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## TITLE 465 – RHODE ISLAND STATE LABOR RELATIONS BOARD

### CHAPTER 10 – GENERAL RULES AND REGULATIONS

#### SUBCHAPTER 00 – N/A

#### PART 1 – Rhode Island State Labor Relations Board - Policies and Procedures

### 1.1 Authority

- A. This Regulation is promulgated pursuant to the authority granted in R.I. Gen. Laws Chapter 28-7.
  - 1. The public policy of the State of Rhode Island, as it relates to labor relations, is to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their Employers.
- B. Composition
  - 1. The composition of the Rhode Island State Labor Relations Board is defined pursuant to R.I. Gen. Laws § 28-7-4.
- C. Jurisdiction
  - 1. State law does not expressly limit the Board’s jurisdiction over Employers; however, the Board’s jurisdiction is preempted as to certain Employers, by Federal law. As a practical matter, for many years, the Board’s cases have been limited to Municipal, State, quasi-Municipal and quasi-State (various “authorities”) Employers.

### 1.2 Definitions

- A. As used in these Regulations and decisions of the Board, the following terms shall be defined as hereinafter set forth:
  - 1. “Act” means Rhode Island Labor Relations Act, R.I. Gen. Laws § 28-7-1 *et seq.*

2. "Accretion" means the process by which positions are added to an existing bargaining unit.
3. "Administrative dismissal" means pursuant to R.I. Gen. Laws § 28-7-9(d), the written discharge of any Unfair Labor Practice Charge after investigation and designated informal hearing process.
4. "Administrative officials" means the highest members of an Employer's executive department; the top level of the Employer's hierarchy, the officials or political appointees of the local government; an officer or political appointee of the executive department of the government.
5. "Ballot harvesting" means the collection of two (2) or more completed mail ballots by one (1) or more person(s) or entity for the purpose of submitting said mail ballots to the Board for counting in a Board conducted mail ballot election.
6. "Board" means the Rhode Island State Labor Relations Board.
7. "Business day" means Monday through Friday, excluding those holidays as enumerated in R.I. Gen. Laws § 25-1-1.
8. "Cards of interest" means a showing of interest for authorization of representation through cards of interest and/or a Petition listing the names, titles of positions, and a showing of an original signature, pursuant to R.I. Gen. Laws § 28-7-9(b)(1).
9. "Casual employee" means those persons hired for an occasional period to perform special jobs or functions.
10. "Certification of Representatives" means the Board's official approval of a bargaining unit, issued upon petition.
11. "Community of interest" means the critical consideration in determining the scope of bargaining units. In determining whether a proposed bargaining unit shares a community of interest, the Board may consider the following factors, among others:
  - a. The similarity in scale and manner of determining earnings;
  - b. Similarity of employment benefits, hours of work, and other terms and conditions of employment;
  - c. Similarity in the kind of work performed;
  - d. Similarity in the qualifications, skills, and training of the employees;

- e. Frequency of contact or interchange among employees;
  - f. Geographic proximity;
  - g. Continuity or integration of production processes;
  - h. Common supervision and determination of labor relations policies;
  - i. Relationship to the administrative organization of the Employer;
  - j. The history of collective bargaining;
  - k. The desires of the affected employees; and
  - l. The extent of Union organization within the Employer's ranks.
12. "Company Union" means any committee, employee representation plan, or association of employees, which exists for the purpose, in whole or in part, of dealing with Employers concerning grievances, or terms and conditions of employment, which the Employer has initiated or created, or whose initiation or creation he or she has suggested, participated in, or in the formulation of whose governing rules or policies, or the conducting of whose management, operations, or elections the Employer participates in or supervises, or which the Employer maintains, finances, controls, dominates or assists in maintaining or financing, whether by compensating anyone for services performed in its behalf or by donating free services, equipment, materials, office or meeting space or anything else of value, or by any other means.
13. "Confidential employee" means those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations, or those employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes, which may result from collective bargaining negotiations.
14. "Confidential information" means information excluded from public access by Federal or State law, or administrative rule, court rule, court or administrative order, or case law.
15. "Consent Election" means an election in which both the employees and Employer agree upon the scope of the proposed bargaining unit; subject to the final approval of the Board and to statutory exclusions of employees, as determined by the Board.

16. “Decertification Signature Cards” means a showing of interest for authorization to displace or decertify a certified or recognized labor organization.
17. “Designation of Bargaining Agent and Waiver of Right to Vote” means a showing of interest for authorization of representation through cards of interest, whereby the parties are deemed to have waived their statutory right to an informal conference and other consent election processes.
18. “Elected official” means those employees who have come to be employed by any city, town, or subdivision of the State, through the electoral process, by its citizens.
19. “Electronic Filing (e-file)” means the electronic transmission of a document to the Electronic Document Management System together with the production and transmission of a notice of electronic filing.
20. “Electronic record” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.
21. “Employee” means includes, but is not restricted to, any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute, or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular Employer, unless the chapter explicitly states otherwise; but shall not include any individual employed by his or her parent or spouse, or in the domestic service of any person in his or her home, or any individuals employed only for the duration of a labor dispute, or any individuals employed as farm laborers.
22. “Employer” means any person acting on behalf of, or in the interest of the Employer, directly or indirectly, with or without his or her knowledge, but a labor organization, or any officer or agent thereof, shall only be considered an Employer with respect to individuals employed by the organization.
23. “Excelsior List” means the listing of the eligible voters by name, address, title, department or division of work.
24. “Formal hearing” means a formal process before the Board members of the Rhode Island State Labor Relations Board that is conducted for the purpose of identifying and hearing issues of fact or law through testimony under oath, by means of an in-person hearing or remote video conferencing, as in accordance with § 1.10 of this Part.

25. “Incumbent” means the current bargaining unit that has been previously certified by the Board through an election process and retains the current Certification of Representatives.
26. “Informal hearing” means a preliminary process that is implemented for the purpose of identifying and narrowing issues of fact or law, by means of either a written submission, remote video conferencing, or an in-person hearing, before the Administrator and/or its Agent of the Board, stating the parties’ position(s) with respect to a newly filed matter, in accordance with § 1.9 of this Part.
27. “Initial Filings – Petitions” means the filing of any Unfair Labor Practice Charge, Petition for Investigation of Controversies as to Representation, Petition for Decertification of a Certified Bargaining Representative, Petition for Unit Clarification and/or Accretion/Exclusion, or a Petition for Affiliation/Merger, before the Rhode Island State Labor Relations Board.
28. “Intervener” means a party who voluntarily interposes in a proceeding with the approval of the Board or its Administrator.
29. “Labor dispute” means includes, but is not restricted to, any controversy between Employers and employees or their representatives, as defined herein, concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to represent, negotiate, fix, maintain, or change terms and conditions of employment, or concerning the violation of any of the rights granted or affirmed by the Act, regardless of whether the disputants stand in the proximate relation of Employer and employee.
30. “Labor organization” means any organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with Employers concerning grievances, terms or conditions of employment, or of other mutual aid and protection, and which is not a company Union, as defined in § 1.2(A)(12) of this Part.
31. “Managerial employee” means those employees who formulate and effectuate management policies by expressing and making operative the decisions of their Employers. Managerial employees must exercise discretion within, or even independently of, established Employer policy and must be aligned with management. An employee may be excluded from a bargaining unit as managerial only if he or she represents management’s interests by taking or recommending discretionary actions that effectively control or implement Employer policy.

32. “Municipal employee” means any employee of a Municipal Employer, whether or not in the classified service of the Municipal Employer, except:
- a. Elected officials and administrative officials;
  - b. Board and commission members;
  - c. Certified teachers, police officers, and fire fighters;
  - d. Confidential and supervisory employees;
  - e. Casual employees, meaning those persons hired for an occasional period to perform special jobs or functions;
  - f. Seasonal employees, meaning those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who are part of an annual job employment program; and
  - g. Employees of authorities except housing authorities not under direct management by a Municipality who work less than twenty (20) hours per week.
33. “Municipal Employer” means any political subdivision of the State, including any town, city, borough, district, school board, housing authority, or other authority established by law, and any person(s) designated by the Municipal Employer to act in its interest in dealing with Municipal employees.
34. “Non-electronic filing” means a process by which a paper document or other non-electronic item is filed with the Board.
35. “Non-electronic signature” means a handwritten signature, signed in blue ink, applied to an original document that is then scanned and electronically filed with the Board in PDF format.
36. “Notice of Electronic Filing Confirmation” means a document generated by the Electronic Document Management System confirming when a document is electronically filed.
37. “Original document” means all documentation filed with the Board, electronically, shall be deemed the original record in each matter.
38. “Party” means any person, employee organization or public Employer who has filed a Petition or Charge under the Act or these Rules; has been named as a party in a Complaint, Petition or other matter under these Rules; or whose Motion to Intervene has been granted by the Board.

39. "Person" means one (1) or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.
40. "Personal Identification Number (PIN) Verification" means a secured four (4) digit number that is used in combination with a party's identifying information, for the purpose of verification of recognition, for the electronic submission of documentation with the Rhode Island State Labor Relations Board.
41. "Petitioner" means the moving party who signs and/or files a Petition.
42. "Policies of Act" means the policies set forth in R.I. Gen. Laws § 28-7-2.
43. "Portable Document Format (PDF)" means an electronic document filed in a portable document format (PDF), which is readable by the free Adobe® Acrobat® Reader.
44. "Professional employee" means:
  - a. Any employee engaged in work:
    - (1) Predominantly intellectual and varied in character; as opposed to routine mental, manual, mechanical or physical work;
    - (2) Involving the consistent exercise of discretion and judgment in its performance;
    - (3) Of such a character that the output produced, or the result accomplished, cannot be standardized in relation to a given period of time;
    - (4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, or from an apprenticeship, or from training in the performance of routine, manual, or physical processes; or
  - b. Any employee who:

- (1) Has completed the courses of specialized intellectual instruction and study described in § 1.2 (A)(44)(a)(4) of this Part; and
  - (2) Is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in § 1.2 (A)(44)(a) of this Part.
45. “Protected information” means any personal information, the nature of which warrants protection from unlimited public access, including:
  - a. Social Security Numbers;
  - b. Financial account numbers;
  - c. Dates of birth;
  - d. Names of minor children;
  - e. Individual taxpayer identification numbers;
  - f. Personal identification numbers; and
  - g. Other unique identifying numbers.
46. “Registered user” means an individual who can electronically file documents through the use of a username and password.
47. “Respondent” means the party who is required to file an Answer to a Petition and/or Complaint for an alleged prohibited practice, requiring the respondent to take some form of action or halt an activity.
48. “Rules and Regulations” means the policies and guidelines of the State Labor Relations Board.
49. “Seasonal employee” means those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who is part of an annual job employment program.
  - a. In connection with this definition, “seasonal basis” shall also mean employment that depends upon, or varies with the seasons of the year, (winter, spring, summer, and fall) or is dependent upon a particular and regular employment.

50. "Signature" means a registered user's username and password accompanied by a "non-electronic signature" and the entry of a PIN.
51. "Signature Affirmation Document" means an affirmation of support by a group of individuals authorizing a transfer procedure by submission of a listing of names, titles of positions, original signatures and date of signatures.
52. "Supervisory employee" means any individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
53. "Table" means any instance that causes a matter to be held by the Board for a short period of time that does not substantiate an abeyance status.
54. "Unfair Labor Practices" means only those unfair labor practices listed in R.I. Gen. Laws §§ 28-7-13 and 28-7-13.1.
55. "Unit Clarification" means a request filed by the exclusive bargaining agent, a Municipality, or the State of Rhode Island, seeking any of the following:
  - a. Accretion of one (1) or more positions to an existing bargaining unit, whether originally constituted through a consent election or a contested election procedure; or
  - b. Exclusion of one (1) or more positions from an existing bargaining unit, whether originally constituted through a consent election or a contested election procedure.
56. "Unit Classification" means the original determination of a bargaining unit, whether done by a consent election or a contested election.

### **1.3 Meetings of the Board**

#### **A. Notice of Board Meetings and Proceedings**

1. The Board shall give written notice of its regularly scheduled monthly meetings at the beginning of each calendar year. The notice shall include the dates, times, locations, and manner of the meetings.

2. The Board shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours excluding weekends and State holidays in the count of hours before the date of the scheduled meeting. The notice shall be filed electronically with the Secretary of State's Office, published on the Board's website at [www.rislrp.ri.gov](http://www.rislrp.ri.gov), posted at the principal office of the Board, and at least in one (1) other prominent location in the agency. The notice shall include, in addition to the date, time, location, and manner, a statement specifying the nature of the business to be discussed. Pursuant to R.I. Gen. Laws § 42-46-6(b), nothing contained therein shall prevent the Board from adding additional items to the agenda, by majority vote of the members.
3. That nothing contained herein shall prevent the Board from holding an emergency meeting, upon an affirmative vote of the majority of the members of the Board, when the meeting is deemed necessary. If such an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable. The notice shall be filed electronically with the Secretary of State's Office, published on the Board's website at [www.rislrp.ri.gov](http://www.rislrp.ri.gov), posted at the principal office of the Board, and at least in one (1) other prominent location in the agency.

#### B. Meeting Locations

1. All meetings of the Board, if held in a facility, shall be accessible to individuals with disabilities in accordance with the Rhode Island Constitution Articles 1 & 2, 29 U.S.C. § 794, R.I. Gen. Laws Chapter 42-87, *et seq.*, and R.I. Gen. Laws Chapter 11-24, *et seq.*

#### C. Minutes of Meetings

1. The Board shall keep minutes of all its meetings. The minutes shall include, but need not be limited to:
  - a. The date, time, location, and manner of the meeting;
  - b. The members of the Board recorded as either present or absent;
  - c. A record by individual members of any vote taken; and
  - d. Any other information relevant to the business of the Board that any member of the Board requested be included or reflected in the minutes.
2. All approved open minutes of all meetings of the Board shall be published on the Board's website at [www.rislrp.ri.gov](http://www.rislrp.ri.gov).

3. The Board shall file electronically with the Secretary of State's Office all approved open minutes of all meetings of the Board within thirty-five (35) days of the meeting or at the next regularly scheduled monthly meeting, whichever is earlier.

D. Quorum; Requirement for Participation in Case

1. Pursuant to R.I. Gen. Laws § 28-7-5, a quorum of two (2) Board members is required for action by the Board in any matter.
2. When deciding any matter, which has been heard formally, any Board member who was not present for all hearings on the matter must first affirm that he or she has read all the transcripts of the case and Briefs filed by the parties (if any), and has reviewed all the evidence submitted therein.

## 1.4 Rules of Practice: Appearances of Representatives

A. Requirements of Entry

1. All person(s) representing any party or appearing *pro se* in any proceeding before the Board shall file an Entry of Appearance, five (5) business days prior to any proceeding, which shall contain the representative's name, address, telephone and facsimile (fax) numbers, electronic mail (e-mail) address, and cellular phone number. The entry shall also specify the represented party. Entry of Appearance forms may be obtained on the Board's website at [www.rislrb.ri.gov](http://www.rislrb.ri.gov).

B. Persons Eligible to Enter an Appearance

1. Representatives may be, but are not required to be, attorneys licensed to practice in the State of Rhode Island. Attorneys who are not licensed to practice in the State of Rhode Island may not appear before the Board in a representative capacity, unless he or she has complied with the applicable Rules and Regulations issued by the Rhode Island Supreme Court for practice within the State of Rhode Island. Out-of-State attorneys are advised to contact the Rhode Island Supreme Court, 250 Benefit Street, Providence, Rhode Island 02903, for further information on practicing before the Rhode Island State Labor Relations Board.
2. Business managers, staff representatives, Union stewards, or any other member(s) of a labor organization, may represent a Union or an individual complainant in any proceeding before the Board. Likewise, labor consultants, town administrators, managers, personnel managers, or any

other member designated by the Employer, shall be permitted to represent any Municipality or the State, in any proceeding before the Board.

3. The Entry of Appearance shall serve as the official address of record for each proceeding. All notices, and oral or written communication from the Board, shall be directed only to the person that has entered his or her appearance. Should a change in representation occur, a Withdrawal of Appearance must be submitted prior to the entry of a new representative. If a Withdrawal of Appearance cannot be produced, an explanation by Affidavit must be submitted. Said submission must be electronically filed (e-filed) in accordance with § 1.5(B)(3) of this Part. Withdrawal of Appearance forms may be obtained on the Board's website at [www.rislr.b.ri.gov](http://www.rislr.b.ri.gov).

C. Practice Before the Board; Limited

1. Any person who, at any time, has been employed by the Board, shall not be permitted to appear as attorney or representative for any person (firm, corporation, or organization) until the expiration of one (1) year from the termination of his or her employment with the Board, nor shall he or she, at any time, be permitted to appear in any case, which was pending before the Board during the period of his or her employment with the Board.

D. Motion for Excusal from Appearance Before the Board

1. All representatives of record shall file a Motion to be excused from every matter assigned before said Board, as applicable. Said Motion for Excusal shall list all cases by name and case number in which the requester has entered an appearance; and a copy of the request shall be certified to all other parties of record.
2. The Motion to be excused from appearance before the Board shall also contain a statement, if applicable, to the effect that none of the matters listed hereto have been assigned for hearing or any other proceeding for the requested excusal dates.
3. If a matter is assigned before this Board during the requested period for excusal, and the party does not request a postponement of said matter, a substitute representative must be noted in said Motion.
4. A postponement of any matter, as a result of a Motion for Excusal, shall be requested in accordance with § 1.8(L) of this Part.

