

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE C: LABOR RELATIONS  
CHAPTER IV: ILLINOIS LABOR RELATIONS BOARD

PART 1200  
GENERAL PROCEDURES

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AUTHORITY: Implementing and authorized by the Illinois Public Labor Relations Act [5 ILCS 315].

SOURCE: Emergency rule adopted at 8 Ill. Reg. 17314, effective September 11, 1984, for a maximum of 150 days; adopted at 9 Ill. Reg. 1846, effective January 25, 1985; amended at 11 Ill. Reg. 6428, effective March 27, 1987; amended at 12 Ill. Reg. 20096, effective November 18, 1988; amended at 14 Ill. Reg. 19896, effective November 30, 1990; amended at 17 Ill. Reg. 15588, effective September 13, 1993; amended at 20 Ill. Reg. 7391, effective May 10, 1996; amended at 27 Ill. Reg. 7365, effective May 1, 2003; emergency amendment at 27 Ill. Reg. 15557, effective September 22, 2003, for a maximum of 150 days; emergency amendment expired February 18, 2004; amended at 28 Ill. Reg. 4166, effective February 19, 2004; emergency amendment at 28 Ill. Reg. 7540, effective May 12, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 15154, effective November 1, 2004.

### **Section 1200.3 General Statement of Purpose**

The regulations contained in this Part detail the procedures that employers, employees and labor organizations should use when filing petitions and charges pursuant to Parts 1210, 1220 and 1230, which implement the provisions of the Illinois Public Labor Relations Act [5 ILCS 315]. This Part shall not apply to cases filed pursuant to Section 6.1 of the Illinois Police Training Act [50 ILCS 705/6.1].

(Source: Added at 28 Ill. Reg. 15154, effective November 1, 2004)

### **Section 1200.5 Board Information and Business Hours**

The State Panel of the Illinois Labor Relations Board is located at 320 West Washington, Suite 500, Springfield, Illinois 62701. The State Panel telephone number is 1-217-785-3155. The State Panel facsimile telephone number is 1-217-785-4146. The Local Panel of the Illinois Labor Relations Board is located at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601. The Local Panel telephone number is 1-312-793-6400. The Local Panel facsimile telephone number is 1-312-793-6989. The Illinois Labor Relations Board's website address is [www.state.il.us/ilrb](http://www.state.il.us/ilrb). The official business hours of the Illinois Labor Relations Board are 8:30 a.m. to 5:00 p.m., Monday through Friday.

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.10 Definitions**

This Part incorporates the definitions contained in Section 3 of the Act as well as other definitions.

"Act" means the Illinois Public Labor Relations Act [5 ILCS 315].

"Administrative Law Judge" means either the agency head or an attorney licensed to practice in Illinois.

"Administrative Law Judge's recommended decision and order" means findings of fact and conclusions of law and reasons for those findings and conclusions. It is not a final decision of the Board. Such a recommended decision and order will be reviewed by the Board upon the filing of exceptions or on the Board's own motion.

"Board" means the Illinois Labor Relations Board or State or Local Panel, individually as applicable, or an agent designated by the Board

"Board agent" means any Board employee who is designated by the Board to perform the acts and/or responsibilities outlined in the relevant sections of the rules.

"Charging party" means the person or labor organization filing an unfair labor practice charge.

"Complaint" means a Board document issued to the parties in an unfair labor practice proceeding, notifying them of a hearing and setting forth the issues of fact or law to be resolved at the hearing.

"Employer" means the party named in a representation petition, unit clarification petition, decertification petition or voluntary recognition petition as the employer of the unit described in the petition.

"Executive Director's Order" includes reports concerning challenges and objections to an election; deferrals to arbitration; orders holding cases in abeyance; dismissals; directions of election; and other similar orders. These orders are not final decisions of the Board but are the results of investigations. The Board, upon the filing of an appeal, shall review such orders except that orders and parts of orders finding sufficient issues of law and fact sufficient to warrant a hearing are not appealable.

"Fact-finding" means a process whereby an employer and an exclusive representative submit their disputes concerning the terms of a new collective bargaining agreement to a neutral third party for non-binding findings of fact and recommendations.

"General public employee unit" means any bargaining unit of employees who, because they are not subject to Section 14 of the Act, have the right to strike in accordance with Section 17 of the Act.

"Grievance arbitration" means a process whereby an employer and an exclusive representative submit a dispute concerning the interpretation or application of an existing collective bargaining agreement to a neutral third party for resolution.

"Grievance mediation" means a process whereby an employer and an exclusive representative employ a neutral third party to communicate with the parties and endeavor to bring about an amicable, voluntary resolution of a dispute over the interpretation or application of an existing collective bargaining agreement.

"Initial contract" means negotiations for a collective bargaining agreement covering a bargaining unit that is not currently covered by a collective bargaining agreement between the exclusive representative and the employer.

"Interest arbitration" means a process whereby an employer and an exclusive representative submit their disputes concerning the terms of a new collective bargaining agreement for resolution by a neutral third party. "Compulsory interest arbitration" shall refer to interest arbitration engaged in pursuant to Section 14 of the Act. "Voluntary interest arbitration" shall refer to all other interest arbitration engaged in under the Act.

"Mediation" means a process whereby an employer and an exclusive representative employ a neutral third party to communicate with the parties and endeavor to bring about an amicable, voluntary resolution of negotiations over the terms of a new collective bargaining agreement.

"Petitioner" means the party named in a representation petition, unit clarification petition, decertification petition or voluntary recognition petition as having filed the petition.

"Protective services unit" means any bargaining unit subject to Section 14 of the Act in which the employees accordingly do not have the right to strike. Such units *are units of security employees of a public employer, peace officer units, or units of firefighters or paramedics.* (Section 14(a) of the Act)

"Representation petition" means either a traditional representation petition to determine a union's majority support through an election (election petition) as set forth in Section 9(a)(1) and (2) of the Act or a petition filed pursuant to the Board's card check procedures (majority interest petition) as set forth in Section 9(a)(5) of the Act.

"Respondent" means the party named in an unfair labor practice charge or complaint as having allegedly committed the unfair labor practice.

"Successor contract" means negotiations for a collective bargaining agreement covering a bargaining unit that is currently covered by a collective bargaining agreement between the exclusive representative and the employer.

(Source: Amended at 28 Ill. Reg. 4166, effective February 19, 2004)

## **Section 1200.20 Filing and Service of Documents**

- a) All charges, petitions, mediation requests and other initial documents relating to any proceeding before the State Panel of the Illinois Labor Relations Board shall be filed in the Board's Springfield office, which shall be designated as the State Panel's principal office. All subsequent documents shall be filed in either the Board's Springfield or Chicago office, as directed by the Board. All documents relating to any proceeding before the Local Panel of the Illinois Labor Relations Board shall be filed with the Board's office in Chicago which shall be designated as the Local Panel's principal office. Two copies of each document shall be filed. The Board shall post, and from time to time revise as appropriate, a list containing the street and mailing addresses for filing by actual delivery of papers and the telephone numbers for filing by electronic telefacsimile transmission (fax).
- b) Whenever this Part or 80 Ill. Adm. Code 1210, 1220 or 1230 requires that a document be on a form developed by the Board, the document may be prepared on a form obtained from the Board or on a facsimile. Minor deviations in the form of a document shall not be grounds for objecting to the document. Minor deviations are those concerning form rather than substance that do not prejudice the other parties to a proceeding.
- c) Documents may be filed by any of the following methods:
  - 1) By actual delivery of documents to the Board;
  - 2) By first class, registered or certified United States mail or by commercial parcel delivery company; or
  - 3) By fax, subject to the following limitations:
    - A) Parties shall transmit one copy of the documents, accompanied by a cover sheet or form identifying the party filing the documents, the total number of pages in the fax transmission, and the name, address, telephone number and fax number of the person sending the fax;
    - B) The original documents filed by fax shall be mailed or delivered to the appropriate Board office on the same day the fax is transmitted, together with a fax confirmation receipt;
    - C) The appropriate case numbers shall be indicated on the front page of each document filed by fax, unless the document is being filed to initiate proceedings before the Board;

- D) If receipt of a fax transmission commences after the close of the Board's business hours, the documents will be deemed filed on the next business day; and
  - E) A fax shall not be used to submit authorization cards for purposes of a showing of interest within the meaning of 80 Ill. Adm. Code 1210.80.
- d) All petitions, intervening claims and amendments to those documents shall be served on the appropriate parties by the Board by certified mail.
  - e) All unfair labor practice charges and all documents, except those listed in subsection (d), shall be served by the party filing the document on all other parties to the proceedings. Evidence submitted to the Board in the course of an investigation shall not be subject to this requirement. When a party is represented in a proceeding before the Board, service shall be on the party's representative. When a party is not represented, service shall be on the party. The document shall not be considered properly served unless accompanied by proof of service. Proof of service shall consist of a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service.
  - f) In all matters, a document shall be considered filed with the Board on the date that it is postmarked, tendered to a delivery service or received by personal delivery in the office of the appropriate Panel before the close of the Board's business hours. Service made by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with the same-day mailing of a copy of the papers, postage pre-paid and properly addressed, to the person being served.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.30 Computation and Extensions of Time**

- a) In computing any period of time prescribed by the Act or this Part, the designated period of time begins to run the day after the act, event, or default and ends on the last day of the period so computed. If the last day falls on a Saturday, Sunday, or legal holiday, the time period shall be automatically extended to the next day that is not a Saturday, Sunday or legal holiday.
- b) When a time period prescribed under the Act or this Part is less than 7 days, intervening Saturdays, Sundays, or legal holidays shall not be included.
- c) Service of a document upon a party by mail shall be presumed complete 3 days after mailing, if proof of service shows the document was properly addressed. This presumption may be overcome by the addressee, with evidence establishing that the document was not delivered or was delivered at a later date. A party's failure to accept or claim a document served by mail shall not be grounds for overcoming the presumption.
- d) Requests for postponements of hearings shall be filed in accordance with Section 1200.45. Requests for postponements of investigations or scheduled conferences, as well as requests for extensions for the filing of briefs, exceptions or responses must be made prior to the then existing deadlines. Such requests will not be granted unless good and sufficient cause is shown and the following requirements are met:

- 1) all requests must be in writing directed to the investigator, Administrative Law Judge, Executive Director or General Counsel responsible for the proceeding;
- 2) the grounds for the request must be set forth in detail;
- 3) the requesting party must specify alternative dates for scheduling the hearing or conference or for the due date of any documents;
- 4) the position of all parties concerning both the postponement or extension requested and the proposed alternative dates must be ascertained in advance by the requesting party and set forth in the request;
- 5) for purposes of this Section, good and sufficient cause may include a showing to the satisfaction of the Board or its agents that a postponement or extension will result in settlement of the case;
- 6) except for good cause shown, no request for postponement will be granted on any of the 3 days immediately preceding the date of a hearing, investigation or conference. All continuances must be to a date and time certain; in no event shall an indefinite continuance be granted.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

#### **Section 1200.40 Authority of Administrative Law Judges**

The Administrative Law Judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order and to ensure development of a clear and complete record. The Administrative Law Judge shall have all powers necessary to achieve these ends, including, but not limited to the discretionary authority to:

- a) Require the parties to participate in a pre-hearing conference before proceeding with a hearing;
- b) Require all parties to submit pre-hearing information, including, but not limited to, a detailed written statement of the issue to be resolved at hearing and its position; a list of witnesses each party intends to call, the nature of their testimony, the estimated time for each witness' testimony, and the estimated time for the party's case in chief; a list of exhibits to be offered by each party in its case in chief and a copy of each exhibit; and all other information the Administrative Law Judge requests;
- c) Regulate the proceedings of the case, and the conduct of the parties and their counsel;
- d) Administer oaths and affirmations;
- e) Receive relevant testimony and evidence;
- f) Establish reasonable limits on the frequency and duration of the testimony of any witness and limit repetitious or cumulative testimony;
- g) Examine witnesses and direct witnesses to testify; however, this provision does not lessen any party's burden of proof;

- h) Issue subpoenas and rule upon motions to revoke subpoenas;
- i) Take administrative notice of generally recognized facts of which Illinois courts may take judicial notice and of other facts within the specialized knowledge and experience of the Board;
- j) Rule on objections, motions and questions of procedure;
- k) Authorize the submission of briefs and set the time for their filing;
- l) Hear closing argument;
- m) Order a hearing reopened prior to the issuance of the Administrative Law Judge's recommended decision and order;
- n) Render and serve the recommended decision and order on the parties to the proceeding;
- o) Carry out the duties of Administrative Law Judge as provided or otherwise authorized by this Part or 80 Ill. Adm. Code 1210, 1220 or 1230 or the Act.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

#### **Section 1200.45 Motions**

- a) In matters set for hearing, all motions must be filed with the assigned Administrative Law Judge. Once the Administrative Law Judge's recommended decision and order has issued, all motions should be filed with the General Counsel in the Board's Chicago office.
- b) Motions must be made in writing unless made during the hearing, at which time the motions may be made verbally, on the record. Motions must briefly state the grounds for the motion and any relief requested. Written motions must be served in accordance with Section 1200.20.
  - 1) Motions to extend time for the filing of documents must contain a statement that the moving party discussed the requested extension with the other parties. If no objections were raised, the moving party must certify that the other parties were consulted and authorized the moving party to represent that they have no objections. If objections were raised, the moving party must describe those objections and its response.
  - 2) Motions for continuance must contain a statement that the moving party consulted with the other parties to determine whether they have any objection to the requested continuance. Where there are no objections, the moving party must certify that it has consulted with the other parties and that they authorized the moving party to represent that they have no objections. Where objections are raised, the moving party must describe those objections and its response. The motion for continuance must contain a statement that the moving party contacted the other parties to determine their availability for hearing on subsequent dates and it must indicate those dates in the motion.

- 3) At any time prior to the issuance of the recommended decision and order, a party may move to disqualify the Administrative Law Judge on the grounds of bias or conflict of interest. The motion shall be in writing to the General Counsel, with a copy to the Administrative Law Judge, setting out the specific instances of bias or conflict of interest. An adverse decision or ruling, in and of itself, is not grounds for disqualification. The General Counsel may decline to disqualify the Administrative Law Judge or may appoint another Administrative Law Judge to hear the case.
- 4) Motions to defer an unfair labor practice matter to arbitration may be made in accordance with Section 1220.65.
- c) Responses and any other answering documents, including memoranda and affidavits, must be filed within 5 days after service of the motion, or as otherwise required by the Administrative Law Judge or the Board. Responses must be served in accordance with Section 1200.20.
- d) Rulings on motions shall be made in writing and served on all parties to the proceeding. The Administrative Law Judge may reserve ruling on any motion until the issuance of his recommended decision and order.
- e) Rulings on motions are not appealable to the Board, unless as otherwise provided by the Board.

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.50 Recording of Hearings**

Whenever a representation hearing, unfair labor practice hearing, strike investigation hearing or similar hearing is held by the Board or its Administrative Law Judge under the Act or this Part or 80 Ill. Adm. Code 1210, 1220 or 1230, it shall be recorded by stenographic or other means that adequately preserves the record. The Administrative Law Judge or the Board may order that the recording be transcribed. Parties may order transcripts and shall bear the costs of any transcripts that they order.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.60 Closing Arguments and Briefs Before An Administrative Law Judge**

Upon request, a party is entitled to a reasonable period of time at the close of the hearing for oral argument, which shall be made part of the record. The Administrative Law Judge may direct the filing of briefs when the filing is, in the opinion of the Administrative Law Judge, warranted by the nature of the proceedings or the particular issues involved. All briefs shall be no more than a total of 50 double-spaced pages with margins of at least 1/2 inch, including attachments. All of the pages in excess of the 50 page limit will be rejected. The General Counsel may grant approval of exceptions and briefs containing more than 50 pages only in extraordinary circumstances (e.g., in cases involving extremely complex issues, in cases involving factual or legal issues of first impression, or in cases involving a lengthy factual record).

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.70 Representation of Parties**

A party may be represented by counsel or any other representative of the party's choosing. The representative shall file a Notice of Appearance with the Board. Filing pleadings on behalf of a party shall be equivalent to filing a Notice of Appearance.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.80 Ex Parte Communications**

No party or other persons legally interested in the outcome of a hearing may communicate ex parte, either directly or indirectly, with an Administrative Law Judge or with any member of the Board regarding matters pending before the Board.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.90 Subpoenas**

Following the issuance of a complaint for hearing or a notice of representation hearing, *the Board*, upon the request of an Administrative Law Judge or upon the written application of a party, *shall have the power to issue subpoenas* for witnesses and subpoenas for documents.

#### a) Subpoenas for Witnesses

- 1) A party's written application for subpoenas for witnesses must be directed to the Administrative Law Judge, and must contain the following information:
  - A) the title and case number of the proceeding;
  - B) the name, address and phone number of the party requesting the subpoena and its representative;
  - C) the name of the person to be subpoenaed; and
  - D) the date, time and place of the appearance to be commanded.
- 2) Applications must be filed with the Board and served on the other parties to the case at least 10 days before the hearing. The requested subpoenas may be picked up at the Board's office where the hearing will be held or at the office specified by the applicant in the subpoena request. Upon request, the Board will mail the subpoenas to the applicant.
- 3) The party requesting the subpoenas shall be responsible for serving the subpoenas on the witnesses at least 5 days before the hearing date. The party requesting the subpoenas shall also be responsible for payment of the witness fees for attendance, subsistence and mileage. Witnesses appearing at a hearing pursuant to subpoena are entitled to the same fees and mileage as are allowed witnesses in civil cases in the courts of the State of Illinois, pursuant to Section 4.3 of the Fees and Salaries Act [705 ILCS 35/4.3]. The requesting party must tender all fees with the subpoena. A witness appearing at the request of the Board shall submit the subpoena with a voucher when claiming reimbursement.

- 4) Board employees shall not be subpoenaed to testify regarding matters that occurred during their employment with the Board.
  - 5) Subpoenas shall remain in effect throughout the course of the proceedings.
- b) Subpoenas for Documents (Subpoena Duces Tecum)
- 1) A party's written application for subpoenas for documents must be directed to the Administrative Law Judge and must contain the following information:
    - A) the title and case number of the proceeding;
    - B) the name, address and phone number of the party requesting the subpoena and its representative;
    - C) a detailed description of the books, papers, documents or other objects to be produced pursuant to the subpoena;
    - D) the name of the person to be served with the subpoena; and
    - E) the date, time and place of production to be commanded.
  - 2) Applications must be filed with the Board and served on the other parties to the case at least 10 days before the hearing and 10 days before the date on which the documents are to be produced. The date and time for production of documents may be prior to the hearing. The requested subpoenas may be picked up at the Board's office where the hearing will be held or at the office specified by the applicant in the subpoena request. Upon request, the Board will mail the subpoenas to the applicant.
  - 3) The party requesting the subpoenas shall be responsible for serving the subpoenas at least 5 days before the hearing date and 5 days before the date on which the documents are to be produced.
  - 4) Confidential Board documents as defined in 2 Ill. Adm. Code 2501.20(c) shall not be subpoenaed.
- c) Motions to Revoke Subpoenas  
A person objecting to the subpoena may file a motion to revoke the subpoena. The motion must be filed at least 3 days prior to the hearing and shall be filed with the Administrative Law Judge assigned to the case. Grounds for revocation shall include irrelevance, undue burden and privilege.
- d) Subpoenas in Impasse Proceedings  
Subpoenas in impasse proceedings shall be handled in accordance with 80 Ill. Adm. Code 1230.90. Motions to revoke the subpoena in such proceedings shall be filed with the arbitrator or fact-finder.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.100 Transfer of Jurisdiction**

- a) Whenever a proceeding is instituted before either the State or Local Panel of the Illinois

Labor Relations Board and it appears that the matter is properly subject to the other Panel's jurisdiction, the first Panel shall transfer the case to the other Panel.

- b) Whenever one Panel has transferred a case to the other Panel, the other Panel an refuse to accept the transfer if it believes that it does not have jurisdiction. The other Panel's refusal to accept the transfer shall automatically initiate a joint Panel proceeding to resolve the jurisdictional issue.
- c) Whenever only one member of either Panel believes that a case before that Panel is subject to the jurisdiction of the other Panel, that member shall initiate a joint Panel proceeding to resolve the jurisdictional issue.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.105 Consolidation of Proceedings**

The Board shall consolidate two or more representation or unfair labor practice cases when the following 3 conditions are met.

