- (3) Stipulations as to the authenticity and admissibility of documents;
- (4) Requests for official notice;
- (5) Identification and exchange of documentary evidence;
- (6) Admissibility of evidence;
- (7) Identification and qualification of witnesses and proof as to the expected testimony;
- (8) Motions;
- (9) Order of presentation;
- (10) Scheduling;
- (11) Settlement possibilities or conferences; and
- (12) Any other matter that will promote the orderly and prompt conduct of the hearing.

E. Conduct.

- (1) At the discretion of the Board, the Executive Director, or the administrative law judge, as appropriate, all or part of the prehearing conference may be recorded.
- (2) The prehearing conference may be conducted by telephone, video, or other electronic means.

F. Prehearing Orders.

- (1) The Board, the Executive Director, or the administrative law judge, as appropriate, may issue a prehearing order addressing any matter raised at the prehearing conference.
- (2) The prehearing order is part of the record.
- (3) Whether or not a prehearing conference is held, the Board, the Executive Director, or the administrative law judge, as appropriate, may issue a prehearing order to regulate the conduct of the proceedings.

G. All parties are bound by the prehearing order of the Board, Executive Director, or administrative law judge, regardless of whether a party attends a prehearing conference.

## **.11 Stipulations and Affidavits.**

A. Stipulations.

- (1) The parties, by stipulation, may agree to any substantive or procedural matter.
- (2) A stipulation may be filed in writing or entered on the record at the hearing.

B. Affidavits. The Board, the Executive Director, or the administrative law judge, as appropriate, may admit an affidavit as evidence.

## **12 Subpoenas.**

A. Issuance of Subpoenas. The Board, the Executive Director, or the Office of Administrative Hearings, as appropriate, may issue subpoenas requiring the attendance and testimony of witnesses and production of documents or tangible items at any hearing.

B. Request for Subpoenas.

- (1) A request for issuance of a subpoena shall:
  - (a) Be made in writing to the Board, Executive Director, or Office of Administrative Hearings, as appropriate;
  - (b) State:
    - (i) The name and address of the individual to be subpoenaed;
    - (ii) If production of documents or tangible items is sought, a particular description of the documents or tangible items sought; and
    - (iii) The name, address, and telephone number of the party requesting the subpoena; and
  - (c) Be sent by certified mail or personal delivery to each party.
- (2) To the extent practicable, a request for subpoena shall be filed with the Board or the Office of Administrative Hearings, as appropriate, at least 7 days before:
  - (a) A prehearing conference, if one has been scheduled; or
  - (b) The hearing, if no prehearing conference has been scheduled.

C. Service of Subpoenas. A subpoena may be served by personal service, or by certified mail.

D. If the subpoena is served by an individual other than the Office of Administrative Hearings, a certificate of service attesting to the method of service and date of service shall be filed with the Board, the Executive Director, or Office of Administrative Hearings, as appropriate.

E. Objections to Subpoenas. A party or an individual who has been served a subpoena may object to the subpoena by filing a motion to modify or quash the subpoena within 7 days of service of the subpoena or by the date of the hearing, whichever is earlier.

### **.13 Motions.**

#### A. Process.

(1) Unless otherwise provided by this chapter, a party:

(a) May move for appropriate relief before or during a hearing; and

(b) Shall submit all motions in writing in accordance with §A(2) of this regulation, or orally at a hearing.

(2) A written motion shall:

(a) Be filed not later than:

(i) 7 days before the date of a prehearing conference; or

(ii) 14 days before the date of the hearing;

(b) State concisely the question to be determined;

(c) Be accompanied by all supporting documentation;

(d) Be accompanied by a memorandum of points and authorities; and

(e) Be served on each party.

(3) A response to a written motion shall be filed on the earlier of:

(a) 7 days after service of the motion; or

(b) The date of the hearing.

(4) The Board, the Executive Director, or the administrative law judge, as appropriate, may schedule a hearing to consider a written motion.

(5) Ruling.

(a) The Board, the Executive Director, or the administrative law judge, as appropriate, may reserve ruling on a motion until after a hearing.

(b) The Board, the Executive Director, or the administrative law judge, as appropriate, may issue a written ruling or orally state the ruling on the record.