5. If the matters listed in the Motion for Excusal are not scheduled for any hearing or action, the Board's Administrator shall grant the party's request in writing.

E. *Ex parte* Consultations or Communications

1. Unless required for the disposition of *ex parte* matters authorized by law, Board members shall not, directly or indirectly, in connection with any issue of fact or law, communicate with any person or party, or his or her representative, except upon notice and opportunity for all parties to participate.
2. No Board member shall, directly or indirectly, in connection with any matter pending before this Board, communicate with any other members of the Board, except for the Board's legal counsel, the Administrator or its Agent of the Board, without notice and opportunity for all parties to participate.

F. Filing Deadlines

1. The Board shall follow the practice of the Superior Court Rules of Civil Procedure for filing deadlines. Therefore, where a filing deadline falls on a Saturday, Sunday, or legal holiday, as recognized for Rhode Island State Employees, the filing deadline shall be extended to the next earliest business day.

## **1.5 Electronic Document Management System (E-Filing)**

A. Effective Date and Scope

1. This section governs the mandatory electronic filing of all correspondence and documents submitted to the Rhode Island State Labor Relations Board (RISLRB) that are filed on or after January 1, 2016. To the extent the Rules and Regulations in this section are inconsistent with any other administrative rule of the Board, the Rules and Regulations in this section shall govern.

B. Electronic Filing Procedures

1. Conversion of Filings to Portable Document Format (PDF)
  - a. All documentation must be converted to a PDF format before uploading to the Electronic Document Management System.

- (1) The only exception to the aforementioned rule is that of written statements and responses submitted to the Board dealing with Charges of Unfair Labor Practices, which shall also be submitted in "WORD" format.
  - b. Parties shall be required to keep an original of all documentation submitted through the e-filing process, should it be necessary for production.
2. Initial Filing of Petitions
  - a. All initial filings in a proceeding as defined in § 1.2(A)(27) of this Part, shall be submitted to the Board only through the Electronic Document Management System, unless a party to the proceeding is exempt from electronically filing (e-filing) documents in accordance with § 1.5(F)(2)(c) of this Part; and
  - b. The Board will then notify all parties of record of the said filing, as well as the designated informal hearing process, in accordance with § 1.9(A) of this Part.
3. Initial Filings of all Correspondence and other Documentation
  - a. All initial filings of correspondence and other documentation except those enumerated in § 1.5(F)(2) of this Part, are to be submitted through the Electronic Document Management System, unless a party to the proceeding is exempt from electronically filing (e-filing) documents in accordance with § 1.5(F)(2)(c) of this Part.
  - b. All initial filings shall be submitted by electronic transmission (e-mailed) to the opposing party, with a copy (Cc) to the Board's Administrator and must certify the same therein, upon conclusion of the electronic submission to the Board. All filings shall contain a certification of notice in accordance with § 1.6(B) of this Part.
4. Subsequent Filings
  - a. All subsequent filings shall be electronically filed (e-filed) via the Electronic Document Management System to the Board, unless a party to the proceeding is exempt from electronically filing documents in accordance with § 1.5(F)(2)(c) of this Part; and
  - b. All subsequent filings shall be submitted by electronic transmission (e-mailed) to the opposing party, with a copy (Cc) to the Board's Administrator and must certify the same therein, upon conclusion of

the electronic submission to the Board. All filings shall contain a certification of notice in accordance with § 1.6(B) of this Part.

C. Electronic Service and Distribution of Electronic Filings by the Board

1. All correspondence and documentation generated by the Board shall be electronically transmitted (e-mailed) to all parties, except for any “certified” documentation required in accordance with § 1.7(B)(1) of this Part.

D. Format and Redaction of Electronic Documents

1. All documents, except those enumerated in § 1.5(F)(2) of this Part, must be converted to a PDF format before they are filed in the Electronic Document Management System. Prior to filing any document, the registered user shall ensure that any confidential information is omitted or redacted in accordance with § 1.6(C)(1)(a) of this Part, and that protected information is omitted or redacted in accordance with § 1.6(C)(2)(a) of this Part.

E. Pertinent Documentation Related to a Filing

1. Any pertinent documentation related to a filing, for instance, an attachment to a statement of facts or an appendix or exhibit to a Brief, shall be uploaded and electronically filed (e-filed) separately from the original filing.
2. Any additional pages to a filing of a Petition shall be uploaded and electronically filed (e-filed) with the Petition.

F. Mandatory Electronic Filing and Exceptions

1. Electronic Filing – Mandatory: Unless otherwise required or authorized by these rules, all documentation submitted to the Board that are filed on or after January 1, 2016, must be filed using the Board’s Electronic Document Management System.
2. Exceptions
  - a. Cards of interest, Decertification Signature Cards, Signature Affirmation Document, and Designation of Bargaining Agent and Waiver of Right to Vote forms submitted in any proceeding before the Board may not be filed electronically. All cards of interest, Decertification Signature Cards, Signature Affirmation Document, and said Designation of Bargaining Agent and Waiver of Right to Vote forms must be submitted no later than 3:00 p.m. in

accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Petition;

- b. Any item that is not capable of being filed in an electronic format will be filed in a non-electronic format, such as, electioneering paraphernalia; and
- c. Upon a showing of an exceptional circumstance that it is not feasible for an individual to file documents by electronic means, the Board may excuse the individual from electronic filing (e-filing) in a particular proceeding.

### 3. What Constitutes Filing

- a. The electronic filing (e-filing) of a document through the Electronic Document Management System consistent with the procedures specified in the Board's Rules and Regulations, together with the production and transmission of a confirmation of electronic filing, constitutes filing of the document.

### 4. Electronic File Confirmation

- a. Electronic documents are considered to be officially filed upon receipt of the electronic filing (e-filing) confirmation notice. Said filings shall have the same force and effect as documents time stamped in a non-electronic manner. Upon approval of said filing by the Board's Administrator, the filer shall receive confirmation of either acceptance or non-acceptance of said document by the Board.

## G. Date and Time of Filing

### 1. Date of Filing

- a. An electronic filing (e-filing) may be made any day of the week, including holidays and weekends, and any time of the day the Electronic Document Management System is available.

### 2. Time of Filing

- a. A document is timely filed if it is filed by or before 3:00 p.m. on the date the filing is due in accordance with § 1.6(H)(4) of this Part. Documentation received after 3:00 p.m. shall be considered filed and documented on the next regular business day.

## H. Signatures

### 1. Registered User

- a. An individual's username, password, and PIN accompanied by a non-electronic signature, signed in blue ink, serves as the registered user's signature on all electronically filed (e-filed) documents.

### 2. Documents Requiring Oaths, Affirmations, Verification or Certification of Service

- a. Any document filed requiring a signature under oath or affirmation, with verification or certification of service, shall be signed non-electronically, in blue ink, authorized with an assigned PIN upon submission, but shall be electronically filed (e-filed).

### 3. Format

- a. Any filing requiring a signature must be signed, with a non-electronic signature, in blue ink (actual signature scanned). The following information about the person shall be included under the person's signature:
  - (1) Name and title;
  - (2) Name of firm, certified employee organization, or governmental agency;
  - (3) Mailing address;
  - (4) Telephone, cellular number, and facsimile number; and
  - (5) E-mail address.

### 4. Multiple Signatures

- a. By filing a document containing multiple signatures, the registered user confirms that the content of the document is acceptable to all persons signing the document and that all such persons consent to having his or her signature appear on the document.
- b. All documentation filed with multiple signatures, must be submitted as an original, signed in blue ink, to the Board.

## I. Rhode Island State Labor Relations Board E-Filing User Agreement

1. In order to register for an account with the Board's Electronic Document Management System, you must accept the terms and conditions of the "User Agreement". Failure to accept these terms will not allow you to register with the Board's Electronic Document Management System.

J. Registration; Username and Password

1. Registration

- a. Registration Required: Every individual filing a document in a proceeding must register as a registered user of the Electronic Document Management System;
- b. How to Register: To register, the individual must complete the registration process located at [www.rislrj.ri.gov](http://www.rislrj.ri.gov), within the e-filing tab, to create a username and password for the Electronic Document Management System;
- c. Registration Completion: When the registration process is completed, the registered user will be assigned a computer-generated personal identification number (PIN); said PIN confirmation will be sent through the electronic filing registration notification;
- d. Changing Passwords: Once registered, the user may change his or her password. If the registered user believes the security of an existing password has been compromised, it shall be the responsibility of the registered user to change the password immediately;
- e. Changes in Registered User's Contact Information: If a registered user's e-mail address, mailing address, or telephone number(s) changes, the user must promptly make the necessary changes to the registered user's information contained in the Electronic Document Management System;
- f. Changes in Employment Organizations:
  - (1) A username and PIN may not be transferred between employment organizations. Upon cessation of employment, the user agrees to deactivate their Electronic Document Management System registration.
  - (2) Upon re-employment within another organization, an individual must re-register with a new username and

password to receive a new PIN. (Each PIN is specific to the user's work identity).

- g. Duties of Registered User: Each registered user shall ensure that the user's e-mail account information is correct and that the account is monitored regularly; and
- h. Account Deactivation: Withdrawal from participation in the Electronic Document Management System cancels the registered user's profile, but does not authorize non-electronic filing of documents, and is not a withdrawal from a proceeding.

## 2. Use of Username and Password

- a. A registered user is responsible for all documentation filed with the user's username and password, unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

## 3. Username and Password Security

- a. If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username and password shall contact the Board. The individual shall then deactivate the current registration and re-register using a new username and password.

## 4. Denial of Access

- a. The Board may refuse to allow an individual to electronically file or download information in the Electronic Document Management System due to misuse, fraud, or other good cause.

# **1.6 Required Contents of Pleadings and Other Documents**

## A. Pleadings; Construction

- 1. All Pleadings shall be liberally construed.

## B. Certification of Service

- 1. All Motions, Pleadings, and Briefs submitted to the Board must contain a certification of notice that a copy of said document(s) was sent to all other parties' representatives of record, which shall specify the date of notice, method(s) of transmission, and name and address of recipient(s) of notice.

2. Included in every electronic transmission (e-mail) to the opposing party, shall be a copy (Cc) of said transmission to the Administrator of the Board and must certify the same therein.

C. Confidential or Protected Information

1. Confidential Information

- a. When a party files any document, which contains material or a reproduction, quotation, or extensive paraphrase of confidential information as defined by § 1.2(A)(14) of this Part, it is the responsibility of the filer to ensure that confidential information is omitted or redacted. The Board will not review filings to determine whether appropriate omissions or redactions have been made.

2. Protected Information

- a. When a party files any document, which contains protected information as defined by § 1.2(A)(45) of this Part, it is the responsibility of the filer to ensure that the protected information is omitted or redacted from the document before the document is filed; unless the protected information is required by statute or rule to be included or is material to the proceeding. The Board will not review filings to determine whether appropriate omissions or redactions have been made.

D. Requirement to Affix Case Law

1. Every Brief submitted to the Board, for its consideration, shall have appended to it, a copy of every principal Federal case cited therein.

E. Format of Pleadings and Other Papers

1. All Motions, Pleadings, and Briefs submitted to the Board, other than the original Unfair Labor Practice Charge, Petition for Investigation of Controversies as to Representation, Petition for Decertification of a Certified Bargaining Representative, Petition for Unit Clarification and/or Accretion/Exclusion, or Petition for Affiliation/Merger, shall be on letter size paper (eight-and-one-half inches by eleven inches (8.5" x 11") in size), and shall be double-spaced. Footnotes, whenever possible, shall be located on the bottom of the page, wherein the citation occurs. Documents not complying with this requirement shall not be accepted by the Board; and shall be returned with direction.

F. Petitions: Compliance; General Requirements for All Petitions

1. All Petitions filed with the Board shall be typewritten and shall be submitted on legal size paper (eight-and-one-half inches by fourteen inches (8.5" x 14") in size). The petitioner shall submit an original, signed in blue ink, to the Board. Petition forms may be obtained on the Board's website at [www.rislrp.ri.gov](http://www.rislrp.ri.gov).
2. A Petition in a proceeding shall not be dismissed, with prejudice, for failure of the petitioner to set forth in the Petition all the information required. The Petition may, however, not be accepted, in accordance with § 1.5(F)(4) of this Part; and shall be returned to the petitioner for substantial completion. The Petition shall not be considered filed until completed satisfactorily; and a transmission of a confirmation of electronic filing has been received by the party(s).

G. Signatures

1. All documents filed with the Board shall be signed and dated by the party, in blue ink, on whose behalf the filing is made, or by the party's authorized representative. The signature constitutes a certification that the individual signing the document has read the document, knows the contents thereof, and to the best of his or her knowledge and belief that the statements are true, that it is not interposed for delay, and that if the document has been signed by a duly authorized representative, he or she has the full power and authority to do so.

H. Timeframe for Filing of a Charge; Petitions; Motions; Pleadings; Briefs; and Written Documentation

1. The filing date of a Charge or Petition shall be the date that the Charge or Petition is received in the Board's administrative office in accordance with § 1.5(G)(1)(a) of this Part.
2. All said submitted Petitions must be an original Petition, signed in blue ink, at the time of filing.
3. All Motions, Pleadings, Briefs, and all other written documentation shall not be considered timely filed unless received by the filing deadline in accordance with § 1.5(G)(2) of this Part.
4. All the above-mentioned documentation must be received by or before 3:00 p.m. in order to be considered timely filed for that calendar day. Documentation received after 3:00 p.m. shall be considered filed and documented on the next regular business day.

5. Electronic documents are considered to be officially filed upon receipt of the electronic filing (e-filing) confirmation notice. Said filings shall have the same force and effect as documents time stamped in a non-electronic manner. Upon approval of said filing by the Board's Administrator or its Agent, the filer shall receive confirmation of either acceptance or non-acceptance of said document by the Board.

I. Submission of Correspondence

1. All correspondence listed below must be submitted to the Board on "formal letterhead" with an original signature, signed in blue ink, in accordance with § 1.5 of this Part:
  - a. All requests for postponement of informal and formal hearings, as set forth in § 1.8(L) of this Part;
  - b. All requests for abeyances of Unfair Labor Practice Charges and Complaints, as set forth in §§ 1.22(J) and 1.23(L) of this Part;
  - c. All submissions of written statements, as set forth in § 1.9(A) of this Part;
  - d. Parties' response to Investigative Reports as set forth in §§ 1.16(B)(2) and 1.17(B)(2) of this Part; and
  - e. Any and all other written correspondence not stated above.

## 1.7 Miscellaneous Administrative Procedures

A. Certification of Documents by Administrator or an Authorized Agent Designated by the Board

1. The Board's Administrator or its Agent, is hereby authorized and empowered to certify copies of all papers or documents, which are a part of any of the files or records of the Board.

B. Processes and Papers of the Board

1. Unfair Labor Practice Complaint(s), Petition for Unit Clarification and/or Accretion/Exclusion investigative report(s), Subpoena(s), and *Subpoena Duces Tecum*, shall be served by certified mail – return receipt requested, in the proper office or place of business of persons to be served. The return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt

therefore, when certified and mailed as aforesaid, shall be proof of service of the same.

2. All other service by the Board shall be made by electronic transmission (e-mail) only to each party's designated representative, who has filed an Entry of Appearance.

## **1.8 Hearings: General Requirements**

### **A. Requirements for Hearings**

1. The Board may conduct informal and formal hearings. An informal hearing shall be conducted in accordance with the procedure set forth in § 1.9 of this Part.
2. A formal hearing, for the purpose of taking testimony upon a Complaint, or upon a Complaint and Answer, or upon a Petition for investigation and certification, shall be conducted by the Board in accordance with § 1.10 of this Part, if the Complaint or Petition has not been dismissed after investigation and/or informal hearing(s).

### **B. Pre-Hearing Requirement to Meet and Confer – Exhibits**

1. Each party of record intending to submit exhibits during a formal hearing process shall be required to meet and confer with the opposing party's representative for the purpose of exchanging and marking exhibits.
2. Upon conclusion of the party's dialogue, the parties shall pre-mark and pre-identify all exhibits accordingly, to wit: petitioner 1, respondent 1, joint, objection, or no objection to an exhibit; and record all exhibits to be entered into the record on the Formal Hearing Exhibit form.
  - a. The Formal Hearing Exhibit form may be obtained on the Board's website at [www.rislrh.ri.gov](http://www.rislrh.ri.gov).
3. The requesting party shall then submit the Formal Hearing Exhibit form to the Board's Administrator, through the Electronic Document Management System, no less than five (5) business days prior to the commencement of the formal hearing process.
4. All said copies of exhibits as enumerated in accordance with § 1.10(F) of this Part, shall be submitted at the commencement of the formal hearing process.

5. Parties who fail to comply with the Board's directives may be sanctioned in accordance with § 1.10(C) of this Part.
6. The filing of the Formal Hearing Exhibit form, prior to the formal hearing, shall not constitute acceptance into evidence by the Board or any admission by the other party of relevance, accuracy or materiality. The opposing party retains the right to object to any contested exhibit(s), at which time the Chairperson will rule on the admissibility of all contested exhibits.

C. Failure to Comply with Orders of the Board; Hearings; Pre-Hearing Directives; Discovery

1. Any complaining or petitioning party that fails, without good cause, to comply with any order of the Board, its Administrator or Agent to participate in, or appear at, any conference or hearing, pre-hearing directives, or who fails to, or refuses to comply with discovery requests, may be sanctioned by the Board, as set forth by § 1.10(C) of this Part.