- a) The cases involve common issues of law or fact or grow out of the same transaction or occurrence;
- b) Consolidation would not prejudice the rights of the parties; and
- c) Consolidation would result in the efficient and expeditious resolution of cases.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.110 Amicus Curiae Briefs (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.120 Voluntary Settlement or Adjustment of Disputes**

The Board, as a matter of policy, encourages the voluntary efforts of the parties to settle or adjust disputes involving issues of representation, unfair labor practices, and interest and rights disputes. Any such efforts at resolution or conciliation and any resulting settlements shall be in compliance with the provisions, purposes and policies of the Act. Any facts, admissions against interest, offers of settlement or proposals of adjustment that have been submitted pursuant to this Section shall not be used as evidence of an admission of a violation of the Act.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1200.130 Rules of Evidence**

Considering the nature of the case and the representatives of the parties, the Administrative Law Judge will, insofar as practicable, apply the rules of evidence applicable in Illinois courts. The Administrative Law Judge may, upon proper objection, exclude evidence that is irrelevant, immaterial or unduly repetitious. Evidence may be presented in the form of testimony, exhibits, or stipulations. Testimonial evidence shall be taken only on oath or affirmation.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

## **Section 1200.135 Appeals Procedures, Board Review and Court Review**

- a) Executive Director's Orders
  - 1) Orders of the Executive Director, except orders setting matters for hearing, may be appealed to the Board. Notice of appeal and all supporting materials shall be filed with the Board's General Counsel, in the Board's Chicago office, no later than 10 days after service of the Executive Director's order. The appeal shall be served on all other parties in accordance with Section 1200.20.
  - 2) A party may file a response to the appeal and all materials in support of the response no later than 5 days after service of the appeal. The response shall be served on all other parties in accordance with Section 1200.20.
  - 3) The Board will review an Executive Director's order only upon the timely filing of an appeal. Parties desiring oral argument before the Board shall request oral argument and state the reasons for the requests in their appeals and responses. The Board shall grant or deny requests for oral argument depending upon the significance, complexity and novelty of the issues. In addition, the Board may, on its own motion, request oral argument, depending upon the significance, complexity and novelty of the issues. The Board may adopt all, part or none of the order depending on the extent to which it is consistent with the record and applicable law. The Board shall issue and serve on all parties its decision and order.
  
- b) Administrative Law Judge's Recommended Decision and Order
  - 1) In representation proceedings, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 14 days after service of the recommended decision and order. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's decision. Within 5 days from the filing of the cross-exceptions, parties may file cross-responses to the cross-exceptions. Cross-responses shall be limited to the questions raised in the cross-exceptions. All exceptions, responses, cross-exceptions and cross-responses shall be filed in accordance with Section 1200.135. Each party shall serve its exceptions, cross-exceptions, responses, cross-responses, and briefs on the other parties. If the original exceptions are withdrawn, then all subsequent exceptions are moot.

In unfair labor practice proceedings, parties may file exceptions to the Administrative Law Judge's recommended decision and order, and briefs in support of those exceptions, no later than 30 days after service of the recommended decision and order. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's decision. Within 7 days from the filing of such cross-exceptions, parties may file cross-responses to the cross-exceptions. Cross-responses shall be limited to the questions raised in the cross-exceptions. All exceptions, responses, cross-

exceptions and cross-responses shall be filed in accordance with Section 1200.135. Each party shall serve its exceptions, cross-exceptions, responses, cross-responses, and briefs on the other parties.

In either type of proceeding, exceptions, responses, cross-exceptions, cross-responses and briefs, shall be filed with the Board's General Counsel in the Board's Chicago office. A party not filing timely exceptions waives its right to object to the Administrative Law Judge's recommended decision and order.

- 2) Exceptions and/or cross-exceptions shall specifically set forth the questions of procedure, fact, law or policy to which exception is taken, shall identify that part of the Administrative Law Judge's recommended decision and order to which objection is made, and shall state the grounds for the exceptions and shall include the citation of authorities unless set forth in a supporting brief. Any exception to a ruling, finding, conclusion or recommendation that is not specifically urged shall be deemed to have been waived. Any exception that fails to comply with the foregoing requirements may be disregarded.
- 3) Any brief in support of exceptions shall be confined to the subjects raised in the exceptions and shall contain:
  - A) a clear and concise statement of the case containing all that is material to the consideration of the questions presented;
  - B) a specification of the questions involved and the issues to be argued; and
  - C) an argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question.
- 4) The Board will review the Administrative Law Judge's recommended decision and order upon timely filing of exceptions or at any time on its own motion. The Board may adopt all, part or none of the recommended decision and order depending on the extent to which it is consistent with the record and applicable law. The Board shall issue and serve on all parties its decision and order.

In representation proceedings, if the Board determines that a question concerning representation exists, the Board shall direct the holding of an election on a date and at a time and place set by the Board. The Board shall direct the posting of a Notice of Election. Within 7 days following the Board's direction of an election, the employer shall furnish the Board and the labor organization with an excelsior list, which is a list of the full names, alphabetized by last name, and addresses of the employees eligible to vote in the election. The lists shall be provided by personal delivery or certified mail. The employer shall obtain receipts verifying delivery.

In unfair labor practice proceedings, the Board will retain jurisdiction over the case to ensure the parties' compliance with the Board order. Unless overturned by the Board, the parties must comply with the recommended decision and order.

- 5) If no exceptions to the Administrative Law Judge's recommended decision and order have been filed within the prescribed time period, the parties will be deemed to have waived their exceptions. Unless the Board reviews the recommended decision and order upon its own motion, it will not be legal precedent and shall be final and binding only on the parties to that proceeding. The Board's General Counsel shall issue an order so providing.

c) Court Review of Board Orders

Appeals to a Board's decision shall be made in accordance with Sections 9(i) and 11(e) of the Act.

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

**Section 1200.140 Amicus Curiae Briefs**

Parties may file a motion with the Board to request leave to file an amicus curiae brief or the Board, on its own motion, may solicit such briefs. The Board's standards by which to grant leave to file an amicus brief will include the importance of the issue presented, the general application of the issue presented and the need perceived by the Board for additional briefing on the issue presented. The amicus curiae brief shall conform to any conditions imposed by the Board for briefs in the case in which the brief is filed. Amicus curiae parties may be invited to participate in oral arguments heard by the Board. The Board will accept amicus curiae briefs in its proceedings. The filing of such briefs shall not serve to postpone or delay the proceedings.

(Source: Old Section 1200.140 renumbered to Section 1200.143, and new Section 1200.140 adopted at 27 Ill. Reg. 7393, effective May 1, 2003)

**Section 1200.143 Declaratory Rulings**

Parties may petition the Board's General Counsel for a declaratory ruling, pursuant to Section 5-150 of the Illinois Administrative Procedure Act [5 ILCS 100/5-150], as follows:

- a) In general public employee bargaining units covered by 80 Ill. Adm. Code 1230.Subpart C, if, after the commencement of negotiations and before reaching agreement, the exclusive representative and the employer have a good faith disagreement over whether the Act requires bargaining over a particular subject or particular subjects, they may jointly petition for a declaratory ruling concerning the status of the law.
  - 1) The petition must be signed by both parties and must contain the name, address, telephone number and person to contact for each party, the date negotiations began, a statement of the legal issue on which a declaratory ruling is sought, and a copy of the most recently negotiated contract, if any.
  - 2) Declaratory rulings shall not be issued concerning factual issues that are in dispute.
  - 3) Each party shall file a brief no later than 10 days after the filing of the petition, unless an extension has been granted by the General Counsel.
  - 4) Any party desiring oral argument shall request oral argument in writing prior to or at the time of the filing of its brief. The General Counsel shall determine whether oral argument is warranted by the particular issues involved. Oral argument shall be held no later than 7 days after the filing of the briefs.
  - 5) The General Counsel shall issue a declaratory ruling no later than 30 days after receipt of the parties' briefs. Pursuant to Board practice and caselaw, the Board considers General Counsel declaratory rulings to be non-binding advisory

opinions. Consequently, the Board's General Counsel declaratory rulings are not appealable.

- 6) The parties shall continue to have a duty to bargain in good faith during the pendency of a declaratory ruling petition. The pendency of a declaratory ruling petition shall not stay the running of the 60 and 30 day notice periods provided in 80 Ill. Adm. Code 1230.140(a), (b), and (c). Nor shall the pendency of a declaratory ruling petition stay the running of the 5 day notice of intent to strike required under Section 17(a)(5) of the Act.
- b) In protective service employee bargaining units covered by 80 Ill. Adm. Code 1230.Subpart B, if, after the commencement of negotiations and before reaching agreement, the exclusive representative and the employer have a good faith disagreement over whether the Act requires bargaining over a particular subject or particular subjects, they may jointly petition for a declaratory ruling concerning the status of the law. If a request for interest arbitration has been served in accordance with 80 Ill. Adm. Code 1230.70 and either the exclusive representative or the employer has requested the other party to join it in filing a declaratory ruling petition and the other party has refused the request, the requesting party may file the petition on its own, provided that the petition is filed no later than the first day of the interest arbitration hearing.
- 1) A joint petition must be signed by both parties. A petition filed by only one party must contain a statement that the other party has refused a request to join in the petition, and must contain a copy of the request for interest arbitration. All petitions must contain the name, address, telephone number and person to contact for each party, the date negotiations began, a statement of the legal issue on which a declaratory ruling is sought, and a copy of the most recently negotiated contract, if any.
  - 2) Declaratory rulings shall not be issued concerning factual issues that are in dispute. In the case of a unilateral petition for declaratory ruling in which the General Counsel has determined that material issues of fact are in dispute, the General Counsel may either dismiss the petition without prejudice to the requesting party's right to file an unfair labor practice charge, or, where the General Counsel determines that a fact-finding of the disputed factual issues will facilitate a determination of the issues that are the subject of the petition, the issuance of the declaratory ruling may be deferred and the disputed issues of fact referred to the Interest Arbitration Panel for determination.
  - 3) The Board shall serve a copy of a petition filed by only one party on the other party. Each party shall file a brief no later than 10 days after the filing of a joint petition, or no later than 10 days after the service of a petition filed by only one party, unless an extension has been granted by the General Counsel.
  - 4) Any party desiring oral argument shall request oral argument in writing prior to or at the time of the filing of its brief. The General Counsel shall determine whether oral argument is warranted by the particular issues involved. Oral argument shall be held no later than 7 days after the filing of the briefs.
  - 5) The General Counsel shall issue a declaratory ruling no later than 30 days after receipt of the parties' briefs. Declaratory rulings shall not be appealable.

- 6) The parties shall continue to have a duty to bargain in good faith during the pendency of a declaratory ruling petition. The pendency of a declaratory ruling petition shall not stay mediation or interest arbitration proceedings required under the Act.

(Source: Renumbered from Section 1200.140 and amended at 27 Ill. Reg. 7393, effective May 1, 2003)

#### **Section 1200.145 Filing of Contracts**

- a) Within 60 days after a collective bargaining agreement has been reached, each labor organization and each employer shall be responsible for filing with the Board 2 copies of any collective bargaining agreement that is subject to the Act.
- b) The collective bargaining agreements shall be accompanied by a designated Board form setting forth the following information:
  - 1) names, addresses, telephone and fax numbers of the parties and their representatives;
  - 2) the contract's execution and expiration dates; and
  - 3) the composition of the bargaining unit and whether the unit is a general public employee unit or a protective services unit.
- c) The Board's acceptance of the contract for filing is not determinative of any substantive issues in any proceedings before the Board, such as the existence of a valid historical unit or of a valid collective bargaining relationship between the parties or that the contract is sufficient to establish a contract bar under 80 Ill. Adm. Code 1210.
- d) Failure of the parties to comply with the above filing requirements may cause any representation petitions or requests for mediation and/or arbitration to be delayed until such information is submitted to the Board.

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

#### **Section 1200.150 Conflicts of Interest**

No person who has been a Board member or an employee of the Board shall engage in practice before the Board in any respect in connection with any case or proceeding that was pending during the person's membership on or employment with the Board.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

#### **Section 1200.160 Variances and Suspensions of Rules**

The provisions of this Part or 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE C: LABOR RELATIONS  
CHAPTER IV: ILLINOIS LABOR RELATIONS BOARD

PART 1210  
REPRESENTATION PROCEEDINGS

Section	
1210.10	General Statement of Purpose
1210.20	Labor Organization Options in Seeking Recognition
1210.30	Employer Options in Responding to Recognition Requests
1210.35	Timeliness of Petitions and Bars to Elections
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1210.175	Stipulated Unit Clarification Procedures
1210.180	Procedures for Amending Certifications
1210.190	Expedited Elections Pursuant to Section 10(b)(7)(C) of the Act

AUTHORITY: Implementing Section 9 and authorized by Section 5(i) and (j) of the Illinois Public Labor Relations Act [5 ILCS 315/9, 5(i) and (j)].

SOURCE: Emergency rule adopted at 8 Ill. Reg. 16014, effective August 22, 1984, for a maximum of 150 days; adopted at 9 Ill. Reg. 1870, effective January 25, 1985; amended at 11 Ill. Reg. 6461, effective March 27, 1987; amended at 12 Ill. Reg. 20110, effective November 18, 1988; amended at 14 Ill. Reg. 19930, effective November 30, 1990; amended at 17 Ill. Reg. 15612, effective September 13, 1993; amended at 20 Ill. Reg. 7406, effective May 10, 1996; amended at 27 Ill. Reg. 7393, effective May 1, 2003; emergency amendment at 27 Ill. Reg. 15563, effective September 22, 2003, for a maximum of 150 days; amended at 28 Ill. Reg. 4172, effective February 19, 2004.

### **Section 1210.10 General Statement of Purpose**

The regulations contained in this Part detail the procedures that employers, employees and labor organizations should use for employer voluntary recognition of a labor organization and for instituting representation and related proceedings. These procedures are the exclusive means by which a public employer may recognize a labor organization after August 22, 1984. The Board does not recognize and the Act does not apply to or provide for any other types of purported recognition. The Board does not recognize and the Act does not apply to collective bargaining agreements negotiated by parties pursuant to other forms of recognition. Such purported recognition or agreements will not bar the filing of representation petitions pursuant to the Illinois Public Labor Relations Act (Act) [5 ILCS 315].

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.20 Labor Organization Options in Seeking Recognition**

- a) A labor organization seeking recognition in a proposed appropriate bargaining unit in which no other labor organization has attained recognition rights in accordance with the Act may request that the employer voluntarily recognize it or may file a representation petition with the Board.
- b) A labor organization seeking recognition in a proposed appropriate bargaining unit in which another labor organization is recognized in accordance with the Act may pursue its request only by filing a representation petition seeking an election with the Board. Majority interest petitions may not be utilized where another labor organization is recognized in accordance with the Act.

(Source: Amended at 28 Ill. Reg. 4172, effective February 19, 2004)

### **Section 1210.30 Employer Options in Responding to Recognition Requests**

- a) An employer faced with a request for recognition in a bargaining unit that is not currently represented by a labor organization may agree to resort to the voluntary recognition procedures set forth in Section 1210.160 of this Part; may consent to a representation election; or may file a representation petition with the Board; or may decline to respond to the request.
- b) An employer faced with a request for recognition in a bargaining unit in which another labor organization is recognized in accordance with the Act may file a representation petition with the Board or may decline to respond to the request. The employer may not voluntarily recognize the labor organization.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.35 Timeliness of Petitions and Bars to Election**

- a) Contract Bar
  - 1) When there is in effect a collective bargaining agreement of 3 years or shorter duration covering all or some of the employees in the bargaining unit, representation and decertification petitions may be filed during the window period

(between 90 and 60 days prior to the scheduled expiration date of the collective bargaining agreement) or anytime after the expiration of the collective bargaining agreement. However, the collective bargaining agreement shall serve as a bar (contract bar) to filing representation or decertification petitions outside of the window period.

- 2) *Where more than 4 years have elapsed since the effective date of the agreement, the agreement shall continue to bar an election, except that the Board may process an election petition filed between 90 and 60 days prior to the end of the fifth year of such an agreement, and between 90 and 60 days prior to the end of each successive year of such agreement.* (Section 9(h) of the Act) This bar shall also apply to the filing of majority interest petitions.
- 3) When an employer recognizes an employee organization without using the voluntary recognition or representation procedures as specified by the Act, any collective bargaining agreement reached by the parties shall not serve as a bar to the filing of a representation or decertification petition.

b) Certification Bar

The Board will dismiss a representation or decertification petition filed within 12 months following the date of Board certification of an exclusive representative for all or some of the employees in the bargaining unit, as a result of certification following a representation petition or voluntary recognition petition.

c) Election Bar

With respect to any bargaining unit, no election may be conducted in a bargaining unit, or subdivision thereof, when a valid Board conducted election has been held within the preceding 12 month period in which the union or petitioner has lost the election. However, representation and decertification petitions filed within the last three months of the 12 month period will be processed, and any resulting election or certification pursuant to the Board's card check procedures will be held after the 12 month period has elapsed. Representation and decertification petitions filed in the first 9 months of the 12 month period will be dismissed.

(Source: Amended at 28 Ill. Reg. 4172, effective February 19, 2004)

### **Section 1210.37 Bargaining Unit Determinations**

- a) In determining the appropriateness of a unit for purposes of collective bargaining, the Administrative Law Judge and/or the Board shall consider all relevant factors, including, but not limited to, such factors as historical pattern of recognition; community of interest, including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees. If the employer alleges that the petitioned for unit is not appropriate, it shall submit a detailed statement explaining why the unit is not appropriate. The Administrative Law Judge may determine a unit other than the one petitioned for is an appropriate unit. The employer or union must inform the Administrative Law Judge whether it is willing to proceed to an election or a determination of majority status through the Board's card check procedures in a unit other than one petitioned for.

- b) In describing the unit found appropriate for purposes of collective bargaining, the Board may, at the parties' request, describe the unit in job function terms rather than by job titles. Such unit descriptions may also include those currently existing job titles that perform the job functions.
- c) A bargaining unit described as consisting of particular job titles shall also include any job titles later created that are successor job titles to the currently existing job titles or perform the same or substantially similar job functions as the currently existing job titles.

(Source: Added at 28 Ill. Reg. 4172, effective February 19, 2004)

#### **Section 1210.40 Representation Petitions**

- a) A representation petition may be filed by:
  - 1) an employee, a group of employees, or a labor organization; or
  - 2) an employer, *alleging that one or more labor organizations have presented a claim to be recognized as an exclusive bargaining representative of a majority of the employees in an appropriate unit.* Section 9(a)(2) of the Act.
- b) Representation petitions shall be signed by a representative of the petitioning party and shall contain:
  - 1) the name, address and telephone number of the employer;
  - 2) the name, address, telephone number and affiliation, if any, of the labor organization;
  - 3) the name, address and telephone number of petitioner's representative;
  - 4) a specific and detailed description of the proposed bargaining unit that petitioner claims to be appropriate, including employee classifications or job titles to the extent known;
  - 5) a statement of whether the proposed unit combines professional and nonprofessional employees;
  - 6) a statement of whether the proposed unit combines craft and noncraft employees;
  - 7) the approximate number of employees in the proposed bargaining unit;
  - 8) a statement of whether the proposed unit is to be included within an existing bargaining unit;
  - 9) the name of any existing exclusive representative of any employees in the proposed bargaining unit;
  - 10) a brief description of any collective bargaining agreements covering any employees in the proposed bargaining unit, and the expiration dates of the agreements;

- 11) the date that the employer recognized any existing exclusive representative of any employees in the proposed bargaining unit, and the method of recognition;
  - 12) election and/or recognition history prior to July 1, 1984, to the extent known; and
  - 13) in the case of a petition filed by an employer, a statement that one or more labor organizations has demanded recognition; and
  - 14) a statement indicating whether the petitioner requests a representation election or a determination of majority support through the Board's card check procedures.
- c) The Board shall serve the representation petition on the appropriate parties as follows:
- 1) Employer petitions shall be served on the labor organizations that have demanded recognition, and on the existing exclusive representative, if any.
  - 2) Employee and labor organization petitions shall be served on the employer and on the existing exclusive representative, if any.
- d) Employee and labor organization petitions shall be accompanied by a showing of interest, as defined in Section 1210.80, that at least 30% of the employees in the petitioned for bargaining unit wish to be represented by the labor organization.
- e) If a labor organization has indicated on the representation petition that it is seeking to utilize the Board's card check procedures for determination of majority status, the petition must be accompanied by a showing of interest, as defined in Section 1210.80, evidencing that a majority of the employees in the petitioned-for bargaining unit wish to be represented by the labor organization.
- f) A petition may seek joint representation by two or more labor organizations if an instrument, such as a joint council, has been established to effectuate the joint representation. In such instances, the petition shall describe the instrument, and the showing of interest shall expressly designate joint representation.
- g) A labor organization may withdraw its representation petition as follows:
- 1) If there are no intervenors, at any time. However, any such withdrawal that occurs after the direction of an election or the approval of a consent election agreement shall bar the labor organization from petitioning for an election or for a determination of majority status through the Board's card check procedures in a bargaining unit covering all or part of the petitioned for unit for six months following the withdrawal.
  - 3) If there are intervenors, the labor organization may not withdraw its petition without the consent of all parties. However, the labor organization may file a statement signed by its authorized representative that it no longer wishes to appear on the ballot. The statement shall be filed no later than 5 days prior to the election. Upon receipt of such a statement, the Board shall strike the labor organization's name from the ballot.
- h) Whenever a representation petition proposes a bargaining unit that includes craft and non-craft employees, the petition shall so state. In cases where a petition seeks

determination of majority support based upon the Board's card check procedures, the Board will first conduct an election to determine whether the employees wish to be included in a combined craft/non-craft unit. The election will be conducted pursuant to the election provisions in this Part, except that the date for determining an employee's eligibility to vote shall be the date the majority interest petition was filed. Following the election, the Board will then calculate the union's majority status, based upon the evidence filed with the petition, for either a combined unit or separate units, depending upon the results of the election.

