

# Department of Labor Relations Regulations



## 456 CMR

456 CMR: DEPARTMENT OF LABOR RELATIONS

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(456 CMR 1.00: RESERVED)

NON-TEXT PAGE

456 CMR 2.00: ADMINISTRATION OF THE LABOR RELATIONS LAW: M.G.L. c. 150A

Section

- 2.01: Definitions
- 2.02: General Provisions
- 2.03: Conduct of Hearings
- 2.04: Questions of Representation
- 2.05: Prohibited Practices
- 2.06: Time Limit for Filing Charges
- 2.07: Designation of Agents of the Department
- 2.08: Construction of Rules and Amendments

2.01: Definitions

When used in the following sections, with reference to M.G.L. c. 150A, the words and phrases in 456 CMR 2.01 have the meanings as defined:

- 456 CMR 12.00: *General Provisions*;
- 456 CMR 13.00: *Conduct of Hearings*;
- 456 CMR 14.00: *Questions of Representation*;
- 456 CMR 15.00: *Investigations*;
- 456 CMR 16.00: *Various Provisions of M.G.L. c. 150E*;
- 456 CMR 18.00: *Designation of Department Agents*.

Board. The Commonwealth Employment Relations Board established pursuant to M.G.L. c. 23, § 9R.

Days. Calendar days, including Saturdays, Sundays and legal holidays.

Department. The Department of Labor Relations established pursuant to M.G.L. c. 23, § 9O.

Director. The Director of the Department of Labor Relations established pursuant to M.G.L. c. 23, § 9T.

Employee. The meaning set forth in M.G.L. c. 150A, § 2.

Employer. The meaning set forth in M.G.L. c. 150A, § 2.

Hearing Officer. The Board member or Department agent designated to preside at a hearing.

Labor Organizations. The meaning set forth in M.G.L. c. 150A, § 2.

Party (as used in connection with the proceedings under M.G.L. c. 150A, § 6). The respondent to the charge, the charging party and any other persons, labor organizations, or entities whose intervention in the proceedings has been permitted by the Department.

Party (as used in connection with proceedings under M.G.L. c. 150A, § 5). The employer, or employers, the person or organization designated in the notice of hearing and served therewith, the petitioner and any other person, labor organization, or entity whose intervention has been permitted by the Department, except as limited by the Department in granting such permission.

Person. The meaning set forth in M.G.L. c. 150A, § 2.

Representatives. The meaning set forth in M.G.L. c. 150A, § 2.

Showing of Interest.

- (a) Authorization cards or petitions, authorizing the named labor organization to represent such employees for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six months prior to the filing of a petition pursuant to 456 CMR 14.03: *Petitions by Employee Organizations*.



2.01: continued

- (b) Authorization cards or petitions stating that such employees no longer wish to be represented by the named labor organization for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six months prior to the filing of a petition pursuant to 456 CMR 14.04: *Petitions by Employees*.
- (c) Other evidence approved by the Department.

Unfair Labor Practice. The meaning set forth in M.G.L. c. 150A, § 2.

Written Majority Authorization. The meaning set forth in M.G.L. c. 150A, § 2.

2.02: General Provisions

The provisions of 456 CMR 12.00: *General Provisions* are applicable to all proceedings conducted under 456 CMR 2.00.

2.03: Conduct of Hearings

The provisions of 456 CMR 13.00: *Conduct of Hearings* are applicable to all proceedings conducted under 456 CMR 14.00: *Questions of Representation*.

2.04: Questions of Representation

- (1) The provisions of 456 CMR 14.00: *Questions of Representation*, except 456 CMR 14.06(1): *Contract Bar* and 14.07: *Employees of the Commonwealth*, are applicable to all proceedings conducted under M.G.L. c. 150A, §§ 5 and 5A, except that all references to M.G.L. c. 150E, § 4 in 456 CMR 14.00 shall be considered references to M.G.L. c. 150A, §§ 5 or 5A.
- (2) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150A, §§ 5 or 5A, and no petition filed pursuant to 456 CMR 14.02(2) or 14.03(2) seeking to alter the composition or scope of a unit during the term of an existing valid collective bargaining agreement, shall be entertained unless such petition is filed no more than 90 days and no fewer than 60 days prior to the termination date of said agreement. A petition to alter the composition or scope of an existing unit by adding or deleting job classifications which have been created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times. No collective bargaining agreement shall operate as a bar for a period of more than three years.

2.05: Prohibited Practices

The provisions of 456 CMR 15.00: *Investigations* (except 15.04: *Six-month Limitation*), 16.06: *Advisory Rulings* and 16.08: *Compliance with Enforcement of Department Orders* are applicable to all proceedings under M.G.L. c. 150A, § 6, except that all references to M.G.L. c. 150E, § 10 shall be considered references to M.G.L. c. 150A, §§ 4, 4A, 4B, and 4C, and all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.06: Time Limit for Filing Charges

- (1) 15 Day Limit - M.G.L. c. 150A, § 6A Charges. Any employee required to maintain union membership as a condition of employment who files a charge pursuant to M.G.L. c. 150A, § 6A, must file such charge not more than 15 days after notice that the union has requested the employee's discharge or other adverse action for failure to maintain union membership.
- (2) Six Month Limit - All Other Charges. Except for good cause shown, no charge alleging a violation of other provisions of M.G.L. c. 150A shall be entertained by the Department based upon any prohibited practice occurring more than six months prior to the filing of the charges with the Department.

2.07: Designation of Agents of the Department

The provisions of 456 CMR 18.00: *Designation of Department Agents* are applicable to all proceedings under 456 CMR 2.00, except that all references to M.G.L. c. 150E shall be considered references to M.G.L. c. 150A.

2.08: Construction of Rules and Amendments

(1) 456 CMR 2.00 shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150A.

(2) The provisions of 456 CMR 14.19: *Certification by Written Majority Authorization*, 14.20: *Bars to Petitions for Certification by Written Majority Authorization*, and 14.21: *Intervention in Written Majority Authorization Cases*, except 456 CMR 14.19(l)(g), (13), and (14)(b), are applicable to all proceedings under M.G.L. c. 150A, § 5, except that all references to M.G.L. c. 150E, § 1 shall be considered references to M.G.L. c. 150A, § 2, all references to M.G.L. c. 150E, §§ 3 and 4 shall be considered references to M.G.L. c. 150A, § 5, and all references to employee organization shall be considered references to labor organization as defined in M.G.L. c. 150A, § 2.

REGULATORY AUTHORITY

456 CMR 2.00: M.G.L. c. 23, §§ 9O, 9T; M.G.L. c. 150A, §§ 2, 3, 4, 4A, 4B, 4C, 5 and 6.

NON-TEXT PAGE

456 CMR: DEPARTMENT OF LABOR RELATIONS

456 CMR 10.00: ADMINISTRATION OF M.G.L. c. 150E, AN ACT PROVIDING FOR  
COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Section

10.01: Applicability of Rules

10.01: Applicability of Rules

All proceedings before the Department of Labor Relations arising under M.G.L. c. 150E shall  
be conducted in accordance with 456 CMR 10.00 through 23.00.

REGULATORY AUTHORITY

456 CMR 10.00: M.G.L. c. 23, §§ 9O, 9P, 9T(c), (d) and c. 150E.

NON-TEXT PAGE

456 CMR 11.00: DEFINITIONS

Section

- 11.01: Purpose
- 11.02: Terms Defined by Law
- 11.03: Definitions
- 11.04: Charges and Complaints

11.01: Purpose

456 CMR 11.00 provides definitions for words and phrases used in 456 CMR when used with reference to M.G.L. c. 150E.

11.02: Terms Defined by Law

Adjudicatory proceeding shall have the meaning set forth in M.G.L. c. 30A, § 1 and shall include proceedings governed pursuant to the following:

- 456 CMR 11.00;
- 456 CMR 12.00: *General Provisions*;
- 456 CMR 13.00: *Conduct of Hearings*;
- 456 CMR 15.00: *Investigations*;
- 456 CMR 17.00: *Agency Service Fee*.

Advisory Council. The Advisory Council established pursuant to M.G.L. c. 23, § 9Q.

Appropriate Bargaining Unit. A bargaining unit determined by the criteria set forth in M.G.L. c. 150E, § 3.

Board. The Commonwealth Employment Relations Board established pursuant to M.G.L. c. 23, § 9R.

Cost Items. The meaning set forth in M.G.L. c. 150E, § 1.

Department. The Department of Labor Relations established pursuant to M.G.L. c. 23, § 9O.

Director. The Director of the Department of Labor Relations established pursuant to M.G.L. c. 23, § 9T.

Employee or Public Employee. The meanings set forth in M.G.L. c. 150E, § 1.

Employee Organization. The meaning set forth in M.G.L. c. 150E, § 1.

Employer. The meaning set forth in M.G.L. c. 150E, § 1.

Incremental Cost Items. The meaning set forth in M.G.L. c. 150E, § 1.

Legislative Body. The meaning set forth in M.G.L. c. 150E, § 1.

Professional Employee. The meaning set forth in M.G.L. c. 150E, § 1.

Prohibited Practice. The meaning set forth in M.G.L. c. 150E, § 10.

Strike. The meaning set forth in M.G.L. c. 150E, § 1.

Written Majority Authorization. The meaning as set forth in M.G.L. c. 150E, § 1.

11.03: Definitions

Bargaining Unit. That group of employees represented by an exclusive bargaining agent, which has been recognized by the employer or certified by the Department pursuant to M.G.L. c. 150E and 456 CMR.

11.03: continued

Collective Bargaining Agreement. A complete and final written agreement signed by all parties reached between a public employer and an employee organization that sets forth wages, hours, or other terms and conditions of employment.

Days. Calendar days, including Saturdays, Sundays and legal holidays.

Escrow Account. An account in a bank or comparable financial institution jointly administered by and payable to the charging party and the respondent exclusive bargaining agent.

Exclusive Bargaining Agent. The employee organization recognized by the employer or certified by the Department as the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining.

Hearing Officer. The Board presiding over a case in the first instance, or the Board member individually, or the Department agent designated to preside at a hearing.

Party. Any individual, employer or employee organization participating in a matter before the Department or Board either as a matter of right or as an intervenor under the provisions of 456 CMR 12.03: *Intervention*.

Recognition. Written recognition by an employer pursuant to 456 CMR 14.06(5): *Recognition Year Bar* of an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

Service Fee. A sum of money that an employee is required to pay as a condition of employment to a bargaining agent pursuant to a collective bargaining agreement as provided in M.G.L. c. 150E, § 12.

Showing of Interest.

- (a) Authorization cards or petitions, authorizing the named employee organization to represent such employees for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six months prior to the filing of a petition pursuant to 456 CMR 14.03: *Petitions by Employee Organizations*;
- (b) Authorization cards or petitions, stating that such employees no longer wish to be represented by the named employee organization for the purpose of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within six months prior to the filing of a petition pursuant to 456 CMR 14.04: *Petitions by Employees*; or
- (c) Other evidence approved by the Department.

Tender. The actual production and unconditional offer to a representative of the bargaining agent of an amount no less than the amount demanded as a service fee.

11.04: Charges and Complaints

Complaint. as used in M.G.L. c. 150E, §§ 11(a) and (b) only, shall hereinafter be referred to as a charge.

Answer. as used in M.G.L. c. 150E, § 11(a) only, shall hereinafter be referred to as a response.

REGULATORY AUTHORITY

456 CMR 11.00: M.G.L. c. 23, §§ 9O, 9Q, 9R, 9T(c); c. 150E, §§ 1, 3 and 4.

456 CMR 12.00: GENERAL PROVISIONS

Section

- 12.01: Scope
- 12.02: Service: When Required
- 12.03: Intervention
- 12.04: Consolidation of Proceedings
- 12.05: Right to Counsel
- 12.06: Appearances
- 12.07: Postponements
- 12.08: Time: How Computed
- 12.09: Decorum
- 12.10: Other Conferences
- 12.11: Settlement of Cases
- 12.12: Filing with the Department

12.01: Scope

456 CMR 12.00 is applicable to all proceedings before the Department, except for those proceedings held pursuant to 456 CMR 18.00: *Designation of Department Agents* and 20.00: *Construction of Rules, Amendment and Publication*.

12.02: Service: When Required

- (1) Except as otherwise provided in 456 CMR, all filings shall be signed by the party or a representative of the party on whose behalf such paper is filed.
- (2) Except as otherwise provided in 456 CMR, all filings shall contain proof of contemporaneous service to all parties in the form of a statement under the penalties of perjury and shall include the date and manner of service and the name of the person served, signed by the person who made service.

12.03: Intervention

- (1) Any employer, employee, or employee organization, or person not initially a party who may be substantially and specifically affected desiring to intervene in any proceeding shall file with the Department a written motion, or may move orally at the hearing, on the record, stating the grounds upon which such employee, employer or employee organization or person claims to be interested. Such written motion shall be filed at or prior to the first day of hearing in any proceeding, except for good cause shown.
- (2) At the discretion of the Department, any employer, employee, employee organization, or other entity may be allowed to intervene.
- (3) Any intervenor shall have the rights of a party to present evidence at any proceeding, subject to the discretion and limitations imposed by the Department, which shall consider the potential for delay and unnecessary duplication of evidence.

12.04: Consolidation of Proceedings

If there are multiple proceedings at the Department involving common issues, a party shall notify the Department, stating with particularity the common issues. The Department may, in its discretion, consolidate the proceedings.

12.05: Right to Counsel

Any party to a proceeding may appear on the party's own behalf, or, in accordance with 456 CMR 12.06, may be accompanied, represented and advised by counsel or other representative at any conference, investigation or hearing.



12.06: Appearances

- (1) Every representative of a party shall enter an appearance with the Department. Every party shall designate one representative for the purpose of receiving notice, pleadings or service of process.
- (2) An appearance may be withdrawn only with the permission of the Department. A request to the Department to withdraw an appearance shall be made in writing, served upon both the party on whose behalf the representative has appeared and upon representatives of all other parties to the proceeding.
- (3) The filing of an appearance shall not operate as a waiver to any challenge to the Department's jurisdiction.

12.07: Postponements

Requests for postponements of scheduled hearings, investigations or conferences shall not be granted unless good cause is shown and the following requirements are met:

- (1) The postponement request shall be made in writing to the Director or the hearing officer at least three days prior to the scheduled hearing, investigation or conference.
- (2) The grounds for the postponement request shall be set forth in detail.
- (3) The requesting party shall specify alternate dates for rescheduling the hearing or conference.
- (4) The position of all parties concerning both the postponement request and the proposed alternate dates shall be ascertained in advance by the requesting party and set forth in the postponement request.
- (5) For the purpose of 456 CMR 12.07(1) through (6), at the discretion of the Department, good cause may include a proffer that a postponement will result in settlement of the case.
- (6) Absent good cause, the Department shall not grant more than one postponement request to each party preceding the date of each hearing, investigation or conference.

12.08: Time: How Computed

- (1) Unless otherwise specifically provided by 456 CMR or other applicable law, computation of time under 456 CMR 12.00, shall begin with the first day following the act, event or default that initiates the running of the time period. The last day of the time period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next business day.
- (2) Whenever a party has the right or is required to do some act within a prescribed period of time, if the Department serves notice of such right or requirement by mail, the Department shall presume that the party received notice thereof three days from the date of issuance of such notice. If the Department serves notice of such right or requirement electronically, the Department shall presume that the party received notice thereof on the date of electronic transmittal. The presumption may be rebutted by evidence of later receipt.
- (3) For good cause shown, the Department may, within its discretion, extend any deadline for filing under 456 CMR.

12.09: Decorum

- (1) All parties and their representatives, witnesses or other persons present at any proceeding shall conduct themselves in a manner consistent with the standards and decorum commonly observed in any court. Where such decorum is not observed, the Department may take appropriate action which may include, but is not limited to, excluding a disruptive person from the proceeding, if such person is a party, to allow participation by the party's representative only.

12.09: continued

- (2) Failing to observe such decorum by any representative appearing before the Department may be grounds for immediate exclusion from the hearing, conference or other proceeding at which the representative is appearing, or may be grounds for suspension or debarment from practice before the Department. Suspension or debarment determination, and the length thereof, may be made by the Department only after due notice and a hearing.

12.10: Other Conferences

Nothing in 456 CMR 12.00 shall be construed so as to prohibit or limit the Department from holding a conference or investigation at any time in connection with any matter pending before the Department.

12.11: Settlement of Cases

The Department may suggest settlement ideas to the parties at any time and may require the Parties to participate in settlement conferences.