D. Rules of Evidence

1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the record.
2. The rules of evidence, as applied in civil cases in the Superior Court of this State, shall be followed; however, when it is necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admitted under those rules may be submitted (except where precluded by statute), if it is of a type commonly relied upon by reasonable, prudent persons in the conduct of their affairs.
3. The rules of privilege, recognized by law, shall be given effect by the Board.
4. Objections to evidential offers may be made and shall be noted in the record.
5. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Notice may be taken of judicially cognizable facts. Rigid compliance with the Rules of Civil Procedure shall not be required, and the Board shall have discretion to apply the rules liberally in order to effectuate full and fair hearings.

E. Powers and Duties of the Board at Hearings

1. During the course of any hearing, the Board shall have the full authority to control the conduct and procedure of the hearings, and the records thereof, to admit or exclude testimony or other evidence, and to rule upon all Motions and objections made during the course of the hearing. It shall be the duty of the Board to see that a full inquiry is made into all the facts in issue, and to obtain a full and complete record of all facts necessary for a fair determination of the issues.
2. In any hearing, the Board shall have the right to call and examine witnesses, to direct the production of papers or documents, and to introduce into the record said papers or documents. The Board, as set forth by § 1.10(C) of this Part, may sanction any party who, without good cause fails or refuses to comply with a Board directive.

#### F. Rights of Parties at Hearings

1. The informal hearing process is a fact-finding procedure; therefore, only the representative of record for the parties shall present their case during the informal hearing process.
2. There shall be no testimony taken from witnesses during the informal hearing process; all documentation presented during the informal hearing process shall not be accepted as exhibits, nor entered into the record. Attendance is limited to the parties of record during the informal hearing process.
3. However, during the formal hearing process, all parties shall have the right to call, examine and cross-examine witnesses, and to introduce into the record, papers and documents, or other evidence, subject to the ruling of the Board. Such formal hearings shall be open to the public.

#### G. Hearings; Stipulations

1. At a hearing, stipulations may be introduced into evidence with respect to any issue, where all parties have joined such stipulation.

#### H. Continuation of Hearings

1. At the discretion of the Board, the Administrator or its Agent, hearings may be continued from day to day, or adjourned to a later date, or to a different location, and manner, by announcement thereof, at the hearing by the Board, its Administrator or Agent, or by other appropriate notice designated by the Board, its Administrator or Agent.

#### I. Contemptuous Conduct at Hearings

1. Any person who engages in contemptuous conduct before the Board, or its Administrator or Agent, may, in the discretion of the Board, its Administrator or Agent, be excluded from the hearing room or further participation in the proceeding.

J. Waiver of Hearing; Entry of Consent Order

1. Nothing in these general Rules and Regulations shall prevent the entry of a Consent Order by the parties' representatives of record prior to the commencement of the formal hearing process. Both parties shall agree to waive the scheduled formal hearing when the making of the findings of fact and conclusions of law are acknowledged.
2. The Consent Order shall be submitted to the Board in lieu of the formal hearing process. The hearing process shall be cancelled upon receipt of the Consent Order; and the matter shall be set down for review and determination on the next applicable monthly Board Meeting Agenda. When filing the Consent Order with the Board, the parties shall submit an original, signed in blue ink, in accordance with § 1.5 of this Part.
3. Said submission of the Consent Order shall be submitted to the Board no later than five (5) business days prior to the commencement of the formal hearing; in accordance with § 1.8(L)(2)(a)((9)) of this Part.
4. Upon determination of said matter by the Board, the Administrator or its Agent shall notify the parties in writing, of the results of the Board's actions.
5. Notwithstanding the foregoing, the Board shall retain jurisdiction of the matter and may reject the Consent Order, if the same is determined by the Board to be in violation of applicable law.

K. Application for Leave to Reopen a Hearing on Grounds of Newly Discovered Evidence

1. No Motion for Leave to Reopen a Hearing because of newly discovered evidence shall be entertained unless it is shown that such additional evidence is material, that the Motion has been timely made, and that there were reasonable grounds for the failure to adduce such evidence at the hearing. Nothing contained in this section shall be deemed to limit the right and power of the Board, in its discretion, and on its own Motion, to reopen a hearing and take further testimony.

L. Requests for Postponement or Cancellation of Hearings

## 1. Informal Hearings

- a. All requests for postponements shall be made no later than five (5) business days after receipt of the notice of hearing, except in the case of an extreme emergency or circumstance;
- b. Each party shall be limited to one (1) postponement per matter. Postponements shall only be granted if there is a showing of sufficient cause. Should a party find that it has exhausted its postponement requests, it will be the obligation of the party to have an appropriate representative available to proceed;
- c. A party requesting a postponement shall be required to contact the Board's Administrator or its Agent, by telephone, prior to the submission of the written request for approval of the postponement. Only the Board's Administrator or its Agent may grant postponements. Parties to the hearing shall not postpone hearings without permission from the Administrator or its Agent of the Board.
- d. The request must be in writing and shall state, with specificity, the reason for the postponement. Copies of the request must be served by electronic transmission (e-mail) simultaneously to any opposing parties' representative of record, with a copy (Cc) to the Board's Administrator and must certify the same therein.
- e. If all parties fail to appear at a duly scheduled informal hearing, without good cause and notification to the Board's offices, or if the parties together agree to postpone the hearing without first receiving approval from the Board or its Administrator or Agent, then the matter pending may be administratively dismissed;
- f. In the case of a Petition for Unit Clarification and/or Accretion/Exclusion, if only the petitioner has failed to appear at the informal hearing without notice or good cause, the matter may be administratively dismissed and shall not be re-filed for a one (1) year period; and
- g. In the case of an Unfair Labor Practice Charge, if only the charging party has failed to comply with the designated informal hearing process without notice or good cause, the matter may be administratively dismissed and shall not be re-filed.

## 2. Formal Hearings

- a. Unless otherwise ordered or permitted by the Board, its Administrator or Agent, all formal hearings shall be held at a date, time, location, and in such a manner contained in the Notice of Hearing. Each party shall be limited to one (1) postponement per matter. Postponements shall only be granted if there is a showing of sufficient cause and the following requirements are met:
- (1) The request must be in writing, and received in the offices of the Board no later than five (5) business days after receipt of the notice of hearing;
  - (2) The request must set forth the grounds for the request in detail;
  - (3) The position(s) of all other parties of record must be ascertained in advance and set forth in the request;
  - (4) Copies of the request shall be served by electronic transmission (e-mail) simultaneously upon all other parties, with a copy (Cc) to the Board's Administrator and must certify the same therein;
  - (5) No request for postponement will be considered unless all of the preceding four (4) requirements have been met;
  - (6) No request for postponement shall be granted during the five (5) business days preceding the date for hearing, except in the case of an extreme emergency or circumstance;
  - (7) Postponements of formal hearings may result in at least a one (1) month delay;
  - (8) When requests for postponements have been denied, it will be the obligation of the party to have an appropriate representative available to proceed; and
  - (9) Should a withdrawal of a pending case or an entry of a Consent Order result in the cancellation of a formal hearing, the request for cancellation must be submitted no later than five (5) business days prior to the commencement of the formal hearing. Parties requesting a cancellation of a formal hearing without proper notification may be required to pay the administrative costs associated therewith.

## 1.9 Informal Hearings

### A. Notification of Hearings; Written Statements

1. Upon the filing of an Unfair Labor Practice Charge, the parties shall be notified in writing, by the Board's Administrator or its Agent, as to the designated informal hearing process and the associated procedural requirements, in accordance with § 1.22(F) of this Part.
2. Upon the filing of a Petition for Investigation of Controversies as to Representation, Petition for Decertification of a Certified Bargaining Representative, or Petition for Unit Clarification and/or Accretion/Exclusion, the Board's Administrator or its Agent will notify the parties in writing, of the date, time, location, and manner of the designated informal conference or hearing, which will be conducted by the Board's Administrator or its Agent.

### B. Parties Required to Appear; Failure to Appear; Failure to Submit Timely Statements; Sanctions

1. A charging party or petitioner who fails to appear for an informal hearing, or who fails to submit written statements, in accordance with the directives of the Board, may have its Petition or Charge administratively dismissed. It is the charging party or petitioner's responsibility to be in compliance with the Board's directives.
2. In the case of a Petition for Unit Clarification and/or Accretion/Exclusion, if only the petitioner has failed to appear at the informal hearing, without notice or good cause, the matter may be administratively dismissed and shall not be re-filed for a one (1) year period.
3. In the case of an Unfair Labor Practice Charge, if only the charging party has failed to comply with the Board's designated informal hearing processes, as directed, without notice or good cause, the matter may be administratively dismissed and shall not be re-filed. The respondent, if planning to object to the requested relief, must comply with the Board's directives as noticed.
4. Upon a "late" filing of a written statement by either party, the opposing party may file a Motion of Objection to the Acceptance of the Written Statement by the Board, within five (5) business days of the written statement's due date. The objection shall then be forwarded to the Board for review and determination on how to proceed. The Administrator of the

Board shall notify the parties, in writing, of the results of the Board's action.

5. Any party who fails to appear within fifteen (15) minutes of the scheduled hearing time may be considered to have "failed to appear."
6. Parties who fail to appear or comply with the Board's directives may be sanctioned in accordance with § 1.10(C) of this Part.

C. Administrative Dismissal of Unfair Labor Practice Charges After Designated Informal Hearing Process

1. Pursuant to R.I. Gen. Laws § 28-7-9(d), after the designated informal hearing process has concluded, and after consideration of the Agent's confidential report, the Board may administratively dismiss the Charge without issuing a Complaint against the respondent. Upon determination of the dismissal of the Charge by the Board, the Board's Administrator or its Agent shall notify the petitioner, in writing, of the results of the Board's action.

D. Unfair Labor Practice Charge – Administrative Dismissal; Request for Reconsideration

1. Upon receipt of notification of an administrative dismissal of the Charge, the charging party shall have five (5) business days from the date of the written dismissal to submit a written request for reconsideration, with legal justification to substantiate said reconsideration.
2. Upon receipt of the request, the matter may be placed on the next applicable monthly Board Meeting Agenda for review and determination. The Administrator or its Agent of the Board shall notify the petitioner, in writing, of the results of the Board's action.

## **1.10 Formal Hearings**

A. Notification of Hearing

1. Upon the issuance of an Unfair Labor Practice Complaint, the matter will be scheduled for formal hearing. The Board's Administrator or its Agent will notify the parties of the date, time, location, and manner of the formal hearing; which is identified within the said Complaint.
2. Parties seeking a postponement, continuance, rescheduling, or cancellation of the formal hearing date, must follow the procedures set forth in § 1.8(L)(2) of this Part.

3. Parties requesting a postponement, continuance, rescheduling, or cancellation of the formal hearing date, may be required to pay for the administrative costs associated therewith.

B. Parties Required to Appear

1. Unless the case has been settled (and the Board has been notified, in writing, of the settlement at least five (5) business days prior to the scheduled hearing date), the parties are required to appear at the date, time, location, and manner, as set forth in the Notice of Hearing. Parties shall not postpone or cancel any hearing scheduled by the Board, without first receiving approval from the Board, its Administrator or its Agent.

C. Failure to Appear or to Comply with Board Directive(s); Sanctions

1. Parties who fail to appear or to comply with a Board directive(s), without good cause, at any hearing may:
  - a. Be defaulted;
  - b. Be assessed costs, including stenographer's expenses, associated with the rescheduling; and
  - c. Be considered to have forfeited any and all objections it may have had.
2. Any party, who fails to appear within fifteen (15) minutes of the scheduled hearing time, may be considered to have "failed to appear."

D. Application for Subpoenas

1. Any party to the proceeding, who is not represented by legal counsel, may apply to the Board for the issuance of a Subpoena or *Subpoena Duces Tecum*, requiring the attendance, during a hearing, of any person, party, or witness, and directing the production, as of the date specified on the *Subpoena Duces Tecum*, of any books, records, or correspondence, or other evidence relating to any matter under investigation or any question before the Board.
2. Such application, to be considered timely, shall be made no later than fifteen (15) business days prior to the scheduled hearing. The application shall be in writing, and it shall specify the name of the witness or documents or things, the production of which is desired, with such particularity as will enable such documents to be identified for purposes of production, the return date desired, as well as the general nature of the

facts to be proved by the witness, or the documents, or things sought to be produced. Such application shall be made and filed with the Board and need not be served on any other party.

3. The Board, in its discretion, or its Administrator or Agent's discretion, may grant or deny such application, in whole or in part, for good cause shown. The Board, or its Administrator or Agent, may make such Subpoena returnable forthwith, or at any other time, within its discretion. The Board's Subpoena shall be issued and served by the Board's Administrator or its Agent, by certified mail, return receipt requested. When served by certified mail, by the Board's Administrator or its Agent, the return receipt shall be filed in the record of the proceedings and shall be conclusive proof of service.
4. The party served with a Board issued Subpoena or *Subpoena Duces Tecum*, shall have a right to file a Motion to Quash the Subpoena, in writing, with the Board's office at least five (5) business days prior to the formal hearing date. The party requesting the Board to issue the Subpoena or *Subpoena Duces Tecum* shall have a right to file a written Objection to the Motion to Quash at any time prior to the commencement of the formal hearing. The parties shall have the right to argue orally before the Board relative to the Motion to Quash. The Board shall issue a written decision on the Motion to Quash prior to proceeding with any further formal hearings on the matter.
5. Parties represented by legal counsel shall have their legal counsel issue a Subpoena or *Subpoena Duces Tecum* on their behalf; and shall not have the right to request the Board to issue a Subpoena. Upon service of a Subpoena or *Subpoena Duces Tecum* by a parties' legal counsel, it is the obligation of the parties' legal counsel to give notice to the opposing party of such action.

E. Issuance of Subpoenas by Board for Production of Documents

1. In its discretion, the Board may issue Subpoenas, at any time, requiring persons, parties, or witnesses to attend or be examined or give testimony, and to produce any books, records, correspondence, documents or other evidence that relate to any matter under investigation, or any question before the Board.

F. Introduction of Exhibits at Formal Hearing

1. Any party of record intending to submit exhibits during a formal hearing process, must provide the Board with nine (9) copies of each exhibit

introduced, as well as provide one (1) copy for each opposing party or parties participating in the formal hearing.

2. Any party of record intending to submit exhibits during a formal hearing process, shall follow the procedures as set forth in § 1.8(B) of this Part.

#### G. Oral Arguments or Briefs

1. At the close of the formal hearing process, the Board shall, in its discretion, permit the parties to either argue orally or to submit Briefs to the Board.
2. Any request for oral argument before the Board shall be made at the close of the formal hearing. The granting or denial of permission to argue orally before the Board shall be within the discretion of the Board.
3. Upon resolve by the Board for the parties to file Briefs in the matter, the timeframe for filing such Briefs shall be determined by the Board at the conclusion of the formal hearing.
4. Upon receipt of the transcript for the concluded matter by the Administrator of the Board, the parties shall be notified, in writing, of the submission date of the Briefs to the Board.

#### H. Rebuttal Briefs

1. Rebuttal Briefs may be requested by either party at the time of the closing of the formal hearing process, with a stated timeframe for submission determined by the Board; or made by Motion of either party, in writing, after the submission of the Briefs, showing reasonable cause, within five (5) business days from the due date of the Briefs. The Motion shall then be forwarded to the Board for review and determination. The Board's Administrator shall notify the parties, in writing, of the results of the Board's action.

#### I. Administrative Requirements for Written Briefs

1. All Briefs shall be typewritten and submitted on letter size paper (eight-and-one-half by eleven inches (8.5" x 11") in size). The font size shall be no smaller than twelve (12), and the Brief shall be double-spaced, except for footnotes, which may be reduced to font size ten (10) and may be single-spaced. Footnotes shall appear at the bottom of the page noted upon. Said Brief shall be signed by the author in blue ink. Each Brief shall also contain a certification of notice that a copy was sent to all other

parties of record; with a copy (Cc) to the Board's Administrator and must certify the same therein.

2. Any Brief containing a principal citation to any non-Rhode Island case shall be accompanied by an appendix, which shall contain copies of the entire case for all principal non-Rhode Island cases cited therein. Said appendix shall be submitted in accordance with § 1.5(E)(1) of this Part.
  3. Briefs shall be filed by the date set by the Board upon the conclusion of the formal hearing. The Board's Administrator or its Agent shall have the discretion, upon good cause shown, to grant extensions of time for filing Briefs. All requests for filing extensions must be made, in writing, and should be by agreement of the parties, no later than five (5) business days prior to the filing due date.
  4. All Briefs must be received by the Board's Administrator or its Agent by 3:00 p.m., on the filing due date, in order to be considered timely filed by this Board, as set forth in § 1.5(G)(2) of this Part.
  5. Upon a "late" filing of a Brief by either party, the opposing party may file a Motion of Objection to the Acceptance of the Brief by the Board, within five (5) business days of the Brief's due date. The objection shall then be forwarded to the Board for review and determination. The Board's Administrator shall notify the parties, in writing, of the results of the Board's action.
- J. Proposed Findings of Fact; Conclusions of Law; Proposed Decision and Order; Exceptions, etc.
1. The Board shall, at any time after the close of a formal hearing, issue its findings of fact, conclusions of law, and Decision and Order. Such findings of fact, conclusions of law, and Decision and Order shall contain, but need not be limited to:
    - a. A statement of the case and preliminary procedure before the Board;
    - b. Findings of fact;
    - c. Conclusions of law; and
    - d. Decision and Order.
  2. The Board may include, if it be found that the respondent has engaged or is engaging in the alleged unfair labor practice, a recommendation as to

what action shall be taken by the respondent to effectuate the policies of the Act.

