

**Relevant Excerpts
of the
Rules of the City of New York
Title 61 - Office of Collective Bargaining
Chapter 1 - Practice and Procedure**

§ 1-01 Definitions

§ 1-07 Proceedings before the Board of Collective Bargaining

§ 1-12 General Provisions

§ 1-01 DEFINITIONS. Terms defined in the statute. The terms "Director," "Board of Collective Bargaining," "Board of Certification," "municipal agency," "municipal employees," "mayoral agency," "public employer," "public employees," "municipal employee organization," "public employee organization," "Municipal Labor Committee," "certified employee organization," "matters within the scope of collective bargaining," "executive order," "grievance," "labor member," "city member," "impartial member," "designated representative," and "designated employee organization" shall have the meanings set forth in § 12-303 of the statute.

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Executive Secretary. The term "Executive Secretary" shall mean the person appointed by the Director to carry out the responsibilities defined by § 1-07(c)(2) of these rules.

Improper practices. The term "improper practices" shall have the meaning set forth in § 12-306 of the statute; the term "improper practices proceeding" shall mean a proceeding conducted, pursuant to § 12-309(a)(4) of the statute, to investigate and determine charges of improper practices and, when appropriate, to issue orders for the purpose of remedying such improper practices.

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Rules. These rules shall be cited as the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1).

Statute. The term "statute" shall mean the New York City Collective Bargaining Law, Chapter 3 of Title 12 of the Administrative Code of the City of New York, as amended.

Trial examiner. The term "trial examiner" shall mean any authorized person conducting a hearing and may include a member of either Board, a Deputy Director, or any other agent designated by the Director to conduct a hearing.

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§ 1-07 PROCEEDINGS BEFORE THE BOARD OF COLLECTIVE BARGAINING.

(a) Definition. Board. As used in this section, the term "Board" shall mean the Board of Collective Bargaining.

(b) Types of proceedings before the Board. A party may file a petition commencing a proceeding pursuant to paragraphs (1) through (4) of this subsection. When appropriate, a party may combine proceedings brought pursuant to paragraphs (2) and (4) in a single petition. The combined petition shall be properly titled, it shall contain separately-labeled sections for each proceeding, and each section shall comply with the requirements set forth in § 1-07(c) of these rules.

(1) Interpretation of and compliance with statute. A public employer or public employee organization which is a party to a disagreement as to the application or interpretation of the statute may petition the Board to consider such disagreement and report its conclusions to the parties and the public.

(2) Scope of collective bargaining.

(i) A public employer or certified or designated public employee organization which is party to a disagreement as to whether a matter is within the scope of collective bargaining, including a claim of practical impact under § 12-307(b) of the statute, or under an applicable executive order, or pursuant to a collective bargaining agreement, may petition the Board for a final determination thereof.

(ii) A scope of collective bargaining petition filed after the appointment of an impasse panel has been authorized in accordance with § 1-05(f) of these rules shall be filed within the time provided in § 1-05(g) of these rules.

(3) Grievance arbitration. A public employer or certified or designated public employee organization which is party to a disagreement as to whether a matter is a proper subject for the grievance and arbitration procedure established pursuant to § 12-312 of the statute or under an applicable executive order or pursuant to a collective bargaining agreement may petition the Board for a final determination thereof. The petition shall be filed within the time provided in § 1-06(c) of these rules.

(4) Improper practices. One or more public employees or any public employee organization acting on their behalf or a public employer may file a petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of § 12-306 of the statute and requesting that the Board issue a determination and remedial order. The petition must be filed within four months of the alleged violation and shall be on a form prescribed by the Office of Collective Bargaining.

(c) Pleadings, Procedures and Determinations.

(1) Petition -- contents; service and filing.

(i) A petition filed pursuant to § 1-07(b) of these rules shall be verified and shall contain:

(A) The name, address, telephone and fax numbers of the petitioner;

(B) The name, address, telephone and fax numbers of the respondent;

(C) The specific sections of the statute alleged to have been violated;

(D) A clear and concise statement, in numbered paragraphs, of the facts constituting the claim under § 1-07(b) of these rules. The statement shall include the nature of the controversy and specify any provisions of the contract, executive order, or collective bargaining agreement involved; a copy of such provisions should be provided. If the controversy involves an alleged improper practice, the statement shall include but not be limited to the names of the individuals involved in the particular act specifically alleged and the date, time, and place of occurrence of each particular act alleged. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the petition;

(E) An argument with citations to legal authority in support of the claims asserted. The argument may be included either in the petition or in a separate memorandum of law;

(F) A statement of the relief requested.

(ii) A copy of the petition shall be served upon each respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

(iii) The public employer shall be made a party to any improper practice charge pursuant to § 12-306(d) of the statute and shall file responsive pleadings in accordance with § 1-07(c)(3) of these rules.

(iv) A petition filed pursuant to § 1-07(b) of these rules against a public employer or a public employee organization shall be served upon the designated agent of the public employer or public employee organization. A listing of designated agents shall be maintained at the Office of Collective Bargaining.