12.12: Filing with the Department

- (1) 456 CMR 12.12 prescribes the method for all filings with the Department. Unless otherwise specifically excluded from 456 CMR 12.12, all references to service, sending, mailing or filing in 456 CMR are governed by 456 CMR 12.12. Where the Department has prescribed specific forms for petitions, charges, or any other filings, parties and representatives shall utilize the forms, regardless of the method used to file them.

- (2) All pleadings, written motions, briefs or memoranda filed by any party in connection with any matter pending before the Department shall be on paper measuring 8½ inches in width and 11 inches in length.

- (3) All pleadings, written motions, briefs and memoranda shall be typed and double spaced.

- (4) All documents shall be deemed filed with the Department on the same business day if received before 11:59 P.M. Any documents received after 11:59 P.M. shall be deemed to be filed on the following business day.

- (5) The Department permits filing by hand delivery, electronically, by mail delivery, and by facsimile (fax) transmission. However, showing of interest evidence and written majority authorization evidence may not be filed electronically or by facsimile transmission.

- (6) Unless otherwise indicated, a fax copy shall constitute an original for all Department purposes. Documents to be transmitted by fax shall bear the notation: SENT on (DATE) VIA FAX FOR FILING WITH THE DEPARTMENT.

- (7) All documents filed by electronic mail (email) shall be in portable document format (PDF) and shall comply with the requirements set forth in 456 CMR 12.12. Unless otherwise indicated, an electronic mail copy shall constitute an original for all Department purposes.

- (a) Transmittal Email. All documents filed as email attachments shall include a transmittal email, identifying the nature of the filing, the parties, and docket number if assigned.

- (b) Parties and Representatives. All electronically filed documents shall include a signature block and shall set forth the individual's name, address, telephone number and email address or the representative's name, address, telephone number and email address. On the signature line above the signature block on the document to be electronically filed, "/s/" shall be typed followed by the name of the party or the representative in the space where the signature would otherwise appear. For example:

/s/ John B. Doe  
John B. Doe  
123 Main Street  
Boston, MA 02210  
617-123-4567  
johnbdoe@isp.com

12.12: continued

(c) **Multiple Signatures.** The filer of any document requiring more than one signature (*e.g.*, stipulations, joint motions, joint status reports, *etc.*) shall list thereon all the names of other signatories by means of a signature block for each signatory. For example:

/s/ John B. Doe  
John B. Doe  
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(d) **Affidavits.** Affidavits may be filed electronically; however, the electronically filed version shall contain a "/s/ name of signatory" block, as above, and indicate that the paper document bears an original signature.

(e) A filing party shall limit the size of each PDF to no more than two megabytes. Multiple PDFs may be filed if the document exceeds the two megabyte limit.

(f) The filer is required to verify the readability of scanned documents before filing them electronically with the Department.

#### REGULATORY AUTHORITY

456 CMR 12.00: M.G.L. c. 23, §§ 9O, 9R, 9T(c) through (e); c. 30A, §§ 10, 11, 12; c. 150A, § 8; and c. 150E, §§ 11 and 15.

456 CMR 13.00: CONDUCT OF HEARINGS

Section

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13.01: Scope

(1) 456 CMR 13.00 is applicable to all hearings before the Department, except as set forth in 456 CMR 13.01(2) and except for those proceedings held pursuant to 456 CMR 20.00: *Construction of Rules and Severability* and 21.00: *Rules for Interest Mediation, Fact-finding and Interest Arbitration in Disputes Involving Public Employers and Public Employees; Private Sector Interest Mediation*.

(2) Hearings on petitions filed pursuant to 456 CMR 14.00: *Questions of Representation* shall be governed by the procedures in 456 CMR 14.08: *Investigation and Hearing*.

13.02: Expeditious Scheduling of Hearings

(1) When temporary relief or a restraining order has been procured by the Department or a party in connection with a complaint under 456 CMR 13.00, the complaint that is the basis for such temporary relief or restraining order may be heard expeditiously.

(2) For other good cause shown by a party in writing, the Department also may determine that a complaint will be heard expeditiously.

13.03: Hearings and Findings

- (1) (a) If a hearing is ordered, the Department shall set the time and place for the hearing.
- (b) Should one or more parties to the hearing petition the Board, the Board, in its discretion, and for good cause shown, may order that the hearing be conducted by the Board in the first instance. The rules and procedures of 456 CMR 12.00: *General Provisions* and 13.00 shall apply to a hearing conducted by the Board in the first instance.
- (c) Any party may file a motion to dismiss the complaint or for a summary decision prior to a hearing.
- (d) At the hearing, which shall be presided over by a hearing officer or the Board, the employer, the employee organization, or the person so complained of shall have the right to appear in person or otherwise to defend against the complaint.
- (e) The charging party shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.
- (f) At the discretion of the Department, any person may be allowed to intervene in such proceeding pursuant to 456 CMR 12.03: *Intervention*.
- (g) In any hearing, the Department shall not be bound by the technical rules of evidence prevailing in the courts.

13.03: continued

- (h) Witness testimony may be preserved by a recording or, at the discretion of the parties who shall be responsible for the costs thereof, by stenographic transcription.
  - (i) The parties shall, at the discretion and direction of the hearing officer, electronically submit documentary exhibits to the hearing.
  - (j) The refusal of a witness at a hearing to answer any question that has been ruled by the Department to be proper may be grounds for striking all testimony previously given by such witness on related matters.
  - (k) At the conclusion of the hearing, the hearing officer shall issue written findings of fact and shall determine whether a practice prohibited under M.G.L. c. 150E, § 10 has been committed and, if so, shall issue an order requiring the respondent to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of M.G.L. c. 150E, § 11(d), including but not limited to the withdrawal of certification of an employee organization established, or assisted in its establishment, by any such prohibited practice.
  - (l) The hearing officer shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation M.G.L. c. 150E, § 10.
  - (m) If the hearing officer determines that a practice prohibited under M.G.L. c. 150E, § 10 has not been or is not being committed, the hearing officer shall state findings of fact and issue an order dismissing the complaint.
- (2) A hearing officer presiding over a hearing shall have, in addition to the authority set forth in 456 CMR 13.07, the authority to make all rulings and orders necessary to decide the case based on the record of the proceedings. All decisions and orders of the hearing officer issued after the close of the hearing shall be in writing and may be appealed to the Board in accordance with 456 CMR 13.19.

13.04: Interlocutory Appeals

- (1) Prior to the close of a hearing, a party may seek relief from a ruling or order of the hearing officer in the following manner:
  - (a) The motion for relief must be in writing and addressed to the Board.
  - (b) The motion must set forth with specificity the ruling or order from which relief is sought and grounds on which the party believes that it is entitled to relief, including why review following the close of the hearing is not an adequate remedy.
- (2) Such a motion for review shall not operate to delay or interrupt the hearing. The ruling of the hearing officer shall remain in effect until and unless modified or overruled by the Board. The Board may, at its discretion, defer any ruling on such motion until the close of the hearing.

13.05: Right to Counsel and to Offer Evidence

Any party to a proceeding shall have the right to appear at such proceeding in person, by counsel or by other representative, to call, examine and cross examine witnesses and to introduce into the record documentary or other evidence.

13.06: Open to Public

Any hearing conducted pursuant to 456 CMR 13.00 shall be open to the public except in extraordinary situations or circumstances as the Department, in its discretion, may determine.

13.07: Authority of Department Agent Presiding at Hearing

The hearing officer presiding at a hearing shall have the right to inquire fully into the facts relevant to the subject matter of the hearing. The hearing officer shall have the authority to:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Rule upon motions to revoke or modify subpoenas;
- (4) Rule upon offers of proof and receive relevant evidence;

13.07: continued

- (5) Permit depositions to be taken when appropriate;
- (6) Limit the examination and cross examination of each witness to one representative for each party;
- (7) Hold conferences for the settlement or clarification of the issues;
- (8) Dispose of procedural requests or similar matters;
- (9) Require the parties to identify prospective witnesses at least ten days prior to a scheduled hearing whenever possible;
- (10) Require the parties to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence;
- (11) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof or to request that the parties submit proposed findings of fact, conclusions of law and requests for remedial relief;
- (12) Continue the hearing from day to day or to adjourn the hearing to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;
- (13) Rule on the admissibility of evidence;
- (14) Require the parties to submit pre-filed direct testimony;
- (15) Require the parties to electronically submit documentary exhibits to the hearing; and
- (16) Take any other action authorized by 456 CMR 13.00.

13.08: Motions

- (1) All motions made prior to or subsequent to the hearing shall be filed in writing with the hearing officer in accordance with the provisions of 456 CMR 12.12: *Filing with the Department* and shall state the order or relief applied for and the grounds for the motion.
- (2) Within seven days of service of the motion, any other party to the proceeding may file a response with the hearing officer, unless directed otherwise by the hearing officer.
- (3) The hearing officer may defer ruling on any motion until the close of the hearing and may direct the parties to proceed with the hearing while the motion is pending. All motions made at the hearing shall be stated orally, unless otherwise directed by the hearing officer, and shall be included in the record of the hearing.

13.09: Objections

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a short statement of the grounds of such objection, and shall be included in the record of the hearing. No such objection shall be deemed waived by further participation in the proceedings.

13.10: Witnesses

Witnesses shall be examined orally under oath or affirmation, except if they reside outside of the Commonwealth or because of illness or other cause are unable to testify before the Department. In such situations, the Department may direct that the testimony be taken within or without this Commonwealth in such manner and in such form as is permitted by applicable law.

13.11: Stipulations of Fact

In any proceeding, stipulations of fact may be introduced in evidence with respect to any issue. At the discretion of the hearing officer, the parties may, by written stipulation filed with the hearing officer at any stage of the proceeding, or by oral stipulation made at hearing, agree as to the truth of any fact pertinent to the proceeding. The hearing officer may require parties to propose stipulations. In making findings, the hearing officer need not be bound by a stipulation which is in contravention of law or erroneous on its face.

13.12: Recording of Hearing

- (1) Except for good cause shown, all hearings conducted pursuant to 456 CMR 13.00 shall be recorded by one of the following methods: audio tape, stenographic transcription, or other equivalent method approved by the Department.
- (2) Copies of any official audio tape, stenographic transcription, or other equivalent record prepared by the Department shall be made available to all parties for purchase and shall be made available for the parties to review at the Department's offices.
- (3) The Department may, in its discretion, allow a party to record the hearing by means of stenographic transcription, or through other means that will not disrupt the proceedings. Any party may request the Department to designate a written transcript of the proceeding as the official record of the proceeding subject to the following requirements:
  - (a) A copy of the written transcript has been made available to all other parties to the proceeding and all have had the opportunity to specify any objections to the accuracy of the transcript to the Department;
  - (b) A copy of the written transcript will be made available for purchase to all other parties for a reasonable fee reflective of the cost of the transcript;
  - (c) A copy of the written transcript is provided without charge to the Department with the understanding that the Department will make the transcript available to the public pursuant to the provisions of state law.

13.13: Submission Without a Hearing

- (1) The parties, with the approval of the Department, may jointly elect to waive a hearing and to submit evidence without appearing at the time and place designated for the hearing. Parties who jointly waive the hearing shall supply all documents supporting their allegations or defenses. Stipulations of fact may supplement the documentary evidence in the record.
- (2) If the parties jointly seek to waive a hearing under this provision, and the Department approves the request, the Department may require the parties to enter into a written statement of Stipulated Facts and Exhibits which shall include the following:
  - (a) A statement of agreement that the parties agree to waive a hearing;
  - (b) A statement of the agreed contents of the entire record;
  - (c) A statement of agreement that any conflict of fact between the statement of Stipulated Facts and Exhibits and the findings contained in the Complaint of Prohibited Practice or within the Respondent's Answer, shall be resolved in favor of the Statement of Stipulated Facts and Exhibits; and
  - (d) A statement that the parties agree not to submit additional facts or exhibits.

13.14: Subpoenas

- (1) Any party to a proceeding under 456 CMR 13.00 may request the issuance of a subpoena to compel the attendance of witnesses or the production of books, records, documents or correspondence.
- (2) The party requesting a subpoena shall submit a written request to the designated hearing officer or, if no hearing officer has been assigned or is unavailable, to the Director. The request shall be submitted on a form authorized by the Department and shall include:
  - (a) Department case number and caption of the proceeding;
  - (b) Name, address and telephone number of the party requesting the subpoena;

13.14: continued

- (c) Date, time and location of the proceeding;
  - (d) Name and address of the witness whose testimony is sought; and
  - (e) A specific description of the books, records, correspondence or documents sought.
- (3) The hearing officer or the Director shall be authorized to grant or deny requests for subpoenas and shall be authorized to affix the seal of the Department. A request for issuance of a subpoena shall be denied only if such request fails to comply with 456 CMR 13.14(2) or if the request is overbroad, oppressive or otherwise legally defective, or is submitted to the Department less than five days prior to the hearing date.
- (4) The party requesting the subpoena shall be responsible for service of the subpoena and shall assume all costs of service, witness fees and mileage. Subpoenas shall be served in person by a disinterested person or by certified or registered mail. Witnesses shall be paid the same fees for attendance and travel as in civil cases in the courts of the Commonwealth and such fees shall be paid at the time of service.
- (5) (a) At or prior to the time at which the subpoena compels attendance, but not later than five days after service of the subpoena, any witness under subpoena may file a motion for revocation or modification of any subpoena by submitting a written motion to the designated hearing officer, or, if no hearing officer has been designated, to the Director. The motion shall include a statement of the grounds for revocation or modification of the subpoena.  
 (b) Upon receipt of a motion for revocation or modification of a subpoena, the hearing officer or the Director shall rule upon the motion. Prior to such ruling, an investigation, pursuant to the provisions of M.G.L. c. 30A, § 12(4) shall be conducted. The Director may defer ruling on the motion pending designation of a hearing officer.
- (6) In the event of the failure of a witness to comply with a subpoena, the Department may initiate proceedings in Superior Court to compel compliance, or may decline to initiate such proceedings. If the Department declines both to quash the subpoena and to initiate proceedings in court, nothing in 456 CMR 13.00 shall prohibit the party at whose request the subpoena was issued from seeking enforcement of the subpoena in court pursuant to M.G.L. c. 30A, § 12(5).

13.15: Oral Argument or Briefs

- (1) The parties shall be entitled to oral arguments at the close of the hearing or may be given permission by the hearing officer to file briefs or written statements. The time for oral argument shall be fixed by the hearing officer.
- (2) Any party permitted to file a brief shall do so within ten days after the close of the hearing, unless otherwise directed by the hearing officer. Any filing must be in compliance with 456 CMR 12.12: *Filing with the Department*.
- (3) Requests for additional time in which to file a brief shall be made in writing to the hearing officer and shall be filed with the Department no later than three days before the date such briefs are due.
- (4) No reply briefs may be filed except by permission of the hearing officer.

13.16: Reopening of Hearings

The hearing officer may reopen the hearing and receive further evidence or otherwise dispose of the matter prior to the issuance of a final decision. The hearing officer shall notify the parties of the time and place of hearings reopened under 456 CMR 13.16.

13.17: Record

- (1) The record in a hearing under this chapter shall consist of the charge, the complaint, answer, motions, rulings, orders, audio recording or stenographic transcription, stipulations, exhibits, documentary evidence, deposition and amendments to any of the foregoing.



13.17: continued

(2) Whenever a hearing concerns, in whole or in part, facts or issues which were or could have been litigated in a related representation proceeding, the Department or hearing officer may incorporate in the record such parts of the record of the representation proceeding as may be appropriate.

(3) The record before the Board on review of a hearing officer decision shall be as set forth in 456 CMR 13.19(3).

13.18: Waiver of Hearing

(1) If the respondent desires to waive a hearing on the allegations set forth in the complaint or the amended complaint and not contest the proceeding, the answer to the complaint may consist of a statement that respondent refrains from contesting the proceedings or that respondent consents that the Department may make, enter and serve upon respondent an order to cease and desist from violations of M.G.L. c. 150E alleged in the complaint or that respondent admits all the allegations of the complaint. Either of the first two such answers shall have the same force and effect as if all the allegations of the complaint were admitted and, as in that case, shall be deemed by the Department to waive a hearing thereon and to authorize the Department, without a hearing, without evidence and without findings as to facts or other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the violation of M.G.L. c. 150E charged in the complaint or to take such other action as provided in M.G.L. c. 150E.

(2) If the respondent does not file an answer, the Department may proceed in a like manner.

13.19: Appeal of Hearing Officer Decisions

(1) The decision of the hearing officer shall become final and binding on the parties unless, within ten days after notice thereof, any party requests a review by the Board. This procedure is the exclusive method by which the parties may request review by the Board of the decision of the hearing officer.