K. Notice of Right to Appeal Agency Decision

1. Pursuant to R.I. Gen. Laws § 42-35-12, included within the Decision and Order of the Rhode Island State Labor Relations Board, shall be a separate notice advising the parties of the availability of judicial review, and the appeal period pursuant to the statutory authority set forth in R.I. Gen. Laws § 28-7-29. If the agency fails to provide such notice, the time for taking an appeal shall be extended for an additional thirty (30) days beyond the time otherwise authorized by law.

### **1.11 Procedures at Informal/Formal Hearings**

A. Order of Presentation of Case

1. In each case, the petitioning party shall present its case first and shall have the burden of establishing its Petition, by a fair preponderance of the credible evidence.

B. Pertinent Documentation Had at Designated Informal Hearing Process

1. The Board's Administrator or its Agent shall accept pertinent documentation, as determined by the Administrator or its Agent, in conjunction with the designated informal hearing process, but such documents shall not be considered part of the public record in any case, unless or until such documents are submitted as exhibits in a formal hearing proceeding.

C. Variance Between Pleading and Proof

1. Where there is a variance between an allegation in a Petition for Certification, or a Pleading in an Unfair Labor Practice Charge Proceeding, and subsequent proof at that hearing, and where said variance is not material, the Board may admit such proof, and the facts may be found accordingly. Any party, or the Board, may move to conform the Pleadings to the proof.

D. Motions; Compliance; General Requirements for All Motions

1. All Motions made, other than those made during the pendency of a formal hearing(s), shall briefly state the order or relief sought and the basis for said Motion. Said Motion, together with the Memorandum of Law in Support of Motion, as well as all appropriate supporting documents, shall

be submitted as an original, signed in blue ink, and shall be electronically filed (e-filed) in accordance with § 1.5 of this Part.

2. The moving party shall be required to certify a copy of the Motion and the Memorandum of Law in Support of Motion to the opposing party of record, with a copy (Cc) to the Board's Administrator and must certify the same therein.
3. Upon receipt of said Motion and Memorandum of Law in Support of Motion, the opposing party shall have the opportunity to respond to said Motion. Should the opposing party respond to said Motion, the opposing party shall electronically file (e-file) the response in accordance with § 1.5 of this Part, within five (5) business days after receipt of said service by the moving party. Said response shall be certified to the moving party of record, with a copy (Cc) to the Board's Administrator and must certify the same therein.
4. The Board, upon receipt of the Motion, Memorandum of Law in Support of Motion, and any other documentation opposing the Motion, shall rule on said Motion, unless the Board, in its discretion, shall decide to hear oral argument or take testimony in which instance, the Board shall notify the parties of such fact, and of the date, time, location, and manner for such argument or such testimony.

E. Motions Made at or During Pendency of Formal Hearings

1. All Motions made at or during the pendency of a formal hearing shall be stated orally and shall be included in the stenographic report of the hearing. Upon conclusion of the stated Motions by the parties, the Board may either rule on the Motions directly, or the Board may instruct the parties to submit said Motions, in writing, to the Board within a specified timeframe. The Motions shall briefly state the order or relief sought and the grounds for such Motions.
  - a. Exception: Motions to intervene shall be made in the manner set forth in § 1.12(C) of this Part.
2. The moving party shall be required to certify a copy of said Motion and Memorandum of Law in Support of Motion to the opposing party of record, with a copy (Cc) to the Board's Administrator and must certify the same therein.
3. Upon receipt of said Motion and Memorandum of Law in Support of Motion, the opposing party shall have the opportunity to respond to said Motion. Should the opposing party respond to said Motion, the opposing

party shall electronically file (e-file) the response in accordance with § 1.5 of this Part, within five (5) business days after receipt of said service by the moving party. Said response shall be certified to the moving party of record, with a copy (Cc) to the Board's Administrator and must certify the same therein.

4. Said Motions shall be set down for review and determination as directed by the Board. All Motions and rulings shall become part of the record in the proceeding.

F. Objections at Formal Hearings

1. Objections made by either party with respect to the conduct of the formal hearing process, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing.

G. Waiver of Objections

1. Any objection not duly urged before the Board shall be deemed waived, unless the failure or neglect to urge such objections shall be excused by the Board because of extraordinary circumstances.

H. Consolidation or Severance

1. The Board, in its discretion, may consolidate two (2) or more proceedings under the Act and the Board, in its discretion, may also sever such proceedings.

## **1.12 Parties to Proceedings**

A. Non-Joinder and Misjoinder of Parties

1. No proceeding under this Act will be dismissed by virtue of non-joinder or misjoinder of parties. Upon Motion of any party, or upon Motion by the Board, or its Administrator or Agent, new parties may be added or substituted, and the parties' misjoinder may be dropped, at any stage of the proceedings, upon such terms as may be deemed just and proper. Such Motions must be made at, or prior to, the first hearing in any such proceeding, unless good and sufficient cause is shown why it could not have been made at such time. Failure so to move shall be deemed a waiver of all objections to a non-joinder or misjoinder.

B. Parties; Relief

1. All persons alleged to have engaged in any unfair labor practices may be joined as respondents whether jointly, severally, or in the alternative; a decision may be rendered against such one (1) or more of the respondents upon all the evidence, without regard to the parties by or against whom such evidence has been introduced.

C. Intervention; Procedure; Contents; Filings and Service

1. Any person, Employer, or labor organization desiring to intervene in any proceeding, shall electronically file (e-file) with the Board a Motion and Memorandum of Law in Support of Motion, in writing, setting forth the facts upon which such person, Employer, or labor organization bases its claim of interest in the proceeding. Said Motion must be served on all the parties of record, with a copy (Cc) to the Board's Administrator and must certify the same therein.
2. Said Motion must be filed with the Board, at least five (5) business days prior to the first hearing. Failure to serve or file said Motion, as above provided, shall be deemed sufficient cause for the denial thereof, unless it shall be determined that good and sufficient reason exists why it was not served, or filed, as herein provided. The Board shall rule upon all said Motions and may permit intervention to such an extent, and upon such terms or conditions, as it shall determine may effectuate the policies of the Act.

D. Witnesses; Examination; Record; Depositions

1. Witnesses at all hearings shall be examined orally, under oath or affirmation, and a record of the proceedings shall be made and kept by the Board. Where a witness resides within another State, or through illness or other causes, is unable to testify before the Board, his or her testimony or deposition may be taken within or without the State in such manner, and in such form, as may be directed by the Board. All applications for the taking of such testimony or depositions must be made, at all times, by Motion to the Board, in accordance with the Motion practice herein, set forth.

E. Subpoenas: Witnesses and Failure to Obey or Testify

1. If a person or witness refuses or fails, without reasonable excuse, to obey a Subpoena requiring him or her to attend a hearing and be examined, or to attend and bring with him or her books, records, correspondence, papers or other matter, or refuses or fails to testify or answer any question, which has been ruled pertinent and proper by the Board, in its discretion, the Board may strike from the record the testimony given by

such person or witness, or so much, thereof, as the Board shall decide is related to the question, which the person or witness has refused to answer, or to the matter called for in the Subpoena. The Board, in its discretion, may preclude the reintroduction of any such testimony so stricken.

2. If a party fails or refuses, without reasonable excuse, to obey a *Subpoena Duces Tecum* requiring the production of books, records, correspondence, documents, papers or other matter, the Board may, in its discretion, preclude any such party from introducing any proof concerning such books, records, correspondence, documents, papers, or other matter in evidence.
3. Where a party is a corporation, this section shall apply to failures and refusals of its officers or directors; or where the party is a labor organization, this section shall apply to failures and refusals of its business agents and officers.

### **1.13 Petition for Investigation of Controversies as to Representation: Blanket Requirements**

#### **A. Conduct of Elections**

1. All controversies as to representation submitted to the Board shall be conducted by secret ballot, at a date(s), time(s) and location(s), in such a manner and upon such terms and conditions as the Administrator of the Board may deem appropriate.
2. The Board may conduct an election process by mail ballot if it is not practical or reasonable to hold an election at which employees may vote in-person. Said determination will be at the sole discretion of the Board's Administrator.
3. The election procedures established by this section apply to all representation elections conducted by the Board. Decertification election procedures and requirements follow the same representation procedures, as applicable and appropriate, regardless of whether the bargaining representative facing challenge was certified by the Board or attained its status through voluntary recognition.
4. All controversies as to representation submitted to the Board shall be expedited unless an extenuating circumstance arises, which would result in the Board proceeding with the process as soon as practicable.

## B. Prerequisites

1. Pursuant to R.I. Gen. Laws § 28-7-9(b)(1), the Board shall require a labor organization to submit cards of interest signed by at least thirty percent (30%) of the employees in the appropriate bargaining unit indicating a desire to be represented by the designated labor organization. Cards of interest signed by at least twenty percent (20%) of the employees in the appropriate unit are required to intervene.
2. Cards of interest submitted in any proceeding before the Board may not be filed electronically. All cards of interest must be submitted no later than 3:00 p.m. in accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Petition. The cards of interest must be in alphabetical order, by last name. Only cards of interest with original signatures shall be accepted.
3. The Board shall certify the authenticity of all cards of interest submitted. A Petition for Investigation of Controversies as to Representation may be dismissed, without prejudice, if the Petition is filed by a labor organization without a sufficient showing of interest.
4. In order to proceed with a Petition for Investigation of Controversies as to Representation, the incumbent(s) must be employed in the position, for a period of thirty (30) days, prior to the filing of the Petition.
5. In order to file a Petition for Investigation of Controversies as to Representation, the number of employees in the unit sought must be more than one (1) employee.

## C. Eligibility to Vote

1. All employees agreed to by the parties at the informal conference, who are determined to be eligible to participate in the election process up to the end of the determined eligibility period, shall be eligible to vote. Disputes regarding the accuracy of the voting list shall be raised at the informal conference. The Board shall resolve any disputes regarding the accuracy of the updated list up to and including five (5) business days before the scheduled election.

## D. Petition: Withdrawal or Amendment

1. At any time before the issuance of a Notice of Hearing on a Petition for Investigation of Controversies as to Representation, the Board may permit the amendment of the Petition, or its withdrawal, in whole or in part. At any time after the issuance of such Notice of Hearing, the Board, upon Motion,

may permit withdrawal of the Petition, in whole or in part, and the Board may permit amendment thereof. Withdrawal of the Petition, in whole or in part, shall not be permitted once the Board's Notice of Election has been posted.

2. In the event of a withdrawal of a Petition, in whole or in part, by a labor organization, the cards of interest submitted pursuant to R.I. Gen. Laws § 28-7-9(b)(1) and § 1.13(B) of this Part, shall be returned only to the labor organization that submitted the original Petition. If the Petition is withdrawn, in part, the labor organization shall request, in writing, the specific cards of interest it seeks to have returned.

E. Voluntary Revocation of Certification by Union

1. An employee organization currently certified to represent a bargaining unit may request the Board to revoke its certification by filing a written request, accompanied by a statement that the employee organization disclaims all interest in continued representation of the bargaining unit. (A copy of the Certification of Representatives and the Unit Clarification Disposition must also be attached) The employee organization shall be required to certify a copy of said request to each party of the proceeding, with a copy (Cc) to the Board's Administrator and must certify the same therein.
2. After review and determination of the request for voluntary revocation by the Board, the Board's Administrator or its Agent, shall notify the parties in writing of the results of the Board's action. Upon granting the voluntary revocation by the Board, the Certification of Representatives and Unit Clarification Disposition shall be negated as of the date of determination by the Board.

F. Abeyance by Preemption of Unit Clarification and/or Accretion Petition

1. If a Unit Clarification and/or Accretion Petition is filed prior to a Petition for Investigation of Controversies as to Representation relative to the same positions, then the Petition for Investigation of Controversies as to Representation shall be held in abeyance, pending the outcome of the Unit Clarification and/or Accretion Petition.

G. Subsequent or Repetitive Requests by the Same Petitioner to File a Petition for Investigation of Controversies as to Representation Upon the Failure of an Election Process

1. Upon conclusion of an election process where the election has failed, the petitioning party may not re-file a Petition for Investigation of

Controversies as to Representation for the same proposed bargaining unit for a twelve (12) month period starting from the date of the failed election.

H. Recognition Requirements of Newly Created Independent Labor Organization/Association

1. When a newly created independent labor organization/association seeks to file a Petition for Investigation of Controversies as to Representation with the Board, it shall, in conjunction with the filing of the Petition, in accordance §§ 1.13(B) and 1.14(A) of this Part, submit the following required documentation as confirmation of the creation of the said independent labor organization/association:
  - a. A certified copy of the notice of meeting reflecting the date, time, location, and manner, as well as the subject matter, to discuss and vote on the creation of the independent labor organization/association;
  - b. A copy of the certified minutes reflecting:
    - (1) Signing of “cards of interest” to indicate intent to be represented;
    - (2) The discussion of the formation of the bargaining unit;
    - (3) The Motion to hold an election to create the independent labor organization/association;
    - (4) The election results (The majority of votes must be fifty-one percent (51%) of the total unit, not the total votes);
    - (5) The election of the Union officers, with titles and names; and
    - (6) The request for recognition letter to the Employer.

**1.14 Petition for Investigation of Controversies as to Representation: Procedural**

A. Petition Contents

1. A Petition for Investigation of Controversies as to Representation may be filed by an employee, or his or her representative, or by an Employer. Petition forms may be obtained on the Board’s website at [www.rislr.org](http://www.rislr.org). The Petition shall include:

- a. An indication of whether the Petition is being filed by or on behalf of employees or by an Employer;
  - b. The name, address, representative, telephone number, and email of both the Employer and the employee organization;
  - c. Composition of unit to organize;
  - d. The number of employees in the unit sought; and
  - e. A list of any other employee organizations known to have an interest in the employees previously described.
2. Cards of interest shall be submitted along with the Petition pursuant to R.I. Gen. Laws § 28-7-9(b)(1); the cards of interest must be in alphabetical order, by last name. Only cards of interest with original signatures shall be accepted.
  3. Cards of interest submitted in any proceeding before the Board may not be filed electronically. All cards of interest must be submitted no later than 3:00 p.m. in accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Petition.

B. Certification of Authenticity of Cards of Interest

1. Upon receipt of a Petition for Investigation of Controversies as to Representation, the Board shall certify the authenticity of all cards of interest submitted as outlined in R.I. Gen. Laws § 28-7-9(b)(1). Only cards of interest with original signatures shall be accepted. A copy of the Petition and any attachments will be provided to the Employer prior to the scheduling of the card confirmation. The process of certifying the authenticity of the cards of interest is that of a confidential nature and the disclosure of the names of the interested parties will not be revealed.
2. All cards of interest signed and submitted with the Petition for Investigation of Controversies as to Representation must be signed within a one (1) year period prior to the filing of the Petition.

C. Determination of Representatives; No Contest; Process

1. Subject to the approval of the Board, the parties to a representation proceeding may waive an informal hearing and agree on a method by which the Board shall determine the question of representation, to wit: Agreement for Consent Election or Agreement for Consent Election by Comparison of Signatures.

a. Agreement for Consent Election

- (1) Where a Petition for Investigation of Controversies as to Representation has been filed, the Employer, employee organization, or person(s) representing a substantial number of employees involved, and any intervener(s), which have submitted the required showing of interest may, subject to the approval of the Board, enter into a stipulation for the waiving of the informal hearing and commence the consent election process. Such stipulation shall be in the form of an Agreement for Consent Election, which must be executed by the appropriate representatives of the Employer and the employee organization(s).
- (2) No Agreement for Consent Election shall be executed for the filing of a Petition for Investigation of Controversies as to Representation, if the parties of interest cannot agree on the inclusion of said positions constituting in number more than ten percent (10%) of the proposed bargaining unit. If more than ten percent (10%) of the positions shall be contested, an informal hearing shall commence.
- (3) The matter shall then be scheduled before the Board, as soon as practicable, for determination on how to proceed with the contested position(s). If the Board establishes that further investigation of the contested position(s) in question is to proceed, the matter shall be expedited. The Board, subsequent to the formal hearing(s), shall resolve the determination of eligibility of the position(s) in dispute.

b. Agreement for Consent Election by Comparison of Signatures

- (1) Where a Petition for Investigation of Controversies as to Representation has been filed and it is not the Employer's intention to challenge the representation of the proposed bargaining unit, the parties shall enter into an Agreement for Consent Election by Comparison of Signatures, which shall be conducted by the Board, through its Administrator or Agent.
- (2) The Designation of Bargaining Agent and Waiver of Right to Vote forms, signed by at least fifty-one percent (51%) of the employees in the proposed bargaining unit, submitted in any proceeding before the Board, may not be filed electronically.

- (3) All said Designation of Bargaining Agent and Waiver of Right to Vote forms must be submitted no later than 3:00 p.m. in accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Petition.
- (4) All said Designation of Bargaining Agent and Waiver of Right to Vote forms must be in alphabetical order, by last name. Only said forms with original signatures shall be accepted.
- (5) Designation of Bargaining Agent and Waiver of Right to Vote forms may be obtained on the Board's website at [www.rislr.b.gov](http://www.rislr.b.gov).
- (6) When proceeding under an Agreement for Consent Election by Comparison of Signatures, the parties are deemed to have waived their statutory right to an informal hearing and other consent election processes.
- (7) Upon the parties' joint submission of an Agreement for Consent Election by Comparison of Signatures, the Board shall certify to the parties, five (5) business days thereafter, a Certification of Representatives for the designated bargaining unit. The Certification of Representatives issued after completion of the Consent Election by Comparison of Signatures process, shall not be subject to decertification for a one (1) year period immediately following the Board's certification.