(2) Executive Secretary Review of Improper Practice Petitions.

(i) Within 10 business days after a petition alleging improper practice is filed, the Executive Secretary shall review the petition to determine whether the facts as alleged may constitute an improper practice as set forth in § 12-306 of the statute. If, upon such review, the

Executive Secretary determines that the petition is not, on its face, untimely or insufficient, notice of such determination shall be served upon the parties by mail. Such determination shall not constitute a bar to defenses of untimeliness or insufficiency which are supported by probative evidence available to the respondent. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four months prior to the filing of the charge, the Executive Secretary may issue a decision dismissing the petition or send a deficiency letter. Copies of such decision or deficiency letter shall be served upon the parties by certified mail.

(ii) Within 10 business days after service of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board an original and three copies of a written statement setting forth an appeal from the decision with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

(iii) Within 10 business days after service of a deficiency letter from the Executive Secretary as provided in this subdivision, the petitioner may serve an amended petition upon each respondent and file the original and three copies thereof, with proof of service, with the Board. The amended petition shall be deemed filed from the date of the original petition. The petitioner may also withdraw the charge. If the petitioner does not seek to amend or withdraw the charge, but instead wishes to file objections to the deficiency letter, the petitioner may file with the Executive Secretary an original and three copies of a written statement setting forth the basis for the objection with proof of service thereof upon all other parties. If the petitioner does not timely file an amendment or otherwise respond, the charge will be deemed withdrawn and the matter closed. Upon review of the amended petition or written objection filed by the petitioner, the Executive Secretary shall issue either a notice that the petition is not on its face untimely or insufficient or a written decision dismissing the improper practice petition.

(3) Answer -- contents; service and filing.

(i) Respondent's answer to the petition shall be verified and shall contain:

(A) Specific admissions or denials of the allegations in the petition in numbered paragraphs which correspond with those in the petition;

(B) A statement of facts with numbered paragraphs setting forth the nature of the controversy. Such statement may be supported by affidavits, documents, and other evidence that may be relevant and material but may not consist solely of such attachments, and any attachments or exhibits shall be specifically identified and referred to in the answer;

(C) Such defenses as may be appropriate;

(D) An argument with citations to legal authority in support of the defenses raised. The argument may be included either in the answer or in a separate memorandum of law.

(ii) Within 10 business days after service of the petition, or, if the petition contains allegations of improper practice, within 10 business days of the service of the notice of finding by the Executive Secretary, pursuant to § 1-07(c)(2)(i) or (iii) of these rules, that the petition is not, on its face, untimely or insufficient, respondent shall serve its answer upon petitioner and any other party respondent. The original and three copies thereof, with proof of service, shall be filed with the Board. When special circumstances that warrant an expedited determination exist, it shall be within the discretion of the Director or the Director's designee to order respondent to serve and file an answer within less than 10 business days.

(4) Reply -- contents; service and filing. Within 10 business days after service of respondent's answer, petitioner may serve and file a verified reply which shall contain admissions and denials of any facts alleged in the answer. Additional facts or new matter alleged in the answer shall be deemed admitted unless denied in the reply. The reply should be limited to a response to specific facts or arguments alleged in the answer, and the Board may disregard new facts or new arguments raised therein. When special circumstances that warrant an expedited determination exist, the Director or the Director's designee may order petitioner to serve and file its reply within less than 10 business days. A copy of the reply shall be served on each respondent, and the original and three copies thereof, with proof of service, shall be filed with the Board.

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(6) Case conferences and mediation.

(i) At any time after a petition has been served and filed pursuant to § 1-07(b) of these rules, the Director's designee may, on notice, schedule a case conference to discuss factual, substantive, or procedural matters. Unless special circumstances that warrant an expedited case conference exist, the conference shall not be held prior to the filing of all pleadings or less than 10 business days from the date of scheduling. Absent good cause shown, the failure of a party to appear at a case conference may constitute grounds for dismissal of the absent party's pleading.

(ii) In any proceeding commenced pursuant to § 1-07(b) of these rules, the Deputy Director may require the parties to attend one mediation session to explore the possibility of a voluntary resolution of their disputes. After the first mediation session, subject to the parties' agreement or joint request, additional mediation sessions may be scheduled. The scheduling of a mediation session may not by itself toll any time limitations under these rules or require the adjournment of the filing of a pleading, a hearing, or other proceeding.

(7) Amendments and withdrawals. After a hearing and upon good cause shown, the trial examiner may permit a party to amend a pleading to conform to the evidence. The request to amend shall be on notice to all parties.

(8) Determination -- decision. After issue has been joined, the Board may decide the dispute on the papers filed, may direct that oral argument be held before it, may direct a hearing before a trial examiner, or may make such other disposition of the matter as it deems

appropriate and proper.

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§ 1-12 GENERAL PROVISIONS.