(2) Any party seeking review of a decision of a hearing officer must file a notice of appeal with the Department, together with a supplementary statement, not later than ten days after receiving notice of the decision of the hearing officer. Within ten days of service thereof, any other party to the proceeding may file a supplementary statement responding to matters raised by the appealing party. The notice of appeal shall be in writing and contain the case name and number, the date of the decision of the hearing officer and a statement that the party requests review by the Board.

(3) Supplementary statements shall state with specificity the basis of the appeal.

(a) A party claiming that the hearing officer has made erroneous findings of fact shall identify the specific findings challenged and clearly identify all record evidence supporting the party's proposed findings of fact, including specific references to page and line numbers of the transcript when one is available.

(b) The findings of fact made by the hearing officer may be adopted summarily by the Board unless specifically objected to by a timely filed supplementary statement. Only disputes as to material issues of fact need be resolved by the Board on appeal.

(c) When a party claims that the hearing officer has made errors of law, the supplementary statement shall identify the challenged conclusions and must explain the basis upon which the party believes the conclusions to be erroneous. Failure to provide the above described information may result in summary dismissal of the appeal.

(3) The record on review before the Board shall consist of the hearing officer's decision, the supplementary statements of the parties, if any, such portions of the record before the hearing officer as are necessary to resolve factual disputes and such other evidence as the Board may require.

REGULATORY AUTHORITY

456 CMR 13.00: M.G.L. c. 23, §§ 90, 9R, 9T(c), (d), (e); c. 30A, §§ 10, 11, 12 and c. 150E, §§ 10, 11.

456 CMR 14.00: QUESTIONS OF REPRESENTATION

Section

- 14.01: Petitions
- 14.02: Petitions by Employers
- 14.03: Petitions by Employee Organizations
- 14.04: Petitions by Employees
- 14.05: Showing of Interest
- 14.06: Bars to Petitions; Elections
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- 14.18: Intervention
- 14.19: Certification by Written Majority Authorization
- 14.20: Bars to Petitions for Certification by Written Majority Authorization
- 14.21: Intervention in Written Majority Authorization Cases

14.01: Petitions

- (1) All petitions filed under 456 CMR 14.00 shall be in the form prescribed by the Department.
- (2) All petitions filed under 456 CMR 14.00 shall be in writing and shall contain a declaration by the person signing them, under the penalties of perjury, that the contents are true and correct to the best of the signatory's knowledge or belief.

14.02: Petitions by Employers

- (1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by an employer alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit shall contain the following information:
  - (a) The correct name and address of the employer and its designated representative for purposes of collective bargaining;
  - (b) A full description of the bargaining unit involved, specifying the job classifications of the employees of the petitioning employer included therein or excluded therefrom, and the approximate number of employees therein;
  - (c) The name, address and affiliation of the exclusive representative, if any;
  - (d) The date of recognition or certification, if any;
  - (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.02(1)(b);
  - (f) The names and addresses of all employee organizations known to have claimed recognition as representatives of a substantial number of employees described in 456 CMR 14.02(1)(b), giving the date of each claim;
  - (g) The names and addresses of other employee organizations known to the employer to have an interest in representing the employees described in 456 CMR 14.02(1)(b); and
  - (h) Any other relevant facts which may be required in a petition form issued by the Department.
- (2) A petition filed by an employer seeking clarification or amendment of an existing bargaining unit shall contain the following information:
  - (a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses;
  - (b) A complete description of the bargaining unit and, if the bargaining unit is certified by the Department, an identification of the case number(s) in which the existing certification was issued and amended;
  - (c) A full description of the job classifications sought to be included or excluded by the proposed clarification;

14.02: continued

- (d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.02(2)(b) and (c);
  - (e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee;
  - (f) The number of employees in the present bargaining unit and in the unit proposed by the clarification;
  - (g) A statement by the petitioner setting forth reasons why the petitioner seeks clarification of the unit; and
  - (h) Any other relevant facts which may be required in a petition form issued by the Department.
- (3) All petitions filed pursuant to 456 CMR 14.02 must be served on all incumbent employee organizations or their legal counsel, if any, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.03: Petitions by Employee Organizations

- (1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by an employee organization alleging that a substantial number of employees wish to be represented by it shall contain the following information:
- (a) The correct name, address and affiliation of the employee organization;
  - (b) The correct name and address of the employer and its designated representative for the purposes of collective bargaining;
  - (c) A full description of the bargaining unit claimed to be appropriate, including job titles, and the approximate number of employees therein;
  - (d) The name and address of all employee organizations known to represent or known to claim to represent any of the employees in the bargaining unit claimed to be appropriate;
  - (e) The expiration date of any current collective bargaining agreement(s) covering any of the employees described in 456 CMR 14.03(1)(c); and
  - (f) Any other relevant facts which may be required in a petition form issued by the Department.
- (2) A petition filed by an employee organization seeking clarification or amendment of an existing bargaining unit shall contain the following information:
- (a) The full name of the employer, the full name of the recognized or certified bargaining agent, and their addresses;
  - (b) A complete description of the bargaining unit and, if the bargaining unit was certified by the Department, an identification of the case number(s) in which the existing certification was issued and amended;
  - (c) A full description of the job classifications sought to be included or excluded by the proposed clarification;
  - (d) The expiration date of the collective bargaining agreement, if any, covering the employees described in 456 CMR 14.03(2)(b) and (c);
  - (e) The name and address of any other employee organization known to claim to represent any employee affected by the proposed clarification and a copy of any collective bargaining agreement covering any such employee;
  - (f) The number of employees in the existing bargaining unit and in the unit proposed by the clarification;
  - (g) A statement by the petitioner setting forth reasons why the petitioner seeks clarification of the unit; and
  - (h) Any other relevant facts which may be required in a petition form issued by the Department.
- (3) All petitions filed pursuant to this section must be served on the employer and all incumbent employee organizations or their legal counsel, if any, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.04: Petitions by Employees

- (1) In initiating action under M.G.L. c. 150E, § 4, a petition filed by or on behalf of a substantial number of employees in a unit alleging that the exclusive representative no longer represents a majority of the employees in the unit shall contain the following information:
  - (a) The correct name and address of the petitioner;
  - (b) The correct name and address of the employer and its designated representative for the purposes of collective bargaining, if known;
  - (c) A full description of the bargaining unit involved, and the approximate number of employees in the unit;
  - (d) The name, address and affiliation of the recognized or certified representative;
  - (e) The date of recognition or certification;
  - (f) The expiration date of the current collective bargaining agreement covering the employees described in 456 CMR 14.04(1)(c), if any; and
  - (g) Any other relevant facts which may be required in a petition form issued by the Department.
- (2) Individual employees may not file petitions for clarification or amendment of certification.
- (3) All petitions filed pursuant to 456 CMR 14.04 must be served on the employer and all incumbent employee organizations or their legal counsel, if any, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.05: Showing of Interest

- (1) A sufficient showing of interest is the percentage, established by 456 CMR 14.05, of employees in an alleged appropriate bargaining unit, or a unit determined to be appropriate, who have designated an employee organization as their exclusive representative or have signed a petition seeking decertification of an incumbent employee organization pursuant to 456 CMR 11.13: *Showing of Interest*.
- (2) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees who are not currently represented for purposes of collective bargaining shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Department determines that the petitioner has been designated by at least 30% of the employees involved to act in their interest.
- (3) No petition filed under 456 CMR 14.03 seeking to represent a bargaining unit of employees already represented for purposes of collective bargaining and no petition filed under 456 CMR 14.04 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Department determines that the petitioner has been designated by at least 50% of the employees involved to act in their interest.
- (4) No motion to intervene filed under 456 CMR 14.18 shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Department determines that the intervenor has been designated by at least 10% of the employees involved to act in their interest. However, any incumbent exclusive representative who files a motion to intervene need not comply with the requirements under 456 CMR 14.05.
- (5) Authorization cards or other written evidence of a "showing of interest" (as defined in 456 CMR 11.13: *Showing of Interest*) must be submitted by the petitioner with the petition, or by the intervenor with any motion to intervene, to enable the Department to make this determination. Such evidence may not be submitted electronically or by facsimile transmission.
- (6) The Department may require the employer to submit a payroll or personnel list to assist in determining whether a sufficient showing of interest has been made. If a payroll or personnel list, or any other information as may be required, is requested by the Department but is not made available by the employer, the showing of interest as submitted shall, if otherwise valid, be accepted as *bona fide*.

## 14.05: continued

(7) If the Department finds that a sufficient showing of interest has not been submitted, the petitioner or intervenor shall be given written notice by the Department of that finding and shall be allowed seven days to submit a further showing of interest. This seven-day period shall not extend the times for filing a representation petition set out in 456 CMR 14.06. If a sufficient showing of interest is not timely submitted by the petitioner the Department may dismiss the petition. If a sufficient showing of interest is not timely submitted by an intervenor the Department may deny the intervenor either the opportunity to participate in or to challenge a consent election agreement between other parties, and/or the opportunity to appear on an election ballot.

14.06: Bars to Petitions: Elections(1) Contract Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement. No collective bargaining agreement shall operate as a bar for a period of more than three years.

(b) Except for good cause shown, no petition seeking clarification or amendment of an existing bargaining unit shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement, except that a petition to alter the composition or scope of an existing unit by adding or deleting job classifications created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times.

(c) Except for good cause shown, no collective bargaining agreement shall operate as a bar, unless an electronic copy of the agreement has been filed with the Department in accordance with 456 CMR 16.01: *Filing of Contracts*.

(d) Except for good cause shown, no collective bargaining agreement shall operate as a bar unless, the employee organization has filed or amended its Employee Organization Information Report (Department-Form 1), filed pursuant to 456 CMR 16.05(1), to include the effective dates of the agreement.

(e) If a petition is filed challenging the contract bar because of a failure to comply with 456 CMR 14.06(1)(c) or (d), the Department shall provide notice to the incumbent employee organization and the employer notifying them of the pending petition and of their non-compliance. The incumbent employee organization and the employer shall have a period of no more than 30 days to cure this failure to comply. The contract bar shall then attach as if there had been compliance with 456 CMR 14.00.

(2) Withdrawal/Disclaimer Bar.

(a) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner withdrew from a prior petition within the preceding six months.

(b) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in any bargaining unit or subdivision thereof within which, after the approval of an agreement for consent election or the close of a hearing, but before the holding of the election, the petitioner disclaimed interest in continued representation of the bargaining unit within the preceding six months.

(c) Except for good cause shown, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained in the same or similar bargaining unit or subdivision thereof in which, after the designation of a neutral, but before the verification process, the petitioner withdrew in the preceding six months a petition for written majority authorization filed pursuant to 456 CMR 14.19.

14.06: continued

(3) Election Year/Verification Bar. Except for good cause shown, no election shall be directed by the Department pursuant to M.G.L. c. 150E, § 4 in the same or similar bargaining unit or subdivision thereof within which a valid election has been held in the preceding 12 months or within which a neutral has conducted a written majority authorization verification process in the preceding 12 months pursuant to 456 CMR 14.19.

(4) Certification Year Bar. Except for good cause shown, the Department shall not process a petition for an election in any bargaining unit or subdivision thereof represented by a certified bargaining representative when the Department has issued a certification of representative or certification by written majority authorization within the preceding 12 months.

(5) Recognition Year Bar. Except for good cause shown, no petition for an election shall be processed by the Department pursuant to M.G.L. c. 150E, § 4 in any represented bargaining unit or any subdivision thereof in which a recognition agreement has been executed in accordance with the provisions of 456 CMR 14.06(5) in the preceding 12-month period. For the purpose of 456 CMR 14.06(5) recognition shall not be extended to an employee organization unless:

(a) The employer in good faith believes that the employee organization has been designated as the freely chosen representative of a majority of the employees in an appropriate bargaining unit;

(b) The employer has posted a notice in all conspicuous places where members of the proposed bargaining unit usually congregate and where notices to these employees are usually posted for a period of at least 20 consecutive days advising all persons that it intends to grant such exclusive recognition to the named employee organization without an election in the specified bargaining unit. If the employer customarily communicates to its employees via intranet or email, it has also forwarded a copy of the notice to all affected employees via those methods;

(c) The employer shall not extend recognition to an employee organization if another employee organization has within the 20 day period notified the employer of a claim to represent any of the employees involved in said bargaining unit and has prior to or within such period filed a valid petition for certification which is pending before the Department;

(d) Such recognition is in writing and describes specifically the bargaining unit involved and is signed and dated by the employer's representative and the employee organization's representative;

(e) The employer has verified with the Department that the employee organization has filed an Employee Organization Information Report (Department-Form 1) and an Employee Organization Financial Report (Department-Form 2) pursuant to M.G.L. c. 150E, §§ 13 and 14;

(f) The employer has filed a copy of the recognition agreement required by 456 CMR 14.06(5)(d) with the Department within seven days of its execution by both parties accompanied by a statement attesting to the employer's good faith belief required by 456 CMR 14.06(5)(a), and the dates of compliance with its posting requirements in 456 CMR 14.06(5)(b); and

(g) If a petition is filed challenging the recognition bar because of a failure to comply with 456 CMR 14.06 (5), the Department shall provide notice to the voluntarily recognized employee organization and the employer notifying them of the pending petition and of the non-compliance. The employer shall have a period of no more than 30 days to cure this failure to comply. The recognition bar shall then attach as if there had been compliance with 456 CMR 14.00.

14.07: Employees of the Commonwealth

(1) With respect to employees of the Commonwealth, excepting only employees of community and state colleges and universities, no petition filed under the provisions of M.G.L. c. 150E, § 4 shall be entertained, except in extraordinary circumstances where the petition seeks certification in a bargaining unit not in substantial accordance with the provisions of this section. Bargaining units have been established on a state wide basis, with one unit for each of the following occupational groups, excluding in each case all managerial and confidential employees as so defined in M.G.L. c. 150E, § 1.

14.07: continued

NONPROFESSIONAL EMPLOYEES:

UNIT 1: Administrative and Clerical, including all nonprofessional employees whose work involves the keeping or examination of records and accounts or general office work;

UNIT 2: Service, Maintenance and Institutional, excluding building trades and crafts and institutional security;

UNIT 3: Building Trades and Crafts;

UNIT 4: Institutional Security, including correctional officers and other employees whose primary function is the protection of the property of the employer, protection of persons on the employer's premises and enforcement of rules and regulations of the employer against other employees;

UNIT 4A: Department of Correction Captains;

UNIT 5: Law Enforcement, including all employees with power to arrest, whose work involves primarily the enforcement of statutes, ordinances, and regulations, and the preservation of public order; and

UNIT 5A: State police troopers and sergeants.

PROFESSIONAL EMPLOYEES:

UNIT 6: Administrative, including legal, fiscal, research, statistical, analytical and staff services;

UNIT 7: Health Care;

UNIT 8: Social and Rehabilitative;

UNIT 9: Engineering and Science;

UNIT 10: Education; and

UNIT 11: Firefighters.

(2) Notwithstanding any provision of this section, nothing shall prevent the Department from finding appropriate:

- (a) The inclusion of related technical employees in any of the professional units designated 6 through 11, provided that the requirements of M.G.L. c. 150E, § 3 have been met;
- (b) One or more units of supervisory employees;
- (c) Separate units for employees of constitutional officers;
- (d) Separate units for employees of the judiciary;
- (e) Separate units for employees of the General Court; and
- (f) Other units for employees of the Commonwealth specifically established by law.

14.08: Investigation and Hearing

(1) The Department shall investigate a petition filed under M.G.L. c. 150E, § 4 to determine if there is reasonable cause to believe that a substantial question of representation exists. The Department may require any party to state in writing its position on any issue raised by the petition or to provide the Department with position descriptions, affidavits, or other information the Department believes to be relevant to the issues raised by the petition. If the Department, upon investigation, has reasonable cause to believe that a substantial question of representation exists, it shall provide for a hearing and shall serve upon the employer involved, and upon any parties or employee organizations purporting to act as a representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing on the question of representation before the Department at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

## 14.08: continued

(2) The Department shall investigate a petition seeking clarification or amendment of an existing bargaining unit to determine if there is a sufficient dispute of relevant facts to warrant a hearing. The Department may require any party to state in writing its position on any issue raised by the petition or to provide the Department with position descriptions, affidavits or other information the Department believes is relevant to the issues raised by the petition. If the Department, upon investigation, has reasonable cause to believe there is a sufficient dispute of relevant facts, it shall provide for a hearing and shall serve upon the employer involved, and upon any parties or employee organizations purporting to act as representative of any employees directly affected by the filing of a petition under 456 CMR 14.00, whether named in the petition or not, a notice of hearing before the Department at a time and place fixed therein. A copy of the petition shall be served with such notice of hearing.