(c) If a ruling on a motion is reserved, the ruling shall be in writing and may be included in the final decision.

(6) Failure of a party to attend a scheduled hearing may be grounds for a decision adverse to that party.

(7) The filing or pendency of a motion does not alter or extend any time limit otherwise established by this chapter.

B. Motion to Dismiss. Upon motion, the Board, the Executive Director, or the administrative law judge, as appropriate, may issue a proposed decision or final decision dismissing a request for hearing which fails to state a claim for which the Board may grant relief.

C. Motion for Summary Decision.

(1) A party may move for summary decision on any substantive issue in the case.

(2) Upon written motion, a proposed decision or a final decision may dismiss a request for hearing if the Board, the Executive Director, or the administrative law judge, as appropriate, finds that:

(a) There is no genuine issue as to any material fact; and

(b) The moving party is entitled to prevail as a matter of law.

D. Motion for Postponement.

(1) The Board, the Executive Director, or the administrative law judge, as appropriate, may postpone or continue a hearing:

(a) For good cause; or

(b) Upon a joint request of the parties.

(2) Absent extenuating circumstances, a hearing may be postponed only upon written request filed not later than 7 days before the hearing and served on all parties.

(3) The failure of the party to retain counsel or to timely request a subpoena is not considered good cause for the purposes of a postponement.

(4) Upon postponement, the hearing shall be rescheduled for a date certain.

## **.14 Conduct of Hearings.**

A. On a genuine issue in a contested case, each party is entitled to:

(1) Call witnesses;

(2) Offer evidence, including rebuttal evidence;

(3) Cross-examine opposing witnesses; and

(4) Make opening and closing statements.

B. Telephone Hearings.

(1) The Board, the Executive Director, or the administrative law judge, as appropriate, may conduct all or part of the hearing by telephone, video conferencing, or other electronic means, by consent of all parties.

(2) All substantive and procedural rights apply to telephone, video, or other electronic hearings, subject only to the limitations of the physical arrangement.

(3) Documentary Evidence. For a telephone hearing, a party shall provide documentary evidence to be offered to all parties so that it is received by each party and the Board or the administrative law judge, as appropriate, at least 5 days before the hearing.

(4) Default. For a telephone hearing, the following may be considered a failure to appear and grounds for a default:

(a) Failure to answer the telephone for 15 minutes;

(b) Failure to free the telephone for a hearing; or

(c) Any other failure without good cause to be ready to proceed with the hearing as scheduled.

C. A quorum of the Board shall be present for Board hearings.

## **.15 Evidence.**

A. Evidence shall be admitted in accordance with this chapter and State Government Article, §10-213, Annotated Code of Maryland.

B. The strict rules of evidence observed by courts do not apply to hearings under this subtitle.

C. The Board, the Executive Director, or the administrative law judge, as appropriate, shall admit evidence, including reliable hearsay evidence, if it is the kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

D. Irrelevant or unduly repetitive evidence may be excluded.

E. The Board, the Executive Director, or the administrative law judge, as appropriate, shall observe the rules of privilege recognized by law.

F. Exclusion of Witnesses.

(1) Upon request by a party, the Board, the Executive Director, or the administrative law judge, as appropriate, may exclude witnesses other than parties from the hearing room.

(2) The Board, the Executive Director, or the administrative law judge, as appropriate, may order the witnesses, parties, attorneys, and all others present in the hearing room not to disclose to any witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness's absence.

(3) An expert witness who is to render an opinion based on testimony given at the hearing may remain during the testimony.

G. Prefiled Testimony.

(1) In the discretion of the Board, the Executive Director, or the administrative law judge, as appropriate, testimony may be received in written form under oath or by notarized affidavit.

(2) The testimony shall be filed with the Board, the Executive Director, or the administrative law judge, as appropriate, and served on opposing parties so that it is received at least 5 days before the hearing.

H. All testimony at a hearing shall be under oath and subject to the penalties of perjury.

### **.16 Expert Testimony.**

Expert testimony may be accepted by the Board, the Executive Director, or the administrative law judge, as appropriate, if the testimony, as proffered, would aid in an understanding of the case.