- i) Whenever a representation petition proposes a bargaining unit that includes or that may include professional and non-professional employees, the petition shall so state. In cases where a petition seeks determination of majority support based upon the Board's card check procedures, the Board will first conduct an election to determine whether the employees wish to be included in a combined professional/non-professional unit. The election will be conducted pursuant to the election provisions in this Part, except that the date for determining an employee's eligibility to vote shall be the date the majority interest petition was filed. Following the election, the Board will then calculate the union's majority status, based upon the evidence filed with the petition, for either a combined unit or separate units, depending upon the results of the election.
- j) Whenever a representation petition proposes a bargaining unit that includes or that may include peace officers and civilian employees, the petition shall so state.

(Source: Amended at 28 Ill. Reg. 4172, effective February 19, 2004)

### **Section 1210.50 Intervention Petitions**

- a) An intervention petition may be filed by an employee, a group of employees, or a labor organization on a Board-designated form.
- b) Intervention petitions shall be signed by a representative of the petitioning party and shall contain the same information as is required for representation petitions.
- c) Intervention petitions may be filed with the Board no later than 15 days prior to the date of the election. However, any intervenor who files after the commencement of the hearing or, if no hearing is held, after the approval of a consent election agreement or the direction of an election, shall have waived objections to the bargaining unit.
- d) Intervention petitions shall be accompanied by a showing of interest, as defined in Section 1210.80, that at least 10 percent of the employees in a bargaining unit substantially similar to the petitioned for unit or at least 30 percent of the employees in a bargaining unit that is not substantially similar to the petitioned for unit wish to be represented by the labor organization. In determining whether the proposed bargaining units are substantially similar, the Board will consider the number and type of employees included in each of the proposed units. The proposed units will not be considered substantially similar whenever less than 50 percent of the employees in the originally proposed unit are included in the unit proposed by the intervenor.
- e) When a proposed unit combines craft and noncraft employees, a labor organization may file a petition to intervene in a unit limited to a craft. Whenever a party has so intervened, the election shall proceed in accordance with Section 1210.140.

- f) When a proposed unit combines professional and nonprofessional employees, a labor organization may file a petition to intervene in a unit limited to professional employees or limited to non-professional employees. The election shall be conducted in accordance with Section 1210.140(d).
- g) When a proposed unit combines civilian employees and peace officers, a labor organization may file a petition to intervene in a unit limited to civilian employees or limited to peace officer employees. A bargaining unit determined by the Board to contain peace officers shall contain no employees other than peace officers unless otherwise agreed to by the employer and the labor organization or labor organizations involved.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.60 Decertification Petitions**

- a) The purpose of a decertification proceeding is to determine whether a majority of the employees in an appropriate bargaining unit maintain their desire to be represented by the existing exclusive bargaining representative.
- b) A petition to decertify an existing exclusive representative may be filed with the Board. The petition shall be served by the Board on the exclusive representative and on the employer. The petition shall be on a form developed by the Board. It shall be signed and shall contain the following:
  - 1) the name, address and telephone number of the petitioner and of the petitioner's representative;
  - 2) the name, address, telephone number and affiliation, if any, of the exclusive representative;
  - 3) the name, address and telephone number of the employer;
  - 4) a specific and detailed description of the bargaining unit, including employee classifications or job titles;
  - 5) the approximate number of employees in the bargaining unit;
  - 6) the date that the exclusive representative was recognized and the method of recognition, if known;
  - 7) a brief description of any collective bargaining agreements covering any employees in the bargaining unit, and the expiration dates of the agreements.
- c) A petition to decertify an existing exclusive representative must be supported by a 30% showing of interest as defined by Section 1210.80. Determination of majority support based upon the Board's card check procedures will not apply to decertification petitions.
- d) An employer may not instigate a decertification petition filed by an employee or group of employees.

- e) The Executive Director, when convinced that the petition is filed in accordance with Section 1210.35, may issue an Order Directing an Election. The Order is appealable pursuant to Section 1200.135.

(Source: Amended at 28 Ill. Reg. 4172, effective February 19, 2004)

### **Section 1210.65 Declaration of Disinterest Petition**

- a) A labor organization that has been certified by the Board or historically recognized pursuant to Section 9 of the Act as the exclusive bargaining representative of a bargaining unit may file a Declaration of Disinterest petition with the Board to declare its disinterest in further representation of that bargaining unit. The petition shall be on a Board-designated form, signed, and shall contain the following:
  - 1) the name, address, telephone number and affiliation, if any, of the petitioning labor organization and its representative;
  - 2) the name, address and telephone number of the employer;
  - 3) a specific and detailed description of the bargaining unit, including employee classifications or job titles;
  - 4) the approximate number of employees in the bargaining unit;
  - 5) the date that the exclusive representative was recognized and the method of recognition, if known;
  - 6) a brief description of any collective bargaining agreements covering any employees in the bargaining unit, and the expiration dates of the agreements; and
  - 7) A declaration that the labor organization waives and disclaims any right to represent the bargaining unit employees.
- b) The Board shall investigate the petition. If the Board determines that 12 months have passed since the certification of the labor organization, and that the petition is otherwise appropriate, the Board shall notify the labor organization that its petition has been approved and, where the labor organization had previously been certified by the Board, shall issue a revocation of the prior certification. Upon receipt of this notification of approval, the duties and responsibilities of the labor organization to that bargaining unit shall cease.

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.70 Timeliness of Petitions (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.80 Showing of Interest**

- a) Representation Petitions/Decertification Petitions  
Representation petitions filed by employees, groups of employees and labor

organizations, and all decertification petitions, must be accompanied by a 30% showing of interest.

b) Majority Interest Petitions

If a labor organization has indicated on the representation petition that it is seeking to utilize the Board's card check procedures for determination of majority support, the petition must be accompanied by a showing of interest evidencing that a majority of the employees in the petitioned-for bargaining unit wish to be represented by the labor organization.

c) Intervention Petitions

A petition to intervene in an election must be supported by a 10% showing of interest when the petition seeks a bargaining unit substantially similar to the unit originally petitioned for. When the intervenor seeks a bargaining unit substantially different from the unit originally petitioned for, the petition must be supported by a 30% showing of interest. However, an incumbent exclusive representative shall automatically be allowed to intervene without submitting any showing of interest. Petitions to intervene shall not be permitted in majority interest cases.

d) Showing of Interest Requirements

1) Representation Petitions Seeking Elections

A) The showing of interest in support of a representation petition may consist of authorization cards, petitions, or any other evidence that demonstrates that at least 30% of the employees wish to be represented by the labor organization.

B) The showing of interest in support of a decertification petition may consist only of cards or petitions clearly stating that the employee does not want the incumbent labor organization to continue serving as exclusive representative.

C) Any evidence submitted as a showing of interest must contain legible signatures and each signature must be dated by the employee.

D) The showing of interest shall be valid only if signed within 12 months prior to the filing of the petition.

E) Where signatures are used to determine showing of interest, the Board will not accept copies of the documents bearing such signatures.

F) The evidence submitted as a showing of interest must indicate the employee's desire for the named labor organization to act as his/her exclusive bargaining representative.

2) Representation Cases Involving Majority Interest Petitions

A) The showing of interest in support of a majority interest petition may consist of authorization cards, petitions, or any other evidence that demonstrates that a majority of the employees wish to be represented by the union for the purposes of collective bargaining.

- B) Any evidence submitted as a showing of interest must contain legible signatures and each signature must be dated by the employee.
- C) The showing of interest shall be valid only if signed within 6 months prior to the filing of the petition.
- D) Where signatures are used to determine showing of interest, the Board will not accept copies of the documents bearing such signatures. The Board also will not count signatures from employees who were not employed by the employer on the date the majority interest petition was filed.
- E) The showing of interest shall include the name of the petitioner, and shall state that by signing the card the employee acknowledges that if a majority of his/her co-workers in an appropriate unit sign evidence of majority support, the card can be used by the petitioner to obtain certification as the employees' exclusive representative without an election. This provision shall not apply to evidence of majority support signed prior to February 19, 2004.
- F) Evidence of majority support signed prior to August 5, 2003 is invalid for determining majority support.

e) Determination of Showing of Interest

- 1) The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties.
- 2) Whenever an employee has signed authorization cards or petitions for two or more labor organizations, each card or petition shall be counted in computing the required showing of interest. Duplicates for the same labor organization shall be counted as one. Where a majority interest petition has been filed and employees signing authorization cards have also signed cards authorizing other labor organizations to represent them, the most recently signed card will count for the purpose of determining majority status.
- 3) The adequacy of the showing of interest shall be determined administratively by the Board or its agent. The showing of interest determination is not subject to litigation, except upon a finding of a material issue of fact or law relating to fraud or coercion in majority interest petition cases. However, any person who has evidence that the showing of interest was obtained improperly, such as through the use of fraud or coercion, may bring the evidence to the attention of the Board agent investigating the petition.
- 4) If the Board agent determines that the evidence submitted does not demonstrate the appropriate level of showing of interest, the petitioner or intervenor shall have 48 hours in election cases, or five days in majority interest cases, to provide the necessary showing of interest to the Board agent. If the petitioner or intervenor is unable to present any necessary additional evidence of showing of interest within that time, then the petition shall be dismissed.

- 5) When the Board orders an election, or certification upon determination of majority support through the Board's majority interest petition procedures, in a unit different from the one petitioned for, the petitioner and intervenors, if any, shall have 5 days from the date of service of the Board's Order to submit a showing of interest in the new unit.
- 6) Employees may not withdraw authorization cards or other documents evidencing majority support after the filing of a majority interest petition, unless the basis for the withdrawal constitutes evidence of fraud or coercion on the part of the petitioner.

(Source: Amended at 28 Ill. Reg. 4172, effective February 19, 2004)

### **Section 1210.90 Posting of Notice (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.100 Processing of Petitions**

- a) Representation Petitions Seeking an Election
  - 1) The Board shall provide the employer with a Notice to Employees of the filing of a representation or decertification petition. The Notice to Employees shall be posted on bulletin boards and other places where notices to employees in the proposed bargaining unit are customarily posted. The Notice to Employees shall inform employees that a petition has been filed with the Board and shall outline intervention procedures. The Notice shall remain posted until replaced by the Board-issued Notice of Election, unless the petition has been dismissed or withdrawn. It shall be incumbent upon the parties to contact the Board to correct any errors that may appear on the Notice to Employees.
  - 2) Within 7 days after service of a petition, the employer shall file with the Board a list containing the full names and titles of the employees in the proposed bargaining unit. In the event the employer does not supply the list within 7 days, the Board shall administratively determine the adequacy of the showing of interest, based on the information provided by the union.
  - 3) All employers served with a representation petition and all unions served with a decertification petition shall file a written response to the petition. The response filed shall set forth the party's position with respect to the matters asserted in the petition, including, but not limited to, the appropriateness of the bargaining unit and, to the extent known, whether any employees sought by petitioner to be included in the unit are supervisory, managerial or confidential. If a party agrees to the appropriateness of the unit proposed in the petition, it shall so indicate. If a party disagrees with the unit proposed in the petition, it shall describe with particularity what it considers to be an appropriate unit, and shall include a description of the job titles and classifications of the employees to be included and of those to be excluded.
  - 4) The setting forth of a party's position with respect to the appropriate unit shall not be deemed to waive or otherwise preclude the right of that party to subsequently assert a different position with respect to what unit it considers appropriate.

- 5) Petitions to intervene in the election may be filed with the Board no later than 15 days prior to the date of the election. However, any intervenor who files after the date set for hearing or, if no hearing is held, after the approval of a consent election agreement or the direction of an election shall have waived objections to the bargaining unit.
- 6) Upon receipt of the petition, the Board or its agent shall investigate the petition. If, for any reason during the investigation, the Board or its agent discovers that the petition may be inappropriate, the Board or its agent may issue an order to show cause requesting that the petitioner provide sufficient evidence to overcome the inappropriateness. Failure to provide sufficient evidence of the petition's appropriateness can result in the dismissal of the petition. Moreover, in conjunction with subsection (a)(3), if, for any reason during the investigation, the Board or its agent discovers that the employer's objections to the representation petition or the union's objections to the decertification petition are insufficient in either law or fact, the Board or its agent may issue an order to show cause requesting that the employer or union provide sufficient evidence to support its defenses. Failure to provide sufficient evidence can result in the waiver of defenses.
- 7) Results of the Investigation
  - A) After the investigation, the Executive Director shall dismiss a petition, or the Administrative Law Judge shall recommend to the Board that a petition be dismissed, when a petition has been filed untimely; when the bargaining unit is clearly inappropriate; when the showing of interest is not adequate; when the employer is not covered by the Act; when the employees are not covered by the Act; or for any other reason there is no reasonable cause to believe that a question of representation exists. Parties may appeal the Executive Director's order or the Administrative Law Judge's recommended decision and order in accordance with 80 Ill. Adm. Code 1200.135.
  - B) If, at the conclusion of the investigation, the parties agree to an election in the petitioned-for bargaining unit, the parties may file a stipulation for consent election in accordance with Section 1210.105.
  - C) If, at the conclusion of the investigation, the only issues remaining between the parties are logistical, e.g., the date of the election, or the positions in dispute comprise 10% or less of the petitioned for bargaining unit, the Executive Director or Administrative Law Judge may issue an Order Directing an Election. Parties may appeal the Order in accordance with 80 Ill. Adm. Code 1200.135.
  - D) If the investigation discloses that there is reasonable cause to believe that there are unresolved issues relating to the question concerning representation, the Board shall set the matter for hearing before an Administrative Law Judge. All parties shall be given a minimum of 14 days notice of the hearing.

- 8) The Executive Director may, in his or her discretion or at the request of the charging party, suspend the processing of a petition if an unfair labor practice charge is filed containing allegations regarding conduct that may either affect the existence of a question concerning representation or have a tendency to interfere with a fair and free election.
- b) Representation Cases Involving Majority Interest Petitions
- 1) The Board shall provide the employer with a Notice to Employees of the filing of a majority interest petition. The Notice to Employees shall be posted on bulletin boards and other places where notices to employees in the proposed bargaining unit are customarily posted. The Notice to Employees shall inform employees that a petition has been filed with the Board in accordance with Section 9(a)(5) of the Act. The Notice shall remain posted for 14 days. It shall be incumbent upon the parties to contact the Board to correct any errors that may appear on the Notice to Employees.
  - 2) Within 7 days after service of a petition, the employer shall file with the Board a list containing the full names and titles of the employees in the proposed bargaining unit, along with signature exemplars of the employees in the proposed unit. The Board's agent shall grant reasonable requests for extensions of time to prepare the signature exemplars based upon the size or scope of the petitioned for unit. In the event the employer does not supply the aforementioned information within 7 days, and it has not been granted an extension of the 7 day period, the Board or its agent shall administratively determine the adequacy of the showing of interest, based on the information provided by the union.
  - 3) All employers served with a majority interest petition shall file a written response to the petition within 14 days after service of the petition. The response filed shall set forth the party's position with respect to the matters asserted in the petition, including, but not limited to, the appropriateness of the bargaining unit and, to the extent known, whether any employees sought by petitioner to be included should be excluded from the unit. The employer must also provide at this time clear and convincing evidence of any alleged fraud or coercion in obtaining majority support. If a party agrees to the appropriateness of the unit proposed in the petition, it shall so indicate. If a party disagrees with the unit proposed in the petition, it shall describe with particularity what it considers to be an appropriate unit, and shall include a description of the job titles and classifications of the employees to be included and of those to be excluded. The Board's agent shall grant reasonable requests for extensions of time to prepare a position statement based upon the size or scope of the petitioned for unit.
  - 4) The setting forth of a party's position with respect to the appropriate unit shall not be deemed to waive or otherwise preclude the right of that party to subsequently assert a different position with respect to what unit it considers appropriate.
  - 5) Fraud or Coercion
    - A) A party or individual alleging that the petitioner's evidence of majority support was obtained fraudulently or through coercion must provide evidence of that fraud or coercion to the Board or its agent. If a party has not provided evidence demonstrating a material issue of fact or law relating

to fraud or coercion, the Board will certify the union as the unit's exclusive representative if it is determined to have majority support.

- B) If the Board finds a party has provided evidence demonstrating a material issue of fact or law relating to fraud or coercion, it will conduct a hearing to determine whether there is clear and convincing evidence of fraud or coercion. All parties shall be given a minimum of 14 days notice of the hearing. If the Board finds clear and convincing evidence of fraud or coercion, the Board will conduct an election in the petitioned for unit to determine majority support for the petitioner. If the Board finds clear and convincing evidence of fraud or coercion to be lacking, it will determine majority support for the petitioner based upon the evidence filed with the petition. As an alternative to submitting the issue of clear and convincing evidence to hearing, the parties may agree to a Board-conducted election in the unit.
- 6) Upon receipt of the petition, the Board or its agent shall investigate the petition. If, for any reason during the investigation, the Board or its agent discovers that the petition may be inappropriate, the Board or its agent may issue an order to show cause requesting that the petitioner provide sufficient evidence to overcome the inappropriateness. Failure to provide sufficient evidence of the petition's appropriateness can result in the dismissal of the petition. Moreover, in conjunction with subsection (b)(3), if, for any reason during the investigation, the Board or its agent discovers that the employer's objections to the majority interest petition are insufficient in either law or fact, the Board or its agent may issue an order to show cause requesting that the employer or union provide sufficient evidence to support its defenses. Failure to provide sufficient evidence can result in the waiver of defenses.
- 7) Results of the Investigation
- A) After the investigation, the Executive Director shall dismiss a petition, or the Administrative Law Judge shall recommend to the Board that a petition be dismissed, when a petition has been filed untimely; when the bargaining unit is clearly inappropriate; when the showing of interest is not adequate; when the employer is not covered by the Act; when the employees are not covered by the Act; or for any other reason there is no reasonable cause to believe that a question of representation exists. Parties may appeal the Executive Director's order or the Administrative Law Judge's recommended decision and order in accordance with 80 Ill. Adm. Code 1200.135.
  - B) Where there are no unit appropriateness or exclusion issues, or any other issues necessitating a hearing, the Executive Director will prepare a tally of the finding of majority support and certify the petitioner as the unit's exclusive representative within 20 days after the service of the petition. Where there are unit or exclusion issues, but the number of the contested positions is not sufficient to affect the determination of majority support, then the Executive Director will, within 20 days after service of the petition, prepare a tally of the finding of majority support and issue a certification and the tally concerning the employees not in dispute. The disputed employees' inclusion in the unit will be subject to the Board's unit clarification procedures. Where the number of contested employees is

determinative of the outcome, the Board will impound the showing of interest and will resolve the unit appropriateness and exclusion issues through its hearing procedures.

- C) If the investigation discloses that there is reasonable cause to believe that there are unresolved issues relating to the question concerning representation, the Board shall set the matter for hearing before an Administrative Law Judge. All parties shall be given a minimum of 14 days notice of the hearing.
- 8) No intervention petitions will be permitted in majority interest cases. If a labor organization seeks to file a representation petition for the same or a similar unit to the one described in a majority interest petition, it may file an election petition pursuant to the procedures of this Part. Where more than one petition exists for the same or a similar unit of employees, the Board will direct an election in the appropriate unit to determine the employees' choice of representative.

(Source: Amended at 28 Ill. Reg. 4172, effective February 19, 2004)

### **Section 1210.105 Consent Elections**

- a) Following the filing of a petition, a stipulation for a consent election may be filed as follows:
  - 1) The stipulation must be signed by the petitioner, the employer, the labor organization seeking to represent the employees, and any intervenor that has filed a timely petition.
  - 2) The stipulation must specify the bargaining unit; the eligibility date for participation in the election; the date, place and hours of the election; and a reasonable number of observers allowed to each party.
- b) A Board-issued Notice of Election shall be posted in accordance with Section 1210.100 of this Part. The parties shall be responsible for informing the Board of any errors that may appear on the Notice.
- c) All consent elections shall be conducted under the direction and supervision of the Board. Upon receipt of a stipulation for a consent election the Executive Director shall review the stipulation. If the Executive Director determines that the stipulation is consistent with the Act and this Part, the Executive Director shall direct the holding of the consent election.
- d) Within 7 days following the Executive Director's approval of the consent election agreement, the employer shall furnish the Board and the labor organizations with a list of the full names, alphabetized by last name, and addresses of the employees eligible to vote in the election. The lists shall be provided by personal delivery or certified mail. The employer shall obtain receipts verifying delivery.

(Source: Section 1210.105 renumbered from Section 1210.110 and amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.107 Hearings**

- a) Representation hearings shall be non-adversarial in nature. All parties may present evidence and make arguments, subject to the control of the Administrative Law Judge.

Subject to the discretion of the Administrative Law Judge, the employer shall present its evidence first in representation hearings. Any party asserting a statutory exclusion shall have the burden of providing sufficient evidence in support of that exclusion.