(3) For the purpose of informing employees affected by the filing of a petition under 456 CMR 14.00, the employer shall post the notice of hearing and a copy of the petition in all conspicuous places where employees directly affected by the filing of a petition under 456 CMR 14.00 usually congregate and where notices to these employees are usually posted. Such notice shall remain posted until the Department issues a certification or dismisses the petition, or the petitioner withdraws its petition. If the employer customarily communicates to its employees via intranet or email, it shall also forward a copy of the notice and petition to all affected employees via those methods.

(4) The procedures specified in 456 CMR 13.04: *Interlocutory Appeals*, 13.08: *Motions*, 13.09: *Objections*, 13.10: *Witnesses*, 13.11: *Stipulations of Fact*, 13.14: *Subpoenas* and 13.16: *Reopening of Hearings* and the following procedures shall apply to all hearings conducted under 456 CMR 14.08:

(a) Subject to 456 CMR 14.08(4)(c), any party to the proceeding shall have the right to appear in person, by counsel or by other representative, to call, examine, and cross-examine witnesses and to offer documentary or other evidence in to the record;

(b) Any hearing conducted under 456 CMR 14.08 shall be open to the public, except in extraordinary cases as the Department, in its discretion, may determine;

(c) The hearing officer shall have the right to inquire fully into the facts relevant to the issues raised by the petition and shall not be bound by the rules of evidence observed by the courts. The hearing officer shall have the authority to:

1. Administer oaths and affirmations;
2. Issue subpoenas;
3. Rule on motions to revoke or modify subpoenas;
4. Limit examination and cross-examination of each witness to one representative per party;
5. Hold conferences for the settlement or clarification of the issues;
6. Dispose of procedural motions or similar matters;
7. Require parties to identify prospective witnesses at least ten days prior to a scheduled hearing;
8. Call, question and cross-examine witnesses; introduce or require the parties to produce relevant documentary evidence; solicit stipulations from the parties; take administrative notice of evidence in related proceedings before the Department; and to exclude cumulative evidence;
9. Require the parties to submit pre-filed direct testimony;
10. Continue the hearing from day to day or otherwise continue the hearing consistent with any applicable case processing time guidelines.

(d) The parties shall be permitted to make oral arguments at the close of the hearing or may be permitted by the hearing officer to file written briefs within ten days after the close of the hearing. Requests for additional time to file briefs shall be granted only in extraordinary circumstances or to permit the parties an opportunity to obtain the recording of the hearing, provided that the time period for filing briefs, including any extensions that may be permitted, shall not exceed 21 days.



14.09: Record

The record before the Department in a hearing conducted under 456 CMR 14.08 shall consist of the petition, notice of hearing, motions, rulings, orders, audio recording or stenographic transcription, stipulations, exhibits, documentary evidence, depositions and amendments to any of the foregoing. The Department shall base its decision on any issues raised in petitions filed under 456 CMR 14.00 on this record.

14.10: Disposition of Petitions

The Department shall proceed, within a reasonable time after the introduction of evidence, or after oral argument or the submission of briefs, or further hearing, as it may determine, to dismiss the petition, or to direct an election by secret ballot among the employees in a bargaining unit determined by it to be appropriate, or to make other disposition of the matter.

14.11: Consent Election Agreements

Where a petition has been duly filed, the employer, employee organization or person or persons representing a substantial number of employees involved and any intervenor which has submitted the required showing of interest may, subject to the approval of the Department, enter into a stipulation to waive the hearing and to conduct a consent election. Such stipulation shall include a description of the appropriate unit, the time and place for holding the election, and the payroll or the personnel list to be used in determining which employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the supervision of the Department or its agents.

14.12: Elections

When the Department determines that an election by secret ballot shall be conducted, or when it approves an agreement for a consent election, it shall direct that such election be conducted upon such terms as it may specify, including an election conducted by mail, an election conducted in person, or any other means ordered by the Department.

(1) Unless otherwise directed by the Department, all elections shall be by secret ballot; provided, however, that no employee organization shall appear on the ballot unless the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14 pursuant to the provisions of 456 CMR 16.05: *Compliance with M.G.L. c. 150E, §§ 13 and 14*. Whenever two or more employee organizations are included as choices in an election, a participant may, upon its request, have its name removed from the ballot; provided, however, that such employee organization gives timely notice in writing to all parties and to the Department disclaiming any representational interest among the employees in the unit and provided that the ballots have not been printed, or Department notices of the election posted, prior to the Department's receipt of the employee organization's written request to remove its name from the ballot.

(2) Any party may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded by the Department. If the number of challenged ballots is sufficient to determine the outcome of the election, then within seven days after the tally of ballots has been furnished, each party must file with the Department a short statement of its position concerning the eligibility of each challenged voter. Such statement shall include a recitation of the facts, if any, alleged by the party to be determinative of the challenged voter's eligibility. The Department may require the parties to submit further evidence or argument to determine whether a hearing is warranted.

(3) At the conclusion of the election, the Department shall furnish to the parties a tally of ballots. Within seven days after the tally of the ballots has been furnished, any party may file with the Department objections to the conduct of the election or to conduct affecting the result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of persons involved, and the date, place, time and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of

14.12: continued

objections and any other submissions which the Department may permit, the Department shall determine whether any of the objections merit further proceedings, and may dismiss some or all of the objections if the Department does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered with the conduct of the election or with the results of the election. If the Department determines that probable cause exists to believe that conduct interfering with either the conduct of the election or the results of the election occurred, it shall conduct such further investigation and/or hearing as it shall deem appropriate, or, if no material facts are disputed, it may issue a decision on the objections without further fact-finding proceedings.

(4) If no timely objections are filed, and the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the Department shall immediately certify the result of the election.

(5) The record in any hearing conducted pursuant to 456 CMR 14.12 shall include the statement of objections or the statement concerning the eligibility of challenged voters, the responses thereto, and the tally of ballots, in addition to the applicable material specified in 456 CMR 14.09.

14.13: Runoff Elections

(1) The Department may conduct a runoff election when a valid election results in no choice receiving a majority of the valid ballots cast. No runoff election shall be conducted while objections to the election are pending. If all eligible voters cast valid ballots in an election involving two or more employee organizations and 50% voted for one employee organization while 50% voted for another employee organization, the Department shall conduct a runoff election between the two employee organizations which each received 50% of the votes. If all eligible voters cast ballots in a runoff election involving two or more employee organizations, the Department may decline to conduct a second runoff election absent evidence that a further runoff election would be likely to produce a different result than the prior election.

(2) Employees who were eligible to vote in the election shall be eligible to vote in a runoff election unless the Department determines otherwise.

(3) The ballot in a runoff election shall provide for a selection between the choices receiving the largest and second largest number of votes in the prior valid election.

14.14: Re-run Elections

(1) The Department may declare an election invalid and may order another election providing for a selection from the choices afforded in the previous ballot in the following situations:

- (a) The ballot provided for a choice among two or more employee organizations and "no employee organization" and the votes are equally divided among the several choices;
- (b) The number of ballots cast for one choice in an election is equal to the number cast for another choice, but less than the number cast for the third choice (which did not receive a majority of valid votes cast);
- (c) A runoff ballot provided for a choice between two employee organizations and the votes are equally divided (See 456 CMR 14.13(1)); or
- (d) The Department 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.

(2) Upon the conclusion of either a re-run or a runoff election, the provisions of 456 CMR 14.12 shall govern, insofar as applicable.

14.15: Reinvestigation of Certification

For good cause shown, the Department may reinvestigate any matter concerning any certification issued by it and, after appropriate hearing, may amend, revise or revoke such certification.

14.16: Revocation of Certification

An employee organization currently certified to represent a bargaining unit may request that the Department 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 request shall be served in accordance with the requirements of 456 CMR 12.02: *Service, When Required*.

14.17: Deferral to AFL-CIO No Raiding Procedure

In any petition filed under 456 CMR 14.03 by an employee organization affiliated with the AFL-CIO seeking to represent a bargaining unit represented at the time of filing by another employee organization affiliated with the AFL-CIO, any party may request that the Department defer processing the case for 30 days to permit the employee organizations to use the settlement provisions of the AFL-CIO no-raiding procedure. Such a request must be filed with the Department within ten days following receipt of notice that the petition has been filed, or at least three days prior to the date of the scheduled hearing on the petition, whichever is earlier. Upon written request by any party the Department may extend the 30-day deferral period. Copies of any request shall be served upon all parties to the case and in accordance with 456 CMR 12.02: *Service: When Required*.

14.18: Intervention

(1) Any employee organization, including the incumbent exclusive representative, if any, wishing to appear on any ballot or be deemed a necessary party to any agreement for consent election shall file a motion to intervene setting out the same information as required in a petition filed pursuant to 456 CMR 14.03. Except for good cause shown, all motions to intervene filed under 456 CMR 14.18 must be filed within 30 days of the date of the Department's Notice of Hearing. Any incumbent exclusive representative who does not file a motion to intervene in accordance with 456 CMR 14.18 shall be deemed to have disclaimed interest in representing the employees in the petitioned-for bargaining unit and shall not appear on any ballot or be deemed a necessary party to any agreement for consent election.

(2) Any motion filed under 456 CMR 14.18 must be accompanied by the showing of interest required in 456 CMR 14.05, except that any incumbent exclusive representative who files a motion to intervene need not comply with the requirements under 456 CMR 14.05.

(3) Any party filing a motion to intervene under 456 CMR 14.18 shall serve a copy of its motion on each of the parties named in the original petition and any other intervenors, and in accordance with the requirements of 456 CMR 12.02: *Service: When Required*.

14.19: Certification by Written Majority Authorization

(1) In initiating a Petition for Certification by Written Majority Authorization, the employee organization shall file with the Department a petition, on a form approved by the Department, containing the following information:

- (a) The correct name, address, and affiliation of the employee organization and the name and address of its representative designated for the purpose of collective bargaining;
- (b) The correct name and address of the employer and, where known, the name and address of its representative designated for the purpose of collective bargaining;
- (c) A full description of the bargaining unit claimed to be appropriate, including job titles, the approximate number of employees, and whether the petitioned-for bargaining unit contains professional employees, non-professional employees, or both (the petitioning employee organization shall indicate which employees it believes are professional employees);
- (d) A statement that the bargaining unit claimed to be appropriate complies with all the provisions of M.G.L. 150E, § 3 and 456 CMR 14.07;
- (e) A statement that the employee organization has received written majority authorization evidence, as described in 456 CMR 14.19(2) and (3), from a majority of the employees in the proposed appropriate bargaining unit;

14.19: continued

- (f) A statement that no other employee organization has been and currently is lawfully recognized as the exclusive representative of the employees in the appropriate bargaining unit;
- (g) A statement that the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14; and
- (h) Any other relevant facts that may be required by the Department.

(2) Written majority authorization evidence may include authorization cards, petitions, or other written evidence that the Department finds suitable, which demonstrates that the majority of employees in an appropriate bargaining unit wish to be represented by an employee organization for the purposes of collective bargaining, provided that any such authorization cards or petitions are signed and individually dated by employees within 12 months prior to the date on which the written majority authorization evidence is proffered to the Department or an outside neutral to establish proof of majority and exclusive representative status.

(3) Any written majority authority evidence shall not be filed electronically or by facsimile transmission and shall:

- (a) Contain a legible employee signature;
- (b) Be dated by the employee;
- (c) Be an original document rather than a photocopy or some other replication;
- (d) Contain a certification from the employee that the designation is his or her free act and deed and given without consideration; further, in proposed units which contain both professional and non-professional employees, the professional employees' designation shall indicate that the professional employee wishes to be included in a bargaining unit with non-professional employees;
- (e) Include the name of the employee organization seeking majority status;
- (f) Include a statement in which the employee designates the aforementioned employee organization as its representative for the purposes of collective bargaining; and
- (g) Include other evidence approved by the Department.

The Department, any outside neutral, and any petitioning employee organization shall maintain the confidentiality of the written majority authorization evidence. The written majority authorization evidence shall not be furnished to any of the parties.

(4) The Petition for Certification by Written Majority Authorization must be served on the employer in accordance with the requirements of 456 CMR 12.02: *Service: When Required*; in addition, the Department shall make the employer aware of such petition when the Department requests the names and addresses of the members of the proposed bargaining unit for purposes of verification.

(5) Upon filing and docketing of a Petition for Certification by Written Majority Authorization, the Department shall prepare and serve a notice upon the parties that shall include information about the petitioner and the petitioned-for bargaining unit. The notice shall also advise the parties that they may agree upon a neutral to conduct the verification by a confidential inspection of the written majority authorization evidence, including ruling on any challenges to the validity of the evidence or to the inclusion or exclusion of a position in the unit. Upon receipt of the Department's notice, the employer shall post a notice in all conspicuous places where members of the proposed bargaining unit usually congregate and where notices to these employees are usually posted, advising all persons that the named employee organization has filed a Petition for Certification by Written Majority Authorization of the specified bargaining unit. Such notice to employees shall remain posted until the Department issues a certification or dismisses the petition, or the employee organization withdraws its petition. If the employer customarily communicates to its employees via intranet or email, it shall also forward a copy of the notice and petition to all affected employee via those methods.

(6) Within ten days from the date of notice from the Department, the employee organization shall notify the Department whether the employee organization and the employer have agreed upon a neutral. If the employee organization fails to provide this notice to the Department, the Department shall act as the neutral. If the parties agree upon a neutral other than the Department (outside neutral), the employee organization shall notify the Department of the outside neutral's name, address, phone and fax numbers, and e-mail address.

## 14.19: continued

(7) Immediately upon selection of the neutral or the designation of the Department as the neutral, and in no event later than three days from selection or designation, the employer shall provide the neutral with a list containing the full names and titles of the employees in the proposed bargaining unit. If the employer does not supply this information to the neutral within the specified time frame, the neutral shall conduct the confidential inspection of the written majority authorization evidence based upon information provided by the employee organization. The employee organization shall provide this information to the neutral within two days from the date that the employer's information was due.

(8) Employees eligible for inclusion on the list referred to in 456 CMR 14.19(7) shall be employees who were employed on the filing date of the Petition for Certification by Written Majority Authorization. Any challenges to the inclusion or exclusion of a name on the list, and/or to the inclusion or exclusion of a title or position in the unit, shall be filed by the employee organization or the employer with the neutral within three days of the presentation of the list to the neutral.

(9) Any challenges to the validity of the written majority authorization evidence shall be filed with the neutral immediately upon the neutral's selection or designation and in no event later than three days from the selection or designation.

(10) As part of the verification process detailed in 456 CMR 14.19(11) and (12), the neutral shall determine whether a majority of employees on the list referred to in 456 CMR 14.19(7) have submitted valid written majority authorization evidence and whether there are a sufficient number of challenges referred to in 456 CMR 14.19(8) and (9) to affect the result of the written majority authorization verification process. If the number of challenges referred to in 456 CMR 14.19(8) and (9) is insufficient to potentially affect the result, then the neutral shall dismiss the challenges. If the number of challenges referred to in 456 CMR 14.19(8) and (9) is sufficient to potentially affect the result, the neutral shall investigate and resolve the challenges. The challenging party shall bear the burden of proving the validity of a challenge.

(11) If an outside neutral conducts the verification of written majority authorization evidence, the outside neutral shall, within 20 days of the neutral's selection, report in writing, on a form prescribed by the Department and in compliance with the Department's procedures, the results of the confidential inspection to the parties and the Department. Along with the report of the inspection, the outside neutral shall provide to the Department all documentation that the outside neutral relied upon in conducting the confidential inspection, including, but not limited to, evidence of written majority authorization and resolution of challenges. Upon receipt of the outside neutral's written report and valid evidence of written majority authorization demonstrating that the petitioning employee organization has majority support in an appropriate, currently unrepresented bargaining unit, the Department shall, in writing, certify the petitioning employee organization as the exclusive representative of the employees in that bargaining unit. If the requisite majority support is not shown, the Department shall, in writing, decline to issue a certification and dismiss the petition.

(12) If the Department acts as the neutral and conducts the verification of written majority authorization evidence, the Department shall report the results of the confidential inspection to the parties in writing within 30 days of the date of its selection or designation as the neutral. Within this same time frame, provided that the valid evidence of written majority authorization demonstrates that the petitioning employee organization has majority support in an appropriate, currently unrepresented bargaining unit, the Department shall, in writing, certify the petitioning organization as the exclusive representative of the employees in that bargaining unit. If the requisite majority support is not shown, the Department shall, in writing, decline to issue a certification and dismiss the petition.

(13) In no event shall the Department issue a certification as described in 456 CMR 14.19(11) and (12) until the employee organization is in compliance with M.G.L. c. 150E, §§ 13 and 14.