### **.17 Appointment of Interpreter.**

A. If a party or witness cannot readily hear, speak, or understand the spoken or written English language, on motion timely submitted, the Board, the Executive Director, or the administrative law judge, as appropriate, shall appoint a qualified interpreter to provide assistance during the hearing.

B. An interpreter shall take an oath or affirmation that the interpreter will accurately translate.

### **.18 Failure to Attend Hearing and Default.**

A. If, after receiving notice, a party fails to attend a prehearing conference, hearing, or other scheduled proceeding, the Board may issue a final decision or the administrative law judge or the Executive Director may issue a proposed decision, as appropriate, against the defaulting party.

B. Within 7 days after service of a default order, the party may file a written motion:

- (1) Requesting that the default order be vacated or modified; and
- (2) Stating the grounds for the request.

C. If the Board, Executive Director, or administrative law judge, as appropriate, finds that there is a substantial and sufficient basis for an actual controversy on the merits and that there is good cause to excuse the default, the Board, Executive Director, or administrative law judge, as appropriate, may vacate the default order.

D. A final default order is:

- (1) A final decision; and
- (2) Reviewable in court as a final decision

### **.19 Burdens of Going Forward and Persuasion.**

A. In any proceeding under this chapter, the petitioner, moving party, or appellant bears the burden of going forward to establish a prima facie case as to the existence of grounds for its action.

B. The Board, Executive Director, or the administrative law judge, as appropriate, shall find against a party with the burden of:

(1) Going forward, if that party has not presented sufficient evidence to establish a prima facie case for the party's claim or defense; or

(2) Persuasion, if that party has not presented evidence sufficient to establish the correctness of the party's claim or defense by a preponderance of the evidence.

## **.20 Record of Hearings.**

A. The Board, the Executive Director, or the Office of Administrative Hearings, as appropriate, shall prepare an official record of each hearing.

B. The record shall consist of:

(1) Any document giving rise to the proceeding;

(2) Any request for the hearing;

(3) Notices of all proceedings;

(4) Any prehearing order;

(5) Motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(6) Evidence received or considered;

(7) A statement of each fact officially noticed;

(8) Proffers of proof, objections, and rulings on them;

(9) Proposed and final findings of fact, conclusions of law, and requested orders;

(10) Matters placed on the record after an ex parte communication;

(11) A recording of the hearing, any transcript of the recording, or any transcript prepared by a court reporting service; and

(12) Any order.

## **.21 Ex Parte Communications.**

A. A party or a party's representative may not communicate ex parte with members of the Board, the Executive Director, an administrative law judge, or any of their staff members who have participated in the contested case regarding the merits of any issue in the hearing.

B. Members of the Board may communicate with:

(1) The Executive Director's staff or the Office of Administrative Hearings' staff who otherwise do not participate in the contested case; or

(2) Any counsel for the Board who otherwise does not participate in the contested case.

C. Actions taken by the Board, the Executive Director, or an administrative law judge following an ex parte communication are governed by State Government Article, §10-219, Annotated Code of Maryland.

## **.22 Transcripts, Costs.**

A. The hearing shall be recorded by tape recording unless excused by the Board.

B. Transcript.

(1) Either party may request a transcript at a hearing conducted by Office of Administrative Hearings (OAH) or by the Board. If a party requests a transcript of the hearing, the requesting party shall bear the cost of transcription and provide a copy to the Board.

(2) Parties may choose between using a recording from OAH or the Board to prepare a transcript, or using the services of a court reporter. If parties elect to use the services of a court reporter, the cost shall be split between the parties. If parties do not elect to use the services of a court reporter, a recording shall be made by the Board or as per the rules of OAH.

(3) If neither party will be ordering a transcript of the proceeding, the parties shall communicate that fact to the Board 5 days prior to the hearing date.

(4) The Board shall order a transcript if neither party does so. Half of the cost of the transcript shall be billed to the petitioner and half to the respondent.

(5) If the Board causes the proceedings to be transcribed, the reporter producing the transcript shall make copies available to the parties to the proceeding upon request and prompt payment of the appropriate fee. Requests for transcripts shall be made directly to the reporter or reporting agency.