D. Contested Elections; Investigation; Ascertainment of Desires of Employees; Hearing; Notice

1. Where a Petition for Investigation of Controversies as to Representation has been filed and the Employer, employee organization, or person(s) representing a substantial number of employees involved, or any intervener(s), which have submitted the required showing of interest, challenges more than ten percent (10%) of the positions sought, an informal hearing shall commence. The matter shall then be scheduled before the Board, as soon as practicable, for determination on how to proceed with the contested position(s).
2. In the course of its investigation of a question or controversy concerning representation, the Board may instruct its Agent to conduct an investigation of the challenged position(s), proceed to formal hearing upon due notice, or may direct an election, or use other suitable methods to

ascertain the wishes of employees, either in conjunction with a proceeding instituted under the Act, or otherwise.

3. Upon completion of the investigation process, the Agent shall provide a written investigative report to the parties.
  - a. Upon receipt of the Agent's report, each party shall have a period of thirty (30) days from the date of mailing to file any written responses or statement it deems appropriate, under the circumstances.
  - b. The Board's Administrator shall have the discretion, upon good cause shown, to grant one (1) extension of the date for filing a response. All requests for filing extensions must be made no later than five (5) business days prior to the filing date, in writing, and should be by agreement of the parties.
  - c. Any party filing a response to the Agent's report must submit an original, signed in blue ink, to the Board's office, and must submit a copy to the opposing party(s), with a copy (Cc) to the Board's Administrator and must certify the same therein.
  - d. At the end of this thirty (30) day response period, the record of proceedings shall be closed, and the case shall be referred to the Board for its consideration. The Agent's report and the responses of the parties shall be considered as, and included within, the public record on the matter.
4. If upon review of the submission of the investigative report, as well as the responses to the report from either or both parties, the Board determines that there were no objections stated by either or both parties, the Board's Agent may proceed with an administrative Direction of Election; an election by secret ballot, under the supervision of the Board or its Agent, at a date, time, location, and in such a manner to be determined by the Board's Administrator or its Agent. An informal conference shall commence to determine all aspects of said election process.
5. However, if upon review of the investigative report, there remains a challenge to the election, the Board may order additional investigation, direct an election, proceed to formal hearing or grant or deny the requested action.
6. When a formal hearing has been directed, the Board, its Administrator or Agent, shall prepare, and cause to be served upon the parties, a notice of hearing before the Board, at a date, time, location, and in such a manner

fixed therein. A copy of the Petition shall be served with the notice of hearing.

E. Elections: Terms and Conditions

1. If the Board determines, as a part of its investigation of a question or controversy concerning representation, that an election by secret ballot shall be held, it shall provide that such election be conducted by an Agent of the Board at a date, time, location, and in such a manner, and upon terms or conditions, as the Board may deem appropriate.
2. Every effort shall be made to schedule the election to reasonably accommodate all work shifts. All individuals eligible to vote must be present to vote; there shall be no submission of an absentee ballot for individuals unable to be present for the election. The contents of this provision will have no application to elections conducted by mail balloting.

F. Observer Notification; Who may observe; Role of Observers

1. Each party to the election process may elect to be represented during the conduct of the election. Upon determination by the parties to have an observer(s) present, the parties must submit written notification of the name(s) of the observer(s), to the Board's office no later than five (5) business days prior to the date of the election, in accordance with § 1.5 of this Part. Copies must be sent to all other parties, with a copy (Cc) to the Board's Administrator and must certify the same therein. Failure to provide the appropriate written notification, as outlined above, may result in a party being denied the opportunity to have an observer(s) present at the election.
2. Observers shall be employees of the Employer. An Employer's observer shall not be a supervisor or manager of the employees. A Union official may serve as an observer if he or she is also an employee of the Employer.
3. The observer's role is to represent their parties during the election process by carrying out the fundamental functions of challenging voters and monitoring the election process. The observer shall also assist the Board's Agent in the conduct of the election.

G. Prohibited Election Conduct

1. No electioneering (campaigning) will be permitted on the day of the election in the building or other facility where the balloting is taking place, or within two hundred feet (200') of said building or other facility. In the

event that any party shall engage in prohibited conduct, as ascertained by the Board or its staff, the Board shall reschedule said election; and the party, which has engaged in the prohibited conduct, shall be responsible for all costs associated with the rescheduling.

2. Failure by the Employer to allow the posting of the Notice of Election by the Board's Agent at least five (5) business days prior to the election pursuant to R.I. Gen. Laws § 28-7-40.
3. A promise of or an award by the Employer upon any employee, of any benefit not required by contract or law which would tend to influence the outcome of an election.
4. Unlawful polling.
5. Any other conduct that would tend to interfere with, restrain, or coerce employees from exercising their rights to participate in elections, pursuant to R.I. Gen. Laws § 28-7-46.

#### H. Challenged Ballots

1. During an election, the Board's Agent, or an observer, has the right to challenge the eligibility of any person to vote in the election.
2. A Board's Agent is required to challenge votes where the voter's name does not appear on the eligibility list, or when the Agent has reason to believe that the voter is ineligible to vote, even if the observer(s) do not challenge the same.
3. The reason for each challenge must be stated before the actual casting of the ballots and, wherever practicable, should be stated before the voter(s) receive(s) a ballot.
4. During an election, whether ordered by the Board or held by the consent of the parties, if the right of an employee to vote is challenged, the employee shall be permitted to vote, but his or her ballot shall be sealed, by him or her, in a separate envelope provided for such purpose, and the employee shall deliver the envelope to the Agent, or person duly designated by the Board to conduct the election. The Agent shall then deliver the challenged ballot to the Board for determination; however, if the challenged ballots are insufficient in number to affect the result of the election, no determination with respect to them shall be made.

#### I. Determination of the Scope of the Bargaining Unit

1. In a contested case, the Board's task is to determine "an" appropriate unit, not the "most" appropriate unit.
2. The petitioning party has the burden of defining an appropriate unit.
3. The burden to show that the unit is inappropriate falls to the objecting party.
4. Bargaining units will be decided on the basis of whether or not the particular employees share a "community of interest", as well as determining a unit that has a direct relevancy to the circumstances in which collective bargaining is to take place. In applying the "community of interest" standard, the Board may consider a number of criteria including, but not limited to those factors set forth in the definition of "community of interest" in § 1.2(A)(11) of this Part.
5. The Board has significant discretion in determining the scope of a bargaining unit and can decide, in each instance, what weight shall be applied to the various criteria. There is no set formula for determining the proper scope of a bargaining unit.

J. Board Determination of Exclusion of Ineligible Employees

1. The Board shall, whenever requested or required to do so, in each instance, determine who are managerial, supervisory, administrative, confidential, casual, and seasonal employees, as these terms are defined in § 1.2 of this Part.

K. Tie Vote; No Union Representation Elections

1. Where the ballot provides for a choice among one (1) employee organization and a "no Union" representation, and the election process results in a tie vote or the "no Union" representation receives a majority of the votes, a Dismissal Order shall be issued indicating that the employee organization did not receive a majority of the votes cast; thus, resulting in a dismissal of the election Petition.

L. Re-Run and Run-Off Elections

1. The Board may declare an election invalid and may order another election providing for a selection from the choices afforded in the previous ballot, or may order a run-off election, in the following situations:

- a. The ballot provided for a choice among two (2) or more employee organizations and “no representation”; and the votes cast are equally divided among the several choices;
  - b. The number of ballots cast for one (1) choice in an election is equal to the number cast for another choice, but less than the number cast for the third (3<sup>rd</sup>) choice (which did not receive a majority of valid votes cast);
  - c. The ballot provided for a choice among two (2) or more employee organizations and “no representation”; and no one (1) choice receives a majority of the votes cast, a run-off election will be held among the top two (2) vote-getters, pursuant to R.I. Gen. Laws § 28-7-18; and
  - d. A run-off ballot provided for a choice between two (2) employee organizations, and the votes are equally divided.
2. If the Board concludes that the results of the prior election are invalid due to objectionable conduct of the election, or objectionable conduct affecting the results of the election, the Board may exercise this option, *sua sponte*.

M. Procedure Following Elections; Objection to Election Process and/or Report Thereon

1. Upon the conclusion of any election, the Board or its Agent, duly designated by the Board to conduct the election, shall prepare a report as to the result of the election; and in cases where the right of an employee to vote has been challenged, and the challenged ballots are sufficient in number to affect the result of the election, the report shall contain a plain statement of the grounds for the challenge. The Board shall cause this report to be served upon the parties.
2. Within five (5) business days thereafter, any party may serve upon all other parties, and file with the Board (with proof of service) an original, signed in blue ink, of the objection(s) to the election or to the report thereon. The objection(s) shall contain a concise statement of the facts constituting the grounds of the objection(s). The Board may direct oral argument to be heard before it, or, with or without a hearing, make a determination with respect to the objection(s) before it.

N. Certification of Representatives; Life of; Exceptions

1. The Board, upon the completion of the election process, shall certify to the parties, five (5) business days thereafter, either a Certification of

Representatives for the designated bargaining unit or a Dismissal Order, based upon the outcome of the election process.

2. When a representative has been certified by the Board as having been designated or selected, such certification shall remain in effect for one (1) year from the date thereof, and thereafter, or until such time as the Board is made aware that the certified representative does not represent a majority of the employees within an appropriate unit.
3. In any case where unusual or extraordinary circumstances require such action, or where probable cause is shown that such action may be necessary to prevent the occurrence or continuation of an unfair labor practice, the Board, in its discretion, may shorten or extend the life of the original certification. If the Board finds that, during the life of a certification, the Employer has refused to bargain collectively with the certified representative, the time of the continuance of such refusal to bargain shall not be a part of the time limited in computing the life of the certification.

O. Challenged Position(s) During the Election Process; Procedure after Election Process

1. Upon receipt of the Certification of Representatives, either party shall have a period of thirty (30) days from the date of electronic transmission (e-mail) of the Certification of Representatives, to file a written letter of request for formal hearing of any or all challenged position(s) in question. Said request shall be served upon all other parties and filed with the Board (with proof of service). The letter of request shall state the correct title(s) of the position(s) for which said formal hearing is being requested.

P. Blocking Charge Bar to Elections – General Rule

1. While there is an Unfair Labor Practice Charge pending before the Board, or before the Court, the Board generally will not entertain a Petition for Investigation of Controversies as to Representation by any labor organization, or any individual, until the Unfair Labor Practice Charge has been finally resolved. However, where an Unfair Labor Practice Charge is filed too late to permit a proper investigation before a scheduled election, the Board or its Administrator may:
  - a. Postpone the election;
  - b. Conduct the election and impound the ballots; or
  - c. Conduct the election, and then proceed to investigate.

Q. Exceptions to the Blocking Charge Bar to Elections

1. The Board will normally proceed with the election, if the party who filed the Charge so requests. However, the Board may refuse to conduct the election if, in the Board's view, the conduct complained of could have an impact on the employees' exercise of their free choice in the election. The Board will consider the following factors when deciding whether to proceed with a representation case once an Unfair Labor Practice Charge has been filed:
  - a. The length of time the representation proceeding has been pending;
  - b. The employees in the unit have been without an election;
  - c. Whether any previous Charges based upon the same unlawful conduct have been dismissed;
  - d. The timing of the filing of the Charge in relation to the date for election;
  - e. The presence of a strike; and
  - f. Any past practice to the effect that the charging party has used an unfair labor practice as a tactic to delay a representation proceeding.
2. The Board may also decide to proceed, even in the absence of a request, if it determines that a fair election can be held.
3. If the Unfair Labor Practice Charge is found to have merit, the Board will make a determination as to whether the alleged unlawful conduct would affect the election; if so, the Petition will generally be held in abeyance until the Unfair Labor Practice Charge has been resolved.
4. If the Unfair Labor Practice Charge is dismissed, after investigation, the "block" is removed, and the election may proceed.

R. Mail Balloting Elections – Blanket Requirements

1. Conduct of Election
  - a. The voting procedures used in a mail balloting election must preserve the integrity and confidentiality of the ballots to the utmost extent possible. The procedures established as defined in § 1.14(R)

of this Part, must be followed unless the parties obtain the written consent of the Administrator or its Agent of the Board.

- b. Upon receipt of the election mail ballots from the United States Postal Service (USPS), the Administrator or its Agent of the Board will retain all mail ballots in a secured and locked location until the day of the ballot count.
- c. The procedures for the mail ballot election process shall be regulated by the same Board Rules and Regulations as applicable and appropriate to those contained under §§ 1.13 and 1.14 of this Part.

## 2. Content

- a. Contents – Each voter mailing will contain:
  - (1) Notice of Election;
  - (2) Voter List;
  - (3) Letter of Instructions to the Voter;
  - (4) Mail Ballot; and
  - (5) Three (3) Mail Ballot Submission Envelopes.
- b. Notice of Election: The Notice of Election shall contain the date and purpose of election, eligibility and lists of voters, the date the ballots were required to be mailed by, information regarding authorized observers, the date, time, location, and the manner of the counting of ballots, Regulations regarding interference, coercion, and electioneering, a sample of the official ballot, and R.I. Gen. Laws § 28-7-40, which regulates the said election process. The purpose of the notice is to inform the voters of all necessary information regarding the voting process.
- c. Voter List: The Voter List will contain all the names of the eligible voters, in alphabetical order, by last name, for viewing by the voters prior to the election process.
- d. Letter of Instructions to the Voter: The instructions will delineate how to use the ballot for voting and the procedures for returning said ballot with a secure outcome.

e. Mail Ballot: The mail ballot will list the appropriate bargaining representative(s) involved in said election process, as well as the ability to vote for “no Union”. Instructions as to filling out the ballot are also listed on said ballot.

f. Three (3) Mail Ballot Submission Envelopes:

(1) Envelope #1 labeled “Secret Ballot Envelope”; Envelope #2 labeled “Print Signature/Signature/Address”; and Envelope #3, a pre-paid postage envelope labeled with the “Rhode Island State Labor Relations Board’s” name, address, and return address.

(2) Mail Ballot Submission Envelopes – Instructions

Envelope #1 labeled “Secret Ballot Envelope” will be used for the voter to place their ballot into after voting and then seal the envelope. Envelope #2 labeled “Print Signature/Signature/Address” will be used for the voter to place the “Secret Ballot Envelope” into after sealing the small envelope. Once the ballot envelope is placed inside, the voter will then seal that envelope, print their name, sign the envelope on the appropriate lines and write the voter’s address in the designated location. Once Envelope #2 is completed, the voter will then place that envelope into the final pre-paid postage Envelope #3 labeled with the “Rhode Island State Labor Relations Board’s” name and address, and then seal the envelope and mail.

### 3. Compliance

a. Should one (1) of the following items pertaining to the submission of mail ballots occur, the mail ballot shall be disqualified and not be counted:

(1) The “Secret Ballot Envelope”, containing the mail ballot is submitted to the Board unsealed;

(2) Identity requirements on the “Print Signature/ Signature/ Address Envelope” not satisfied; or destruction of any identifying mark on said envelope, causing the signature area to become illegible;

- (3) Mail ballots not received at the office of the Board, on or before the stated date of return, date stamped by 3:00 p.m., shall constitute said ballot ineligible;
  - (4) Mail ballots that have been marked with more than one (1) choice, which do not clearly reveal the intent of the voter, or which has any other writings on said ballot; and
  - (5) Any other occurrence that may come into question, which could cause the mail ballot to become a “voided” ballot.
- b. Ballot harvesting as defined in § 1.2(A)(5) of this Part is strictly prohibited; and if discovered or learned will result in the disqualification of all harvested ballots.

#### 4. Challenges

- a. All challenges to the mail ballot election process, which are based on or concern the identity of the voter or voter eligibility, may be disputed by any party, as applicable. Said challenges shall be declared prior to the removal of the “Secret Ballot Envelope” from the “Print Signature/Signature/Address” Envelope #2. Once the “Secret Ballot Envelope” is removed from Envelope #2, no challenge to the mail ballot will be allowed or accepted by the Board.
- b. Should an employee contact the Board informing them that his or her name does not appear on the Voters List and he or she believes that he or she should be allowed to vote, the Administrator or its Agent of the Board will contact the representatives of each party requesting clarification. If it is asserted by either of the party’s representatives that he or she believes said employee should be allowed to vote, the employee will be notified by the Board, sent a packet, and allowed to vote; however, the ballot shall be challenged, as in accordance with the Board’s Rules and Regulations, § 1.14(H) of this Part.
- c. Should an employee contact the Board indicating that he or she never received a packet and his or her name is listed on the Voting List, the Board will send out a duplicate packet; however, in the event both the original and duplicate ballots are received separately by the Board, only the first (1<sup>st</sup>) ballot received will be counted. If both ballots are returned in one (1) envelope, both ballots will be challenged.

- d. All ballot challenges shall be regulated by the same Rules and Regulations as applicable and appropriate as those contained under § 1.14(H) of this Part.