(14) In no event shall the verification process detailed in 456 CMR 14.19(11) and (12) last longer than 30 days after the selection or designation of the neutral absent exceptional cause. Exceptional cause may include, but is not limited to:

14.19: continued

- (a) Resolving challenges as described in 456 CMR 14.19(8) and (9); and
- (b) Allowing the petitioning employee organization not more than seven days to comply with M.G.L. c. 150E, §§ 13 and 14.

(15) Within seven days after the Department certifies the bargaining unit, the employer may seek review of any previous challenges the neutral had dismissed as non-outcome determinative. The employer may obtain such review by filing a request to reinvestigate the certification pursuant to the procedure outlined in 456 CMR 14.15.

14.20: Bars to Petitions for Certification by Written Majority Authorization

- (1) Withdrawal Bar. Except for good cause shown, no Petition for Certification by Written Majority Authorization shall be entertained in a same or similar bargaining unit within which, after the selection or designation of a neutral, but before the verification process, the petitioner withdrew from a prior Petition for Certification by Written Majority Authorization, or withdrew a petition filed under the provisions of M.G.L. c. 150E, § 4, within the preceding six months.
- (2) Verification/Election Year Bar. Except for good cause shown, no Petition for Certification by Written Majority Authorization shall be entertained in a same or similar bargaining unit within which a neutral has conducted a written majority authorization verification process in the preceding 12 months, or within which a valid election has been held in the preceding 12 months.
- (3) Certification Year Bar. Except for good cause shown, no Petition for Certification by Written Majority Authorization shall be entertained in a same or similar bargaining unit represented by a bargaining representative certified through the written majority authorization process or a valid election process in which the Department has issued a certification within the preceding 12 months.

14.21: Intervention in Written Majority Authorization Cases

Intervention shall not be permitted in written majority authorization cases. Before the Department issues a certification, Petitions for Certification by Written Majority Authorization shall be dismissed and the Department shall investigate questions of representation pursuant to M.G.L. c. 150E, § 4 under the following circumstances:

- (a) If an employee organization files a representation petition for the same or a similar bargaining unit to the one described in a pending Petition for Certification by Written Majority Authorization;
- (b) If an employee organization files a Petition for Certification by Written Majority Authorization for the same or a similar bargaining unit to the one described in a pending representation petition; or
- (c) If an employee organization files a Petition for Certification by Written Majority Authorization for the same or a similar bargaining unit to the one described in a pending Petition for Certification by Written Majority Authorization.

REGULATORY AUTHORITY

456 CMR 14.00: M.G.L. c. 23, §§ 90, 9T(c), (d); c. 150E, §§ 2 through 5, 13 and 14.

NON-TEXT PAGE

456 CMR 15.00: INVESTIGATIONS

Section

- 15.01: Charges
- 15.02: Contents of Charge
- 15.03: Response to Charge
- 15.04: Six-month Limitation
- 15.05: Investigation
- 15.06: Amendments
- 15.07: Answers
- 15.08: Record
- 15.09: Expeditious Scheduling of Investigation
- 15.10: Interim Bargaining Order
- 15.11: Blocking Charges

15.01: Charges

- (1) A charge filed under 456 CMR 15.00 shall be in the form prescribed by the Department.
- (2) A charge of prohibited practice as defined in M.G.L. c. 150E, §§ 10(a) and (b) may be made by any individual, employer, employee or employee organization.
- (3) A charge made under 456 CMR 15.00 shall be in writing and signed by the charging party and shall contain a declaration by the signatory, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

15.02: Contents of Charge

A charge made under 456 CMR 15.00 shall contain the following:

- (1) The full name and address of the individual, employer, employee or employee organization making the charge and his or her official position, if any.
- (2) The full name and principal place of business of the respondent.
- (3) An enumeration of the subdivision of M.G.L. c. 150E alleged to have been violated and a clear and concise statement of all relevant facts that form the basis of the charge.

15.03: Response to Charge

The respondent may file a response within 14 days after the service of such charge or within such other time as the Department may require.

15.04: Six-month Limitation

Except for good cause shown, no charge shall be entertained by the Department based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Department.

15.05: Investigation

- (1) When a charge has been filed, the Director may assign the matter to an investigator. The investigator may issue an order dismissing the charge, deferring the charge to the pending grievance arbitration provisions of the collective bargaining agreement, referring any charge to one of the Department's mediators, or directing that a hearing take place.
- (2) The investigator may refer charges involving police or fire fighters to the Joint Labor Management Committee, for such period of time as the Department shall determine in order to promote resolution of the issue.



15.05: continued

- (3) Unless the charge is dismissed, deferred, or referred, the investigator shall promptly meet with the parties, investigate whether settlement of the charge is possible, and clarify and narrow the issues before determining whether the charge will be forwarded to a hearing.
- (4) The parties shall, at the discretion and direction of the investigator, electronically submit documentary exhibits to an investigation.
- (5) The investigator may dismiss the charge without a hearing if the investigator finds no probable cause to believe that a prohibited practice has occurred or if the investigator otherwise determines that further proceedings would not effectuate the purposes of M.G.L. c. 150E.
- (6) After such investigation, if the investigator determines that there is probable cause to believe that the charging party has committed a prohibited practice, the Department shall serve upon the parties a complaint and a notice of hearing.
- (7) The Department may decline to issue a complaint or may withdraw any complaint issued unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.
- (8) No complaint shall be issued until the charging party has complied with the applicable provisions of M.G.L. c. 150E, §§ 13 and 14.
- (9) If, after a charge has been filed, the investigator declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for the dismissal. The charging party may obtain a review of the dismissal by filing a request therefor with the Board within ten days from the date of receipt of the dismissal. Within seven days of service of the request for review, any other party to the proceeding may file a response with the Board. The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. Upon its own motion or upon good cause shown by any of the parties to the proceeding, the Department may extend the time for the filing of such request for review.

15.06: Amendments

- (1) Before the receipt of any response to the charge by the respondent, any charge may be amended as of right. After the receipt of any response, the charge may only be amended with the permission of the Department.
- (2) Within ten days after the Department issues a complaint, if the charging party believes that the complaint should be amended to correct an error or omission, the charging party shall file a motion to amend the complaint with the investigator who issued the complaint. After the hearing opens, the hearing officer may allow amendment of any complaint provided that such amendment is within the scope of the original complaint.
- (3) Any complaint or amended complaint or any part thereof may be withdrawn by the Department any time prior to the issuance of an order based thereon and upon good cause shown.
- (4) Any charge or amended charge or any part thereof may be withdrawn by the charging party prior to the issuance of a complaint. After a complaint has been issued the charge or amended charge may be withdrawn only with the permission of the Department.

15.07: Answers

- (1) The respondent shall file an answer to a complaint or amended complaint within ten days from the date of service, unless otherwise notified by the Department. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement shall operate as a denial. All allegations in the complaint not specifically denied or explained in the answer, unless the respondent has stated in the answer that it is without knowledge, shall be deemed by the Department to be admitted, unless good cause to the contrary is shown.

15.08: Record

The record of the investigation shall consist of the charge, the respondent's answer, evidence presented at the investigation, and any written submissions presented before, during, or after the investigation when allowed by the investigator.

15.09: Expeditious Scheduling of Investigation

- (1) When temporary relief or a restraining order has been procured by the Department or a party in connection with a charge under 456 CMR 15.00, the charge that is the basis for such temporary relief or restraining order may be investigated expeditiously.
- (2) For other good cause shown by a party in writing, the Department also may determine that a charge will be investigated expeditiously.

15.10: Interim Bargaining Order

- (1) When it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative in violation of M.G.L. c. 150E, § 10, and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the Department shall, upon request, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute.
- (2) When such interim order is issued, the Department shall hold a hearing on the complaint in a summary manner and shall speedily determine the issues.

15.11: Blocking Charges

- (1) During the pendency of a petition filed pursuant to M.G.L. c. 150E, § 4 any party to the petition may file a motion with the Department requesting that a pending prohibited practice charge "block" the conduct of an election. Such motion shall include a complete statement of the reasons supporting such motion and evidence sufficient to establish probable cause to believe that:
  - (a) The conduct alleged in the prohibited practice charge has occurred;
  - (b) The alleged conduct violates M.G.L. c. 150E; and
  - (c) The alleged unlawful conduct may interfere with the conduct of a valid election.
- (2) Upon receipt of such a motion the Department may investigate the matter, issue a notice to the other parties to the election to show cause why the motion should not be granted, or conduct further proceedings to dispose of the matter.

REGULATORY AUTHORITY

456 CMR 15.00: M.G.L. c. 23, §§ 90, 9T(c), 9T(d); c. 150E, §§ 11, 10, 13, 14; c. 150A, §§ 6, 6B, 7 and 8.

NON-TEXT PAGE

456 CMR 16.00: VARIOUS PROVISIONS OF M.G.L. c. 150E

Section

- 16.01: Filing of Contracts
- 16.02: Requests for Binding Arbitration
- 16.03: Strike Investigations
- 16.04: Petitions and Requests
- 16.05: Compliance with M.G.L. c. 150E, §§ 13 and 14
- 16.06: Advisory Rulings
- 16.07: Rule-making Hearings
- 16.08: Compliance with Enforcement of Department Orders

16.01: Filing of Contracts

For the purpose of 456 CMR 16.00, any collective bargaining agreement that has been reduced to writing and executed by the employer and exclusive representative shall be deemed to have been filed with the Department, for the purposes of satisfying the provisions of M.G.L. c. 150E, § 7, when within 30 days of its execution and funding an exact copy of said agreement has been electronically filed with the Department in accordance with 456 CMR 12.12(7) by the employer, the exclusive representative, or any other person. Any filing in the form of a Memorandum of Agreement (MOA) executed by the employer and the exclusive representative must include an electronic copy of any prior contract or MOA that is altered or referenced by the MOA.

16.02: Requests for Binding Arbitration

- (1) When a party requests the Department to order binding arbitration, pursuant to M.G.L. c. 150E, § 8, the party so requesting shall provide the Department the following information in writing:
  - (a) The full names and addresses of the employer and the employee organization involved.
  - (b) A clear and concise statement of the dispute concerning the interpretation or application of the applicable collective bargaining agreement. A copy of the grievance for which arbitration is requested must be submitted with the request, along with the date and disposition of the last step of the grievance procedure at which the grievance has been considered.
  - (c) A specific reference to the particular part or parts of the written agreement allegedly violated. A copy of the entire written agreement must be submitted with the request.
  - (d) Any other relevant facts which may be required in the request for binding arbitration forms issued by the Department.
- (2) Except for good cause shown, no request for binding arbitration shall be entertained by the Department more than 60 days after exhaustion of the contractual grievance procedure, if any.
- (3) In addition to the requirements of 456 CMR 12.02: *Service When Required* and 456 CMR 12.12: *Filing with the Department*, all requests for an order of binding arbitration shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true to the best of that person's knowledge or belief.
- (4) Within 15 days after receipt of a copy of a request for an order of binding arbitration, the other party to the collective bargaining agreement shall provide to the Department a statement indicating whether the party joins in the request for binding arbitration, or opposes the request, and all legal or other arguments in support of its position.
- (5) Upon receipt of the submissions of the parties referenced in 456 CMR 16.02(1) through (4), the Department may conduct such further investigation as it deems necessary and may issue an order directing the parties to submit the grievance to binding arbitration, or may dismiss the request for an order directing binding arbitration.

16.03: Strike Investigations

- (1) When an employer petitions the Department to investigate an alleged violation of M.G.L. c. 150E, § 9A(a), the employer shall include in the petition the following information:
  - (a) The name, address and telephone number of the employer, and its legal representative, if any.
  - (b) The names, addresses and telephone numbers, if known, of the employee organization and its officers or the public employees who are alleged to have violated or are about to violate the provisions of M.G.L. c. 150E, § 9A(a).
  - (c) The name, address and telephone number of counsel for the employee organization or public employees, if known.
  - (d) The place of employment of the public employee or employees and the services affected.
  - (e) A statement as to what facts cause the employer to believe that a strike has occurred or is about to occur or has been induced, encouraged or condoned by a public employee or employee organization.
  - (f) Any other relevant facts which may be of assistance to the Department.
- (2)
  - (a) The employer shall serve a copy of the petition upon an officer or representative of the employee organization and on all named public employees alleged to have violated or to be about to violate M.G.L. c. 150E, § 9A(a). The petition served pursuant to 456 CMR 16.03(2)(a) shall contain a statement that the employer requests an investigation by the Department and that the employee organization or employees may contact the Department if they wish to present information pertinent to the investigation. The employer shall file an affidavit with the Department specifying its compliance with 456 CMR 16.03(2).
  - (b) The Department may require the employer to serve a notice of the time, date and place of an investigation, to be conducted by the Department, upon an officer or representative of the employee organization and on each named public employee alleged to have violated or to be about to violate M.G.L. c. 150E, § 9A(a).
  - (c) The Board may investigate the allegations of the employer's petition and may determine whether a strike is occurring or about to occur upon consideration of the employer's allegations and such other evidence as the Board may consider.
- (3) Upon determination that a violation of M.G.L. c. 150E, § 9A(a) is occurring or is about to occur, the Board may issue orders setting requirements and may seek enforcement thereof. The Board may require the employer to serve such orders upon an officer or representative of the employee organization and upon each named public employee found to have violated M.G.L. c. 150E, § 9A(a).

16.04: Petitions and Requests

All petitions and requests filed with the Department under 456 CMR 16.00 shall be in writing and shall contain a declaration by the person signing it, under the penalties of perjury, that its contents are true to the best of that person's knowledge or belief.

16.05: Compliance with M.G.L. c. 150E, §§ 13 and 14

- (1) For the purpose of 456 CMR 16.00, compliance with M.G.L. c. 150E, §§ 13 and 14 means that:
  - (a) An employee organization has electronically filed the information required by M.G.L. c. 150E, §§ 13 on an Employee Organization Information Report (Department-Form 1) or the equivalent thereof. The information provided shall include:
    1. The full legal name of the employee organization, including any local or district;
    2. The date of incorporation, if any;
    3. The date of organization;
    4. The full name of any organization affiliate, if any;
    5. The name, mailing address, email address and telephone number of the secretary or other officer to whom notices may be sent;
    6. A listing of all of the names, addresses, email addresses and annual salaries of all of the officers of the employee organization;
    7. The type of employee organization filing the report;
    8. The dates of the employee organization's fiscal year covered by the report;

16.05: continued

9. The scale of the dues, initiation fees, fines and assessments to be charged to members and the scale or amount of any agency service fee to be charged to non-members;
  10. A listing of all current certifications and recognitions held by the employee organization including the name of the employer, the date of certification or recognition, a description of the bargaining unit, and the dates of the most recent contract;
  11. A listing of all certifications and recognitions previously held by the employee organization for which the employee organization disclaimed interest during the reporting period, including the name of the employer, the date of certification or recognition, a description of the bargaining unit, and the effective date of the disclaimer; and
  12. A statement of purpose.
- (b) An employee organization must annually file an Employee Organization Information Report (Department-Form 1) within 60 days of the close of its fiscal year. An employee organization must file an amended report within 30 days of any change in the employee organization's name, its affiliation or the name, address or email address of its secretary or other officer to whom notices may be sent. The Department may, upon request of the employee organization, allow an extension of time for filing.
- (2) For the purpose of 456 CMR 16.00, compliance with M.G.L. c. 150E, § 14 means that an employee organization has electronically filed the information required by M.G.L. c. 150E, § 14 on an Employee Organization Financial Report (Department-Form 2) or the equivalent thereof within 60 days of the close of its fiscal year. The information provided shall include:
- (a) The full legal name of the employee organization, including any local or district;
  - (b) The name, mailing address, email address and telephone number of the secretary or other officer to whom notices may be sent;
  - (c) The beginning and ending date of the employee organization's fiscal year covered by the report;
  - (d) A balance sheet listing all assets and liabilities and the start and end of the reporting period;
  - (e) An operating statement listing all receipts and disbursements during the reporting period; and
  - (f) All disbursements to any officer during the fiscal year.
- (3) An employee organization filing a petition or a charge, or seeking to intervene in a proceeding before the Department, shall make a declaration under oath or affirmation that it has complied with the requirements of M.G.L. c. 150E, §§ 13 and 14. In the event of failure to comply with 456 CMR 16.05, the Department may compel such compliance by appropriate order.