- b) If the petitioner fails to appear after proper service of Notice of Hearing, the Administrative Law Judge shall dismiss the petition. If any party other than the petitioner fails to appear, the Administrative Law Judge may proceed in its absence and issue a recommended decision and order.
- c) Interested persons, other than labor organizations, who may be necessary to the proceedings, who wish to intervene in the hearing shall direct a request to the Administrative Law Judge. The request shall be in writing and shall state the grounds for intervention. The Administrative Law Judge shall have discretion to grant or deny the request for intervention. The decision shall be based upon the interests of the intervenor, whether those interests will be adequately protected by existing parties, and the timeliness of the intervenor's request.
- d) Pursuant to 80 Ill. Adm. Code 1200.40, the Administrative Law Judge may schedule a pre-hearing conference or request statements of position when it appears to the Administrative Law Judge that such would expedite the procedure.
- e) Intermediate rulings of the Administrative Law Judge shall not be subject to interlocutory appeal, except for rulings issued in accordance with 80 Ill. Adm. Code 1220.65. Parties may raise objections to such intermediate rulings in their exceptions to the Administrative Law Judge's recommended decision.
- f) The Administrative Law Judge shall inquire fully into all matters in dispute, and shall obtain a full and complete record. The Administrative Law Judge shall file and serve on the parties a recommended decision and order of the case as expeditiously as possible.
- g) All exceptions, cross-exceptions, responses and cross-responses to the Administrative Law Judge's recommended decision and order shall be filed and served in accordance with 80 Ill. Adm. Code 1200.135.

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.110 Consent Elections (Renumbered)**

(Source: Section 1210.110 renumbered to Section 1210.105 at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.120 Bargaining Unit Determinations (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.130 Eligibility of Voters**

- a) To be eligible to vote in an election, an employee must have been in the bargaining unit as of the last day of the payroll period immediately prior to the date of the direction of the election or the approval of a consent election agreement, and must still be in the bargaining unit on the date of the election.

- b) To be eligible to vote in a runoff election, an employee must have been eligible to vote in the original election and still be in the bargaining unit on the date of the runoff.
- c) Within 7 days following the Executive Director's approval of a consent election agreement or within 7 days following a Direction of Election, the employer shall furnish the Board and the labor organizations with an excelsior list of the full names, alphabetized by last name, and addresses of the employees eligible to vote in the election. The lists shall be provided by personal delivery or certified mail. The employer shall obtain receipts verifying delivery.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.140 Conduct of the Election**

- a) The election shall be conducted under the supervision of the Board. Voting shall be by secret ballot. Whenever the Board determines that a mail ballot will better effectuate the purposes of the Act, it shall conduct the election by mail ballot. In all other cases, it shall conduct the election on site.
- b) Ballots shall list all labor organizations that properly petitioned or intervened in the election, the incumbent exclusive representative, and the choice of "No Representation".
- c) Where an election involves a bargaining unit that includes craft employees, and there has been a proper petition for a separate craft unit, craft employees shall be given two ballots: one to vote for or against craft severance and a second to vote on choice of representative, if any. Noncraft employees shall only be given ballots for voting on choice of representative.
- d) Where an election involves a bargaining unit containing professional and nonprofessional employees, all employees shall be given two ballots: one for indicating whether they desire a combined professional/nonprofessional unit and a second for indicating choice of representative, if any.
- e) On Site Election Procedures. When the election is conducted on site, the following procedures shall apply:
  - 1) Each party shall be entitled to an equal number of observers as determined by the Executive Director or the Board agent. Observers for the employer may not be individuals who supervise any of the employees in the bargaining unit, other individuals closely identified with management, paid union staff, or attorneys for any party. The conduct of observers is subject to such reasonable limitations as the Executive Director or Board agent may prescribe.
  - 2) Parties must submit to the Board agent the names and job titles of each observer who will be present at the election at least 2 days prior to the election.
  - 3) Election observer duties include assisting in the identification of voters, challenging voters and/or ballots, if necessary, and otherwise assisting the Board agent.
  - 4) The Board agent shall prescribe the area in proximity to the polling place in which electioneering shall be prohibited. Cameras, video equipment, and similar

equipment shall be prohibited within the actual polling area while employees are voting.

- 5) Ballot boxes shall be examined in the presence of the observers immediately prior to the opening of the polls and shall be sealed at the opening of the polls. The seal shall allow for one opening on the top of the ballot box for voters to insert their ballots.
  - 6) The Board agent or any authorized observer may challenge the eligibility of any voter. The observer must state the reason for the challenge. A voter whose identity has been challenged may establish identity by showing a driver's license or any other piece of identification acceptable to the Board agent. A challenged voter shall be permitted to vote in secret. The challenged voter's ballot shall be placed in a "challenged ballot" envelope. The envelope shall be sealed by the Board agent and initialed by the observers. The reason for the challenge and the voter's name shall be marked on the envelope and the envelope shall be placed in the ballot box.
  - 7) A voter shall mark a cross (X) or check mark in the circle or block designating the voter's choice in the election. The intent of the voter shall be followed in the marking of the ballot. If the ballot is defaced, torn or marked in such a manner that it is not understandable, or identifies the voter, the ballot shall be declared void. If the voter inadvertently spoils a ballot, it may be returned to the Board agent who shall give the voter another ballot. The spoiled ballot shall be placed in a "spoiled ballot" envelope. The envelope shall be sealed by the Board agent and initialed by the observers, and the Board agent shall place the envelope in the ballot box.
  - 8) A voter shall fold the ballot so that no part of its face is exposed and, on leaving the voting booth, shall deposit the ballot in the ballot box. If the election is continued for more than one period, the ballot box shall be sealed by the Board agent and initialed by the observers until the subsequent opening of the polls and shall remain in the custody of the Board agent until the counting of the ballots.
  - 9) The Board agent may privately assist any voter who, due to physical or other disability, is unable to mark the ballot.
  - 10) Each party shall designate a representative to observe the tallying of the ballots.
  - 11) Upon conclusion of the polling, ballots shall be tallied in accordance with subsection (g). If there was only one polling location, ballots shall be tallied at the polling site. If there was more than one polling location, the Board agent shall seal the ballot boxes, which shall be initialed by the observers, and bring them to a predetermined central location. When all of the ballot boxes have arrived, they shall be opened by the Board agent and the ballots shall be commingled for tallying.
- f) Mail Ballot Election Procedures. When the election is to be conducted by mail ballot, the following procedures shall apply:
- 1) Each eligible voter shall be mailed a packet containing a ballot, ballot envelope, a pre-addressed stamped return envelope, and instructions.

- 2) The instructions shall advise the voter to mark the ballot without using a self-identifying mark, place the ballot in the ballot envelope, seal the ballot envelope and place it in the return envelope, seal the return envelope, both print and sign the return envelope across the seal, and mail it to the Board. The instructions will also advise the voter of the date, set by the Board, by which return envelopes must be postmarked.
  - 3) When the election includes a vote on a combined professional/ nonprofessional unit, or a vote on craft severance, the appropriate voters shall be mailed separate ballots and ballot envelopes for unit preference or craft severance, and for choice of representative. These voters shall be instructed to mark the ballots separately, place them in their respective ballot envelopes, and return both ballot envelopes in the return envelope.
  - 4) The parties may designate an equal number of representatives, as set by the Board, to observe the tallying of the ballots. Ballots shall be tallied on a date set by the Board.
  - 5) Ballots shall remain unopened in their return envelopes until the date set for tallying. On the date set for tallying, the representatives and the Board-agent shall have an opportunity to challenge any ballots prior to the opening of the return envelopes. Challenged ballots shall be handled in accordance with subsection (e)(6). All ballots that have not been challenged shall be separated from their return envelopes and commingled prior to tallying.
  - 6) The ballots shall be tallied in accordance with Section 1210.140(g).
  - 7) The Board agent shall attempt to resolve ballot challenges before the ballots are counted.
- g) Vote Tally Procedures. In mail and on site elections, ballots will be tallied in the presence of the parties' representatives attending the count as follows:
- 1) The Board agent shall segregate the challenged ballots. The challenged ballots shall only be opened and counted if they could be determinative of the outcome of the election.
  - 2) If challenges to ballots have not been resolved, and if the challenges could affect the outcome of the election, the Board will treat the challenges in the same manner as objections to the election.
  - 3) When the election includes a vote on craft severance, the craft employee ballots on craft severance shall be tallied first. If a majority of the craft employees casting valid craft severance ballots choose craft severance, the craft and noncraft ballots on choice of representative, if any, shall be tallied separately. If a majority of the craft employees casting valid ballots do not choose craft severance, the ballots on choice of representative, if any, shall be tallied together.
  - 4) When the election includes a vote on a combined professional/ nonprofessional unit, the ballots on unit preference shall be tallied first. Separate tallies shall be made for professional and nonprofessional employees. If a majority of the employees casting valid ballots in each group vote for a combined unit, the ballots

on choice of representative, if any, shall be tallied together. If a combined unit fails to receive a majority vote in either or both groups, the ballots on choice of representative, if any, shall be tallied separately.

- h) When there are only two choices on the ballot and each receives 50 percent of the vote, the following shall apply:
  - 1) In representation elections, absent valid objections or challenges, the Board shall certify that a majority of the employees have not voted to select the labor organization as their exclusive representative.
  - 2) In decertification elections, absent valid objections or challenges, the Board shall certify that a majority of the employees no longer desire to be represented by the labor organization.
- i) Where there are three or more choices on the ballot (two or more labor organizations and "No Representation") and no choice receives a majority of the valid ballots cast, the Board shall conduct a runoff election between the two choices that received the most votes. When there is a tie for first place among more than two choices, the runoff shall be among those choices involved in the tie. When the first place choice has not received a majority of the votes and there is a tie for second place, the runoff shall be among the first place choice and those tying for second place. The results of votes taken during the first election on craft severances and/or combined professional/nonprofessional units, if applicable, shall be binding on the runoff election.
- j) The Board shall preserve all ballots until such time as any objections to the election have been resolved and the results have been certified.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.150 Objections to the Election**

- a) Any party to the election may file objections with the Board alleging that the result was not fairly and freely chosen by a majority of the employees. The party must serve its objections on the other parties to the election prior to or simultaneously with their filing with the Board.
- b) Objections must be received by the Board no later than five days after the final tally was served on the representatives. Pending challenges to ballots shall not stay the time for filing objections.
- c) The objecting party shall, within five days after filing objections, submit to the Board a statement of material facts and issues and a summary of material evidence.
- d) The Executive Director shall promptly investigate the allegations and, at the conclusion of the investigation, issue a report on the challenges and/or objections. If the Executive Director finds no reasonable cause to believe that the result of the election was not fairly and freely chosen, he shall issue a report dismissing the challenges and objections. Parties may appeal the Executive Director's report in accordance with 80 Ill. Adm. Code 1200.135. If the Executive Director finds reasonable cause to believe that the result of the election was not fairly and freely chosen by a majority of the employees, he or she shall

set the matter for hearing before an Administrative Law Judge. The Administrative Law Judge will conduct the hearing in accordance with Section 1210.105. If it is determined, after hearing, that the result was not fairly and freely chosen by a majority of the employees, the Board shall order a new election and shall order corrective action it finds necessary to ensure the fairness of the new election. If it is determined that the result was fairly and freely chosen by a majority of the employees, the Board shall promptly certify the election results.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.160 Voluntary Recognition Procedures**

- a) Voluntary recognition petitions may not be filed under the following circumstances:
  - 1) whenever a labor organization is recognized in accordance with the Act as the exclusive representative of all or some of the employees in the bargaining unit; and
  - 2) whenever the proposed bargaining unit would include both professional and nonprofessional employees.
  
- b) When an employer and a labor organization agree to use the voluntary recognition procedures, the employer and labor organization must file a request for voluntary recognition with the Board. The request shall be on a form developed by the Board. The request shall be signed by both parties and shall contain the following:
  - 1) the name, address and telephone number of the employer;
  - 2) the name, address, telephone number and affiliation, if any, of the labor organization;
  - 3) the name, addresses and telephone numbers of the parties' representatives;
  - 4) a specific and detailed description of the proposed bargaining unit, including job titles and classifications;
  - 5) the number of employees in the proposed bargaining unit and whether the proposed bargaining unit includes professional employees;
  - 6) a statement describing why the employer and the labor organization are satisfied that the labor organization represents the majority of the employees in the proposed bargaining unit; and
  - 7) a statement describing why the employer and the labor organization are satisfied that the proposed unit is an appropriate bargaining unit within the meaning of Section 9 of the Act.
  
- c) The request must be supported by objective evidence of the majority status of the labor organization as required by Section 1210.80.
  - 1) If authorization cards are offered as evidence, they may be submitted jointly to the

Board or they may be confidentially submitted by the labor organization to the Board. Cards must be signed and dated by the employees pursuant to Section 1210.80. The authorization cards expire one year from the signing date.

- 2) If authorization cards are offered as evidence, those cards that would not qualify as evidence in support of a representation petition will not be considered sufficient evidence of majority status.
  - 3) If employees signing authorization cards have also signed cards authorizing other labor organizations to represent them, those cards will not be considered sufficient evidence of majority status.
- d) Following the filing of a request for voluntary recognition, the Board shall provide the employer with a Notice of Voluntary Recognition that shall be posted on bulletin boards and other places where notices for employees in the bargaining unit are customarily posted. The Board's Notice of Voluntary Recognition shall have the following information:
- 1) statement that, subject to Board certification, the employer intends to recognize the employee organization if no competing claims of representation are filed with the Board;
  - 2) the name and address of the employer;
  - 3) the name and address and affiliation, if any, of the labor organization;
  - 4) a specific and detailed description of the proposed bargaining unit, including job titles and classifications;
  - 5) the number of employees in the proposed bargaining unit;
  - 6) the date of posting; and
  - 7) the signature of the employer's representative.

Parties are required to inform the Board of any errors in the Notice of Voluntary Recognition.

- e) The Notice of Voluntary Recognition shall remain posted for a 20 day period specified within the Notice. The employer shall take steps reasonably necessary to ensure that the Notice of Voluntary Recognition is not removed or defaced. After the Notice of Voluntary Recognition has been posted for the prescribed 20 day period, the employer shall submit a Board-issued Certificate of Posting confirming that the Notice has been posted for 20 days.
- f) During the 20 day posting period, any competing labor organization may file a petition with the Board seeking to represent all or some of the employees in the unit. Prior to, or simultaneously with, its filing with the Board, the competing labor organization shall serve the petition on the employer and the labor organization that was to have been voluntarily recognized. The petition shall be on a form developed by the Board and shall contain:
- 1) the name, address, telephone number and affiliation, if any, of the labor organization;

- 2) the name, address, telephone number and signature of petitioner's representative;
  - 3) the names of the employer and labor organization that the employer intended to voluntarily recognize, and the names and addresses of the employer and labor organization representatives;
  - 4) a specific and detailed description of the proposed bargaining units, including job titles and classifications to the extent known, proposed by the petitioner and on the Notice of Voluntary Recognition and designate any positions included in both units;
  - 5) the date the Notice of Voluntary Recognition was posted; and
  - 6) the date the posting period is scheduled to end.
- g) A competing labor organization's petition must be supported by a showing of interest of *at least 10 percent of the employees in an appropriate bargaining unit which includes all or some of the employees in the unit* that was to have been voluntarily recognized. (Section 9(g) of the Act)
- h) Upon the filing of a competing labor organization's petition and proper showing of interest, the Board shall treat the voluntary recognition proceeding as a representation proceeding. The Board shall proceed in accordance with Section 9(a) of the Act and Sections 1210.80 through 1210.150.
- i) If no competing labor organization petitions have been filed with the Board by the end of the posting period, the employer and the labor organization shall file with the Board a certification of posting. This Certification of Posting shall be on a form developed by the Board. The Certification of Posting shall contain the following:
- 1) the Board case number assigned to the Request for Voluntary Recognition and date filed;
  - 2) the name, address and telephone number of the employer;
  - 3) the name, address, telephone number and affiliation, if any, of the labor organization;
  - 4) the names, addresses and telephone numbers of the parties' representatives;
  - 5) a specific and detailed description of the proposed bargaining unit, including job titles and classifications;
  - 6) the number of employees in the proposed bargaining unit;
  - 7) the dates, locations and termination date of the posting of the Notice of Voluntary Recognition ;
  - 8) a statement that the Notice of Voluntary Recognition was not removed or defaced during the posting period;
  - 9) a statement that the parties desire certification of the voluntary recognition issue; and

- 10) a statement that no intervening petition was filed.
- j) The Board will investigate the Request for Voluntary Recognition.
  - 1) If the Board concludes that the labor organization represents a majority of the employees in an appropriate bargaining unit, and that the petition is otherwise consistent with the Act and this Part, the Board shall certify the labor organization as the exclusive representative of the employees.
  - 2) If the Board determines that there is insufficient evidence to support the claim of majority status, that the proposed bargaining unit is not appropriate, or that the petition otherwise contravenes the Act or this Part, the Board shall dismiss the petition without prejudice to the filing of a representation petition by either the employer or the labor organization or the commencement of voluntary recognition proceedings in an appropriate unit in which the labor organization has majority status.
- k) If, after the Board directs an election in a representation proceeding, the employer decides to voluntarily recognize the labor organization, the Request for Voluntary Recognition must be filed within 14 days after service of the Board's Direction of Election. Within seven days after receipt of the Request, if the Board determines that there is insufficient evidence to support the claim of majority status, an election shall be scheduled as expeditiously as possible.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

#### **Section 1210.170 Unit Clarification Procedures**

- a) An exclusive representative or an employer may file a unit clarification petition to clarify or amend an existing bargaining unit when:
  - 1) substantial changes occur in the duties and functions of an existing title, raising an issue as to the title's unit placement;
  - 2) an existing job title that is logically encompassed within the existing unit was inadvertently excluded by the parties at the time the unit was established; and
  - 3) a significant change takes place in statutory or case law that affects the bargaining rights of employees.
- b) The petition shall be served on the other party by the Board. The petition shall be signed and shall contain the following:
  - 1) the name, address and telephone number of the employer;
  - 2) the name, address and telephone number of petitioner's representative;
  - 3) the name, address, telephone number and affiliation, if any, of the exclusive representative;
  - 4) a specific and detailed description of the existing bargaining unit, including job titles and classifications; and

- 5) the nature of and reasons for the proposed amendment or clarification.
- c) Following the filing of a unit clarification petition, the Board shall provide the employer with a Notice to Employees that shall be posted on bulletin boards and other places where notices to employees in the bargaining unit are customarily posted. The Notice to Employees shall remain posted for at least the 20 day period specified by the Board in the Notice.
- d) The responding party may file a response to the petition within 20 days following service of the petition.
- e) The Board or its agent shall investigate the petition. After the investigation, the Executive Director shall dismiss the petition, set the matter for hearing, or issue an order clarifying the unit. Parties may appeal the dismissal or the order clarifying the unit in accordance with Section 1200.135. If the matter is set for hearing, the hearing shall be held in accordance with Section 1200.105.
  - 1) Interested persons desiring to intervene in the hearing shall submit a written request to the Administrative Law Judge. The Administrative Law Judge shall have discretion to grant or deny intervention. The decision shall be based upon the interests of the intervenor, whether those interests will be adequately protected by existing parties, and the timeliness of the intervenor's request.
  - 2) The Administrative Law Judge may schedule a prehearing conference or request prehearing briefs when it appears that doing so would expedite the procedure.
  - 3) The Administrative Law Judge shall inquire into all matters in dispute and shall obtain a full and complete record. Following the close of the hearing, the Administrative Law Judge shall file and serve upon the parties a recommended disposition of the matter.
  - 4) Parties may appeal the Administrative Law Judge's recommended decision and order in accordance with Section 1200.135.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.175 Stipulated Unit Clarification Procedures**

- a) The parties may stipulate to a unit clarification. The parties shall file with the Board a unit clarification petition indicating their stipulation. Following the filing of such a petition, the Board shall provide the employer with a Notice to Employees of the Stipulated Unit Clarification. The Board-issued Notice to Employees of the Stipulated Unit Clarification shall be posted on bulletin boards and at other places where notices to employees in the bargaining unit are customarily posted. The Notice to Employees shall advise employees of the terms of the stipulation and direct persons objecting to the stipulation to file objections with the Board. The Notice shall remain posted for the 20 day period specified in the Notice to Employees. The employer shall take reasonable steps to ensure that the Notice is not removed or defaced during the posting period.
- b) During any posting period under this Section, interested parties may file objections with the Board. Objections shall be served on the employer and the exclusive representative

prior to, or simultaneously with, their filing with the Board. If objections are not timely filed and/or properly served, the objections shall be deemed waived.

- c) Following the posting period, if no objections have been filed, the Board shall approve or disapprove the unit clarification depending upon whether the amendment or clarification is consistent with the Act. If objections have been filed, the Board shall proceed in accordance with Section 1210.170(e).