S. Mail Ballot Elections – Procedural

- 1. Petition Content; Cards of Interest; Informal Conference
  - a. All Petition contents, as well as the certification of the cards of interest shall be regulated by the Board's Rules and Regulations § 1.14(A) of this Part.
  - b. Upon the certification of the cards of interest, in accordance with § 1.14(B) of this Part, the Board shall convene an informal conference to set the ground rules for the mail ballot election process through an Agreement for Consent Election.
- 2. Requirements of the Employer – Informal Conference
  - a. At least five (5) business days prior to the convening of the informal conference, it shall be the responsibility of the Employer's representative to submit the Excelsior List to all parties of record;
    - (1) Said document shall be electronically filed (e-filed) in accordance with § 1.5 of this Part, as well as electronically transmitted (e-mailed) to the opposing party by means of a secure transmission, with a copy (Cc) to the Board's Administrator and must certify the same therein, upon conclusion of the electronic filing to the Board.
  - b. Upon conclusion of the informal conference, the Employer shall submit to the Board a complete listing of the voter's names and addresses, in label layout form. (Label size (2x4)).
    - (1) Said document shall be electronically filed (e-filed) in accordance with § 1.5 of this Part.
- 3. Overview of Election Material and Procedures
  - a. The Administrator or its Agent of the Board shall mail to each eligible voter an election packet with the noted contents listed in § 1.14(R)(2)(a) of this Part:
    - (1) Said mailing as referenced in § 1.14(S)(3)(a) of this Part shall be at least fifteen (15) business days prior to the mail

ballot election process due date. This timeframe shall permit the voter adequate time to receive and return the ballot by said noted filing deadline.

- (2) Should an employee report that he or she has not received the voter packet, or said ballot was invalidated, said employee should contact the Board as soon as possible for determination on how to proceed.
  - b. Concurrently, the Administrator or its Agent of the Board shall electronically transmit (email) a copy of the Notice of Election and Voters List to the Employer's representative for their records, as well as:
    - (1) Posting of said Notice of Election and Voters List in a visible location on the homepage of the Employer's website and in a conspicuous location visible to all voting employees within the facility. (i.e. Union bulletin board; employee breakroom). Upon posting of said notice, the Employer's representative shall complete the Employer's Certificate of Posting (enclosed with said documents) and electronically file (e-file) said document in accordance with § 1.5 of this Part.
  - c. Subsequently, the Administrator or its Agent of the Board shall electronically transmit (email) a copy of the Notice of Election and Voters List to the petitioner's representative for their records.
  - d. The Notice of Election and the Voters List shall also be posted on the Board's website at [www.rislrh.ri.gov](http://www.rislrh.ri.gov).
4. Voter Return
  - a. Mail ballots shall be submitted in accordance with § 1.14(R)(2)(f) ((2)) of this Part, by the stated date of return, as noted in the Letter of Instructions to the Voter.
  - b. Should the Board receive returned mail ballots, marked undeliverable, unknown addressee, or for any other reason, the parties shall be contacted by the Administrator or its Agent of the Board as to the return. It will then be the party's responsibility to acquire a correct name and address, if applicable, as soon as possible. Upon receipt, by the Administrator or its Agent of the Board, of the returned ballot, said ballot will be held and marked returned.

5. Ballot Receipt; Verification; Ballot Tabulation
  - a. Upon receipt of each mail ballot, the Administrator or its Agent of the Board will timestamp each envelope at time of receipt in the Board's office, and then place said mail ballot in a secure and locked location, in order to preserve the integrity and confidentiality of the ballots, until the tabulation of the vote occurs.
  - b. On the previously determined date and time of election, the Administrator and/or its Agent will collect said secured ballots for tabulation. The Administrator and/or its Agent, along with the party's observers, if any, will then authenticate and validate said voter's submission by:
    - (1) The timestamp of the Rhode Island State Labor Relations Board on Envelope #3;
      - (AA) Upon authentication and validation of Envelope #3, Envelope #2 will be removed from Envelope #3 and Envelope #3 will then be discarded;
    - (2) Comparing the name and the address listed on Envelope #2 with the Excelsior List;
      - (AA) Upon authentication and validation of Envelope #2, Envelope #1 will be removed from Envelope #2 and Envelope #2 will then be discarded. Envelope #1 will then be placed into a secure location until all envelopes are authenticated and validated;
      - (BB) Once the "Secret Ballot Envelope" is removed from Envelope #2, no challenge to the mail ballot will be allowed or accepted by the Board; and
    - (3) All "Secret Ballot Envelopes" shall then be opened, the ballots removed and counted at random, and the results recorded as regulated in accordance with the Board's Rules and Regulations, as applicable and appropriate, as those contained under §§ 1.13 and 1.14 of this Part.

## **1.15 Petition for Decertification of a Certified Bargaining Representative**

- A. Blanket Requirements

1. A Petition for Decertification of a Certified Bargaining Representative may be filed by or on behalf of employees seeking decertification from an employee organization, a Petition by an intervener seeking certification of representatives through the decertification process, or a Petition by an Employer seeking decertification of an existing employee organization.
  - a. The Petition for Decertification of a Certified Bargaining Representative may be obtained on the Board's website at [www.rislrb.ri.gov](http://www.rislrb.ri.gov).
2. A Petition for Decertification of a Certified Bargaining Representative filed by an Employer must be accompanied by evidence that the Employer has a good faith objective basis for doubting that the labor organization continues to represent a majority of the bargaining unit employees.
3. No election for decertification may be conducted and no Petition for Decertification of a Certified Bargaining Representative will be accepted under this section in a bargaining unit within which, in the preceding twelve (12) months, a valid election has been held.
4. No election for decertification may be conducted and no Petition for Decertification of a Certified Bargaining Representative will be accepted when there exists a Collective Bargaining Agreement; provided that the Board may consider such Petition within a thirty (30) day period immediately preceding sixty (60) days prior to the expiration of such Collective Bargaining Agreement.
5. To serve as a "bar" to decertification, the contract must:
  - a. Be in writing and be signed by the Employer and the labor organization;
  - b. Address substantial terms and conditions of employment; and
  - c. Exist for a definite duration.
6. No election for decertification shall be conducted for "partial" bargaining units, even in situations where changed circumstances may indicate that the originally certified unit is no longer appropriate.
7. The Board shall require the petitioning party to submit Decertification Signature Cards with original signatures, by at least thirty percent (30%) of the employees in the said bargaining unit, indicating a desire to decertify from the designated labor organization.

- a. Employees signing the Decertification Signature Cards shall only complete the top half of said card of interest pertaining to decertification.
8. The filing of a Petition for Decertification of a Certified Bargaining Representative, by an employee, Employer, or an intervening employee organization does not relieve an Employer from the responsibility to bargain with the existing labor organization during the said process.

B. Intervening Employee Organization Requirements

1. An intervening labor organization petitioning to succeed the incumbent employee organization as an intervener seeking certification of representatives through the decertification process on behalf of the said employees involved, shall submit a Petition for Decertification of a Certified Bargaining Representative.
2. The intervening labor organization shall submit Decertification Signature Cards with original signatures, by at least thirty percent (30%) of the employees in the said bargaining unit, indicating a desire to:
  - a. Decertify from the incumbent labor organization; and
  - b. Certify with the intervening labor organization.
    - (1) Decertification Signature Cards must be completed in their entirety.

C. Petition Contents

1. The Petition shall include:
  - a. An indication of whether the Petition is being filed by or on behalf of employees, intervener, or by an Employer;
  - b. The name, address, representative, telephone number, and email of the Employer;
  - c. The name, address, representative, telephone number, and email of the employee organization;
  - d. The name, address, representative, telephone number, and email of other employee organization(s) known to have interest in the said employees;
  - e. Composition of current certified unit for decertification; and

- f. The number of total employees in the current unit to be decertified, certification number, date certified, copy of current certification of representatives, expiration date of most recent Collective Bargaining Agreement.

D. Certification of Decertification Signature Cards

1. Upon receipt of a Petition for Decertification of a Certified Bargaining Representative, the Board shall certify the authenticity of all Decertification Signature Cards submitted as outlined in R.I. Gen. Laws § 28-7-9(b)(1). A copy of the Petition and any attachments will be provided to the Employer prior to the scheduling of the card confirmation. The process of certifying the authenticity of the Decertification Signature Cards is of a confidential nature and the disclosure of the names of the interested parties will not be revealed.

- a. The Decertification Signature Cards must be in alphabetical order, by last name. Only Decertification Signature Cards with original signatures, shall be accepted. The date of the signatures must be within one (1) year of the date on which the Petition is filed. Decertification Signature Cards may be obtained on the Board's website at [www.rislrb.ri.gov](http://www.rislrb.ri.gov).

- b. The Decertification Signature Cards submitted in any proceeding before the Board, may not be filed electronically. All said Decertification Signature Cards must be submitted no later than 3:00 p.m. in accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Petition.

E. Decertification Election Process

1. The procedures for the decertification election process, alleging that the members of a bargaining unit no longer wish to be represented by the labor organization presently representing them, shall be regulated by the same Rules and Regulations, as applicable and appropriate, as those contained under §§ 1.13 and 1.14 of this Part.

F. Outcomes of the Decertification Election Process

1. Upon conclusion of the decertification election process, should the election vote result in a tie vote or a failure to decertify the incumbent, the incumbent shall remain the certified representative of the bargaining unit.
2. Upon conclusion of the decertification election process, should the election vote result in a majority vote of no Union by the voters

participating, the current Certification of Representatives shall no longer be in effect and the bargaining unit shall be deemed decertified.

3. Upon conclusion of the decertification election process, should the intervening labor organization obtain a majority vote of the participating voters, the intervening labor organization shall automatically become the certified representative of the bargaining unit immediately upon the effective date of decertification of the incumbent. There shall be no break in the representation status of the bargaining unit during the transition from the incumbent to the newly certified intervening labor organization.

#### G. Notification of Board's Actions

1. The Board, upon the completion of the election, shall certify to the parties, five (5) business days thereafter, either a:
  - a. Notice and Dismissal Order – as a result of a tie vote, or failure to decertify the bargaining unit; or
  - b. Notice and Decertification of Representatives – as a result of the incumbent labor organization losing majority support; or
  - c. Notice and Decertification of Representatives/Certification of Representatives – as a result of the intervening organization winning the majority support of the participating voters.

### **1.16 Petition for Unit Clarification: Accretion**

#### A. Petition Contents; Sufficiency

1. Either a Union or an Employer may, at any time, file a request to add or “accrete” a position(s) to an existing bargaining unit. Petition forms may be obtained on the Board’s website at [www.rislrh.ri.gov](http://www.rislrh.ri.gov). The request should include:
  - a. An indication as to whether the Petition is being filed by a labor organization or an Employer;
  - b. Type of Petition filed, to wit: clarification, accretion or exclusion;
  - c. The name, address, representative, telephone number, and e-mail of the Employer;
  - d. The name and address of the certified bargaining agent, Board's certification number, disposition and date of Board certification;

Attached to the Petition for Unit Clarification and/or Accretion/ Exclusion shall be a copy of the appropriate Certification of Representatives, as well as a copy of the Board's Unit Clarification Disposition Record, which may be obtained on the Board's website at [www.rislrh.ri.gov](http://www.rislrh.ri.gov).

- e. Number of employees in the existing unit, number of employees to be accreted into/excluded from existing unit, and number of employees in the proposed unit. If the petitioner is seeking to accrete positions totaling more than twenty percent (20%) of the existing bargaining unit, then cards of interest of at least fifty-one percent (51%) of the employees holding the positions that the petitioner seeks to accrete must accompany the Petition; and the accretion Petition may require that an election (for accretion purposes) be held;
  - f. The title of each disputed position, name(s) of individual(s) holding the said title(s), and the length of time the incumbent(s) held the position(s) and the date(s) each position was created; and
  - g. A list of any other employee organization(s) that may claim to represent any of the employees affected by the Petition.
2. In order to proceed with a Petition for Unit Clarification and/or Accretion, the incumbent(s) must be employed in the position for a period of thirty (30) business days, prior to the filing of the Petition.

#### B. Processing of Petition

1. Upon receipt of a Petition for Unit Clarification and/or Accretion, an informal hearing shall be scheduled within thirty (30) days. If, upon conclusion of the informal hearing, the parties cannot agree to the accretion of the position(s), the Board's Agent shall cause an investigation to commence.
2. Upon completion of the investigation, the Agent shall provide a written investigative report to the parties' representatives of record. Upon receipt of the Agent's report, each party shall have a period of thirty (30) days from the date of mailing to file any written responses or statement it deems appropriate. At the end of this thirty (30) day response period, the record of proceedings shall be closed, and the case shall be referred to the Board for its consideration. After consideration of the matter, the Board may refer the matter to its Agent for further investigation, order a formal hearing, or preliminarily grant or deny the requested action.

3. After determination of said matter by the Board, the Board shall notify all parties, in writing, of its preliminary determination as to whether or not the requested position(s) shall be accreted into the existing bargaining unit. The said written notification shall be sent to all parties of record.
4. Pursuant to R.I. Gen. Laws § 28-7-9(d), the matter shall be set down for a formal hearing only if requested by either party within thirty (30) days of the written notice of the Board's preliminary determination. Should neither of the parties involved in the matter request a formal hearing, in writing, within the thirty (30) day period referenced above, and the Board's preliminary determination includes an accretion of a position(s), then the accretion will take effect on the date of the written notification to the parties.
5. Subsequent to the expiration of the aforementioned timeframe, where there was no request for a formal hearing submitted by either party, the Administrator of the Board shall notify the parties, in writing, of the final determination in the matter.
6. The Agent's report and the responses of the parties shall be considered as, and included within, the public record on the matter.
7. The Board's Administrator shall have the discretion, upon good cause shown, to grant one (1) extension of the date for filing a response. All requests for filing extensions must be made, in writing, no later than five (5) business days prior to the filing due date and should be by agreement of the parties' representative of record. Any party filing a response to the Agent's report shall submit an original, signed in blue ink, to the Board; as well as a copy to the opposing party(s), with a copy (Cc) to the Board's Administrator and must certify the same therein.

C. Formal Hearings After Preliminary Determination to Accrete

1. Should any of the parties of record request a formal hearing and the request is granted by the Board, upon conclusion of the formal hearing process, the Board will issue a final written Decision and Order. Should the Board determine in its Decision and Order that the position(s) shall be accreted, then the effective date of the accretion will be the date of the Board's final written Decision and Order.
2. Should the parties reach an agreement on the accretion of the position(s) in question, after request and/or commencement of a formal hearing, by any of the parties of record, but prior to the Board's final written Decision

and Order, the parties shall submit a Consent Agreement & Affidavit in accordance with § 1.16(J) of this Part.

D. Burden of Petitioner

1. It shall be the petitioner's affirmative duty and burden to demonstrate, through either testimony or documentary evidence, or a combination thereof, that the petitioned for position(s) share a community of interest with the existing bargaining unit.

E. Factors Considered in Accretion

1. In reviewing a Petition to accrete a position(s) into an existing bargaining unit, the petitioner shall provide the Board with information concerning the community of interest, as defined in § 1.2(A)(11) of this Part, shared by the position(s) sought and the bargaining unit.

F. Vacant Positions

1. If the position is vacated after a Petition has been filed and prior to informal hearing, the Petition will be denied; and the requesting party will be instructed to resubmit the request, if and when the position is filled.
2. If the position is vacated after informal hearing, but prior to investigation, the Petition will be denied; and the requesting party will be instructed to resubmit the request, if and when the position is filled.
3. If the position is vacated after informal hearing and investigation, but prior to the formal hearing (if applicable), then the matter will be treated as moot; and no further action shall be taken, unless and until the Employer notifies the Board that the position has been filled, in which case, the matter will be placed back on the formal hearing calendar.
4. If the position is vacated after the formal hearing, but prior to the written Decision and Order being rendered, the Board will decide the inclusion of the position based on the evidence adduced at the formal hearing.
5. In order to proceed with a Petition for Unit Clarification and/or Accretion, the incumbent(s) must be employed in the position, for a period of thirty (30) days, prior to the re-filing of the Petition.

G. Abeyance by Preemption of Election Petition

1. If a Petition for Investigation of Controversies as to Representation is filed prior to a Petition for Unit Clarification and/or Accretion relative to the

same position(s), then the Petition for Unit Clarification and/or Accretion shall be held in abeyance, pending the outcome of the Petition for Investigation of Controversies as to Representation.

#### H. Requests for Abeyance

1. Since R.I. Gen. Laws § 28-7-9(b)(3) allows for the Petition for Unit Clarification and/or Accretion to be filed at any time, the parties shall not be allowed to request that a Petition for Unit Clarification and/or Accretion be held in abeyance. If the petitioner does not wish to proceed with the informal hearing and/or the investigation, the matter must be withdrawn.

#### I. Voluntary Recognition; Accretion of Position(s) by Parties

1. When the parties determine that they have reached an agreement on an inclusion of any position(s), prior to the filing of a Petition for Unit Clarification and/or Accretion with the Board, the parties shall submit a Consent Agreement and Affidavit in lieu of the Petition for Unit Clarification and/or Accretion.
  - a. All parties must sign the Consent Agreement; the Affidavit must outline why it is appropriate to include the position(s) into the bargaining unit. Included as part of the Consent Agreement and Affidavit, shall be an indication of a proposed effective date, as agreed upon by the parties, for the accreted position(s). When filing the Consent Agreement and Affidavit with the Board, the parties shall submit an original, signed in blue ink, in accordance with § 1.5 of this Part.
2. Notwithstanding the foregoing, the Board retains jurisdiction of the matter and may reject the Consent Agreement and Affidavit, if the same is determined by the Board to be in violation of applicable law.