16.06: Advisory Rulings

- (1) Whenever a party to collective bargaining negotiations challenges the negotiability of a written proposal submitted to it by the opposing party, either party may petition the Department for an advisory ruling to determine whether the challenged proposal is within the scope of mandatory negotiations as defined in M.G.L. c. 150E, § 6. The party petitioning for an advisory ruling shall simultaneously serve one copy of the petition upon the respondent or the respondent's attorney or representative. The filing of a petition pursuant to 456 CMR 16.06 shall not affect either party's obligation to bargain under M.G.L. c. 150E.
- (2) When a party files a petition for an advisory ruling, it shall provide the Department with the following information:
  - (a) The full name and address of the petitioner;
  - (b) The full name and address of the petitioner's attorney or representative;
  - (c) The name and address of the respondent;
  - (d) The name and address of the respondent's attorney or representative;
  - (e) The text of the disputed proposal;
  - (f) A concise statement as to what aspect of the disputed proposal has been challenged and the substance of the challenge;

16.06: continued

- (g) Whether the parties are in negotiations, mediation or fact finding; and
  - (h) Why an evidentiary hearing is not required.
- (3) The respondent shall within ten days of service of the petition by the petitioner file a response providing the Department with the following information:
- (a) Whether the information in the petition required by 456 CMR 16.06(2) is accurate and, if not, the reasons therefor;
  - (b) Whether the respondent considers the issuance of an advisory ruling appropriate and, if not, the reasons therefor.
- (4) The Board shall determine whether a petition presents an issue appropriate for an advisory ruling. If the petition is granted, the Board may allow the following:
- (a) The filing of factual stipulations;
  - (b) The filing of briefs; and/or
  - (c) Oral argument.
- (5) The Board may render, after the filing of briefs or oral argument, if any, its advisory ruling upon the issues involved or otherwise dispose of the petition.
- (6) In any proceeding under M.G.L. c. 150E, § 11 which is based in whole or in part on the subject matter of proceedings under 456 CMR 16.06, the record made under 456 CMR 16.06 shall be made a part of the M.G.L. c. 150E, § 11 proceeding.

16.07: Rule-making Hearings

Whenever, pursuant to the provisions of M.G.L. c. 23, § 9T(c) or c. 30A, a rule-making hearing is held by the Department, the following procedural rules apply to the extent required by M.G.L. c. 30A.

- (1) The Department will provide public notice of the proposed rules as required by M.G.L. c. 30A. Persons desiring to be heard with respect to proposed standards, rules or regulations including employers, employee organizations and members of the public may appear at the designated time and place. A record of each such hearing will be kept.
- (2) Interested parties may be required to submit written statements regarding proposed standards, rules or regulations and such questions as they may have in advance of the hearing date and the time for such questions and responses may be limited by the Department.
- (3) Such questions as interested parties may have should be submitted in advance, whether or not the submitting party wishes to appear, because questions to witnesses may only be asked by the Department or its agents. The order of presentation at the hearing will be as follows:
- (a) The Department shall present the proposed standards, rules or regulations and an explanation thereof.
  - (b) Persons requesting the opportunity to speak shall make such request to the Director five days before the hearing with an outline of the person's position. Such persons shall be afforded no more than 15 minutes to make an opening statement, in the order in which such requests are received by the Director. If, following the opening statements, any person requires additional time to present, the person's original request to the Director shall also include an estimation of the amount of time required and a justification therefor.
  - (c) Following the opening statements, persons who complied with the provisions of 456 CMR 16.07(3)(b) may be allowed additional time for a further presentation, at the discretion of the Department, in the order followed for the opening statements.
  - (d) Other persons who request to speak, prior to or during the course of the hearing, may do so subject to the availability of time and at the Department's discretion.
- (4) The Department may limit presentations which are redundant, irrelevant or repetitious. Written statements or memoranda may be submitted for consideration by the Department within seven days after the close of a hearing or such further time as, upon written application, the Department shall allow.

16.07: continued

(5) Except to the extent that such waiver or modification may be inconsistent with the law, any of the procedures described relating to the conduct of a hearing may be waived or modified by the Department to prevent undue hardship or manifest injustice or as the expeditious conduct of business so requires.

(6) A copy of M.G.L. c. 150E and a copy of the proposed standards, rules or regulations shall be made available for inspection at the Boston office of the Department and appropriate notice of any hearing given, in accordance with the requirement of M.G.L. c. 30A, §§ 3 and 9.

16.08: Compliance with Enforcement of Department Orders

(1) When a party petitions the Department to seek enforcement of any order issued by the Department, the party so requesting shall provide the Department the following information, in writing:

- (a) The name and address of the party requesting enforcement;
- (b) The name and address of the requesting party's attorney or representative, if any;
- (c) The name and address of the party alleged to be in non-compliance with an order of the Department;
- (d) The name and address of the alleged non-complying party's attorney or representative;
- (e) The Department case number and text of the specific order or portion thereof which the requesting party claims has not been complied with; and
- (f) A statement as to what facts cause the requesting party to believe that there has been non-compliance with the specific order described in 456 CMR 16.08(1)(e). Such statement shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury.

(2) The party alleged to be in non-compliance with an order of the Department shall, within ten days of service of the request for enforcement, file a response, providing the Department with the following:

- (a) A stipulation that the information in the request for enforcement is accurate; or
- (b) If it is contended that the information is not accurate, an explanation of the nature of any alleged inaccuracy and the reasons therefor. Such reasons shall be supported by affidavits made by individuals with personal knowledge, signed under the penalties of perjury, specifying the steps taken to fully comply with the orders or portions thereof of the Department or any member or agent.

(3) The Department may institute enforcement proceedings in court if the party alleged to be in non-compliance:

- (a) fails to respond to the request for enforcement;
- (b) admits non-compliance; or
- (c) provides insufficient information to warrant a conclusion that appropriate compliance has occurred.

(4) The Department may decline to institute enforcement proceedings, if the Department determines that:

- (a) the party requesting compliance has failed to provide the information in 456 CMR 16.08(1);
- (b) the party alleged to be in non-compliance has provided sufficient information to warrant a conclusion that appropriate compliance has occurred; or
- (c) no further action is necessary.

(5) If the Department determines that there is a genuine dispute as to compliance, it may order that a hearing be held to determine whether compliance has occurred. At any hearing concerning the alleged non-compliance, the party required to comply with the Department's order shall have the burden of proving such compliance by a preponderance of the evidence. The provisions of 456 CMR 13.00: *Conduct of Hearings* shall govern the proceeding insofar as applicable.

(6) (a) Upon determination that a party is in non-compliance with an order of the Department, the Department may institute appropriate proceedings for enforcement of the order.



16.08: continued

(b) If the Department, after consideration of the evidence and arguments of the parties, determines that the purposes of M.G.L. c. 150E would not be effectuated by instituting proceedings for enforcement, it may decline to institute proceedings for enforcement and shall so notify the parties.

(7) The party requesting compliance may be required to provide the Department with assistance, including the furnishing of affidavits, witnesses and documents in preparation for an enforcement proceeding and may be required to bear the expenses associated therewith.

(8) If, following receipt of a final court judgment enforcing a Department order, the Department declines to seek execution of the court judgment, the Department's declination shall not preclude the party who desires such execution from seeking it independent of the Department.

#### REGULATORY AUTHORITY

456 CMR 16.00: M.G.L. c. 23, §§ 9O and 9T(c), 9T(d); c. 30A, §§ 3, 9; c. 150E, §§ 7, 8, 9A, 11, 13 and 14.

456 CMR 17.00: AGENCY SERVICE FEE

Section

- 17.01: Scope
- 17.02: Ratification
- 17.03: Impermissible and Permissible Costs
- 17.04: Demand for Payment of a Service Fee
- 17.05: Challenge of a Service Fee
- 17.06: Escrow Account
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- 17.08: Investigation
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- 17.13: Record
- 17.14: Burden of Proof
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17.01: Scope

The purpose of 456 CMR 17.00 is to implement the provisions of M.G.L. c. 150E, § 12. 456 CMR 17.00 shall be applicable only to proceedings arising under M.G.L. c. 150E, § 12.

17.02: Ratification

- (1) No service fee shall be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed pursuant to a ratification vote of a majority of all employees casting valid votes in person at a meeting or meetings or by mail in a mail ballot ratification procedure.
- (2) The ratification vote shall be taken by mail or at a meeting or meetings called by the exclusive bargaining agent. The right to vote by mail or in person at a meeting shall be extended to all employees in the bargaining unit covered by the proposed collective bargaining agreement. Ratification meetings shall be held at a reasonable time and place. Mail ballot ratifications shall be conducted in a manner calculated to ensure custody of the ballots and compliance with the public counting requirement of 456 CMR 17.02(3).
- (3) The vote shall be publicly counted, and the majority of valid votes cast by mail or in person at a meeting or meetings shall prevail. If the collective bargaining agreement is ratified, the exclusive bargaining agent shall maintain a written record of the results of the vote until the expiration of said agreement.
- (4) The exclusive bargaining agent shall maintain and make available for inspection by members of the bargaining unit, at reasonable times and places, a copy of its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous fiscal year as required by M.G.L. c. 150E, § 14.
- (5) Notice of the ratification procedure shall be given by the exclusive bargaining agent in like manner to all employees in the bargaining unit at least five calendar days prior to the holding of the meeting(s) or the distribution of ballots to employees in a mail ratification unless extraordinary circumstances warrant notice of fewer than five days. The notice shall include the following information:
  - (a) The time and place of the meeting(s) or details of the mail ratification procedure;
  - (b) A statement that the proposed collective bargaining agreement, if ratified, shall require payment of a service fee as a condition of employment;
  - (c) The current amount of the service fee;
  - (d) A statement that all employees in the bargaining unit may attend and vote at the meeting(s) or by mail in a mail ballot ratification;

17.02: continued

- (e) A statement that all employees within the bargaining unit covered by the proposed agreement are eligible to vote;
- (f) The full identity, including affiliations, of the exclusive bargaining agent; and
- (g) A statement that the exclusive bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous financial year is available for inspection.

17.03: Impermissible and Permissible Costs

- (1) Costs attributable to the following shall be deemed impermissible in computing a service fee:
  - (a) Expenditures for political candidates or political committees formed for a candidate or political party;
  - (b) Establishing and publicizing of an organizational preference for a candidate for political office;
  - (c) Lobbying or efforts to enact, defeat, repeal or amend legislation or regulations unrelated to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the exclusive bargaining agent or its affiliates;
  - (d) Expenditures for charitable, religious or ideological causes not germane to a bargaining agent's duties as the exclusive representative;
  - (e) Benefits and activities which are:
    - 1. Not germane to the governance or duties of the exclusive bargaining agent, and
    - 2. Available only to the members of the employee organization which is the exclusive bargaining agent;
  - (f) Fines, penalties or damages arising from the unlawful activities of the exclusive bargaining agent or the exclusive bargaining agent's officers, agents or members;
  - (g) Overhead and administrative costs allocable to any activity listed in 456 CMR 17.03(1)(a) through (f).
- (2) Costs attributable to the following shall be deemed permissible to the extent that they are not deemed impermissible under 456 CMR 17.03(1):
  - (a) Preparation, negotiation, and ratification of collective bargaining agreements;
  - (b) Adjusting employee grievances and complaints;
  - (c) The public advertising of positions on the negotiating of, or provisions in, collective bargaining agreements, as well as on matters relating to the collective bargaining process and contract administration;
  - (d) Purchasing of materials and supplies used in matters relating to the collective bargaining process and contract administration;
  - (e) Paying specialists in labor law, negotiations, economics and other subjects for services used in matters relating to working conditions and to the collective bargaining process and contract administration;
  - (f) Organizing within the charging party's bargaining unit;
  - (g) Organizing bargaining units in which charging parties are not employed, including units where there is an existing exclusive bargaining agent;
  - (h) Defending the employee organization seeking a service fee against efforts by other unions or organizing committees to gain representation rights in units represented by the employee organization seeking a service fee or by its affiliates;
  - (i) Proceedings involving jurisdictional controversies under the AFL-CIO constitution or analogous provisions governing bargaining agents that are not affiliated with the AFL-CIO;
  - (j) Lobbying or efforts to enact, defeat, repeal, or amend legislation or regulations relating to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the exclusive bargaining agent or its affiliates;
  - (k) Paying costs and fees to employee organizations affiliated with the exclusive bargaining agent seeking a service fee;
  - (l) Meetings and conventions;
  - (m) Publications of the exclusive bargaining agent seeking a service fee;
  - (n) Lawful impasse procedures to resolve disputes arising in connection with negotiating and enforcing collective bargaining agreements;

17.03: continued

- (o) Professional services rendered to the exclusive bargaining agent and its affiliates;
- (p) Wages and benefits for persons employed by the exclusive bargaining agent;
- (q) All other activities not listed in 456 CMR 17.03(1);
- (r) Overhead and administrative costs allocable to any item in 456 CMR 17.03(2)(a) through (q).

17.04: Demand for Payment of a Service Fee

- (1) An exclusive bargaining agent seeking payment of a service fee shall serve a written demand for the fee upon the employee from whom the fee is sought. The written demand shall include the amount of the service fee, the period for which the fee is assessed, the method by which payment is to be made, the person to whom payment should be made, and the consequences of a failure to pay the fee.
- (2) An exclusive bargaining agent making a written demand pursuant to 456 CMR 17.04(1) shall also provide a copy of 456 CMR 17.00.
- (3) No demand for payment of a service fee under 450 CMR 17.04 shall be made until the exclusive bargaining agent making the demand has complied with the applicable provisions of M.G.L. c. 150E, §§ 13 and 14.
- (4) Any information that an exclusive bargaining agent may be required to provide as part of making a valid demand may be delivered electronically.

17.05: Challenge of a Service Fee

- (1) Employees may challenge the validity or amount of a service fee by filing a prohibited practice charge with the Department.
  - (a) Validity shall mean whether there has been compliance with the provisions of 456 CMR 17.02 and 17.04.
  - (b) Amount shall mean whether some or all of the service fee demanded by an exclusive bargaining agent is impermissible under 456 CMR 17.03(1).
- (2) Except for good cause shown, a charge challenging the amount of a service fee or its validity under 456 CMR 17.02 or 17.04 shall be filed within six months after the exclusive bargaining agent has made a written demand for payment of the fee pursuant to 456 CMR 17.04.
- (3) A charge challenging the validity or amount of a service fee shall contain the following:
  - (a) The full name(s) and address(es) of the individual(s) making the charge.
  - (b) The full name and address of the exclusive bargaining agent against whom the charge is made.
  - (c) The date the exclusive bargaining agent made a written demand for payment of the fee pursuant to 456 CMR 17.04.
  - (d) The amount of the regular membership dues.
  - (e) The amount of the service fee assessed by the exclusive bargaining agent, and the effective dates of the collective bargaining agreement under which the fee was assessed.
  - (f) If an employee is contesting the validity of the service fee under 456 CMR 17.02 or 17.04, a clear and concise statement of the reasons for the charge, including all relevant facts on which the charge is based.
  - (g) If an employee is contesting the amount of the fee, a general statement of the reasons for the charge.
  - (h) The signature of the individual making the charge or his or her representative.
  - (i) A statement as to whether the charging party has used the exclusive bargaining agent's rebate procedure and the result of that procedure.
  - (j) A declaration by the charging party, under the penalties of perjury, that its contents are true and correct to the best of the charging party's knowledge and belief.

17.06: Escrow Account

- (1) An employee filing a charge contesting the amount of a service fee shall jointly establish and administer an escrow account with the employee's exclusive bargaining agent.
- (2) The amount deposited in the escrow account must be equal to the full amount of the service fee for the disputed period of time, or equal to whatever amount remains in dispute after partial settlement between the employee and the exclusive bargaining agent seeking the fee.
- (3) Except for good cause shown, the charging party shall file with the Department evidence of the establishment of an escrow account before the date of the Department's investigation of the charge pursuant to 456 CMR 17.08. Failure to submit such evidence may result in dismissal of the charge.
- (4) Failure of the exclusive bargaining agent to cooperate in the establishment of the escrow account may waive its right to the establishment of the escrow account. If the exclusive bargaining agent waives its right to an escrow account, the charging party shall not be required to pay a service fee until the Department determines the fee due pursuant to 456 CMR 17.12.
- (5) Until a final order is issued by a hearing officer or the Board, the charging party shall continue to pay into the escrow account as such sums become due an amount equal to the service fee, or equal to whatever amount remains in dispute after a partial settlement between the employee and exclusive bargaining agent.