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.180 Procedures for Amending Certifications**

- a) An exclusive representative shall file a petition with the Board to amend its certification whenever there is a change in its name or structure. An employer or exclusive representative shall file a petition to amend a unit certification whenever there is a change in the employer's structure or when the certification incorrectly identifies the bargaining unit or contains any other errors. The petition shall be served by the Board on any employer, or exclusive representative, who is not the petitioner. The petition shall be signed, under penalty of perjury, and shall contain:
  - 1) the name, address and telephone number of the employer;
  - 2) the name, address, telephone number and affiliation, if any, of the exclusive representative, as certified by the Board;
  - 3) the name, address and telephone number of petitioner's representative;
  - 4) a description of the proposed amendment; and
  - 5) the reasons for the proposed amendment.
- b) The employer shall post a Notice to Employees of the proposed amendment in accordance with Section 1210.170(c).
- c) Interested persons, including the employer, may file objections to the proposed amendment with the Board during the posting period. Objections shall be served on the petitioner prior to, or simultaneously with, filing with the Board.
- d) If, at the conclusion of the posting period, no objections have been filed, the Board may approve or disapprove the amendment or take any other action necessary to effectuate the purposes and policies of the Act.
- e) If objections have been filed during the posting period, the Board shall proceed in accordance with Section 1210.170(e).

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1210.190 Expedited Elections Pursuant to Section 10(b)(7)(C) of the Act**

- a) Whenever a labor organization is engaged in activities set forth in Section 10(b)(7)(C) of the Act, the employer may file a petition for an expedited election.

- b) Labor organizations and employees may not file petitions for expedited elections.
- c) A petition for an expedited election shall contain the same information as set forth in Section 1210.40 of this Part for representation petitions. A petition for an expedited election shall also contain a detailed statement describing the picketing, including the date the picketing began. The petition shall be accompanied by evidence, including relevant documents and affidavits, supporting the employer's allegation of activities as set forth in Section 10(b)(7)(C) of the Act. The petition shall be served by the Board on the labor organization.
- d) The Board shall investigate the petition. The investigation shall include an expedited hearing where one is necessary to resolve disputed issues of fact concerning the appropriateness of the bargaining unit or the appropriateness of an expedited election. The parties shall be given at least 24 hours notice of the hearing.
- e) If, after investigation, the Board determines that recognitional or organizational picketing within the meaning of Section 10(b)(7)(C) of the Act is continuing, it shall direct an expedited election. The order directing an expedited election shall establish the bargaining unit, the date for the election, and the number of observers that the parties may have.
- f) The expedited election shall be conducted on site, in accordance with Section 1210.140. Objections to the election may be filed in accordance with Section 1210.150.
- g) After completion of the election, any continuation of the activities as set forth in Section 10(b)(7)(C) of the Act or any threat to continue such activities shall constitute a violation of Section 10(b)(7)(B) of the Act.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE C: LABOR RELATIONS  
CHAPTER IV: ILLINOIS LABOR RELATIONS BOARD

PART 1220  
UNFAIR LABOR PRACTICE PROCEEDINGS

Section	
1220.10	General Statement of Purpose
1220.20	Filing of a Charge
1220.30	Appointment of Counsel (Renumbered)
1220.40	Charge Processing and Investigation, Complaints and Responses
1220.50	Hearings
1220.60	Consideration by the Board (Repealed)
1220.65	Deferral to Arbitration
1220.70	Requests for Preliminary Relief
1220.80	Compliance Procedures
1220.90	Sanctions
1220.100	Unfair Labor Practice Charges Involving Fair Share Fees
1220.105	Appointment of Counsel
TABLE A	"Adjusted Income" Standards for Appointment of Counsel in Unfair Labor Practice Cases

AUTHORITY: Implementing Sections 10 and 11 and authorized by Section 5(i) of the Illinois Public Labor Relations Act [5 ILCS 315/10, 11, 5(i)].

SOURCE: Emergency rule adopted at 8 Ill. Reg. 16043, effective August 22, 1984, for a maximum of 150 days; adopted at 9 Ill. Reg. 1898, effective January 25, 1985; amended at 11 Ill. Reg. 6481, effective March 27, 1987; amended at 12 Ill. Reg. 20122, effective November 18, 1988; amended at 14 Ill. Reg. 19959, effective November 30, 1990; amended at 17 Ill. Reg. 15628, effective September 13, 1993; amended at 20 Ill. Reg. 7415, effective May 10, 1996; amended at 27 Ill. Reg. 7393, effective May 1, 2003.

## **Section 1220.10 General Statement of Purpose**

The regulations contained in this Part detail the procedures for initiating, processing and resolving charges that an employer or a labor organization has committed, or is committing, an unfair labor practice in violation of Sections 10(a) and 10(b) of the Illinois Public Labor Relations Act (Act) [5 ILCS 315].

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

## **Section 1220.20 Filing of a Charge**

- a) An unfair labor practice charge may be filed with the Board by an employer, a labor organization, or an employee.
- b) Unfair labor practice charges shall be on a form developed by the Board, shall be signed by the charging party, and shall contain:
  - 1) the name, address, telephone number and affiliation, if any, of the charging party;
  - 2) the name, address, telephone number and affiliation, if any, of the respondent;
  - 3) the name, address and telephone number of the charging party's representative;
  - 4) a clear and complete statement of facts supporting the alleged unfair labor practice, including dates, times and places of occurrence of each particular act alleged, and the Sections of the Act alleged to have been violated;
  - 5) a statement as to whether a grievance concerning the same, similar or related issue as the charge is pending; and
  - 6) a statement of the relief sought, provided that the statement shall not limit the Board's ability to award relief based on the record.
- c) The charging party shall serve a copy of the charge upon the respondent. Service may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the charge, service may be made by fax transmission or by any other agreed-upon method. The Board shall serve a courtesy copy of the charge upon the respondent, but timely service of a copy of the charge within the meaning of Section 11(a) of the Act is the exclusive responsibility of the charging party and not of the Board.
- d) Unfair labor practice charges must be filed with the Board and served on the respondent no later than 6 months after the alleged unfair labor practice occurred.
- e) Before the Executive Director issues a complaint for hearing or dismissal, the charging party may amend its unfair labor practice charge. Filing, service, and proof of service of an amended charge shall be made in accordance with 80 Ill. Adm. Code 1200.20.
- f) The charging party may withdraw an unfair labor practice charge. If the charge is pending at the investigative or hearing stage, the charging party may write a letter to the Executive Director, requesting that the charge be withdrawn. Upon receipt of the request, the

Executive Director will grant or deny the request for withdrawal of the charge. If the charge is pending before the Board, the charging party may write a letter to the General Counsel requesting the charge be withdrawn. Upon receipt of the request, the General Counsel will grant or deny the request for withdrawal of the charge.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1220.30 Appointment of Counsel (Renumbered)**

(Source: Renumbered to Section 1220.105 at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1220.40 Charge Processing and Investigation, Complaints and Responses**

- a) The Board or its agent shall investigate the charge. The investigation may include an investigatory conference with the parties.
  - 1) The charging party shall submit to the Board or its agent all evidence relevant to or in support of the charge. The evidence may include documents and affidavits. If the charging party does not comply with the agent's requests for information and documents, the agent may recommend dismissal of the charge.
  - 2) Upon request by the Board or its agent, the respondent may submit a complete account of the facts, a statement of its position in respect to the allegations set forth in the charge and all relevant evidence in support of its position. The evidence may include documents and affidavits.
  - 3) If the investigation reveals that the charge involves *an issue of law or fact* [5 ILCS 315/11(a)] sufficient to warrant a hearing, the Board or the Executive Director shall issue a complaint for hearing. The complaint shall state the issues that warrant a hearing and shall be served on the respondent and the charging party.
  - 4) If the charge does not state a claim on its face or if the investigation reveals that there is no issue of law or fact sufficient to warrant a hearing, the Executive Director shall dismiss the charge. The charging party may appeal the dismissal in accordance with 80 Ill. Adm. Code 1200.135.
- b) Whenever the Executive Director issues a complaint for hearing, the respondent shall file an answer within 15 days after service of the complaint and deliver a copy to the charging party by ordinary mail to the address set forth in the complaint. Answers shall be filed with the Board with attention to the designated Administrative Law Judge.
  - 1) The answer shall include a specific admission, denial or explanation of each allegation or issue of the complaint or, if the respondent is without knowledge thereof, it shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the circumstances of the allegation.
  - 2) The answer shall also include a specific, detailed statement of any affirmative defenses.

- 3) Parties who fail to file timely answers shall be deemed to have admitted the material facts and legal conclusions alleged in the complaint. The failure to answer any allegation shall be deemed an admission of that allegation. Failure to file an answer shall be cause for the termination of the proceeding and the entry of an order of default. Filing of a motion will not stay the time for filing an answer.
- 4) Leave to file a late answer shall only be granted by the Administrative Law Judge if the late filing is due to extraordinary circumstances, which will include, among other things: fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable relief from judgments.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1220.50 Hearings**

- a) Upon the issuance of a complaint for hearing, the Board shall set the matter for hearing before an Administrative Law Judge. The hearing shall be set *not less than 5 days after serving of such complaint*. (Section 11(a) of the Act)
- b) Interested persons who wish to intervene in the hearing shall direct such requests to the Administrative Law Judge. Motions shall be made in accordance with 80 Ill. Adm. Code 1200.45. The request shall be in writing and shall state the grounds for intervention. The Administrative Law Judge shall have discretion to grant or deny the request for intervention. The decision shall be based upon the interests of the intervenor, whether those interests will be adequately protected by existing parties, and the timeliness of the intervenor's request.
- c) Pursuant to 80 Ill. Adm. Code 1200.40, the Administrative Law Judge may schedule a pre-hearing conference when it appears that such a conference would expedite the procedure.
- d) Intermediate rulings of the Administrative Law Judge shall not be subject to interlocutory appeal. Parties may raise objections to intermediate rulings in their exceptions to the Administrative Law Judge's recommended decision.
- e) The charging party shall present its case in support of the charge. The charging party shall have the burden of proving the allegations of its unfair labor practice charge. The respondent may present evidence in support of its defense.
- f) The Administrative Law Judge, on the judge's own motion or on the motion of a party, may amend a complaint to conform to the evidence presented in the hearing or to include uncharged allegations at any time prior to the issuance of the Judge's recommended decision and order.
- g) The Administrative Law Judge shall inquire fully into all matters in dispute, and shall obtain a full and complete record either by evidentiary hearing and/or stipulation. After the close of the hearing, the Administrative Law Judge shall file and serve on the parties a recommended decision.
- h) If the charging party fails to appear at the hearing after proper service of notice, the Administrative Law Judge shall dismiss for want of prosecution. If the respondent fails to appear, the Administrative Law Judge shall proceed in the absence of the respondent and issue a recommended decision and order.

- i) All exceptions, cross-exceptions, responses and cross-responses to the Administrative Law Judge's recommended decision and order shall be filed and served in accordance with 80 Ill. Adm. Code 1200.135.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1220.60 Consideration by the Board (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1220.65 Deferral to Arbitration**

- a) The Board may, on its own motion or the motion of a party, defer the resolution of an unfair labor practice charge to the grievance arbitration procedure contained in a collective bargaining agreement.
- b) A party may file a motion to defer the resolution of an unfair labor practice charge:
  - 1) at any time during the investigation prior to the issuance of a complaint for hearing, dismissal, or deferral order. The motion shall be made in writing to the Board agent investigating the unfair labor practice charge and shall be served in accordance with 80 Ill. Adm. Code 1200.20.
  - 2) within 25 days after the issuance of a complaint for hearing. The motion shall be made in writing to the Administrative Law Judge assigned to the case and shall be served in accordance with 80 Ill. Adm. Code 1200.20.
- c) Responses and any other answering documents, including memoranda and affidavits, must be filed within 5 days after service of the motion, or as otherwise required by the Administrative Law Judge or the Board. Responses must be served in accordance with 80 Ill. Adm. Code 1200.20.
- d) If the motion to defer the resolution of an unfair labor practice charge is made during the investigation, the Executive Director will rule on the motion by issuance of an order or a complaint for hearing. Parties may appeal the Executive Director's orders in accordance with 80 Ill. Adm. Code 1200.135(a). Complaints for hearing are not appealable. If the motion to defer the resolution of an unfair labor practice charge is made after the issuance of a complaint for hearing, the Administrative Law Judge shall rule on the motion in accordance with 80 Ill. Adm. Code 1200.45. Parties may appeal the Administrative Law Judge's ruling on the motion to defer in accordance with 80 Ill. Adm. Code 1200.135(b).

(Source: Added at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1220.70 Requests for Preliminary Relief**

The charging party may request the Board to seek preliminary relief pursuant to Section 11(h) of the Act. The charging party shall have the burden of demonstrating to the General Counsel that if preliminary relief is not sought it will suffer irreparable harm and that the remedies available from the Board will be inadequate. Any request to seek such preliminary relief shall be in writing and accompanied by

affidavits, documents or other evidence supporting the request. All requests shall be filed with the General Counsel and shall be served on the other party simultaneously with their filing with the Board.

### **Section 1220.80 Compliance Procedures**

- a) Whenever it is determined that an unfair labor practice has been committed, a copy of the Board's decision and order, or a copy of the Administrative Law Judge's recommended decision and order in cases where the Board has declined to review such recommended decision and order, shall be sent to the compliance officer who shall be responsible for monitoring the respondent's compliance with the order. Following an investigation, the compliance officer may order that the parties take certain actions or he or she may set the matter for a compliance hearing.
- b) Parties may request that the Board seek enforcement of the Board's order pursuant to Section 11(f) of the Act. Requests shall be in the form of a petition for enforcement filed with the Board and served upon the other parties. The petition shall set forth specifically the manner in which the respondent has failed to voluntarily comply with the Board's order, or Administrative Law Judge's recommended order in cases where the Board has declined to review the Administrative Law Judge's order.
- c) The compliance officer shall investigate the information in the petition and shall issue and serve upon the parties, no later than 75 days after the filing of the petition, an order dismissing the petition, directing specifically the actions to be taken by the respondent or setting the matter for hearing before an Administrative Law Judge.
- d) If a party fails or refuses to respond to a compliance officer's request for information, the compliance officer shall make the determinations based on the evidence presented.
- e) No later than 7 days after service of the compliance officer's order dismissing the petition or directing action by the respondent, the parties may file objections to the compliance order. The objections shall:
  - 1) set forth specifically the finding, order or omission to which the objection is taken; and
  - 2) set forth specifically the grounds for the objection, and be accompanied by any available supporting documentation, specific calculations and requests for subpoenas.
- f) Any objection to a finding, order or omission not specifically urged shall be deemed waived. In the event that objections are filed by any party, the Board shall set the matter for hearing before an Administrative Law Judge.
- g) Parties may appeal the Administrative Law Judge's recommended compliance decision and order in accordance with 80 Ill. Adm. Code 1200.135.
- h) All proceeding under this Section shall be suspended during the pendency of any appeal from the Board's decision finding a violation of the Act. However, when a court denies a request for a stay of the proceedings, the compliance officer may resume monitoring the respondent's compliance with the Administrative Law Judge's or Board's decision and order.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

## Section 1220.90 Sanctions

- a) *The Board's order may in its discretion include an appropriate sanction, based on the Board's rules and regulations, if the other party has made allegations or denials without reasonable cause and found to be untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation. The State of Illinois or any agency thereof shall be subject to these provisions in the same manner as any other party.* (Section 11 of the Act)
- b) The Board may award sanctions for such written or recorded *allegations or denials*, including statements recorded during the course of Board proceedings.
- c) *The sanction may include an admonition or reprimand; striking an offending allegation or denial; an order to pay the other party or parties' reasonable expenses, including costs and reasonable attorney's fees or an appropriate portion thereof; and/or any other appropriate sanction.* (Section 11 of the Act) Sanctions are to be awarded only against a party or parties to the proceeding.
- d) Any party to an unfair labor practice proceeding may move for sanctions. The motion for sanctions must be a succinct statement identifying the *allegations* and/or *denials* and/or incidents of *frivolous litigation* alleged to be subject to sanctions, with citations to the record, and succinct arguments. (Section 11 of the Act) The party subject to the motion for sanctions shall have 14 days after service of the motion to respond or withdraw the paper or position that is the basis of the motion. Neither the motion for sanctions nor the response may be used as an additional brief on the merits of the underlying case.
  - 1) Motions for sanctions may be filed with the Executive Director while an unfair labor practice charge is pending before the Executive Director. Sanctions before the Executive Director may only be sought for instances of frivolous litigation. Motions shall be filed no later than 7 days after receipt of the Executive Director's notice that investigation of the unfair labor practice charge has been completed, or that a party has withdrawn the unfair labor practice charge.
  - 2) Once an unfair labor practice complaint has been issued, motions for sanctions may be filed with the Administrative Law Judge. Sanctions before the Administrative Law Judge may be sought for both *allegations or denials made without reasonable cause and found to be untrue and/or instances of frivolous litigation.* (Section 11 of the Act.) Motions shall be filed no later than 7 days after receipt of the last post-hearing brief scheduled to be filed, or no later than 7 days after the close of the hearing, if no briefs are to be filed.
  - 3) Once the Administrative Law Judge has issued a recommended decision and order, or the Executive Director has issued an order dismissing an unfair labor practice charge, the motion and order is pending before the Board. Motions for sanctions shall be filed no later than 7 days after receipt of the last brief scheduled to be filed with the Board, or no later than 7 days after oral argument before the Board, if such argument occurs after all briefing is completed. Sanctions before the Board may be sought for either *allegations or denials made without reasonable cause and found to be untrue and/or instances of frivolous litigation.* (Section 11 of the Act)

- e) A party may request sanctions from the Board for *allegations or denials made without reasonable cause and found to be untrue* even though it did not move for sanctions on that *allegation or denial* before the Administrative Law Judge, and even though the Administrative Law Judge did not recommend sanctions on such *allegations or denials*. (Section 11 of the Act)
- f) A party may not request sanctions from the Board for alleged *frivolous litigation for the purpose of delay or needless increase in the cost of litigation* before the Executive Director or Administrative Law Judge, unless it requested sanctions from the Executive Director or Administrative Law Judge as to such alleged incident of *frivolous litigation*, or unless the Executive Director or Administrative Law Judge recommended sanctions as to such alleged incident of *frivolous litigation*. (Section 11 of the Act)
- g) Except as provided in subsection (h) below, an order for sanctions shall be included in the Executive Director's order, the Administrative Law Judge's recommended decision and order, or the Board decision and order.
- h) If neither party has moved for sanctions, the Executive Director, Administrative Law Judge, or Board may sua sponte issue an order to show cause why sanctions are not warranted. The party or parties to whom the order to show cause is directed shall have 14 days from the service of that order to file a response. The order to show cause shall recite the conduct or circumstances at issue.
- i) An order leveling sanctions shall recite the conduct or circumstances for which sanctions are sought, and explain the basis for the sanction imposed.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1220.100 Unfair Labor Practice Charges Involving Fair Share Fees**

- a) Unfair labor practice charges that proportionate share fees violate the Act shall be filed and processed in accordance with this Part.
- b) The Board shall consolidate charges involving proportionate share fees in accordance with 80 Ill. Adm. Code 1200.105. Specifically, the Board shall consolidate in a single proceeding all proportionate share fee charges involving the same bargaining unit. The Board shall consolidate charges involving two or more bargaining units whenever it determines that the exclusive representatives are affiliated with a common employee organization, the exclusive representatives use similar methods for determining fair share fees, the consolidation would not prejudice the constitutional and statutory rights of the objecting employees, and the consolidation would resolve the charges in an efficient manner.
- c) In hearings on fair share fee charges, the exclusive representative shall have the burden of proving how the fair share fee was calculated and that the fee did not exceed the employee's proportionate share of *the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment*. (Sections 3(g) and (e) of the Act)

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

## Section 1220.105 Appointment of Counsel

- a) A charging party may file a request for appointment of counsel simultaneously with or after filing a charge. The request shall be on a form developed by the Board. It shall be accompanied by an affidavit attesting to the charging party's *inability to pay or inability to otherwise provide for adequate representation*. (Section 5(k) of the Act) It shall also be accompanied by affidavits, documents or other evidence supporting the charge.
- b) A charging party shall be deemed unable to pay or provide for adequate representation if the party's "Adjusted Income" is less than the amount set forth in Table A to this Part for a "Family Unit" of the applicable size, and if this person is not entitled to representation from a labor organization (or such representation would be inappropriate) or under the provisions of a prepaid legal services plan or similar arrangement. As an example, instances when representation by a labor organization would be inappropriate include when an individual files charges against a labor organization.
- c) For purposes of this Section, "Adjusted Income" refers to all gross income available to the charging party for the prior year from wages, pensions, annuities, insurance or public assistance benefits, interest and dividends, and other such sources, including liquid assets such as savings and checking accounts, stocks, bonds and similar investments, less the following deductions for the prior year:
  - 1) Child care and court-ordered child support payments;
  - 2) That portion of educational and medical expenses which exceeds 5 percent of total gross income;
  - 3) Unreimbursed expenses of obtaining and maintaining employment; and
  - 4) An amount equivalent to 20 percent of wages earned, to approximate withholding for taxes and social security and the like.
- d) For purposes of this Section, "Family Unit" means the charging party and all other persons related to the charging party by blood, marriage or adoption who reside in the charging party's household and are dependent upon the charging party for at least one half of their support.
- e) If the Board or its designated representative determines that the charging party is unable to pay or is otherwise unable to provide for adequate representation, and that the charge is not clearly without merit, the charging party shall select counsel from a list of attorneys maintained by the Board.
- f) Counsel selected by the charging party shall certify to the Board:
  - 1) That they are licensed to practice law in Illinois under the rules of the Illinois Supreme Court.
  - 2) That they have previous experience as the representative of parties in the trial or hearing of contested cases. An attorney without trial experience, including a law student certified to practice under Rule 711 of the Illinois Supreme Court, shall satisfy this requirement if actively supervised and accompanied at hearing by an

attorney with previous trial experience, in which case the supervising attorney shall make the certification.

