

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

Section

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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;

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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;

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- (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.

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(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.

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(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.