17.07: Deferral to Rebate Procedure

At any time after the establishment of an escrow account pursuant to 456 CMR 17.06, the Department may defer to an exclusive bargaining agent's procedure for rebating impermissible expenses to members of the bargaining unit. In order for the Department to consider deferral, a rebate procedure must meet the following standards:

- (1) Disputed amounts shall be placed in an escrow account during the pendency of the rebate proceedings;
- (2) The exclusive bargaining agent shall establish the justification for the fee demanded;
- (3) The exclusive bargaining agent shall make available to the dissenting employee the books and records on which the exclusive bargaining agent relies to justify the amount of the service fee demanded;
- (4) The procedure shall provide for a hearing or similar proceeding before a neutral decision maker in order to determine impermissible and permissible costs used in determining the fee, in accordance with the standards set forth in 456 CMR 17.03;
- (5) At any hearing or similar proceeding, the dissenting employee shall be entitled to a representative of her or his choice;
- (6) The costs arising from the hearing before a neutral decision maker shall be borne by the exclusive bargaining agent; and
- (7) The procedure shall not be unduly lengthy, cumbersome, or burdensome.

17.08: Investigation

- (1) When a charge has been filed under 456 CMR 17.00, the Department shall conduct an investigation to ascertain whether there is probable cause to believe that the contested service fee is invalid under 456 CMR 17.02 or 17.04, or that the amount exceeds the non-member's *pro rata* share of the costs of collective bargaining and contract administration.

17.08: continued

- (2) Either at or before the investigation, the exclusive bargaining agent shall make available to the charging party the books and records on which the exclusive bargaining agent relies to justify the amount of the service fee demanded.

17.09: Complaint

- (1) If, after investigation, there is probable cause to believe that the contested service fee is invalid under 456 CMR 17.02 or 17.04, or the amount of the service fee remains in dispute, the Department shall serve a written complaint upon the parties and shall conduct a hearing. The Department may decline to issue a complaint unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.
- (2) If, after investigation, the Department declines to issue a complaint, it shall notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of the decision not to issue a complaint by filing a request for review with the Department in accordance with 456 CMR 15.05(9).

17.10: Amendments

- (1) Upon its own motion, or upon the motion of any party, the Department may allow amendment of any complaint at any time prior to the issuance of a decision and order based thereon, provided that such amendment is within the scope of the original complaint.
- (2) Any charge or amended charge filed, or any part thereof, may be withdrawn by the charging party prior to the issuance of a complaint.
- (3) Any complaint or amended complaint, or any part thereof, may be withdrawn by the Department at any time prior to the issuance of an order based thereon and upon such terms as the Department may deem just and proper.

17.11: Answers

- (1) The exclusive bargaining agent shall file an answer to a complaint within ten days from the date of service, unless otherwise notified by the Department. The exclusive bargaining agent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless it is without knowledge, in which case it shall so state, such statement shall operate as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the exclusive bargaining agent has stated in the answer that it is without knowledge, shall be deemed by the Department to be admitted to be true and shall be so found by the Department, unless good cause to the contrary is shown.
- (2) Upon its own initiative or upon proper cause shown by the exclusive bargaining agent, the Department may extend the time within which an answer shall be filed.

17.12: Hearing and Final Determination

The Department shall schedule a hearing pursuant to 456 CMR 13.00: *Conduct of Hearings* to make a final determination on the amount of the service fee. At least seven days before the hearing, the exclusive bargaining agent upon request shall make available to the charging party the books and records on which the exclusive bargaining agent relies to justify the amount of the service fee demanded.

17.13: Record

- (1) The record in a hearing under 456 CMR 17.00 shall consist of the charge, the complaint, notice of hearing, answer, motions, rulings, orders, audio recording or stenographic transcription, stipulations, exhibits, documentary evidence and amendments to any of the foregoing.

17.13: continued

(2) The record before the Board on review of a hearing officer's decision shall be as set forth in 456 CMR 13.19(3).

17.14: Burden of Proof

(1) When a complaint issued under 456 CMR 17.00 alleges that a service fee is invalid under 456 CMR 17.02 or 17.04, the burden of proof shall be on the charging party to establish the defects by a preponderance of the evidence.

(2) When a complaint issued under 456 CMR 17.00 alleges that part or all of the amount of a service fee is impermissible under 456 CMR 17.03, the burden of proof shall be on the exclusive bargaining agent to establish by a preponderance of the evidence that the contested amounts are permissible.

17.15: Non payment of Fee

(1) If an employee, after demand by the exclusive bargaining agent, refuses to pay the service fee in accordance with the requirements of a collective bargaining agreement, the exclusive bargaining agent may request the employee's termination or other sanction. The employer, after reasonable notice to the employee, shall terminate or otherwise sanction the employee pursuant to the collective bargaining agreement; provided, however, that no employee shall be terminated or otherwise sanctioned who has tendered the required service fee prior to the decision to terminate or otherwise sanction; and provided further that payment of a service fee shall not be required before the 30<sup>th</sup> day following the beginning of the employee's employment or the effective date of the collective bargaining agreement, whichever is later.

(2) No employee who has filed a charge with the Department and established an escrow account, if required under the provisions of 456 CMR 17.05 and 17.06, shall be terminated or otherwise sanctioned for failure to pay the service fee during the pendency of the charge before the Department and any related judicial appeal.

REGULATORY AUTHORITY

456 CMR 17.00: M.G.L. c. 23, §§ 9O, 9P, 9T(c), (d) and c. 150E, §§ 12 through 14.

456 CMR: DEPARTMENT OF LABOR RELATIONS

456 CMR 18.00: DESIGNATION OF DEPARTMENT AGENTS

Section

18.01: Department Agents

18.02: Attorneys

18.03: Special Designations

18.01: Department Agents

The Director may designate any person the Department employs as its agent to conduct:

- (1) Any inquiry necessary to the performance of the Department's functions;
- (2) Any election as directed by the Department or designated agent thereof;
- (3) Investigations, conferences or hearings as specified in 456 CMR 12.00: *General Provisions*, 13.00: *Conduct of Hearings*, 14.00: *Questions of Representation*, 15.00: *Investigations*, 16.00: *Various Provisions of M.G.L. c. 150E*, and 17.00: *Agency Service Fee*; and
- (4) Conduct any election as directed by the Department or designated agent thereof.

18.02: Attorneys

In addition to the functions described in 18.01, the Director may designate any attorney the Department employs as its agent to appear for and represent the Department in any case in court.

18.03: Special Designations

The foregoing designations shall not be construed to limit the power of the Director to make other special designations as may, in the Director's discretion, be necessary or proper to effectuate the purposes of M.G.L. c. 150E and to appoint any attorneys, hearing officers or other persons as it may deem necessary for the proper performance of its duties as designated in M.G.L. c. 23 and c. 150E.

REGULATORY AUTHORITY

456 CMR 18.00: M.G.L. c. 23, §§ 90, 9P, 9R (g), 9T(c); c. 30A; c. 150E, §§ 4 and 11.



NON-TEXT PAGE

456 CMR: DEPARTMENT OF LABOR RELATIONS

(456 CMR 19.00: RESERVED)

NON-TEXT PAGE

456 CMR: DEPARTMENT OF LABOR RELATIONS

456 CMR 20.00: CONSTRUCTION OF RULES, AMENDMENT AND PUBLICATION

Section

20.01: Construction

20.02: Severability

20.01: Construction

456 CMR shall be liberally construed to effectuate the purposes and provisions of M.G.L. c. 150E.

20.02: Severability

If any rule contained in 456 CMR should be declared invalid by final order or decree of a court of competent jurisdiction, such invalid provision or rule shall be severed and the validity of the remaining rules shall not be so affected.

REGULATORY AUTHORITY

456 CMR 20.00: M.G.L. c. 23, § 9T(c).

NON TEXT PAGE

456 CMR 21.00: RULES FOR INTEREST MEDIATION, FACT-FINDING AND INTEREST ARBITRATION IN DISPUTES INVOLVING PUBLIC EMPLOYERS AND PUBLIC EMPLOYEES; PRIVATE SECTOR INTEREST MEDIATION

Section

- 21.01: Scope
- 21.02: Confidentiality
- 21.03: Initiation of Interest Mediation and Fact-finding
- 21.04: Voluntary Interest Mediation
- 21.05: Appointment of a Mediator
- 21.06: Mediator's Function
- 21.07: Public Access
- 21.08: Mediator's Report
- 21.09: Designation of a Fact-finder
- 21.10: Withdrawal of Fact-finder Petition
- 21.11: Fact-finder's Responsibility
- 21.12: Mediation during Fact-finding
- 21.13: Hearing before the Fact-finder, Subpoenas
- 21.14: Fact-finding Report
- 21.15: Termination of Fact-finding
- 21.16: Mediation after Fact-finding
- 21.17: Compensation of the Fact-finder
- 21.18: Certification of Completion of the Collective Bargaining Process
- 21.19: Voluntary Interest Arbitration
- 21.20: Private Sector Interest Mediation

21.01: Scope

456 CMR 21.00 regulates the conduct of mediation and fact-finding proceedings in public employment, including state, county, municipal, and district government.

21.02: Confidentiality

Any person acting as a mediator, including a fact finder or interest arbitrator, shall not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

21.03: Initiation of Interest Mediation and Fact-finding

(1) Petition for Mediation and Fact-finding. If a public employer and an employee organization have negotiated for a reasonable period of time and an impasse exists over one or more issues arising out of the negotiations, the public employer, the employee organization, or the parties jointly, may file a Petition for Mediation and Fact-finding with the Department, in accordance with 456 CMR 12.12: *Filing with the Department*.

(2) Unilateral Petitions. A petitioning party proceeding unilaterally shall serve the petition on the principal representative of the other party in accordance with 456 CMR 12.02: *Service: When Required*. The petition shall state in the appropriate place that a copy of the petition has been served on the other party in accordance with the requirements of 456 CMR 12.02. Failure to so state shall suspend the processing of the petition.

21.04: Voluntary Interest Mediation

At any time during bargaining, whether or not a Petition for Mediation and Fact-finding has been filed, an employee organization and a public employer may jointly request mediation assistance in resolving a collective bargaining dispute. The Department shall provide mediators for this purpose.

21.05: Appointment of a Mediator

- (1) Investigation. Upon receipt of the petition, the Department shall commence an investigation to determine if the parties have negotiated for a reasonable period of time and if an impasse exists. If the Department determines that the parties are not at impasse, it shall notify the parties of this determination within ten days of the filing of the petition. Failure to notify the parties within ten days shall be deemed to mean that an impasse exists.
- (2) Appointment. Within five days of the determination of an impasse, the Department shall promptly appoint a mediator to assist the parties in the resolution of the impasse.
- (3) Selection. The mediator may be appointed from the Department's staff unless the parties have stated in the Petition for Mediation and Fact-finding that they jointly request that the Department appoint an outside mediator. If the parties request an outside mediator, they shall specify on the Petition for Mediation and Fact-finding the name, address, and telephone number of the person selected. The Department, in its discretion, may allow a joint request by the parties for the appointment of a particular staff mediator.
- (4) Disqualification or Withdrawal of the Mediator. Prior to accepting an appointment, the mediator shall disclose to the Department any circumstances likely to create a presumption of bias, or which the mediator believes might disqualify him or her as an impartial mediator.
- (5) Fees. The filing fee for a Petition for Mediation and Fact-finding filed pursuant to 456 CMR 21.03 or for Voluntary Interest Mediation filed pursuant to 456 CMR 21.04 is the amount established by 801 CMR 4.02: *Fees of Licenses, Permits, and Services to Be Charged by State Agencies*. The cost of the filing fee shall be equally divided between the parties. The cost of an outside mediator, selected by the parties, shall be equally divided between the parties unless the parties agree otherwise.

21.06: Mediator's Function

- (1) The function of a mediator is to assist employers and employee organizations in reaching a voluntary agreement. A mediator may hold separate or joint meetings for this purpose. The mediator shall consult with each party concerning the time, date, and place of each mediation session; however, the mediator shall make the final decision on scheduling.
- (2) The mediator may order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for the purpose of resolving the impasse and negotiating such an agreement.

21.07: Public Access

There shall be no public access to mediation sessions.

21.08: Mediator's Report

After concluding mediation, the staff or outside mediator shall report in writing to the Department the results of the efforts to resolve the impasse. The report is confidential and shall contain the following information:

- (1) The names of the parties;
- (2) A statement of the dates of the first contacts with both the employer and the employee organization;
- (3) A brief description of the unresolved issues which existed at the beginning of the mediation effort;
- (4) A statement of the issues that have been resolved through the mediation effort;
- (5) A statement of the issues that are still unresolved, if any; and

21.08: continued

- (6) A recommendation as to whether the Director should invoke fact-finding.

21.09: Designation of a Fact-finder

- (1) Appointment by the Department. If the mediator's report reveals that an impasse continues to exist, the Department shall send written notice to both parties informing them that mediation has not resolved the impasse and that the Department intends to act upon the Petition for Mediation and Fact-finding by appointing a fact-finder. Promptly thereafter, the Department shall initiate the process to appoint a fact-finder from its list of qualified individuals.
- (2) Selection by Alternative Means. If the parties jointly agree to select the fact-finder in an alternative manner, they shall jointly inform the Department before the Department appoints a fact-finder, along with the selected fact-finder's name, address, and telephone number.
- (3) Letter of Appointment. After a fact-finder has been selected or appointed, the Department shall promptly send a letter of appointment and a copy of the petition to the fact-finder, and a copy of the letter to both parties. The fact-finder shall promptly notify the Department whether the fact-finder accepts the appointment.
- (4) Disqualification or Withdrawal of the Fact-finder. If the fact-finder has represented an employer or an employee organization within the last 12 months, the appointment shall be revoked by the Department. The fact-finder is required to disclose to the Department and the parties any circumstances likely to create a presumption of bias, or which the fact-finder believes might be disqualifying as an impartial fact-finder. Following such a disclosure, the Department shall revoke the fact-finder's appointment unless both parties waive this presumptive disqualification. If a fact-finder is disqualified, resigns, withdraws, or otherwise becomes unavailable from the fact-finding duties, the Department shall appoint another fact-finder in accordance with 456 CMR 21.09(1).

21.10: Withdrawal of Fact-finding Petition

A fact-finding petition may be withdrawn by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing, at any time prior to the appointment of a fact-finder. After the appointment of a fact-finder, a fact-finding petition may be withdrawn only by joint agreement of the parties. The parties shall compensate the fact-finder for such services performed in accordance with 456 CMR 21.17.

21.11: Fact-finder's Responsibilities

- (1) Authority. The appointed fact-finder shall have the authority and responsibility for the conduct of the fact-finding proceedings, and shall have sole discretion in deciding any issues of procedure. The fact-finder shall immediately advise the Department if a work stoppage has occurred or is imminent.
- (2) Scheduling of Conferences and Hearings. The fact-finder shall consult with each party concerning the time, date, and place of each meeting or hearing. The fact-finder shall make an effort to expedite the process. The fact-finder shall be the sole judge of scheduling, and the fact-finder's ruling as to time, date, place, adjournment, or continuance of any meeting or hearing shall be final and binding. Prior to any hearing, the fact-finder shall serve upon each party and the Department a written notice of the time, place, and date of such hearing.

21.12: Mediation During Fact-finding

- (1) Authority. The fact-finder or mediator has the authority to mediate the dispute.
- (2) Report to the Department. If the dispute is settled through mediation by the fact-finder, the fact-finder shall promptly notify the Department of the date and terms of the settlement.



21.13: Hearing Before the Fact-finder, Subpoenas

- (1) Proceeding in the Absence of a Party. Fact-finding may proceed in the absence of a party who, after notice given in accordance with 456 CMR 21.11, fails to appear for a conference or hearing or to obtain a continuance. The fact-finder may choose not to base the report solely upon the presentation of the appearing party. If any party to the dispute fails to appear or to cooperate with the fact-finder, the fact-finder may determine what further evidence is required and may obtain and use any evidence deemed relevant by the fact-finder. The fact-finder shall disclose to the appearing party the evidence intended to be considered, and shall give the appearing party an opportunity to respond to such evidence.
- (2) Waiver of Fact-finding Hearing. The parties may agree to waive the fact-finding hearing. The fact-finder is authorized to issue the report on the basis of the documents and stipulations submitted by the parties.
- (3) Representation. Any party may be represented by counsel or other person of its choosing. Such counsel or representative has exclusive authority to present that party's case.
- (4) Third Party Intervention. The fact-finder has authority to decide, in consultation with the parties, whether to permit third party intervenors to file any statements, memoranda, or briefs.
- (5) Order of Proceedings. The fact-finder shall:
  - (a) Obtain from the parties a statement of the issues in dispute;
  - (b) Determine the order in which the parties present their cases. In the case of a unilateral petition, the petitioning party shall ordinarily present its case first;
  - (c) Afford each party a full and fair opportunity to present all relevant evidence;
  - (d) Rule on all objections.
- (6) Fact-finder's Authority to Issue Subpoenas and Administer Oaths. The fact-finder shall have the authority, upon delegation of the Department, to administer oaths, take the testimony of any person under oath, and issue subpoenas to compel the attendance of witnesses or the production of documents. A request for a subpoena shall be allowed unless it is overbroad, oppressive, or otherwise legally defective.
- (7) Briefs. Upon the close of the hearing, each party has the right to make an oral argument or to file a brief. The time limits on submission of briefs shall be established by the fact-finder after consultation with the parties. Should the parties wish to make oral arguments, the order of proceeding shall be at the discretion of the fact-finder.