- 3) That they accept appointment in return for compensation from the Board at the rate of \$75 per hour (\$30 per hour for the time of law students and paralegals) plus costs, i.e., copying documents, subpoena fees, and subject to a maximum compensation limit of \$5000 in any single cause. The maximum limit of \$5000 may be increased in a particular case upon application to the Board if the circumstances of the case, including the number and complexity of the issues, demand the investment of time and expenses exceeding the limitation.
- 4) That they will maintain contemporaneous, careful records of time and expenses devoted to the case and will supply copies or summaries to the Board, together with bills for services rendered, at least monthly for each month in which time or costs are accrued.
- g) Payment for personal services at the hourly rate is due upon completion of the Board proceedings in the cause. Payment of costs up to a total of \$500 are payable on a monthly basis for the month in which the costs are incurred. Costs totalling more than \$500 are payable at the completion of the proceedings before the Board and may be incurred only with prior approval of the Board, e.g., in instances in which issues presented are numerous or call for numerous witnesses.
- h) An attorney appointed by the Board to represent a charging party pursuant to this Section shall not withdraw from such employment without approval of the Board or its Administrative Law Judge.

(Source: Renumbered from Section 1220.30 and amended at 27 Ill. Reg. 7393, effective May 1, 2003.

**Section 1220.TABLE A "Adjusted Income" Standards for Appointment of Counsel in Unfair Labor Practice Cases**

Size of Family Unit	Adjusted Income Limit	Annual
1	\$ 8,860	
2	11,940	
3	15,020	
4	18,100	
5	21,180	
6	24,260	

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE C: LABOR RELATIONS  
CHAPTER IV: ILLINOIS LABOR RELATIONS BOARD

PART 1230  
IMPASSE RESOLUTION

SUBPART A: STATEMENT OF PURPOSE AND DEFINITIONS

Section	
1230.10	General Statement of Purpose
1230.20	Definitions (Repealed)

SUBPART B: IMPASSE PROCEDURES FOR PROTECTIVE SERVICES UNITS

Section	
1230.30	General Purpose of this Subpart
1230.40	Filing of Contracts (Repealed)
1230.50	Bargaining Notices for Protective Services Units
1230.60	Mediation
1230.70	Demand for Compulsory Interest Arbitration
1230.80	Composition of the Arbitration Panel
1230.90	Conduct of the Interest Arbitration Hearing
1230.100	The Arbitration Award
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SUBPART C: IMPASSE PROCEDURES FOR GENERAL PUBLIC EMPLOYEE UNITS

Section	
1230.120	General Purpose of this Subpart
1230.130	Filing of Contracts (Repealed)
1230.140	Bargaining Notices for General Public Employee Units
1230.150	Mediation
1230.160	Fact-finding
1230.170	Voluntary Interest Arbitration
1230.180	Strikes
1230.190	Petitions for Strike Investigations

SUBPART D: GRIEVANCE ARBITRATION AND MEDIATION

Section	
1230.200	Grievance Arbitration
1230.210	Grievance Mediation

## SUBPART E: ILLINOIS PUBLIC EMPLOYEE MEDIATION/ARBITRATION ROSTER

### Section

1230.220 Mediation/Arbitration Roster

**AUTHORITY:** Implementing Sections 7, 12, 13, 17 and 18 and authorized by Section 5(i) and (j) of the Illinois Public Labor Relations Act [5 ILCS 315/7, 12, 13, 17, 18, 5(i) and (j)].

**SOURCE:** Emergency rule adopted at 8 Ill. Reg. 17322, effective September 11, 1984, for a maximum of 150 days; adopted at 9 Ill. Reg. 1857, effective January 25, 1985; Part repealed, new Part adopted at 11 Ill. Reg. 6434, effective March 27, 1987; amended at 12 Ill. Reg. 20102, effective November 18, 1988; amended at 14 Ill. Reg. 19903, effective November 30, 1990; amended at 17 Ill. Reg. 15599, effective September 13, 1993; amended at 27 Ill. Reg. 7393, effective May 1, 2003.

## SUBPART A: STATEMENT OF PURPOSE AND DEFINITIONS

### **Section 1230.10 General Statement of Purpose**

- a) In creating this Part it is the Board's intent to be cognizant of the interests of labor organizations, public employers and employees, and the general public in assuring stable labor relations in the public sector. In pursuit of this objective, it is incumbent upon both labor organizations and public employers to adhere to and comply with the rules and regulations set forth in this Part, particularly those provisions that set forth time periods and those provisions that set forth requirements for filing, with the Board, contracts, bargaining notices and other documents.
- b) The regulations contained in this Part detail the procedures for giving required notices during collective bargaining, for resolving impasses in collective bargaining, for making appointments to the Illinois Public Employees Mediation/Arbitration Roster, and for the selection of mediators, fact-finders and arbitrators from the Roster. The regulations in this Part implement the policies of the Illinois Public Labor Relations Act (Act) [5 ILCS 315] to provide peaceful and orderly procedures to protect the rights of public employers, public employees, labor organizations and the general public, to prevent labor strife and to protect the public health and safety.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.20 Definitions (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

## SUBPART B: IMPASSE PROCEDURES FOR PROTECTIVE SERVICES UNITS

### **Section 1230.30 General Purpose of this Subpart**

*Security officers of public employers, and peace officers, firefighters and fire department and fire protection district paramedics, may not withhold services, nor may public employers lock out or prevent such employees from performing services at any time. (Section 14(m) of the Act) This Subpart implements the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by the Act. (Section 2 of the Act) To achieve this policy objective, it is incumbent upon the parties to comply with the procedures established and to observe the time periods provided in this Subpart.*

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.40 Filing of Contracts (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.50 Bargaining Notices for Protective Services Units**

- a) The following notice requirements shall apply where the parties are bargaining for a successor contract:

- 1) Pursuant to Section 7 of the Act, any party wishing to terminate or modify an existing collective bargaining agreement shall serve on the other party a written notice of their intent to terminate or modify. The notice shall be served on the other party 60 days prior to the scheduled termination date of the existing agreement. A copy of the notice shall be filed with the Board by the party wishing to terminate or modify at the same time it is served on the other party. The notice filed with the Board shall reference the existing contract's number as assigned by the Board.
  - 2) If, no later than 30 days after service of the notice of the intent to terminate or modify, the parties have not reached agreement on a new contract, the party who filed the notice shall serve on the other party and the Board a Notice of No Agreement. The Notice shall be on a Board-designated form and shall set forth:
    - A) whether the parties are engaged in mediation and, if so, with whom;
    - B) if the parties are not in mediation, whether the parties desire the Board's assistance in obtaining mediation;
    - C) if the parties are not in mediation and do not require the Board's assistance in obtaining mediation, a statement from the parties that they are fully aware of the mandate of Section 14 of the Act that they engage in mediation 30 days prior to the expiration of a contract.
- b) The following notice requirements shall apply when the parties are bargaining for an initial contract:
- 1) Any time after the Board certifies an exclusive representative or at any time when there exists a valid historical bargaining relationship but no current contract, any party may serve on the other party a written demand for bargaining. A copy of the demand for bargaining shall be filed with the Board by the party making the demand at the same time it is served on the other party. The parties shall begin bargaining at any reasonable time after the demand is filed and served.
  - 2) Thirty days after the initial bargaining session between the parties, the party who filed the demand for bargaining shall file with the Board a Notice of Status of Negotiations. The Notice shall be on a Board-designated form and set forth:
    - A) whether the parties are engaged in mediation and, if so, with whom;
    - B) if the parties are not in mediation, whether the parties desire the Board's assistance in obtaining mediation;
  - c) Upon completing negotiations for either a successor or initial contract, the parties shall file with the Board a copy of the contract pursuant to Section 1200.145.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.60 Mediation**

- a) Parties concerned with protective services units shall commence mediation as follows, unless provided for in an alternative impasse procedure under Section 14(p) of the Act:

- 1) In bargaining for a successor contract, *unless the parties mutually agree to some other time limit*, 30 days prior to expiration of the contract. (Section 14(a) of the Act)
  - 2) In bargaining for an initial contract *mediation shall commence upon 15 days of notice from either party or at such later time as the mediation services chosen pursuant to Section 12(b) of the Act can be provided to the parties*. (Section 14(a) of the Act)
- b) If the parties desire Board assistance in engaging a mediator, they shall file a Request for Mediation with the Board on a Board-designated form. The Board shall provide the parties with a panel of at least 3 mediators listed on the Public Employees Mediation/Arbitration Roster. The parties shall have 7 days from receipt of the list to choose one of the persons on the panel or any other person they choose to serve as mediator. If, at the end of this 7-day period, the parties have not notified the Board of their selection, the Board shall appoint a mediator.
- c) Mediation shall be conducted as follows:
- 1) *The function of the mediator shall be to communicate with the employer and the exclusive representative or their representatives and to endeavor to bring about an amicable and voluntary settlement*. (Section 14(a) of the Act)
  - 2) The mediator may hold joint and separate conferences with the parties. The conferences shall be private unless the parties otherwise agree.
  - 3) Information disclosed by a party to a mediator in the performance of mediation functions shall not be disclosed voluntarily or by compulsion. All files, records, reports, documents, or other papers prepared by a mediator shall be considered confidential. The mediator shall not produce any such confidential records of, or testify in regard to, any mediation conducted by him, on behalf of any party to any cause pending in any type of proceeding.
  - 4) The mediator shall keep the Board apprised of the status of the negotiations.
- d) Compensation for the mediator shall be paid equally by the parties; however, *if either party requests the use of mediation services from the federal mediation and conciliation service, the other party shall either join in such request or bear the additional cost of mediation services from another source*. (Section 14(a) of the Act)

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.70 Demand for Compulsory Interest Arbitration**

- a) When negotiating for an initial contract or a successor contract, *if any dispute has not been resolved within 15 days after the first meeting of the parties and the mediator, or within such other time limit as may be mutually agreed upon by the parties* (Section 14(a) of the Act), either party may file on the other party a Demand for Compulsory Interest Arbitration.

- b) Demands for compulsory interest arbitration shall also be filed with the Board on a Board-designated form and shall include the names, addresses and telephone numbers of the parties and their representatives, the contract number and expiration date of the existing contract if there is one, the date mediation began or was waived or refused, the date the Notice of No Agreement was filed or, in initial contract negotiations, the date the Notice of Status of Negotiations was filed.
- c) *Arbitration procedures shall be deemed to be initiated by the filing of a request for mediation. (Section 14(j) of the Act)*

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.80 Composition of the Arbitration Panel**

- a) Unless otherwise agreed to in writing by the parties, the arbitration panel shall consist of 3 members: the employer's delegate, the exclusive representative's delegate and the neutral chairman.
- b) Selection of the neutral chairman shall proceed as follows:
  - 1) Within 7 days after receipt of a timely filed Demand for Compulsory Interest Arbitration, the Board shall send the parties a list of 7 interest arbitrators selected from the Illinois Public Employees Mediation/Arbitration Roster, unless the parties have notified the Board of an agreement to use an alternate source of interest arbitrator. The parties may agree to use an alternate source of interest arbitrators at any time prior to appointment of an arbitrator by the Board.
  - 2) *The parties may select an individual on the list provided by the Board or any other individual mutually agreed upon by the parties. Within 7 days following the receipt of the list, the parties shall notify the Board of the person they have selected. Unless the parties agree on an alternate selection procedure, they shall alternatively strike one name from the list provided by the Board until only one name remains. A coin toss shall determine which party shall strike the first name. (Section 14(c) of the Act)*
  - 3) *If the parties fail to notify the Board of their selection for neutral chairman, the Board shall appoint, at random, a neutral chairman from the Illinois Public Employees Mediation/Arbitration Roster. (Section 14(c) of the Act)*
  - 4) The parties may request a second panel of arbitrators only upon agreement of the parties. In the event a party objects to one or more members of the panel, the party shall notify the Executive Director of its objection within 5 days after receipt of the list of arbitrators. If the Executive Director believes that it is appropriate to include the arbitrator on the list, the parties shall continue the selection process provided in Section 1230.80(b)(2). If the Executive Director believes that it is inappropriate to include the arbitrator on the list due to extenuating circumstances, such as a conflict of interest or incapacity, the Executive Director will send the parties the name of an arbitrator to replace the objectionable name. The parties will follow the procedures set forth in Section 1230.80(b)(2) after receipt of the new list. The fact that an arbitrator had previously represented unions or management in labor relations matters is not sufficient evidence of conflict of interest under this

Section. The Executive Director's decision not to remove an arbitrator from the list is not appealable; the objecting party having the objection may seek relief through striking the name of the arbitrator as provided in Section 1230.80(b)(2).

- 5) If the neutral chairman is unable or unwilling to commence the hearing within 15 days following his or her appointment, or within such additional time period to which the parties may agree pursuant to Section 1230.90(a) of this Part, or if the neutral chairman is otherwise unable or unwilling to serve, the parties shall notify the Board within 5 days. The Board shall provide the parties with a second list of 7 interest arbitrators from the Illinois Public Employees Mediation/Arbitration Roster. Within 7 days after the Board provides the list, the parties shall select an individual from the list or any other individual to serve as neutral chairman. If the parties fail to notify the Board of their selection, the Board shall appoint a neutral chairman. Except in exceptional circumstances, the Board shall not supply the parties with more than 2 lists of interest arbitrators.
- c) Within 10 days following the filing of the demand for compulsory interest arbitration, each party shall notify the Board of the name, address and telephone number of its delegate to the interest arbitration panel. Delegates who are public officers or public employees shall continue on the payroll of the public employer during the arbitration proceeding without loss of pay.
- d) Upon receipt of the names of the delegates and upon selection of a neutral chairman, the Board shall notify the neutral chairman in writing of the Chairman's appointment. The date of receipt of the notice shall be the date of the neutral chairman's appointment.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.90 Conduct of the Interest Arbitration Hearing**

- a) The neutral chairman of the arbitration panel shall provide the parties with reasonable notice of a hearing to commence within 15 days following the Chairman's appointment. The parties may agree in writing to extend the time for commencement of the hearing for a period of time not to exceed 90 days. The hearing shall conclude within 30 days following its commencement, unless the parties agree to extend this period.
- b) The arbitration panel shall be responsible for choosing the location of the hearing and securing the premises. The Board hereby deems it appropriate for hearings to take place at the location selected by the panel. Requests to use the hearing rooms at the Board's offices must be made to the Board at least 10 days in advance, and will only be granted if space is available.
- c) The neutral chairman *shall preside over the hearing and shall take testimony.* (Section 14(d) of the Act) The neutral chairman shall control the hearing to ensure that it is concluded expeditiously within 30 days after its commencement or within such longer period to which the parties may agree.
- d) The neutral chairman shall have the authority to issue subpoenas in accordance with this Section. Subpoenas shall be secured by the neutral chairman from the Board's office. *If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or representative is guilty of contempt while in attendance at the hearing,* the neutral chairman may advise the Board's General Counsel. The General Counsel

shall request the assistance of the Attorney General to *invoke the aid of the circuit court within the jurisdiction in which the hearing is being held.* (Section 14(e) of the Act)

- e) The arbitration proceeding shall be informal. *Technical rules of evidence shall not apply and the competence of evidence shall not thereby be deemed impaired.* (Section 14(d) of the Act)
- f) *The arbitration panel may administer oaths, require the attendance of witnesses and the production of books, papers, contracts, agreements, and documents as may be deemed by it to be material to a just determination of the issues in dispute.* (Section 14(e) of the Act)
- g) The hearing proceedings shall be transcribed. The arbitration panel shall arrange for the recording and transcription of the proceedings. The costs of recording and transcribing the hearing shall be shared equally by the parties. Any party that desires a copy of the transcript shall be responsible for the cost of its copy.
- h) The neutral chairman, *if he or she is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks.* (Section 14(f) of the Act) The chairman shall notify the Board in writing of any such remand. If the dispute is remanded to the parties, the running of the time period for conclusion of the hearing shall be stayed.
- i) *Majority actions and rulings shall constitute the actions and rulings of the arbitration panel.* (Section 14(d) of the Act)
- j) *Arbitration proceedings shall not be interrupted or terminated by reason of any unfair labor practice charges involving either party.* (Section 14(d) of the Act)
- k) Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue. However, except as provided in subsections (1) and (m) of this Section, the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.140(b), to be a subject over which the parties are required to bargain.
- l) In arbitration proceedings involving peace officers, *the arbitration panel's decision shall be limited to wages, hours and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following:*
  - ? *residency requirements in municipalities with a population of at least 1,000,000;*
  - ? *the type of equipment, other than uniforms, issued or used;*
  - ? *manning;*
  - ? *the total number employees employed by the department;*
  - ? *mutual aid and assistance agreements to other units of government; and*
  - ? *the criterion pursuant to which force including deadly force, can be used;*

*provided nothing herein shall preclude an arbitration decision regarding equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. (Section 14(i) of the Act)*

m) In arbitration proceedings involving firefighters or paramedics employed by fire departments or fire protection districts, the arbitration *panel's decision shall be limited to wages, hours and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include the following matters:*

- ? *residency requirements in municipalities with a population of at least 1,000,000;*
- ? *the type of equipment (other than uniforms and fire fighter turnout gear) issued or used;*
- ? *the total number of employees employed by the department;*
- ? *mutual aid and assistance agreements to other units of government; and*
- ? *the criterion pursuant to which force, including deadly force, can be used;*

*provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. (Section 14(i) of the Act)*

These limitations shall not apply to any provision of a firefighter collective bargaining agreement in effect and applicable as of January 1, 1986.

n) If issues of peace officer manning, or peace officer, firefighter or paramedic equipment are raised, unless otherwise agreed to by the parties, the panel shall receive evidence concerning the existence of a serious safety risk beyond that which is inherent in the normal performance of the employee's duties and evidence concerning the merits of the issue in the same proceeding.

o) The arbitration panel:

- 1) shall determine which issues are in dispute and which of those issues are economic issues and serve a copy of that determination on the parties and require the parties to submit their final offers of settlement on each economic issue in dispute.
- 2) need not determine whether, with regard to protective service employees, equipment or manning issues involve serious safety risks beyond that which is inherent in the normal performance of the employees' duties at this stage of the proceeding.
- 3) may allow the parties reasonable additional time, as determined by the number and the complexity of the issues, for presenting written or oral arguments in support of their positions. The hearing shall be considered concluded when final

offers are submitted or when written or oral arguments are presented, whichever is later.

- 4) where the Board has issued an order or the General Counsel has issued a declaratory ruling, or issue concerning the mandatory or non-mandatory nature of a matter in dispute between the parties, allow parties to amend those aspects of their final offers affected by the Board Order or General Counsel's declaratory ruling.
- p) The neutral chairman's fee, and costs of recording and transcribing the hearing, the rent, if any, for the hearing room, and all other costs of the proceeding, except for supplemental proceedings necessitated by an employer's rejection of an arbitration award, shall be shared equally by the parties.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.100 The Arbitration Award**

- a) *Within 30 days after the conclusion of the hearing or such further additional periods to which the parties may agree* (Section 14(g) of the Act), the panel shall issue, serve on the parties, and file with the Board its award and findings of fact. The panel shall file a hard copy and a computer disk copy of the award and findings of fact with the Board. The award shall be considered issued on the date it is served on the parties. The panel shall file a certificate of service with the Board.
- b) The award shall contain findings of fact and a written opinion concerning each issue in dispute. *The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive.* (Section 14(g) of the Act) With respect to each economic issue in dispute, the panel shall adopt the final offer of one of the parties, based on the following factors:
  - 1) *The lawful authority of the employer* (Section 14(h)(1) of the Act);
  - 2) *Stipulations of the parties* (Section 14(h)(2) of the Act);
  - 3) *The interests and welfare of the public and the financial ability of the unit of government to meet these costs* (Section 14(h)(3) of the Act);
  - 4) *Comparison of the wages and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
    - A) *In public employment in comparable communities;*
    - B) *In private employment in comparable communities* (Section 14(h)(4) of the Act);
  - 5) *The average consumer prices for goods and services, commonly known as the cost of living* (Section 14(h)(5) of the Act);

- 6) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received*-(Section 14(h)(6) of the Act);
  - 7) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings* (Section 14(h)(7) of the Act);
  - 8) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment* (Section 14(h)(8) of the Act).
- c) With respect to each noneconomic issue in dispute, the panel shall base its award on the applicable factors set forth in subsection (b) of this Part.
  - d) If peace officer manning issues, or peace officer, firefighter or paramedic equipment issues are in dispute, the panel shall first make its findings and conclusions concerning the presence of a serious risk to employee safety beyond that which is inherent in the normal performance of the employee's duties. If the panel finds that such a serious risk exists, the panel shall render an award in accordance with this Part.
  - e) *The commencement of a new municipal fiscal year after the initiation of arbitration procedures* (Section 14(j) of the Act) shall not render the proceeding moot. Awards of wage increases may be effective only at the start of the fiscal year beginning after the date of the award; however, if a new fiscal year began after the initiation of arbitration proceedings, an award of wage increases may be retroactive to the beginning of that fiscal year.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.110 Employer Review of the Award**

- a) *All of the terms decided upon by the arbitration panel shall be included in an agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or equivalent appropriate means.* (Section 14(n) of the Act)
- b) *The governing body shall review each term decided by the arbitration panel.* (Section 14(n) of the Act)
- c) The governing body may reject any terms of the award *by a three-fifths vote of those duly elected and qualified members of the governing body.* (Section 14(n) of the Act) The rejection vote must occur within 20 days after service of the award. The governing body shall provide written reasons for its rejection and shall serve those reasons on the parties and the neutral chairman no later than 20 days after the rejection vote. The governing body shall file a copy of its reasons and a certificate of service with the Board. The reasons for rejection shall be considered issued on the date that they are served on the neutral chairman.
- d) Any terms not rejected in accordance with this Section shall become a part of the parties' collective bargaining agreement.