#### J. Consent Agreement and Affidavit

1. If, prior to the completion of the Board's investigation on a Petition for Unit Clarification and/or Accretion, the parties determine that they can agree on an inclusion of a position(s), the requesting party must withdraw the Petition for Unit Clarification and/or Accretion request upon submission of the Consent Agreement and Affidavit.
  - a. All parties must sign the Consent Agreement; the Affidavit must outline why it is appropriate to include the position(s) into the bargaining unit. Included as part of the Consent Agreement and Affidavit, shall be an indication of a proposed effective date for the

accreted position(s) agreed upon. When filing the Consent Agreement and Affidavit with the Board, the parties shall submit an original, signed in blue ink, in accordance with § 1.5 of this Part.

2. Notwithstanding the foregoing, the Board retains jurisdiction of the matter and may reject the Consent Agreement and Affidavit, if the same is determined by the Board to be in violation of applicable law.
- K. Request for Petition for Unit Clarification and/or Exclusion of Position(s) After Accretion Process
1. Upon accretion of a position(s) to a certified bargaining unit, either by the filing of a Petition for Unit Clarification and/or Accretion, or by Consent Agreement and Affidavit, a Petition for Unit Clarification and/or Exclusion may not be filed for a period of at least one (1) year from the date of accretion.
- L. Charge of an Unfair Labor Practice filed After Preliminary Determination to Accrete
1. If an Unfair Labor Practice Charge is filed based on a preliminary determination by the Board to accrete a position(s) into a bargaining unit, prior to the formal hearing process, the matter shall proceed to a designated informal hearing process in accordance with § 1.22(F) of this Part. The matter will then be scheduled before the Board, as soon as practicable, for the Board to determine whether the Unfair Labor Practice Charge should be placed into abeyance based on the outcome of the Petition for Unit Clarification and/or Accretion, a Complaint should issue, or to dismiss the matter.
- M. Subsequent or Repetitive Requests by the Same Petitioner to Accrete
1. When a Petition for Unit Clarification and/or Accretion for a position has been reviewed by the Board, and the Board makes a determination to deny the accretion of the position, the same position may not be the subject of a subsequent Petition unless:
    - a. A period of at least one (1) year has passed from the date of the denial;
    - b. The request is accompanied by an Affidavit alleging a substantial change in circumstances of the position. The Affidavit shall describe the substantial change in circumstances in sufficient detail; and

- c. The Board shall have the right to return any Petition and Affidavit that the Board, or its Administrator or Agent, finds insufficient to meet these terms. No processing shall commence until the Petition is sufficient for review.

## **1.17 Petition for Unit Clarification: Exclusion**

### **A. Petition Contents; Sufficiency**

1. Either a Union or an Employer may, at any time, file a request to exclude positions from an existing bargaining unit. Petition forms may be obtained on the Board's website at [www.rislrh.ri.gov](http://www.rislrh.ri.gov). The request should include:
  - a. An indication as to whether the Petition is being filed by a labor organization or an Employer;
  - b. Type of Petition filed, to wit: clarification, accretion or exclusion;
  - c. The name, address, representative, telephone number, and e-mail of the Employer;
  - d. The name and address of the certified bargaining agent, Board's certification number, disposition and date of Board certification; Attached to the Petition for Unit Clarification and/or Accretion/ Exclusion shall be a copy of the appropriate Certification of Representatives, as well as a copy of the Board's Unit Clarification Disposition Record, which may be obtained on the Board's website at [www.rislrh.ri.gov](http://www.rislrh.ri.gov).
  - e. Number of employees in the existing unit, number of employees to be accreted into/excluded from existing unit, and number of employees in the proposed unit. If the petitioner is seeking to exclude positions totaling more than twenty percent (20%) of the existing bargaining unit, then cards of interest of at least fifty-one percent (51%) of the employees holding the positions that the petitioner seeks to exclude must accompany the Petition; and the exclusion Petition may require that an election for exclusion purposes be held;
  - f. The title of each disputed position, name(s) of individual(s) holding the said title(s), and the length of time the incumbent(s) held the position(s) and the date(s) each position was created; and
  - g. A list of any other employee organization(s) that may claim to represent any of the employees affected by the Petition.

2. In order to proceed with a Petition for Unit Clarification and/or Exclusion, the incumbent(s) must be employed in the position for a period of thirty (30) business days, prior to the filing of the Petition.

B. Processing of Petition

1. Upon receipt of a Petition for Unit Clarification and/or Exclusion, an informal hearing shall be scheduled within thirty (30) days. If, upon conclusion of the informal hearing, the parties cannot agree to the exclusion of the position(s), the Board's Agent shall cause an investigation to commence.
2. Upon completion of the investigation, the Agent shall provide a written investigative report to the parties' representatives of record. Upon receipt of the Agent's report, each party shall have a period of thirty (30) days from the date of mailing to file any written responses or statement it deems appropriate. At the end of this thirty (30) day response period, the record of proceedings shall be closed, and the case shall be referred to the Board for its consideration. After consideration of the matter, the Board may refer the matter to its Agent for further investigation, order a formal hearing, or preliminarily grant or deny the requested action.
3. After determination of said matter by the Board, the Board shall notify all parties, in writing, of its preliminary determination as to whether or not the requested position(s) shall be excluded from the existing bargaining unit. The said written notification shall be sent to all parties of record.
4. Pursuant to R.I. Gen. Laws § 28-7-9(d), the matter shall be set down for a formal hearing only if requested by either party within thirty (30) days of the written notice of the Board's preliminary determination. Should neither of the parties involved in the matter request a formal hearing, in writing, within the thirty (30) day period referenced above, and the Board's preliminary determination includes an exclusion of a position(s), then the exclusion will take effect on the date of the written notification to the parties.
5. Subsequent to the expiration of the aforementioned timeframe, where there was no request for a formal hearing submitted by either party, the Administrator of the Board shall notify the parties, in writing, of the final determination in the matter.
6. The Agent's report and the responses of the parties shall be considered as, and included within, the public record on the matter.

7. The Board's Administrator shall have the discretion, upon good cause shown, to grant one (1) extension of the date for filing a response. All requests for filing extensions must be made in writing, no later than five (5) business days prior to the filing due date and should be by agreement of the parties' representatives of record. Any party filing a response to the Agent's report shall submit an original, signed in blue ink, to the Board, in accordance with § 1.5 of this Part; as well as to the opposing party(s) with a copy (Cc) to the Board's Administrator and must certify the same therein.

C. Formal Hearings After Preliminary Determination to Exclude

1. Should any of the parties of record request a formal hearing and the request is granted by the Board, upon conclusion of the formal hearing process, the Board will issue a final written Decision and Order. Should the Board determine in its Decision and Order that the position(s) shall be excluded then the effective date of the exclusion will be the date of the Board's final written Decision and Order.
2. Should the parties reach an agreement on the exclusion of the position(s) in question, after request and/or commencement of a formal hearing, by any of the parties of record, but prior to the Board's final written Decision and Order, the parties shall submit a Consent Agreement & Affidavit in accordance with § 1.17(H) of this Part.

D. Burden of Proof

1. The petitioner has the burden of establishing that a substantial change in the duties of the position(s) in question has occurred, such that the position(s) is no longer eligible for inclusion within the bargaining unit or for collective bargaining.

E. Requests for Abeyance

1. Since R.I. Gen. Laws § 28-7-9(b)(3) allows for the Petition for Unit Clarification and/or Exclusion to be filed at any time, the parties shall not be allowed to request that a Petition for Unit Clarification and/or Exclusion be held in abeyance. If the petitioner does not wish to proceed with the informal hearing and/or the investigation, the matter must be withdrawn.

F. Charge of an Unfair Labor Practice Filed After Preliminary Determination to Exclude

1. If an Unfair Labor Practice Charge is filed based on a preliminary determination by the Board to exclude a position(s) from a bargaining unit,

prior to the formal hearing process, the matter shall proceed to a designated informal hearing process in accordance with § 1.22(F) of this Part. The matter will then be scheduled before the Board, as soon as practicable, for the Board to determine whether the Unfair Labor Practice Charge should be placed into abeyance based on the outcome of the Petition for Unit Clarification and/or Exclusion, a Complaint should issue, or to dismiss the matter.

G. Voluntary Recognition; Exclusion of Position(s) by Parties

1. When the parties determine that they have reached an agreement on an exclusion of any position(s), prior to the filing of a Petition for Unit Clarification and/or Exclusion with the Board, the parties shall submit a Consent Agreement and Affidavit in lieu of the Petition for Unit Clarification and/or Exclusion.
  - a. All parties must sign the Consent Agreement; the Affidavit must outline why it is appropriate to exclude the position(s) from the bargaining unit. Included as part of the Consent Agreement and Affidavit, shall be an indication of a proposed effective date for the excluded position(s) agreed upon. When filing the Consent Agreement and Affidavit with the Board, the parties shall submit an original, signed in blue ink, in accordance with § 1.5 of this Part.
2. Notwithstanding the foregoing, the Board retains jurisdiction of the matter and may reject the Consent Agreement and Affidavit, if the same is determined by the Board to be in violation of applicable law.

H. Consent Agreement and Affidavit

1. If, prior to the completion of the Board's investigation on a Petition for Unit Clarification and/or Exclusion, the parties determine that they can agree on an exclusion of a position(s), the requesting party must withdraw the Petition for Unit Clarification and/or Exclusion upon submission of the Consent Agreement and Affidavit.
  - a. All parties must sign the Consent Agreement; the Affidavit must outline why it is appropriate to exclude the position(s) from the bargaining unit. Included as part of the Consent Agreement and Affidavit, shall be an indication of a proposed effective date for the excluded position(s) agreed upon. When filing the Consent Agreement and Affidavit with the Board, the parties shall submit an original, signed in blue ink, in accordance with § 1.5 of this Part.

2. Notwithstanding the foregoing, the Board retains jurisdiction of the matter and may reject the Consent Agreement and Affidavit, if the same is determined by the Board to be in violation of applicable law.

## **1.18 Affiliation/Merger**

### **A. Requirements of Request to Board**

1. Employees represented by an independent labor organization or association may seek to affiliate/merge with a national organization while a contract is in existence by filing with the Board:
  - a. A Petition for Affiliation/Merger of Bargaining Representatives; (Petition forms may be obtained on the Board's website at [www.rislrb.ri.gov](http://www.rislrb.ri.gov));
  - b. Cards of interest shall be submitted pursuant to R.I. Gen. Laws § 28-7-9(b)(1);
  - c. A copy of the notice of meeting of employees that will take place to discuss and vote on affiliating/merging with the national organization;
  - d. An Affidavit, signed by a representative of the independent association or organization, which indicates that a majority of the members of the bargaining unit have voted to affiliate/merge. The Affidavit shall set forth the total number of employees in the bargaining unit, and the total number of employees voting for the merger;
    - (1) The majority of votes must be fifty-one percent (51%) of the total unit, not the total votes;
  - e. A certified copy of the minutes of the meeting at which the vote to affiliate/merge took place. The minutes of the meeting should reflect the taking of the vote, as well as the results of the vote; and
  - f. A letter from the national organization requesting the Board to affiliate/merge the two (2) organizations by certification.
2. Cards of interest submitted in any proceeding before the Board may not be filed electronically. All cards of interest must be submitted no later than 3:00 p.m. in accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Petition. The cards of interest must be in

alphabetical order, by last name. Only cards of interest with original signatures shall be accepted.

B. Action by Board

1. Upon receipt of a Petition for Affiliation/Merger of Bargaining Representatives, the Board's Administrator or its Agent shall notify the Employer of the request to affiliate/merge. The Board shall certify the authenticity of the cards of interest, as well as verifying the number of employees in the current bargaining unit. A copy of the Petition and any attachments will be provided to the Employer prior to the scheduling of the card confirmation. The Employer shall be directed to submit its objection, if any, within five (5) business days of receipt of the said notification by the Board, together with a clear and concise statement of its reasons for its objections.
2. The Board shall undertake review of the request, and any objections filed, and may either grant the request to affiliate/merge and amend the certification, refer the matter to its Agent for further investigation, or may deny the request.

C. Notification of Board's Action

1. The Board's Administrator or its Agent shall notify the petitioner, in writing, of the results of the Board's action. Upon acceptance of the affiliation/merger by the Board, the Board shall amend the Certification of Representatives to reflect the change in organizations. Each party shall receive a copy of the amended certification. (Upon the denial of the affiliation/merger by the Board, the petitioner may adhere to the procedures as set forth by § 1.18(D) of this Part).

D. Requests for Hearing and/or Reconsideration

1. Requests, which have been denied, may be set down for a hearing only upon written request to the Board; said request must be filed within five (5) business days after receipt of the denial. Any aggrieved petitioner also has the right to request a reconsideration of its request. In submitting such a request, the petitioner shall state with specificity the reasons why it believes the Board's prior determination was erroneous and submit any available or existing evidence to support stated reasons.

## **1.19 Merger of Two or More Bargaining Units into One Bargaining Unit Within the Same Affiliation**

### **A. Required Documentation**

1. In order to effectuate a merger of two (2) or more bargaining units within the same affiliation, the requesting party must submit the following documentation:
  - a. A letter from the affiliation requesting the Board to merge the bargaining units involved, as well as listing all appropriate documentation in support of the request;
    - (1) The Certification of Representatives, which will be affected by this merger, must be attached to the letter.
  - b. A copy of the notice of meeting of employees that will take place to discuss and vote on the merger;
  - c. A certified copy of the minutes of the meeting at which the vote to merge the bargaining units took place. The minutes of the meeting should reflect the taking of the vote, as well as the results of the vote;
    - (1) The majority of votes must be fifty-one percent (51%) of the total bargaining unit, not the total votes.
  - d. An Affidavit, signed by a representative of the affiliation, affirming that the bargaining unit members involved held a Union meeting for the purpose of voting to merge; that a majority of the members of the bargaining units have voted for the merger; as well as indicating the titles of positions to be merged; and
  - e. A Consent Agreement executed between the Union and the Employer, indicating the authorization and agreement of the members to merge the affected bargaining units. Included as part of the Consent Agreement, shall be an indication of a proposed effective date for the merger as agreed upon.
2. When filing the merger documentation with the Board, the affiliation is required to submit an original, signed in blue ink, in accordance with § 1.5 of this Part.

### **B. Notification of Board's Action**

1. The Board's Administrator or its Agent shall notify the petitioner, in writing, of the results of the Board's action. Upon acceptance of the Consent Agreement and Affidavit by the Board, the Board shall issue an amended Certification of Representatives to reflect the merger. Each party shall receive a copy of the amended certification.

## **1.20 Transfer of Bargaining Units and/or Portions Thereof Within the Same Labor Organization**

### **A. Required Documentation**

1. In order to effectuate a transfer of an entire bargaining unit, and/or a portion thereof, the requesting party must submit the following documentation:
  - a. An Affidavit signed by the duly authorized representative, indicating why the parties feel it is appropriate to transfer the bargaining unit, or portion thereof, as well as the titles of positions to be transferred and the number of positions within each title;
  - b. A Consent Agreement executed between the Union(s) and the Employer indicating the agreement and authorization of the members to transfer, as well as a proposed effective date for the transferred position(s) agreed upon; and
  - c. The Signature Affirmation Document containing the names, title of positions to be transferred, original signatures and dates, signed in blue ink, of at least fifty-one percent (51%) of the bargaining unit, and/or portion thereof, being transferred. Upon receipt of the Signature Affirmation Document, the Board shall certify the authenticity of the said signatures.
    - (1) The Signature Affirmation Document shall be submitted along with the Consent Agreement & Affidavit, in accordance with R.I. Gen. Laws § 28-7-9(b)(1). The Signature Affirmation Document must be in alphabetical order, by last name, with original signatures, signed in blue ink.
    - (2) The Signature Affirmation Document may not be filed electronically and must be submitted no later than 3:00 p.m. in accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Consent Agreement & Affidavit.

2. When filing the transfer documentation with the Board, the labor organization is required to submit an original, signed in blue ink, in accordance with § 1.5 of this Part.
3. When transferring a “portion” of a bargaining unit from one (1) bargaining unit to another bargaining unit within the same labor organization, the petitioner must transfer the entire portion of the specific title, not just one (1) of the positions within that specific title.

**B. Contested Transfers**

1. Upon receipt of the request for a Transfer Of Bargaining Unit(s) and/or Portions Thereof, Within the Same Labor Organization, the requesting party advises the Board that a party(s) objects to the transfer, as well as its refusal to sign the Consent Agreement, the Board’s Administrator will notify the objecting party(s), in writing, of the pending request for transfer. The party(s) shall be directed to submit its objection(s), together with a clear and concise statement of its reasons for its objection(s) within five (5) business days of receipt of the notification by the Board. The matter shall then be scheduled before the Board, as soon as practicable, for disposition.

**C. Notification of Board’s Action**

1. The Board’s Administrator or its Agent shall notify the parties, in writing, of the results of the Board’s action. Upon acceptance of the Consent Agreement and Affidavit for a Transfer of Bargaining Unit(s) and/or Portions Thereof, Within the Same Labor Organization, the Board shall publish its determination in the Unit Clarification Disposition section of the Board’s website at [www.rislrh.ri.gov](http://www.rislrh.ri.gov). Upon the denial of the transfer by the Board, the petitioner may adhere to the procedures as set forth by § 1.20(D) of this Part.

**D. Requests for Hearing and/or Reconsideration – Transfer of Bargaining Units and/or Portions Thereof Within the Same Labor Organization**

1. Requests, which have been denied, may be set down for a formal hearing only upon written request, which is to be filed within five (5) business days after the denial. Any aggrieved petitioner also has the right to request a reconsideration of its request. In submitting such a request, the petitioner shall state, with specificity, the reasons why it believes the Board’s prior determination was erroneous.