21.14: Fact-finding Report

- (1) Form and Contents. After the close of the hearing and the submission of briefs, if any, the fact-finder shall prepare, sign, and date a written fact-finding report. It shall include:
  - (a) A statement of the issue(s);
  - (b) The findings of fact regarding the issue(s);
  - (c) A statement of the recommendation for each issue;
  - (d) The rationale for the recommendation reached on each issue; and
  - (e) A summary cover sheet containing a complete statement as to the fact-finder's recommendations on all issues.
- (2) Service of the Report. The fact-finder shall send a copy of the fact-finding report to the Department and to each party to the dispute. The fact-finder shall send the report in accordance with 456 CMR 12.12: *Filing with the Department*.
- (3) Clarification of Report. One or both parties may request that the fact-finder clarify any recommendation in the fact-finding report. This request must be received by the Department within seven days of the date of the report. The party(ies) making this request shall send a copy to the fact-finder. The fact-finder shall attempt to dispose of such request within ten days of the Department's receipt of the request. The fact-finder shall notify the parties and the Department in writing or by conference of the disposition of the request for clarification.

21.14: continued

(4) Action on Report. If the parties fail to notify the Department that they have reached an agreement on the issues in dispute within ten days after the Department's receipt of the fact-finder's report, the Department shall assume that the impasse remains unresolved.

(5) Publication of the Report. If the impasse remains unresolved ten days after the Department's receipt of the fact-finder's report, the Department shall make it public.

21.15: Termination of Fact-finding

Unless the parties agree otherwise, the fact-finder shall perform no further service in connection with the dispute once the fact-finding report and clarification, if any, have been served. If the fact-finder performs further service, the fact-finder shall keep the Department informed of any activities, and shall notify the Department promptly of any settlement of the dispute and of the terms of the settlement.

21.16: Mediation after Fact-finding

If the parties are unable to come to agreement after the receipt of the fact-finder's report, the Department may appoint a staff mediator to assist them in resolving the dispute.

21.17: Compensation of Fact-finder

The fact-finder shall be entitled to the compensation rate contained in the resume on file with the Department, for each day or portion thereof spent in hearing, preparation, and issuance of the fact-finder's report, including clarification, if any, and in mediation. The fact-finder shall also be entitled to reimbursement for necessary and ordinary expenses. The costs for fact-finding shall be equally divided between the parties unless they agree otherwise.

The fact-finder's bill showing the amount payable by each party must accompany the final fact-finding report. The fact-finder may submit interim bills to the parties in the course of the proceedings, and copies of such interim bills shall also be sent to the Department. The parties shall make payment directly to the fact-finder.

21.18: Certification of Completion of the Collective Bargaining Process

Either or both parties may request the Department to certify to the parties that the collective bargaining process, including mediation, fact-finding, or arbitration, if applicable, has been completed. If the Department determines that the dispute resolution mechanisms provided for in M.G.L. c. 150E, § 9 have been exhausted, it shall certify to the parties that the collective bargaining process has been completed.

21.19: Voluntary Interest Arbitration

Upon joint request of the parties, the Department shall administer any written agreement to enter into final and binding interest arbitration of a collective bargaining dispute.

21.20: Private Sector Interest Mediation

Upon request, the Department may appoint a mediator to assist in the resolution of a private sector interest mediation dispute.

REGULATORY AUTHORITY

456 CMR 21.00: M.G.L. c. 23, §§ 90, 9P, 9Q, 9T(c), (d); c. 30A; c. 150 and c. 150E, § 9.

NON-TEXT PAGE

456 CMR 22.00: GRIEVANCE MEDIATION IN THE PUBLIC AND PRIVATE SECTORS

Section

- 22.01: Scope
- 22.02: Confidentiality
- 22.03: Voluntary Grievance Mediation
- 22.04: Appointment of Mediator
- 22.05: Mediator's Function
- 22.06: Admissibility of Grievance Mediation in Arbitration

22.01: Scope

456 CMR 22.00 governs the procedures for mediation of grievances between parties whenever in their collective bargaining agreements or by submission they have provided for mediation through the Department. 456 CMR 22.00 applies to the mediation of grievances arising in the public sector pursuant to M.G.L. c. 150E, § 8, and in the private sector pursuant to M.G.L. c. 150.

22.02: Confidentiality

A mediator, including an arbitrator acting in a mediatory capacity, shall not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers, or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

22.03: Voluntary Grievance Mediation

At any time, an employee organization and employer may request mediation assistance for problems arising from the interpretation or application of terms of a collective bargaining agreement. This includes preventive mediation prior to the filing of a grievance and grievance mediation. A party making such a request shall file a petition in accordance with 456 CMR 12.12: *Filing with the Department*.

22.04: Appointment of Mediator

(1) Appointment. Upon receipt of the Petition for Grievance Mediation, the Department shall promptly ascertain whether the parties agree to grievance mediation. If the parties agree, the Department shall appoint a staff mediator. Alternatively, should the parties request an outside mediator, the Department shall assist them by providing a list from its panel of qualified individuals.

(2) Fees. The filing fee for a Petition for Grievance Mediation is the amount established by 801 CMR 4.02: *Fees of Licenses, Permits, and Services to Be Charged by State Agencies*. The cost of the filing fee shall be equally divided between the parties. The cost of an outside mediator shall be equally divided between the parties, unless they agree otherwise.

22.05: Mediator's Function

The function of the mediator is to assist the parties in reaching a voluntary settlement of the dispute prior to grievance arbitration. A mediator may hold separate or joint conferences for this purpose. An agreement to mediate, however, shall not alter a scheduled arbitration date unless both parties agree to postpone the arbitration. Unless expressly agreed to in writing by the parties, at no time shall a grievance mediator also act as an arbitrator of the same case. A grievance mediator shall not discuss any aspect of the grievance mediation process with the appointed arbitrator.

22.06: Admissibility of Grievance Mediation in Arbitration

No discussions, offers of compromise, or proposed settlements generated during grievance mediation shall be admissible as evidence in an arbitration proceeding.

REGULATORY AUTHORITY

456 CMR 22.00: M.G.L. c. 23, §§ 9O, 9P, 9T(c), (d); c. 150; and c. 150E, § 8.

456 CMR 23.00: CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS

Section

- 23.01: Scope
- 23.02: Petition to Initiate Grievance Arbitration before the Department
- 23.03: Appointment and Qualifications of the Arbitrator
- 23.04: Scheduling of Arbitration Hearing by the Department; Continuances
- 23.05: Issuance of Subpoenas
- 23.06: Withdrawal of Petition
- 23.07: Arbitration Hearing before the Department
- 23.08: Clarification, Modification, or Correction of the Award
- 23.09: Publication of Award and Opinion
- 23.10: Request for Arbitration before Outside Arbitrator

23.01: Scope

456 CMR 23.00 governs the procedure for the arbitration of grievances which arise during the life of a collective bargaining agreement wherein the parties have agreed upon the Department as the arbitration tribunal. 456 CMR 23.00 applies to the arbitration of grievances arising in either the private sector pursuant to M.G.L. c. 150 or the public sector pursuant to M.G.L. c. 150E, § 8.

23.02: Petition to Initiate Grievance Arbitration before the Department

- (1) An employer or an employee organization, or both, may petition the Department to initiate grievance arbitration as provided for in any collective bargaining agreement or other agreement between them. Pursuant to 456 CMR 22.03 through 22.06, at any time prior to the arbitration hearing, the parties may also jointly request the Department to appoint a mediator to aid them in resolving the grievance in advance of the arbitration proceeding.
- (2) If the petition is being brought unilaterally, the petitioning party shall serve a copy of the petition on the principal representative of the other party in accordance with the provisions of 456 CMR 12.02: *Service: When Required*. The petition must state in the appropriate place that a copy of the petition has been served on the other party in accordance with 456 CMR 12.02. Failure to so state shall suspend the processing of the petition.
- (3) The party or parties requesting grievance arbitration shall file the petition, signed and dated by the petitioning party or parties, and a copy of the pertinent collective bargaining agreement with the Department pursuant to 456 CMR 12.12: *Filing with the Department*.
- (4) Fee for Grievance Arbitration. The filing fee for arbitration before the Department is the amount established by 801 CMR 4.02: *Fees of Licenses, Permits, and Services to Be Charged by State Agencies*. The cost of the filing fee shall be equally divided between the parties.

23.03: Appointment and Qualifications of the Arbitrator

- (1) Appointment of a Single Neutral Arbitrator. The Director may appoint a single neutral arbitrator from within the Department, who shall hear and determine the case.
- (2) Appointment of a Tripartite Board. The Director may appoint a tripartite board to hear and determine grievance arbitration cases. The Director or a designee shall be the neutral member of this board. The other members shall include a representative of labor and a representative of employers of labor. Prior to appointing these representatives, the Director shall consult with the employee organization and employer involved in the case to determine whether they want a representative to sit on the case and, if so, who they recommend.
- (3) Disqualification or Withdrawal of the Arbitrator. Prior to accepting an appointment, the neutral arbitrator is required to disclose to the Department any circumstances likely to create a presumption of bias, or which the arbitrator believes might disqualify the arbitrator from being impartial. If the arbitrator is disqualified or withdraws, the Department shall appoint another arbitrator in accordance with the provisions of 456 CMR 23.03(1) and (2).

23.04: Scheduling of Arbitration Hearing by the Department; Continuances

(1) Scheduling. Upon receipt of the petition, the Department shall serve upon each of the parties a written notice of the date and time of the hearing to be held at the offices of the Department. The notice shall be given reasonably in advance of the hearing. The Department shall make every effort to hold the hearing promptly after it receives the petition.

(2) Continuances. Where both parties request a continuance of the hearing to another time and date, the Department shall generally accept such requests. If one party requests a continuance of the hearing, the Department may for good cause shown and, where possible, after consultation with the other party, continue the hearing to another time and date, set at the discretion of the arbitrator or, if an arbitrator has not been appointed, the Director. Notice of a new hearing date and time shall be given in accordance with the provisions of 456 CMR 23.04(1).

23.05: Issuance of Subpoenas

(1) Any party may request the arbitrator to issue a subpoena to compel the attendance of witnesses or the production of documents. A request for a subpoena shall be allowed unless it is overbroad, oppressive, or otherwise legally defective, or is submitted to the arbitrator less than five days before the hearing date. The party requesting the subpoena shall be responsible for service of the subpoena.

(2) (a) At or prior to the time at which the subpoena compels attendance, but not later than five days after service of the subpoena, any witness under subpoena may file a motion for revocation or modification of any subpoena by submitting a written motion to the arbitrator, or, if no arbitrator has been assigned, to the Director. The motion shall include a statement of the grounds for revocation or modification of the subpoena.

(b) Upon receipt of a motion for revocation or modification of a subpoena, the arbitrator or the Director, if no arbitrator has been assigned, shall rule upon the motion. Prior to such ruling, an investigation may be conducted. The Director may defer ruling on the motion pending designation of an arbitrator.

(3) In the event of the failure of a witness to comply with a subpoena, the Department may initiate proceedings in Superior Court to compel compliance, or may decline to initiate such proceedings. If the Department declines both to quash the subpoena and to initiate proceedings in court, nothing in 456 CMR 23.00 shall prohibit the party at whose request the subpoena was issued from seeking enforcement of the subpoena in court.

23.06: Withdrawal of Petition

A petition to initiate grievance arbitration may be withdrawn at any time prior to the holding of the arbitration hearing by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing. Upon or after the holding of the arbitration hearing, the petition may be withdrawn only by joint agreement of the parties.

23.07: Arbitration Hearing before the Department

(1) Proceeding in the Absence of a Party. Arbitration may proceed in the absence of a party who, after notice is given in accordance with 456 CMR 23.04(1), fails to appear or to obtain a continuance. The Department shall investigate the circumstances surrounding a party's failure to be present and, under extraordinary circumstances, may reopen the record to allow the introduction of additional evidence by the party who had failed to appear, subject to rebuttal by the appearing party.

(2) Representation. A party may be represented by counsel or other person of its choosing. Such counsel or representative has the exclusive authority to present that party's case.

(3) Last Chance Grievance Mediation. Directly preceding the scheduled arbitration hearing and upon agreement of the parties, a mediator may assist the parties in a final attempt to settle the grievance. The conduct of such mediation shall be governed by 456 CMR 22.03 through 22.06.

23.07: continued

(4) Conduct of Proceedings. The arbitrator shall have the authority and responsibility for the conduct of the arbitration proceedings and shall have sole discretion in deciding any issues of procedure. The arbitrator shall:

- (a) Attempt to obtain from the parties a joint statement of the issue(s) in dispute, and shall unilaterally frame the issue if the parties do not agree;
- (b) Determine the order of presentation;
- (c) Record the date, time, and place of each hearing, and the names of the counsel or representatives and of all others present;
- (d) Administer oaths or affirmations;
- (e) Afford each party a full and fair opportunity to present relevant evidence and argument;
- (f) Require the parties to submit additional evidence that the arbitrator deems necessary to an understanding and determination of the dispute;
- (g) Rule on the admissibility of evidence; and
- (h) Rule on all objections.

(5) Transcript or Recording of Proceedings. To obtain a stenographic record of the proceedings a party shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the arbitration hearing. The requesting party or parties shall pay the cost of such record. The remaining party or parties may purchase a copy from the stenographer. Such transcript shall be the official record of the proceedings, and a copy shall be provided to the arbitrator free of charge. The arbitrator's copy of the transcript shall be made available to the parties for inspection at a time and place determined by the arbitrator. The arbitrator, but not the parties, may make an unofficial recording of the proceedings strictly for the arbitrator's own use.

(6) Closing of Hearings. When the arbitrator determines that all of the evidence has been offered, the hearing shall be closed. The arbitrator may reopen the record for good cause shown. Parties have the right to make oral closing arguments or to submit written briefs. The time limits on submission of briefs shall be established by the arbitrator after consultation with the parties. Should the parties request to make oral argument, the arbitrator shall determine the order of proceeding.

(7) Submission of Briefs. Any briefs submitted in arbitration proceedings before the Department shall be submitted to the Department in accordance with the provisions of 456 CMR 12.12: *Filing with the Department.*

23.08: Clarification, Modification, or Correction of the Award

(1) Standards.

- (a) Clarification. The arbitrator may clarify the award if it is so indefinite or incomplete that it cannot be performed.
- (b) Modification or Correction. The arbitrator may modify or correct the award if there is: an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in an award; or if the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) Procedure.

- (a) Joint Request. A joint request for clarification, modification, or correction of an award must be submitted to the Department within 14 days after the requesting parties have received the award. The arbitrator may extend the time for submitting such a request upon good cause shown. The arbitrator shall promptly determine whether to grant the request. The arbitrator may call a conference with the parties to consider the request. The arbitrator shall then promptly notify the parties in writing of the disposition of the request.
- (b) Unilateral Request. A unilateral request for clarification, modification, or correction of an award shall be submitted to the Department within 14 days after the requesting party has received the award. The arbitrator may extend the time for submitting such a request upon good cause shown. Such a request shall be served at the same time upon the opposing party's counsel or representative in accordance with 456 CMR 12:02: *Service, When Required.* The arbitrator shall give the opposing party an opportunity to respond or raise objections to the



23.08: continued

request. Any such response or objection shall be received by the arbitrator within seven days after the opposing party has received a copy of the request. The arbitrator shall then determine whether to proceed as set forth in 456 CMR 23.08(1).

23.09: Publication of Award and Opinion

The award and opinion of the arbitrator shall be treated as a public record and after issuance shall be open to public inspection. The Department may have its awards and opinions published unless either party to the proceeding gives written notice to the Department within 30 days of the award that it does not wish to have such award and opinion published.

23.10: Request for Arbitration before Outside Arbitrator

The Department shall appoint an outside arbitrator from its list of qualified individuals if so specified in the collective bargaining agreement. The arbitrator so designated should conduct the arbitration proceedings and render an award in accordance with 456 CMR 23.00. The compensation of an outside arbitrator shall be in accordance with the requirements of 456 CMR 21.17: *Compensation of the Fact Finder*.

REGULATORY AUTHORITY

456 CMR 23.00: M.G.L. c. 23, §§ 9O, 9P, 9T(c), (d); c. 150 and c. 150E, § 8.