- e) The neutral chairman shall call together the panel and convene a supplemental interest arbitration hearing within 30 days after issuance of the reasons for rejection. The supplemental hearing shall be conducted in accordance with Section 1230.90.
- f) The parties may mutually agree to select a different neutral chairman for the supplemental hearing, provided they notify the Board and the original neutral chairman within 7 days after service of the reasons for rejection of the award.
- g) *All reasonable costs of such supplemental proceedings, including the exclusive representative's reasonable attorney's fees, shall be paid by the employer.* (Section 14(o) of the Act) If the employer refuses to pay any costs or attorney's fees, the exclusive representative may submit the costs and/or fees to the Board's General Counsel for a determination of reasonableness. The General Counsel shall certify the amount determined to be reasonable and the employer shall promptly pay that amount to the exclusive representative.
- h) Any supplemental award rendered by the arbitration panel shall be subject to governing body review in accordance with this Section.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

## SUBPART C: IMPASSE PROCEDURES FOR GENERAL PUBLIC EMPLOYEE UNITS

### **Section 1230.120 General Purpose of This Subpart**

This Subpart governs employees with the right to strike, provided that certain conditions are met. The Act requires that the parties attempt to mutually resolve their bargaining disputes prior to resorting to a strike. To facilitate amicable settlement between the parties, the Board shall provide, in accordance with this Subpart, services of mediators, interest arbitrators and fact-finders. All costs of such services shall be shared equally by the parties.

### **Section 1230.130 Filing of Contracts (Repealed)**

(Source: Repealed at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.140 Bargaining Notices for General Public Employee Units**

The following notice requirements shall apply when the parties are bargaining for a successor contract for a general public employee unit:

- a) Pursuant to Section 7 of the Act, any party wishing to terminate or modify an existing collective bargaining agreement shall serve on the other party a written demand for bargaining. The demand for bargaining shall be served on the other party 60 days prior to the scheduled termination date of the existing agreement. Service of the demand for bargaining *continues in full force and effect, without resort to strike or lockout, all the terms and conditions of the existing contract for a period of 60 days after such demand notice is given to the other party or until the expiration date of such contract, whichever occurs later.* (Section 7(4) of the Act) A copy of the demand for bargaining shall be filed with the Board by the party making the demand at the same time it is served on the other

party. The demand for bargaining shall reference the existing contract's number as assigned pursuant to Section 1230.130 of this Part.

- b) Upon completing negotiations for either a successor or initial contract, the parties shall file with the Board a copy of the contract pursuant to Section 1230.145 of this Part.
- c) Any time after the parties have commenced negotiations, either party may request fact-finding or mediation/arbitration services. Such requests shall be filed in accordance with this Subpart.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.150 Mediation**

- a) Requests for mediation shall be on a Board-designated form. Joint requests for mediation must be made in writing.
- b) Requests for mediation in negotiations for either successor or initial contracts may be made at any time after the parties have commenced negotiations.
- c) Requests for mediation shall generally be made jointly. Unilateral requests for mediation may be made only after the party requesting mediation has asked the other party to join in the request and the other party has refused. Unilateral requests for mediation shall be accompanied by a written statement setting forth the circumstances of the other party's refusal to join in the request. Upon receipt of a unilateral request for mediation, the Board shall investigate the request. If the Board's investigation discloses that the request was properly filed under this Part, that bargaining has not resulted in an agreement, and that mediation would assist the parties, the Board shall grant the request. Unilateral requests filed by the exclusive representative in conformance with this Section shall satisfy the precondition for a lawful strike set forth in Section 17(a)(4) of the Act.
- d) Whenever the Board grants a request for mediation it shall provide the parties with a panel of at least 3 mediators listed on the Public Employees Mediation/Arbitration Roster. The parties shall have 7 days from receipt of the list to choose one of the persons on the panel or any other person they choose to serve as mediator. If at the end of this 7-day period the parties have not notified the Board of their selection, the Board shall appoint a mediator.
- e) Mediation shall be conducted as follows:
  - 1) *The function of the mediator shall be to communicate with the employer and the exclusive representative or their representatives and to endeavor to bring about an amicable and voluntary settlement. (Section 12(a) of the Act)*
  - 2) The mediator may hold joint and separate conferences with the parties. The conferences shall be private unless the parties otherwise agree.
  - 3) Information disclosed by a party to a mediator in the performance of mediation functions shall not be disclosed voluntarily or by compulsion. All files, records, reports, documents, or other papers prepared by a mediator shall be considered confidential. The mediator shall not produce any confidential records of, or testify

in regard to, any mediation previously conducted, on behalf of any party to any case pending in any type of proceeding.

- 4) The mediator shall keep the Board apprised of the status of the negotiations.
- f) Compensation of the mediator shall be paid equally by the parties; however, *if either party requests the use of mediation services from the federal mediation and conciliation service, the other party shall either join in such request or bear the additional cost of mediation services from another source.* (Section 17(a)(5) of the Act)

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.160 Fact-finding**

- a) The parties may agree in writing to the use of fact-finding in resolving their disputes.
- b) Requests for fact-finding shall be filed on a Board-designated form and shall be accompanied by a copy of the parties' agreement to use fact-finding.
- c) Upon receipt of the request for fact-finding, the Board shall supply the parties with a list of 7 fact-finders listed on the Public Employees Mediation/Arbitration Roster. The parties shall select one individual from the list to serve as fact-finder within 10 days of service of the list. If the parties advise the Board that they are unable to select one of the 7 individuals on the list, the Board shall provide a second list. Except in extraordinary circumstances, the Board shall not provide more than 2 lists. The parties shall notify the Board of the name of the individual they select to serve as fact-finder. Upon being so notified, the Board shall appoint the fact-finder.
- d) If fact-finding follows mediation, the parties may agree to use the mediator as fact-finder, provided that the mediator is not a Board employee.
- e) The fact-finding hearing shall be conducted as follows:
  - 1) *The person appointed as fact-finder shall immediately establish the dates and place of hearing.*
  - 2) *Upon request, the Board shall issue subpoenas for hearings conducted by the fact-finder.*
  - 3) *The fact-finder may administer oaths.* (Section 13(b) of the Act)
- f) The fact-finder shall issue a report and findings as follows:
  - 1) The fact-finder shall serve these findings and report on the parties and the Board within 45 days after the fact finder's appointment, unless the parties mutually agree to extend the time period.
  - 2) Within 5 days after service of the findings and report, the fact-finder shall mail the findings and report to all newspapers of general circulation in the community as mutually designated by the parties, unless the parties mutually request otherwise.

- g) The costs of the fact-finding proceeding shall be shared equally by the parties.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.170 Voluntary Interest Arbitration**

- a) The parties may voluntarily agree in writing to use interest arbitration.
- b) The parties may request a list of interest arbitrators from the Board by completing a Board-designated form and a copy of their agreement to use interest arbitration. Upon receipt of the request, the Board shall provide the parties a list of up to 7 interest arbitrators from the Public Employees Mediation/Arbitration Roster. If the parties are unable to select an arbitrator from the list provided by the Board, upon request, the Board shall provide a second list of interest arbitrators to the parties. Except under extraordinary circumstances, the Board shall provide no more than 2 lists.
- c) The neutral interest arbitrator selected by the parties shall conduct the voluntary interest arbitration in accordance with the agreement of the parties. The interest arbitrator or interest arbitration panel shall use the factors set forth in Section 1230.100(b) of this Part as guidelines in rendering the award.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.180 Strikes**

Employees in general public employee units have the right to strike, provided that the following conditions have been met:

- a) *The employees are represented by an exclusive bargaining representative (Section 17(a)(1) of the Act) that has been certified by the Board or that has a valid claim to status as an historical bargaining representative pursuant to Section 3(f) of the Act.*
- b) *The collective bargaining agreement between the public employer and the public employees, if any, has expired, or such agreement does not prohibit the strike. (Section 17(a)(2) of the Act) Pursuant to Section 8 of the Act, a collective bargaining agreement must contain provisions prohibiting strikes for the agreement's duration and providing for a grievance procedure culminating in final and binding arbitration of disputes over the interpretation of the agreement unless the parties agree to forgo these provisions.*
- c) *The public employer and the labor organization have not mutually agreed to submit the disputed issues to final and binding arbitration. (Section 17(a)(3) of the Act)*
- d) *The exclusive representative has requested a mediator pursuant to Section 12 of the Act and Section 1230.150 of this Part and mediation has been used. (Section 17(a)(4) of the Act)*
- e) *At least 5 days have elapsed after a notice of intent to strike has been given by the exclusive representative to the public employer. (Section 17(a)(5) of the Act) A copy of the notice shall be filed with the Board and shall reference the contract number in cases of negotiations for successor contracts or the certification case number in cases of*

negotiations for initial contracts. The 5 day time period shall be calculated in accordance with 80 Ill. Adm. Code 1200.30(a) and (b).

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

### **Section 1230.190 Petitions for Strike Investigations**

- a) *If a strike, which may constitute a clear and present danger to the health and safety of the public is about to occur or is in progress, the public employer concerned may file with the Board a petition for a strike investigation (Section 18(a) of the Act).*
- b) A petition for a strike investigation shall be on a Board-designated form and shall contain:
  - 1) the name, address and telephone number of the petitioner;
  - 2) the name, address, telephone number and affiliation, if any, of the labor organization that is threatening or conducting the strike;
  - 3) the name, address and telephone number of the parties' representatives;
  - 4) the date that the strike began or is threatened to begin;
  - 5) a detailed description of the danger posed by the strike to the public health and safety.
- c) Petitioner shall attach to its petition copies of all relevant evidence, including affidavits, of the existence of a strike or the threat of a strike, and of the existence of a *clear and present danger to the health and safety of the public*. (Section 18 of the Act)
- d) The employer shall serve a copy of the petition on the labor organization prior to or simultaneously with its filing with the Board. Service shall be in person or by overnight delivery.
- e) The Board shall investigate the petition. If there are disputed issues of material fact, the Board shall hold an expedited hearing. The Board shall issue its findings within 72 hours following the filing of the petition.
- f) If the Board finds that there is no strike or threat of a strike, or that there is no *clear and present danger to the health and safety of the public* (Section 18 of the Act), or that the employer is otherwise not entitled to relief pursuant to Section 18 of the Act, the Board shall serve its findings on the parties. The employer may refile its petition for a strike investigation only if it alleges that circumstances have changed since the filing of the Board's findings.
- g) If the Board finds that there is a strike or a threat of a strike that poses a *clear and present danger to the health and safety of the public* (Section 18 of the Act), and the Board finds that the employer is otherwise entitled to relief pursuant to Section 18 of the Act, the Board shall serve its findings on the parties.

- h) Whenever a court enjoins a strike and orders interest arbitration in accordance with Section 14 of the Act, Section 1230.80 through 1230.110 of this Part shall govern the arbitration.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

#### SUBPART D: GRIEVANCE ARBITRATION AND MEDIATION

##### **Section 1230.200 Grievance Arbitration**

- a) Unless mutually agreed otherwise, every collective bargaining agreement between an employer and a labor organization that covers employment subject to the Act shall contain a grievance procedure that has as its last step final and binding grievance arbitration. The parties may use the Illinois Public Employees Mediation/Arbitration Roster or any other source for selection of grievance arbitrators.
- b) Whenever either party requests, unless the collective bargaining agreement provides for an alternative source, the Board shall provide a panel of up to 7 grievance arbitrators selected from the Illinois Public Employees Mediation/Arbitration Roster. Requests shall be submitted on a Board-designated form. If the parties are unable to select an arbitrator from the first panel, the Board shall provide a second panel. The Board shall not provide more than 2 panels.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

##### **Section 1230.210 Grievance Mediation**

If the parties desire an individual from the Public Employees Mediation/Arbitration Roster to mediate one or more grievance, requests shall be made and processed in the same manner as requests for grievance arbitrators.

#### SUBPART E: ILLINOIS PUBLIC EMPLOYEES MEDIATION/ARBITRATION ROSTER

##### **Section 1230.220 Mediation/Arbitration Roster**

- a) The Board shall establish an Illinois Public Employees Mediation/Arbitration Roster and shall make its services available for mediation, fact-finding, interest arbitration, grievance arbitration, and grievance mediation. The Roster shall list qualified mediators, fact-finders, interest arbitrators, and grievance arbitrators. A person may be qualified in more than one category.
- b) Appointment to the Roster shall be based upon a majority vote of the members of the Board, after application by the individual. The application shall be on a form developed by the Board.
- c) In making appointments to the Roster, the Board shall consider such factors as experience and training, membership on other recognized mediation or arbitration panels,

education, prior published awards, current advocacy in employment relations matters, letters of recommendation supporting the application, and any other relevant material supplied by the applicant or requested by the Board. Individuals appointed to the Roster shall be residents of the State of Illinois. The members of the Public Employees Mediation/Arbitration Roster are persons who are on the labor arbitration panels of either the American Arbitration Association or the Federal Mediation and Conciliation Service or who are members of the National Academy of Arbitrators.

- d) Individuals appointed to the Roster shall file with the Board a brief biographical sketch, a concise resume of their experience relevant to the position for which they are listed and a fee schedule. Whenever an individual is selected to serve in a case, that individual shall not charge a fee greater than that listed in the fee schedule an individual has filed with the Board. A minimum of 30 days notice shall be given to the Board for changes in fee schedules.
- e) Requests for panels from the Roster shall be submitted on a form developed by the Board and shall include:
  - 1) The name, address, telephone number and affiliation, if any, of the parties submitting the request;
  - 2) The name, address and telephone number of the parties' representatives;
  - 3) The type of service requested; and
  - 4) A brief description of the nature of the dispute, including unresolved issues, to the extent known.
- f) Whenever the Board provides the parties with a panel selected from the Roster, the Board shall provide copies of the biographical sketches and fee schedules of the panelists.
- g) The parties may jointly request that panels submitted to them contain or omit specific individuals. No party may unilaterally make such a request.
- h) Individuals listed on the Roster shall abide by the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, as amended, effective May 29, 1985, and adopted by the National Academy of Arbitrators and the American Arbitration Association, and shall take the constitutional affirmation of office. This incorporation by reference does not contain any further amendments.

(Source: Amended at 27 Ill. Reg. 7393, effective May 1, 2003)

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE C: LABOR RELATIONS  
CHAPTER IV: ILLINOIS LABOR RELATIONS BOARD

PART 1240  
POLICE OFFICER DECERTIFICATION PROCEEDINGS

Section	
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AUTHORITY: Implementing Section 6.1 of the Illinois Police Training Act [50 ILCS 705/6.1] and authorized by the Illinois Public Labor Relations Act [5 ILCS 315].

SOURCE: Adopted by emergency rulemaking at 28 Ill. Reg. 7531, effective May 12, 2004, for a maximum of 150 days; adopted at 28 Ill. Reg. 15158, effective November 1, 2004.

### **Section 1240.10 General Statement of Purpose**

The regulations contained in this Part detail the procedures for obtaining an Illinois Labor Relations Board hearing to determine decertification of a police officer based upon that officer's commission of perjury in a murder case pursuant to Section 6.1 of the Illinois Police Training Act [50 ILCS 705/6.1]. The Illinois Labor Relations Board does not recognize or effectuate any other type of police officer decertification. The provisions of this Part shall not apply to any charges or petitions filed with the Illinois Labor Relations Board pursuant to the Illinois Public Labor Relations Act [5 ILCS 315].

### **Section 1240.20 Board Information and Business Hours**

The State Panel of the Illinois Labor Relations Board can be contacted at:

Springfield Office:  
320 West Washington Street, Suite 500  
Springfield, Illinois 62701  
(217) 785-3155  
Facsimile: (217)785-4146  
Website: [www.state.il.us/ilrb](http://www.state.il.us/ilrb)

Chicago Office:  
160 North LaSalle Street, Suite S-400  
Chicago, Illinois 60601  
(312) 793-6400  
Facsimile: (312) 793-6989  
Website: [www.state.il.us/ilrb](http://www.state.il.us/ilrb)

The official business hours of the Illinois Labor Relations Board are 8:30 a.m. to 5:00 p.m., Monday through Friday.

### **Section 1240.30 Definitions**

Some of the terms used in this Part have the definition ascribed in Section 6.1 of the Illinois Police Training Act. Other definitions of terms used in this Part follow.

"Act" means the Illinois Police Training Act [50 ILCS 705].

"Administrative Law Judge" means an employee of the Illinois Labor Relations Board who is an attorney licensed to practice in Illinois.

"Board" means the Illinois Labor Relations Board State Panel, individually as applicable, or an agent designated by the Illinois Labor Relations Board State Panel.

"Board agent" means any Board employee who is designated by the Board to perform the acts and/or responsibilities outlined in this Part.

"Complainant" means the individual who has filed a verified complaint or petition for hearing pursuant to Sec 6.1 of the Act [50 ILCS 705/6.1].

"Interested party" means *the defendant or any police officer who has personal knowledge that the police officer who is the subject of a complaint has, while under oath, knowingly and willfully made false statements as to a material fact going to an element of the offense of murder.* [50 ILCS 705/6.1(q)]

"LETSB" means the Illinois Law Enforcement Training Standards Board created by the Illinois Police Training Act [50 ILCS 705].

"Perjury" is, while under oath, knowingly and willfully making false statements as to a material fact going to an element of the offense of murder.

"Petition for hearing" means a document filed with the Board by a defendant or police officer with personal knowledge of perjured testimony in a murder prosecution where there has been a finding of guilt.

"Police officer" or "officer" means any individual who has been certified pursuant to the Act.

"Respondent" means the officer named in a verified complaint or petition for hearing filed pursuant to Section 6.1 of the Act.

"Verified complaint" or "complaint" means the document filed with the Illinois Law Enforcement Training Standards Board by a defendant or police officer with personal knowledge of perjured testimony in a murder prosecution where there has been an acquittal.

#### **Section 1240.40 Board's Jurisdiction**

The Board shall undertake the process of determining whether a police officer has committed perjury only under the following circumstances:

- a) Where there has been an acquittal on a charge of murder and the defendant, or a police officer with personal knowledge of perjury, files a verified complaint with the Illinois Law Enforcement Training Standards Board (LETSB) and LETSB has investigated the case and submitted a report to the Board's Executive Director; or
- b) Where there has been a finding of guilt on the offense of murder and a new trial has been granted on direct appeal or a State post-conviction evidentiary hearing has been ordered based on the claim that a police officer committed perjury and an interested party has filed a timely petition for hearing with the Board.

#### **Section 1240.50 Filing and Service**

- a) General Procedures
  - 1) All initial documents relating to the decertification of police officers, except those filed pursuant to subsection (b), must be filed in the Board's Springfield office (see Section 1240.20). All subsequent documents shall be filed in the Board's Chicago office, as directed by the Board. Two copies of each document shall be filed.