(a) **Definition. Board.** As used in this section, the term "Board" shall mean either the Board of Collective Bargaining or the Board of Certification.

(b) **Form of documents -- docket number.** All petitions, pleadings, motions, briefs and other formal papers shall bear the title of the proceeding and the docket number. Any document other than the initial petition which does not bear the docket number may be returned to the sender. However, failure to include a docket number which is promptly corrected will not be a bar to an otherwise timely filed pleading.

(c) **Service of papers -- Board.** Notices of hearings and other process of the Board, their members, deputies and agents, may be served personally or by mail. Subpoenas issued by the Board shall be served personally.

(d) **Service of papers -- party.**

(1) Except as provided for herein, bargaining notices, requests for arbitration, petitions and other papers served on behalf of a party shall be served personally or by mail. A signed written statement that service has been effected, stating the name and the address of the party served and the date and manner of service, shall constitute prima facie proof of service. Subpoenas issued by a party shall be served personally.

(2) Service of papers by fax or other electronically formatted means, followed by mail, shall be permitted, provided that a telephone number or other station is designated by the receiving party for that purpose. The designation of a telephone number or other station for service by electronic means in the address block subscribed on paper served or filed in the course of a proceeding shall constitute consent to service by electronic means in accordance with this subdivision. A party may change or rescind a number or address designated for service of documents by serving a notice on the other parties.

(3) Any petition required by these rules to be served on a public employer or a public employee organization shall be served upon the designated agent of the public employer or public employee organization. A listing of designated agents shall be maintained at the Office of Collective Bargaining.

(4) If a party appears in a proceeding by attorney, all papers in such proceeding shall thereafter be served on such attorney unless the party requests otherwise.

(e) **Filing of papers.** Unless otherwise provided in these rules, all petitions, pleadings, motions, briefs and other formal papers may be filed with the Office of Collective Bargaining by

mail or personally between the hours of 9:00 a.m. and 5:30 p.m. Except as otherwise provided in these rules, the filing of papers with the Board by fax or other electronic means shall be permitted only when prior approval has been granted by the Board or its designee and upon such conditions as that approval may be based.

(f) Time -- computation. In computing any period of time prescribed or allowed by these rules, or by order or direction, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday or legal holiday, in which event the period shall run to the next business day. Unless otherwise provided in these rules, when any period of time prescribed or allowed is 10 days or fewer, they shall be considered business days, and intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Unless otherwise provided in these rules, when the period of time prescribed or allowed is greater than 10 days, they shall be considered calendar days and intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(g) Time -- service by mail. When a period of time is measured from the service of a paper, and service is by mail, five calendar days shall be added to the prescribed period. Service by mail is complete upon mailing.

(h) Time -- Board action. Except as prescribed by statute, the Director or a Deputy Director acting in his/her absence, for good cause shown, may extend or shorten any time limit prescribed or allowed in these rules. When good cause exists, the Director or Deputy Director acting in his/her absence, acting with the approval of the Board, may shorten time limits and invoke expedited procedures in bringing disputes to mediation, arbitration or to impasse proceedings. Approval of such action by the Board shall require the concurrence of at least one labor member and one city member. In the exercise of such extraordinary powers, the Director or Deputy Director acting in his/her absence shall be authorized to prescribe such times and conditions for the service of notices, filing of pleadings and appearances of parties as the circumstances require and as considerations of due process permit.

(i) Petition -- withdrawal. At the request of the petitioner, upon notice to all other parties, the Director or the Director's designee may permit the withdrawal of a petition. The case will be closed without consideration or review of any of the issues raised in the pleadings.

(j) Parties -- non-joinder and misjoinder. No proceeding will be dismissed because of non-joinder or misjoinder of parties. Upon motion of any party, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as may be deemed proper by the Director or the Director's designee.

(k) Intervention -- procedure; contents; filing; service. A person, public employer or public employee organization desiring to intervene in any proceeding shall file a verified written application and three copies thereof, setting forth the facts upon which such person, employer or organization claims an interest in the proceeding. Such application must be timely made, served on all parties and filed with proof of service. Failure to serve or file such application as above

provided shall be deemed sufficient cause for the denial thereof, unless good and sufficient reason exists why it was not served or filed as herein provided.

(l) All other motions. Except as otherwise provided by these rules, all motions, other than those made during a hearing, shall be made in writing, shall briefly state the relief sought and shall be accompanied by affidavits setting forth the grounds for such motion. The moving party shall serve copies of all motion papers on all other parties and shall within 10 business days thereafter file the original and three copies thereof, with proof of service. Answering papers, if any, shall be served on all parties and the original and three copies thereof, with proof of service, shall be filed within 10 business days after service of the moving papers. Reply papers, if any, shall be served on all parties and the original and three copies thereof, with proof of service, shall be filed within 10 business days after service of the answering papers. All motions shall be decided upon the papers unless oral argument, or the taking of testimony, is directed, in which event the parties will be notified thereof and of the time and place for such argument or for the taking of such testimony.

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