## **1.21 Transfer of Bargaining Unit(s) Between National Organizations: Change of Jurisdiction**

### **A. Required Documentation**

1. In order to effectuate a transfer of an entire bargaining unit based on a change in jurisdiction between national organizations, the requesting party must submit:
  - a. A letter of intent from the filing national organization;
  - b. An Affidavit, signed by the duly authorized representative of the national organization, affirming that a Union meeting was held by the existing national organization's bargaining unit members for the purpose of voting to transfer national organizations, that a majority of the members of the bargaining unit have voted for the transfer, and that the existing national organization is granting the transfer;
  - c. A Consent Agreement executed between the Union(s) and the Employer indicating the authorization and desire of the members to transfer, as well as a proposed effective date for the transferred position(s) agreed upon;
  - d. The Signature Affirmation Document, containing the names, title of positions to be transferred, original signatures and dates, signed in blue ink, of at least fifty-one percent (51%) of the bargaining unit, and/or portion thereof, being transferred. Upon receipt of the Signature Affirmation Document, the Board shall certify the authenticity of the said signatures.
  - e. A letter from the current certified national organization approving the transfer of organizations.
2. The Signature Affirmation Document may not be filed electronically and must be submitted no later than 3:00 p.m. in accordance with § 1.6(H)(4) of this Part, on the same day as the electronic submission of the Consent Agreement & Affidavit.
3. When filing the transfer documentation with the Board, the labor organization is required to submit an original, signed in blue ink, in accordance with § 1.5 of this Part.

### **B. Action by Board; No Contest**

1. Upon receipt of the request and the required documentation, the Board shall certify the authenticity of the signatures listed on the Signature Affirmation Document. The Board shall then review the request and may either grant the request to transfer jurisdiction of organizations and amend the certification or deny the request.

C. Contested Transfers

1. Upon receipt of the Request for a Transfer of Bargaining Unit(s) Between National Organizations: Change of Jurisdiction, should the requesting party advise the Board that a party(s) objects to the transfer of jurisdictional representation, as well as its refusal to sign the Consent Agreement, the Board's Administrator will notify the objecting party(s), in writing, of the pending request for transfer. The party(s) shall be directed to submit its objection(s), together with a clear and concise statement of its reasons for its objection(s), within five (5) business days of receipt of the notification by the Board. The matter shall then be scheduled before the Board, as soon as practicable, for disposition.

D. Notification of Board's Action

1. The Board's Administrator or its Agent shall notify the parties, in writing, of the results of the Board's action. Upon acceptance of the Consent Agreement and Affidavit for a change in jurisdiction of a national organization by the Board, the Board shall amend the Certification of Representatives to reflect the change in the organizations. Each party shall receive a copy of the amended certification. Upon the denial of the transfer by the Board, the petitioner may adhere to the procedures as set forth by § 1.21(E) of this Part.

E. Requests for Hearing and/or Reconsideration – Transfer of Bargaining Unit(s) Between National Organizations: Change of Jurisdiction

1. Requests, which have been denied, may be set down for a formal hearing only upon written request, which is to be filed within five (5) business days after the denial. Any aggrieved petitioner also has the right to request a reconsideration of its request. In submitting such a request, the petitioner shall state, with specificity, the reasons why it believes the Board's prior determination was erroneous.

## **1.22 Procedures for the Prevention of Unfair Labor Practices**

A. Charge; Persons Eligible to File

1. Any person, Employer, or labor organization may make a charge that an individual has engaged in or is engaging in an unfair labor practice. Any person who is a member of a labor organization must first seek to have the labor organization file the Unfair Labor Practice Charge(s) on his or her behalf. Any person who demonstrates that his or her exclusive bargaining agent has refused to file the Charge(s) on the bargaining unit member's behalf shall be permitted to file his or her own Charge, which shall be subject to all the Rules, Regulations, and requirements of this section. Any person filing a Charge directly shall attach to the Charge an Affidavit, which attests to the labor organization's refusal to file.

B. Charge; Form and Filing; Deadline

1. The Unfair Labor Practice Charge shall be typewritten and submitted on legal size paper (eight-and-one-half inches by fourteen inches (8.5" x 14") in size). The petitioner shall submit an original, signed in blue ink, with the Board, in accordance with § 1.5 of this Part. Petition forms may be obtained on the Board's website at [www.rislr.b.ri.gov](http://www.rislr.b.ri.gov). Charges must be filed with the Board within six (6) months from the date of knowledge of the alleged unfair labor practice.

C. Contents of Charge

1. A Charge shall contain:
  - a. An indication as to whether the Charge is being filed on behalf of an "individual," "employee organization," or an "Employer;"
  - b. The name of Employer, address, representative, telephone number, and email;
  - c. The name of the employee organization or individual, address, representative, telephone number, and email;
  - d. An indication of whether the Charge is being filed against an "Employer" or an "employee organization;"
  - e. An enumeration of the specific Subsection(s) of R.I. Gen. Laws §§ 28-7-13 or 28-7-13.1 that the complainant is alleging has been violated;
  - f. A summary of the basis for the Charge to include, where known, the approximate dates and places of the alleged acts, and the names of the respondent's agents, or other representatives by whom the acts were committed. In the event, it is alleged that an

employee or employees have been discharged, refused employment or suffered discrimination in violation of the Act, the name or names of such employees;

- g. The remedy requested by the complainant; and
  - h. An indication as to any previous action that has been taken in the matter, to wit: grievance, negotiations, mediation, fact-finding, conciliation, interest arbitration.
2. Charges which, in the opinion of the Board or its Administrator or Agent, do not provide sufficient detail of factual allegations and the legal theory underlying the alleged unfair labor practice(s), or fail to provide adequate and due notice to the accused, shall be returned to the complainant, without prejudice to re-file; provided however, any such re-filing is completed within the six (6) month period set forth in § 1.22(B) of this Part.

D. Amendment of Charge

1. Otherwise than as set forth in § 1.22(G) of this Part, such Charge may be amended at any time prior to the issuance of the final Decision and Order of the Board. The Complaint may thereupon be amended, in accordance with the provisions of § 1.23(H) of this Part.

E. Investigation of Charge; Report

1. After a Charge has been filed, the Board may conduct all investigations, which in its opinion are necessary and proper for the exercise of the power vested in it by the Act. For the purposes of this investigation, the Board, its Administrator or Agent, may exercise all the powers, respectively, specified in the Act.

F. Designated Informal Hearing Process with Charging Party and Respondent

1. Upon the filing of an Unfair Labor Practice Charge, the parties will be notified and provided with a copy of said Charge by the Board. The parties shall be notified in writing, by the Board's Administrator or its Agent, as to the designated informal hearing process and the associated procedural requirements, pursuant to R.I. Gen. Laws § 28-7-9(5).
2. Upon a "late" filing of a written statement by either party, in accordance with § 1.9(B)(4) of this Part, the opposing party may file a Motion of Objection to the Acceptance of the Written Statement by the Board, within five (5) business days of the written statement's due date. The objection shall then be forwarded to the Board for review and determination on how

to proceed. The Administrator of the Board shall notify the parties, in writing, of the results of the Board's action.

G. Withdrawal of Charge

1. A Charge, or any part thereof, may be withdrawn only with the consent of the Board, and upon such terms and conditions as the Board may deem just and proper. Upon withdrawal of any Charge at any time prior to the issuance of the Complaint thereon, or upon application of the person, Employer, or labor organization filing the Charge, the Board may permit the withdrawal of the whole, or any part thereof. At any time, subsequent to the issuance of a Complaint thereon, and upon Motion of the person, Employer, or labor organization filing the Charge, the Board may permit the withdrawal of such Charge, or any part thereof. The Complaint may thereupon be amended or withdrawn, in accordance with §§ 1.23(H) and (K) of this Part.

H. Administrative Dismissal of Unfair Labor Practice Charges After Designated Informal Hearing Process

1. Pursuant to R.I. Gen. Laws § 28-7-9(d), after the designated informal hearing process has concluded, and after consideration of the Agent's confidential report, the Board may administratively dismiss the Charge without issuing a Complaint against the respondent. Upon determination of the dismissal of the Charge by the Board, the Board's Administrator or its Agent shall notify the petitioner, in writing, of the results of the Board's action.

I. Unfair Labor Practice Charge – Administrative Dismissal; Request for Reconsideration

1. Upon receipt of notification of an administrative dismissal of the Charge, the charging party shall have five (5) business days from the date of the written dismissal to submit a written request for reconsideration, with legal justification to substantiate said reconsideration. Upon receipt of the request, the matter may be placed on the next applicable monthly Board Agenda for review and determination. The Administrator or its Agent of the Board shall notify the petitioner, in writing, of the results of the Board's action.

J. Unfair Labor Practice Charges Held in Abeyance

1. Once an Unfair Labor Practice Charge has been filed, the matter will proceed to a designated informal hearing process. The Board will only hold an Unfair Labor Practice Charge in abeyance, upon request by the

charging party. Status letters will be sent to the charging party, with a copy sent to the responding party, every sixty (60) days, requesting an update. Failure to respond to any request for a status update may result in the Unfair Labor Practice Charge being dismissed.

### **1.23 Issuance of Unfair Labor Practice Complaint by Board**

#### **A. Investigative Report Not Part of Complaint**

1. The report of the Board's Administrator or its Agent shall not be deemed or considered as part of the Complaint, or a part of the public record as defined in § 3.4 of this Subchapter.

#### **B. Complaint and Notice of Hearing; Other Disposition of Charge**

1. After a Charge has been filed, the Board may issue, and cause to be served upon the parties to the proceeding, a Complaint in the name of the Board, containing a concise statement as to the alleged violations of the Act, together with a notice of hearing, at a date, time, location, and manner therein fixed, not less than five (5) business days after the service of the Complaint; provided, however, that the parties to the proceedings may waive the five (5) business days' notice by stipulating thereto in writing. The Board's Administrator or its Agent, is hereby authorized and empowered to sign and disburse all Complaints authorized to be issued by the Board.
2. After the Board, in its discretion, and after the designated informal hearing process thereon, may determine that no Complaint shall be issued on a Charge filed with it, the Board shall administratively dismiss the Charge by issuing a letter of dismissal to both the charging party and the respondent.

#### **C. Service and Filing of Answer**

1. The respondent against whom the Complaint is issued shall have the right to file an Answer within five (5) business days from the service of the Complaint. Such Answer shall be in writing; the original being signed by the respondent or his or her representative. The respondent or his or her representative shall file, with the Board, an original, signed in blue ink, in accordance with § 1.5 of this Part, the Answer to the Complaint and copies, thereof, for each party to the proceeding. The respondent shall be required to certify a copy of said Answer to each party of the proceeding, with a copy (Cc) to the Board's Administrator and must certify the same therein.

#### **D. Extension of Time to File Answer**

1. The Board may extend the time within, which the Answer shall be filed, upon request or Motion of the respondent.

E. Failure to File Answer

1. Upon failure of the respondent to file an Answer within the time period provided in § 1.23(C) of this Part, the Board may proceed to hold a formal hearing at a date, time, location, and manner specified in the notice of hearing, and may make its findings of fact and enter its order upon the testimony so taken. The respondent, however, in the event of such failure, shall have the right to appear at such hearing, and cross-examine all witnesses, but shall not have the right to interpose or seek to establish any affirmative defense without permission of the Board.

F. Denial of Complaint

1. In its Answer, the respondent shall specifically deny or explain each of the allegations contained in the Complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Such Answer shall contain a concise statement of the facts that constitute the grounds of defense. Any allegations in the Complaint not specifically denied in the Answer, unless the respondent shall state in the Answer that the respondent is without knowledge, shall be deemed admitted being true and may be so found by the Board.

G. Defense and New Matter

1. Any allegation of new matter contained in the Answer is to be deemed denied without the necessity of a reply.

H. Amendment of Complaint

1. In the discretion of the Board, the Board's Administrator or its Agent may amend the Complaint upon due notice to all parties, at any time before the issuance of the final Decision and Order. Where a Charge has been amended in accordance with § 1.22(D) of this Part, the Board may amend the Complaint. Such amendment(s) to the Complaint may be made on notice to all parties in accordance with this section, upon such terms as may be deemed just and proper, at any time prior to the issuance of a final Decision and Order based thereon.

I. Amendment of Answer by Motion

1. After the Answer is filed, the Answer may be amended upon Motion of the party filing it, upon due notice to all parties, and upon such terms as may

be deemed just and proper. Such amendment(s) of the Answer may be permitted at any time prior to the issuance of a final order based upon the Complaint.

J. Amendment of Answer by Right

1. In any case where a Complaint has been amended, the respondent shall have an opportunity to amend his or her Answer, within such period as may be fixed by the Board, after it permits an amendment to the Complaint.

K. Withdrawal of Complaint

1. Any such Complaint or amended Complaint, or any part thereof, may be withdrawn by the Board, on its own Motion, or on Motion of the Board's Administrator or its Agent, at any time before the issuance of a final Decision and Order, upon notice to all parties to the proceeding.

L. Complaints Held in Abeyance

1. Once a Complaint has been issued, the matter will be placed on the formal hearing calendar. The Board will only hold a Complaint in abeyance, upon request by the charging party. Status letters will be sent to the charging party, with a copy sent to the responding party, every sixty (60) days, requesting an update. Failure to respond to any request for a status update may result in the Charge and Complaint being dismissed.

## **1.24 Agents and Legal Counsel of the Board**

A. Powers and Duties of the Administrator

1. The Administrator of the Board, in addition to all powers, hereinabove, conferred upon him or her, is hereby designated by the Board as its Agent:
  - a. To conduct and be in full charge and control of any and all informal/formal hearing processes and the records thereof;
  - b. To accept service of *Subpoenas Duces Tecum* for Board records;
  - c. In the absence of the Board's Agent, to serve Subpoena(s) or *Subpoena Duces Tecum* issued by the Board, by certified mail, in accordance with §§ 1.10(D) and (E) of this Part;

- d. In the event the Board is without legal counsel for any period of time, to accept service on court summons, Subpoenas, or Complaints, on appeals of Board cases;
- e. To oversee the daily operations and responsibilities of the Rhode Island State Labor Relations Board's administrative office, as well as the planning, directing, and management of the staff engaged in the investigations and clerical activities; and to work for and under the direction of the Rhode Island State Labor Relations Board and its Chairperson as required;
- f. To do any and all things necessary and proper to effectuate the policies of the Act and these general Rules and Regulations.

B. Powers and Duties of the Investigator(s)

- 1. All Investigators, now or hereafter, in the employ of the Rhode Island State Labor Relations Board, are hereby designated by the Board as its Agents:
  - a. To conduct any inquiry necessary to the functions of the Board;
  - b. To investigate concerning the representation of employees, including the taking of secret ballots of employees pursuant to the Act;
  - c. To have access to, and the right to copy evidence, to administer oaths and affirmations, in connection with his or her investigations, to examine witnesses, and to receive evidence, pursuant to the Act; and
  - d. To serve Subpoena(s) or *Subpoena Duces Tecum* issued by the Board, by certified mail, in accordance with §§ 1.10(D) and (E) of this Part.

C. Powers and Duties of the Legal Counsel

- 1. Pursuant to R.I. Gen. Laws § 28-7-7, the Board has the authority to select its own legal counsel:
  - a. To attend formal hearings;
  - b. To prepare Board Decision & Orders;
  - c. To accept service, on behalf of the Board, of court summons, Subpoenas, or Complaints, relative to labor board matters;

- d. To represent the Board before the Rhode Island Superior Court and the Rhode Island Supreme Court, on appeals; and to prepare Briefs, Motions, Pleadings, etc.;
- e. To advise the Board on legal questions and on the Board's rights and autonomy under the Act;
- f. To represent the Board before tribunals, committees, courts, and on legislative matters, when requested; and
- g. To do any and all things necessary and proper to effectuate the policies of the Act and these general Rules and Regulations.

D. Not Limiting Board to Make Special Designation of Agents

- 1. The foregoing designations are not to be construed to limit the power of the Board to make such special designations of Agents, consistent with the law, as may, in its discretion, be necessary or proper to effectuate the policies of the Act, nor shall the foregoing designations be construed as limiting the power of the Board, at any time, to confer upon its Agent(s), such additional and different duties as it may deem necessary and proper.

## **1.25 Construction; Amendments; Application of General Rules and Regulations**

A. Construction of Rules

- 1. These general Rules and Regulations shall be liberally construed and shall not be deemed to limit the powers conferred upon the Board by the Act.

B. Amendments; Rules and Regulations

- 1. Any Rule or Regulation may be amended or rescinded by the Board, at any time, but such amendment or rescinding shall not be effective until the same is filed with the Office of the Secretary of State pursuant to the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

C. Application of General Rules and Regulations

- 1. These general Rules and Regulations, and any amendments thereto, shall govern all proceedings filed with the Board on or after February 1, 2021, and all other proceedings or Charges then pending, except to the extent that in the judgment of the Board, their application to such proceedings or pending Charges and Petitions would not be feasible or would work an

injustice, in which event these general Rules and Regulations shall not apply.

465-RICR-10-00-1

**TITLE 465 - LABOR RELATIONS BOARD**

**CHAPTER 10 - GENERAL RULES AND REGULATIONS**

**SUBCHAPTER 00 - N/A**

**PART 1 - RHODE ISLAND STATE LABOR RELATIONS BOARD - POLICY AND PROCEDURES**

Type of Filing: Amendment

**Agency Signature**

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Agency Head Signature

Agency Signing Date

**Department of State**

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Regulation Effective Date

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Department of State Initials

Department of State Date