- 2) Documents may be filed by any of the following methods:
  - A) By actual delivery of documents to the Board;
  - B) By first class, registered or certified United States mail or by commercial parcel delivery company; or
  - C) By fax, subject to the following limitations:
    - i) Parties shall transmit one copy of the documents, accompanied by a cover sheet or form identifying the party filing the documents, the total number of pages in the fax transmission, and the name, address, telephone number and fax number of the person sending the fax;
    - ii) The original documents filed by fax shall be mailed or delivered to the appropriate Board office on the same day the fax is transmitted, together with a fax confirmation receipt;
    - iii) The appropriate case number shall be indicated on the front page of each document filed by fax, unless the document is being filed to initiate proceedings before the Board; and
    - iv) If receipt of a fax transmission commences after the close of the Board's business hours, the documents will be deemed filed on the next business day.
- 3) All petitions for hearing, amendments to verified complaints and amendments to petitions for hearing shall be served on the appropriate parties by the Board by certified mail. All other documents shall be served by the party filing the document on all other parties to the proceeding. The document shall not be considered properly served unless accompanied by proof of service. Proof of service shall consist of a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service.
- 4) When a party is represented in a proceeding before the Board, service shall be on the party's representative. When a party is not represented, service shall be on the party.
- 5) A document shall be considered filed with the Board on the date that it is postmarked, tendered to a delivery service or received by personal delivery in the appropriate Board office before the close of the Board's business hours. Service made by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with the same-day mailing of a copy of the papers, postage pre-paid and properly addressed, to the person being served.

b) Cases Arising Upon Acquittal

- 1) In the case of an acquittal on a charge of murder, the defendant in the criminal case or a police officer with personal knowledge of perjured testimony may file a verified complaint with the Executive Director of LETSB, pursuant to 20 Ill. Adm. Code 1720.120.

- 2) The Illinois Labor Relations Board will not accept the filing of the verified complaint at its offices.
- c) Cases Arising Upon a Finding of Guilt
- 1) In the case of a finding of guilt on the offense of murder, the Board will hold a hearing where either a new trial was granted on direct appeal or a State post-conviction evidentiary hearing has been ordered *based on a claim that a police officer, under oath, knowingly and willfully made false statements as to a material fact going to an element of the offense of murder.* [50 ILCS 705/6.1(k)]
  - 2) An interested party must file a petition for hearing with the Board within 2 years after the court's decision in order for the petition to be considered timely filed.
  - 3) The petition for hearing must contain the following information:
    - A) names and, to the extent known, addresses of individuals and representatives of the parties involved;
    - B) a summary of the procedural history of the underlying criminal case;
    - C) a description of the conduct alleged to be remediable by the Board within the meaning of Section 6.1 of the Act; and
    - D) a copy of the court order granting either a new trial or a State post-conviction evidentiary hearing.

### **Section 1240.60 Investigation**

- a) Cases Arising Upon a Finding of Acquittal
- 1) LETSB will investigate the verified complaint pursuant to 20 Ill. Adm. Code 1720.120.
  - 2) Upon receipt of a report from LETSB, the Illinois Labor Relations Board's Executive Director shall, within 30 days, review the investigative report and determine whether sufficient evidence exists to conduct an evidentiary hearing on the verified complaint.
    - A) If the Executive Director determines that a hearing should not be conducted, a written order dismissing the complaint will be issued. *This decision is in the Executive Director's sole discretion, and this dismissal may not be appealed.* [50 ILCS 705/6.1(j)]
    - B) If the Executive Director determines that there is sufficient evidence to warrant a hearing to determine, by clear and convincing evidence, whether a police officer, under oath, knowingly and willfully made false statements as to a material fact going to an element of the offense of murder, he or she will issue an order notifying the parties that a hearing in the matter has been granted. The Executive Director will assign the case to an

Administrative Law Judge within 30 days following that order. The Board will serve a copy of the verified complaint and a copy of the Executive Director's order on the Illinois Department of Professional Regulation within 30 days after issuance of the Executive Director's order.

- b) Cases Arising Upon a Finding of Guilt
  - 1) If a complainant seeks a Board-conducted hearing where either a new trial has been granted on direct appeal or a State post-conviction evidentiary hearing has been ordered based upon the claim that a police officer committed perjury, the Board's Executive Director will assign the case to an Administrative Law Judge within 30 days after filing of the petition for hearing. The Board will serve a copy of the petition for hearing on the Department of Professional Regulation within 30 days after filing of the petition for hearing.
  - 2) If a complainant seeks a Board-conducted hearing where the requirements set forth in Sections 1240.40(b) and 1240.50(c) have not been met, the Executive Director will issue an order dismissing the petition without prejudice.
  - 3) Appeal of Dismissal
    - A) Parties may appeal the dismissal to the Board by filing an appeal with the Board's General Counsel, in the Board's Chicago office, no later than 10 days after service of the Executive Director's dismissal. The appeal shall be served on all other parties by the party filing the appeal.
    - B) A party may file a response to the appeal and any materials in support of the response no later than 5 days after service of the appeal. The response shall be served on all other parties by the party filing the response.
    - C) The Board will review the dismissal only upon the timely filing of an appeal. Parties desiring oral argument before the Board shall request oral argument and state the reasons for the requests in their appeals or responses. The Board shall grant or deny requests for oral argument depending on the significance, complexity and novelty of the issues. In addition, the Board may, on its own motion, request oral argument, depending upon the significance, complexity and novelty of the issues. The Board may adopt all, part or none of the order depending on the extent to which it is consistent with the record and applicable law. The Board shall issue and serve on all parties its decision.

### **Section 1240.70 Hearing**

An Administrative Law Judge (ALJ) employed by the Board shall conduct a hearing for the purpose of receiving into evidence relevant testimony and documents to support or disprove the allegations of perjury. The ALJ shall make a recommended decision to the Board as to whether the complainant proved by clear and convincing evidence that the respondent had, while under oath, knowingly and willfully made false statements as to a material fact going to an element of the offense of murder.

- a) Process
- 1) The ALJ shall set dates for a hearing and serve notice of the hearing on all parties. A hearing shall be set not less than 14 days after service of the verified complaint or petition for hearing on the Illinois Department of Professional Regulation (DPR).
  - 2) DPR shall proceed first and present its case in support of the verified complaint or petition for hearing. DPR shall have the burden of proving the allegations in the verified complaint or petition for hearing by clear and convincing evidence. After DPR has completed presenting its case, the Respondent may present evidence in support of his/her defense.
  - 3) The ALJ shall inquire fully into all matters in dispute and shall obtain a full and complete record either by taking evidence or accepting parties' stipulations.
  - 4) Upon request, a party is entitled to a reasonable period of time at the close of the hearing for oral argument, which shall be made part of the record. The ALJ may direct the filing of briefs when the filing is, in the opinion of the ALJ, warranted by the nature of the proceedings or the particular issues involved.
  - 5) The ALJ shall issue a recommended decision. That recommended decision shall be served upon all parties to the proceeding and upon the Executive Director of LETSB.
- b) Intermediate Rulings  
Intermediate rulings of the ALJ shall not be subject to interlocutory appeal. Parties may raise objections to intermediate rulings in their exceptions to the ALJ's recommended decision.
- c) Amendments to Complaints  
The ALJ, on his or her own motion, or on the motion of a party, may allow amendments to the verified complaint or petition for hearing only if the amendments are related to the allegations that the respondent knowingly and willfully made false statements as to a material fact going to an element of the offense of murder.
- d) Recording of Hearings  
Whenever a hearing is held pursuant to the provisions of this Part, it shall be recorded by stenographic or other means that adequately preserves the record. The ALJ or the Board may order that the hearings be transcribed. Parties may order transcripts and shall bear the costs of any transcripts that they order.
- e) Rules of Evidence  
Considering the nature of the case and the representatives of the parties, the ALJ will, insofar as practicable, apply the rules of evidence applicable in Illinois courts. The ALJ may, upon proper objection, exclude evidence that is irrelevant, immaterial or unduly repetitious. Evidence may be presented in the form of testimony, exhibits or stipulations. Testimonial evidence shall be taken only on oath or affirmation.

- f) **Brief Requirements**  
All briefs shall be no more than a total of 50 double-spaced pages with margins of at least ½ inch, including attachments. All of the pages in excess of the 50-page limit will be rejected. The ALJ may grant approval of briefs containing more than 50 pages only in extraordinary circumstances (e.g., in cases involving extremely complex issues, in cases involving factual or legal issues of first impression or in cases involving a lengthy factual record).
- g) **Security**  
The ALJ may, for safety and security reasons, convene the hearing at a location different from the Board's offices.

### **Section 1240.80 Authority of Administrative Law Judges**

The Administrative Law Judge (ALJ) shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order and to ensure development of a clear and complete record. The ALJ shall have all powers necessary to achieve these ends, including, but not limited to, the discretionary authority to:

- a) Require the parties to participate in a pre-hearing conference before proceeding with a hearing;
- b) Require all parties to submit pre-hearing information, including, but not limited to, a detailed written statement of the issue to be resolved at hearing and its position; a list of witnesses each party intends to call, the nature of their testimony, the estimated time for each witness' testimony, and the estimated time for the party's case in chief; a list of exhibits to be offered by each party in its case in chief and a copy of each exhibit; and all other information the ALJ requests;
- c) Regulate the proceedings of the case and the conduct of the parties and their counsel;
- d) Administer oaths and affirmations;
- e) Receive relevant testimony and evidence;
- f) Establish reasonable limits on the frequency and duration of the testimony of any witness and limit repetitious or cumulative testimony;
- g) Examine witnesses and direct witnesses to testify; however, this provision does not lessen any party's burden of proof;
- h) Issue subpoenas and rule upon motions to revoke subpoenas;
- i) Take administrative notice of generally recognized facts of which Illinois courts may take judicial notice and of other facts within the specialized knowledge and experience of the Board;
- j) Rule on objections, motions and questions of procedure;
- k) Authorize the submission of briefs and set the time for their filing;

- l) Hear closing argument;
- m) Order a hearing reopened prior to the issuance of the ALJ's recommended decision;
- n) Render and serve the recommended decision on the parties to the proceeding;
- o) Carry out the duties of ALJs as provided or otherwise authorized by this Part, 80 Ill. Adm. Code 1200, 1210, 1220 or 1230, or Section 6.1 of the Act.

### **Section 1240.90 Computation and Extensions of Time**

- a) In computing any period of time prescribed by this Part, the designated period of time begins to run the day after the act, event, or default and ends on the last day of the period so computed. If the last day falls on a Saturday, Sunday, or legal holiday, the time period shall be automatically extended to the next day that is not a Saturday, Sunday or legal holiday.
- b) When a time period prescribed under this Part is less than 7 days, intervening Saturdays, Sundays, or legal holidays shall not be included.
- c) Service of a document upon a party by mail shall be presumed complete 3 days after mailing, if proof of service shows the document was properly addressed. This presumption may be overcome by the addressee, with evidence establishing that the document was not delivered or was delivered at a later date. A party's failure to accept or claim a document served by mail shall not be grounds for overcoming the presumption.
- d) Requests for postponements of hearings shall be filed in accordance with Section 1240.100. Requests for postponements of investigations or scheduled conferences, as well as requests for extensions for the filing of briefs, exceptions or responses must be made prior to the existing deadlines. Such requests will not be granted unless good and sufficient cause is shown and the following requirements are met:
  - 1) all requests must be in writing directed to the Administrative Law Judge, Executive Director or General Counsel responsible for the proceeding;
  - 2) the grounds for the request must be set forth in detail;
  - 3) the requesting party must specify alternative dates for scheduling the hearing or conference or for the due date of any documents;
  - 4) the position of all parties concerning both the postponement or extension requested and the proposed alternative dates must be ascertained in advance by the requesting party and set forth in the request;
  - 5) for the purposes of this Section, good and sufficient cause may include a showing to the satisfaction of the Board or its agents that a postponement or extension will result in settlement of the case;
  - 6) except for good cause shown, no request for postponement will be granted on any of the 3 days immediately preceding the date of a hearing, investigation or conference;

- 7) all continuances must be to a date and time certain; in no event shall an indefinite continuance be granted.

### **Section 1240.100 Motions**

- a) In matters set for hearing, all motions must be filed with the assigned Administrative Law Judge (ALJ). Once the ALJ's recommended decision has issued, all motions should be filed with the General Counsel in the Board's Chicago office.
- b) Motions must be made in writing unless made during the hearing, at which time the motions may be made orally on the record. Motions must briefly state the grounds for the motion and any relief requested. Written motions must be served in accordance with Section 1240.50.
  - 1) Motions to extend time for the filing of documents must contain a statement that the moving party discussed the requested extension with the other parties. If no objections were raised, the moving party must certify that the other parties were consulted and authorized the moving party to represent that they have no objections. If objections were raised, the moving party must describe those objections and its response.
  - 2) At any time prior to the issuance of the recommended decision, a party may move to disqualify the ALJ on the grounds of bias or conflict of interest. The motion shall be in writing to the General Counsel, with a copy to the ALJ, setting out the specific instances of bias or conflict of interest. An adverse decision or ruling, in and of itself, will not be considered grounds for disqualification. The General Counsel may decline to disqualify the ALJ or may appoint another ALJ to hear the case.
- c) Responses and any other answering documents, including memoranda and affidavits, must be filed within 5 days after service of the motion, or as otherwise required by the ALJ or the Board. Responses must be served in accordance with Section 1240.50.
- d) Rulings on motions shall be made in writing and served on all parties to the proceeding. The ALJ may reserve ruling on any motion until the issuance of the recommended decision.
- e) Rulings on motions shall not be appealed to the Board, unless as otherwise provided by the Board.

### **Section 1240.110 Subpoenas**

The Board, upon the request of an Administrative Law Judge (ALJ) or upon the written application of a party, shall have the power to issue subpoenas for witnesses and subpoenas for documents.

- a) Subpoenas for Witnesses
  - 1) A party's written application for subpoenas for witnesses must be directed to the ALJ, and must contain the following information:

- A) the title and case number of the proceeding;
  - B) the name, address and phone number of the party requesting the subpoena and its representative;
  - C) the name of the person to be subpoenaed; and
  - D) the date, time and place of the appearance to be commanded.
- 2) Applications must be filed with the Board and served on the other parties to the case at least 10 days before the hearing. The requested subpoenas may be picked up at the Board's office where the hearing will be held or at the office specified by the applicant in the subpoena request. Upon request, the Board will mail the subpoenas to the applicant.
  - 3) The party requesting the subpoenas shall be responsible for serving the subpoenas on the witnesses at least 5 days before the hearing date. The party requesting the subpoenas shall also be responsible for payment of the witness fees for attendance, subsistence and mileage at the time the subpoena is served. Witnesses appearing at a hearing pursuant to subpoena are entitled to the same fees and mileage as are allowed witnesses in civil cases in the courts of the State of Illinois, pursuant to Section 4.3 of the Circuit Court Act [705 ILCS 35/4.3]. The requesting party must tender all fees with the subpoena. A witness appearing at the request of the Board shall submit the subpoena with a voucher when claiming reimbursement.
  - 4) Board employees shall not be subpoenaed to testify regarding matters that occurred during their employment with the Board.
  - 5) Subpoenas shall remain in effect throughout the course of the proceedings.
- b) Subpoenas for Documents (Subpoena Duces Tecum)
- 1) A party's written application for subpoenas for documents must be directed to the ALJ and must contain the following information:
    - A) the title and case number of the proceeding;
    - B) the name, address and phone number of the party requesting the subpoena and its representative;
    - C) a detailed description of the books, papers, documents or other objects to be produced pursuant to the subpoena;
    - D) the name of the person to be served with the subpoena; and
    - E) the date, time and place of production to be commanded.
  - 2) Applications must be filed with the Board and served on the other parties to the case at least 10 days before the hearing and 10 days before the date on which the documents are to be produced. The date and time for production of documents

may be prior to the hearing. The requested subpoenas may be picked up at the Board's office where the hearing will be held or at the office specified by the applicant in the subpoena request. Upon request, the Board will mail the subpoenas to the applicant.

- 3) The party requesting the subpoenas shall be responsible for serving the subpoenas at least 5 days before the hearing date and 5 days before the date on which the documents are to be produced.
  - 4) Confidential Board documents as defined in 2 Ill. Adm. Code 2501.20(c) shall not be subpoenaed.
- c) **Motions to Revoke Subpoenas**  
A person objecting to the subpoena may file a motion to revoke the subpoena. The motion must be filed at least 3 days prior to the hearing and shall be filed with the ALJ assigned to the case. Grounds for revocation shall include irrelevance, undue burden and privilege.

#### **Section 1240.120 Officer Indemnification**

An officer named in any verified complaint shall be indemnified for his or her reasonable attorney's fees and costs by his or her employer. *These fees shall be paid in a regular and timely manner. The State, upon application by the public employer, shall reimburse the public employer for the accused officer's reasonable attorney's fees and costs. At no time and under no circumstances will the accused officer be required to pay his or her own reasonable attorney's fees and costs.* [50 ILCS 705/6.1(l)]

#### **Section 1240.130 Representation of Parties**

- a) A verified complaint or petition for hearing shall be prosecuted by an agent of the Illinois Department of Professional Regulation.
- b) The complainant or respondent may be represented by counsel or any other representative of his or her choosing.
- c) The representative of each party shall file a Notice of Appearance with the Board. Filing pleadings on behalf of a party shall be equivalent to filing a Notice of Appearance.

#### **Section 1240.140 Board Review of the Administrative Law Judge's Recommended Decision**

The State Panel of the Illinois Labor Relations Board shall review the Administrative Law Judge's (ALJ's) recommended decision and determine by a majority vote whether there was clear and convincing evidence that the respondent, while under oath, knowingly and willfully made false statements as to a material fact going to the offense of murder.

- a) Parties may file exceptions to the ALJ's recommended decision and briefs in support of those exceptions no later than 30 days after service of the recommended decision. Exceptions must be filed with the Board's General Counsel in the Board's Chicago office. Exceptions shall specifically set forth the questions of procedure, fact, law or policy to which exception is taken, shall identify that part of the ALJ's recommended decision to

which exception is made, and shall state the grounds for the exceptions and shall include the citation of authorities unless set forth in a supporting brief. Any exception to a ruling, finding, conclusion or recommendation that is not specifically raised shall be deemed to have been waived. Any exception that fails to comply with the foregoing requirements may be disregarded. If no exceptions to the ALJ's recommended decision are filed within the prescribed time period, the parties will be deemed to have waived their exceptions.

- b) Parties may file responses to the exceptions and briefs in support of those responses no later than 15 days after service of the exceptions. Responses shall be limited to the issues raised in the exceptions.
- c) Any brief in support of the exceptions or responses shall be confined to the subjects raised in the exceptions and shall contain:
  - 1) a clear and concise statement of the case containing all that is material to the consideration of the questions presented;
  - 2) a specification of the questions involved and the issues to be argued; and
  - 3) an argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question.
- d) All briefs shall be no more than a total of 50 double-spaced pages with margins of at least ½ inch, including attachments. All of the pages in excess of the 50-page limit will be rejected. The General Counsel may grant approval of briefs containing more than 50 pages only in extraordinary circumstances (e.g., in cases involving extremely complex issues, in cases involving factual or legal issues of first impression, or in cases involving a lengthy factual record).
- e) The Board will review the ALJ's recommended decision upon the timely filing of exceptions. The Board will make a finding to uphold, vacate or modify the recommended decision. The Board may adopt all, part or none of the recommended decision depending on the extent to which it is consistent with the record and applicable law. The Board shall issue and serve its decision and order upon the parties and upon LETSB. If no exceptions to the ALJ's recommended decision are filed within the prescribed time period, the Board's General Counsel shall issue an order so providing and serve it upon the parties and upon LETSB.
- f) *None of the Illinois Labor Relations Board State Panel's findings or determinations shall set any precedent in any of its decisions decided pursuant to the Illinois Public Labor Relations Act by the Illinois Labor Relations Board or the courts. [50 ILCS 705/6.1(o)]*

### **Section 1240.150 Appellate Review**

- a) A party aggrieved by a final order of the Illinois Labor Relations Board State Panel may obtain judicial review of that order in accordance with the provisions of the Administrative Review Law [735 ILCS 5/Art. III], except that such review shall be afforded directly in the Appellate Court for the district in which the accused officer resides. The appeal shall be filed within 35 days from the date that a copy of the Board's decision was served upon the party affected by the decision.

- b) If LETSB has revoked an accused officer's certification as the result of an adverse finding of the Board, the officer may petition the Appellate Court to stay the revocation of his or her certification pending the court's review of the matter.

#### **Section 1240.160 Conflicts of Interest**

No person who has been a Board member or an employee of the Board shall engage in practice before the Board in any respect in connection with any case or proceeding that was pending during the person's membership on or employment with the Board.

#### **Section 1240.170 Ex Parte Communications**

No party or other persons legally interested in the outcome of a hearing may communicate ex parte, either directly or indirectly, with an Administrative Law Judge or with any member of the Board regarding matters pending before the Board.

#### **Section 1240.180 Amicus Curiae Briefs**

Parties may file a motion with the Board to request leave to file an amicus curiae brief or the Board, on its own motion, may solicit such briefs. The Board's standards by which to grant leave to file an amicus curiae brief will include the importance of the issue presented, the general application of the issue presented and the need perceived by the Board for additional briefing on the issue presented. The amicus curiae brief shall conform to any conditions imposed by the Board for briefs in the case in which the brief is filed. Amicus curiae parties may be invited to participate in oral arguments heard by the Board. The Board will accept amicus curiae briefs in its proceedings. The filing of such briefs shall not serve to postpone or delay the proceedings.

#### **Section 1240.190 Variances and Suspensions of Rules**

The provisions of this Part may be waived by the Board when it finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.