(6) The Board's copy of the transcript shall be available for inspection, but not copying, by the parties. Transcripts prepared at the direction of the Board or its Executive Director are the official transcripts of the Board proceeding.

## **.23 Proposed Orders; Exceptions.**

A. In any matter that has been delegated to the Office of Administrative Hearings, the administrative law judge shall issue, as appropriate, findings, conclusions, orders, decisions, or any of these, as prescribed under State Government Article, §10-205(b), Annotated Code of Maryland. The Office of Administrative Hearings shall serve a document issued under this section upon the parties within 30 days following the conclusion of the hearing.

B. In any matter which has been delegated to the Office of Administrative Hearings or to the Executive Director, the parties may file exceptions with the Board within 20 days of receiving the proposed decision. A response to the exceptions may be filed within 15 days from the filing of the exceptions.

B-1. Unless expressly authorized by the Board in extraordinary circumstances, interlocutory appeals to the Board in any matter which has been delegated to the Office of Administrative Hearings are not permitted.

C. The exceptions or response shall:

(1) Contain the legal and factual basis for the exceptions or response; and

(2) Be accompanied by copies of any portions of the record referred to in the exceptions.

D. A party who desires a transcript to be made a part of the proceedings shall, at the party's own expense, file a copy of the transcript with the Board.

E. Upon a showing of good cause, the Board may grant an extension for the filing of exceptions or any response.

F. The parties may request oral argument on the exceptions.

G. If oral argument is requested, the Board may schedule an oral argument as soon as practicable and all parties shall be notified of the date, time, and place for oral argument. Participation by amicus curiae may be granted in the Board's discretion.

H. The presiding officer, ordinarily the chairman of the Board, or the member designated by the chairman, may limit the time given to each party for oral argument.

I. The presiding officer, ordinarily the chairman of the Board, or the member designated by the chairman, shall determine all procedural issues and may make any rulings necessary to facilitate the effective and efficient consideration of the exceptions.

J. If oral argument is not held, the Board shall:

(1) Consider the matter as soon as practicable; and

(2) Notify all parties of the date that the matter will be considered.

K. Copies of the exceptions, responses, and any accompanying documents shall be provided to the Board at least 5 days before the matter is to be considered.

L. The entire record shall be provided to the chairman of the Board before consideration of the exceptions.

M. Additional evidence may not be introduced upon consideration of exceptions unless the party seeking to introduce it:

(1) Requests leave to submit the evidence at least 15 days before the Board considers the exceptions; and

(2) Demonstrates to the satisfaction of the Board that the new evidence:

(a) Is relevant and material;

(b) Was not discovered before the hearing; and

(c) Could not have been discovered before the hearing with the exercise of due diligence.

N. A quorum of the Board shall be present to consider the exceptions.

## **.24 Final Decision.**

A. In any matter that has been delegated to the Office of Administrative Hearings or to the Executive Director, the Board, after considering the record and any exceptions, by majority vote, shall:

(1) Adopt the proposed decision as the final decision of the Board;

(2) Modify the proposed findings of fact, proposed conclusions of law, or proposed disposition, in whole or in part, and then adopt the modified proposed decision as the final decision of the Board;

(3) Reverse the proposed decision and issue its own findings of fact, conclusions of law, or order; or

(4) Remand the matter for further proceedings.

B. In any matter that has not been delegated to the Office of Administrative Hearings or the Executive Director, the Board, as soon as practicable after the conclusion of the hearing, shall issue a written decision.

C. The decision of the Board is the final decision of the agency for purposes of judicial review. Unless the matter is remanded for further proceedings, or a motion for reconsideration is filed, the date of the written decision of the Board is the date of the final decision of the agency for purposes of judicial review.

D. A final decision shall:

(1) Be in writing;

(2) Be served on all parties; and

(3) Contain:

(a) Findings of fact and conclusions of law, separately stated;

(b) An order; and

(c) A statement of the available procedures and time limitations for review.

## **.25 Reconsideration.**

In the event of fraud, mistake, or irregularity, a final decision may be reconsidered and corrected at any time.

## **.26 Judicial Review.**

A party who is aggrieved by a final decision is entitled to judicial review in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. The Board may request to intervene as a party to the proceeding.