RHODE ISLAND STATE LABOR RELATIONS BOARD

GENERAL RULES & REGULATIONS

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RHODE ISLAND STATE LABOR RELATIONS BOARD
GENERAL RULES AND REGULATIONS

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GENERAL RULES AND REGULATIONS
(Adopted May 20, 1943 - Effective June 1, 1943)
Amended 01/01/05

SECTION 1.00 RHODE ISLAND STATE LABOR RELATIONS ACT

1.00.1 Title 28, Chapter 7 of the Rhode Island General Laws:

The Rhode Island State Labor Relations Act is found at Title 28, Chapter 7 of the Rhode Island General Laws. The public policy of the State of Rhode Island, as it relates to labor relations, is to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self organization and designation of representatives of their own choosing for the purpose of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers.

1.00.2 The Rhode Island State Labor Relations Board:

The Rhode Island State Labor Relations Board is a seven (7) member Board created within the Department of Labor and Training. However, neither the Director of the Department of Labor and Training, nor any board or other agency shall in any way review, modify or reverse any decision or finding of the Board, or supervise or control the Board, in its exercise of its powers, or performance of its duties, as defined by law.

The Board is composed of seven (7) members who are appointed by the Governor, with the advice and consent of the Senate. Three (3) members of the Board represent labor, three (3) members represent management, including at least one (1) representative of local government, and one (1) member is a representative of the public generally. The appointments are for terms of six (6) years, and the Chairperson is appointed by the Governor. Two (2) members of the Board constitute a quorum, pursuant to R.I.G.L. 28-7-5.

1.00.3 Organization and Operation:

The seven (7) member Board generally meets monthly to decide cases pending before it. In addition, the Board meets several additional times per month to hold formal hearings on pending matters. At the present time, the Board's staff consists of its Administrator, two (2) Investigative Agents and one (1) secretary. The Board also retains the services of outside, independent legal counsel. Pursuant to statute and to the rules and regulations contained herein, the Board often delegates some of its powers and duties to its administrative staff.

The RI State Labor Relations Board is located at 1511 Pontiac Avenue, Building #73, Cranston, R.I. 02920. The telephone number is (401) 462-8830, and the fax number is (401) 462-8776. Regular office hours are Monday through Friday, from 8:30 a.m. - 4:00 p.m., except on days when a Board conducted election takes place. The web site is (www.dlt.state.ri.us/lrb).

1.00.4 Jurisdiction:
The Board's jurisdiction over employers is not expressly limited by state law; however, the Board's jurisdiction is preempted as to certain employers, by federal law. As a practical matter, for many years, the Board's cases have been limited to municipal, state and quasi-state (various "authorities") employers.

SECTION 1.01 DEFINITIONS
As used in these regulations and Decisions of the Board, the following terms shall be defined as hereinafter set forth.

1.01.1 Act:
Rhode Island State Labor Relations Act, R. .G.L. 28-7-1, et seq.

1.01.2 Accretion:
The process by which positions are added to an existing bargaining unit.

1.01.3 Administrative Officials:
The highest members of an employer's executive department; the top level of the employer's hierarchy, the officials or political appointees of the local government; an officer or political appointee of the executive department of the government.

1.01.4 Board:
Rhode Island State Labor Relations Board

1.01.5 Business Day:
Monday through Friday, excluding those holidays as enumerated in R.I.G.L. 25-1-1.

1.01.6 Casual Employee:
Those persons hired for an occasional period to perform special jobs or functions.

1.01.7 Certification:
The Board's official approval of a bargaining unit, issued upon petition

1.01.8 Community of Interest:
The critical consideration in determining the scope of bargaining units. In determining whether a proposed bargaining unit shares a community of interest, the Board may consider the following factors, among others:

a) The similarity in scale and manner of determining earnings;

b) Similarity of employment benefits, hours of work, and other terms and conditions of employment;

c) Similarity in the kind of work performed;

d) Similarity in the qualifications, skills and training of the employees;

e) Frequency of contact or interchange among employees;

f) Geographic proximity;

g) Continuity or integration of production processes;

h) Common supervision and determination of labor relations policies;

i) Relationship to the administrative organization of the employer;

j) The history of collective bargaining;

k) The desires of the affected employees;

l) The extent of union organization within the employer's ranks.

1.01.9 Company Union:
Any committee, employee representation plan, or association of employees which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, or terms and conditions of employment, which the employer has initiated or created, or whose initiation or creation he or she has suggested, participated in, or in the formulation of whose governing rules or policies, or the conducting of whose management, operations, or elections the employer participates in or supervises, or which the employer maintains, finances, controls, dominates or assists in maintaining or financing, whether by compensating any one for services performed in its behalf or by donating free services, equipment, materials, office or meeting space or anything else of value, or by any other means.

1.01.10 Confidential Employee:
Those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations, or those employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

1.01.11 Consent Election:
An election in which both the employees and employer agree upon the scope of the proposed bargaining unit, subject to the final approval of the Board, and to statutory exclusions of employees, as determined by the Board.

1.01.12 Dismissal:
Pursuant to R.I.G.L. 28-7-9 (d), the written discharge of any unfair labor practice charge after investigation and informal hearing.

1.01.13 Elected Official:
Those employees who have come to be employed by any city, town or subdivision of the state, through the electoral process, by its citizens.

1.01.14 Employees:
Includes, but is not restricted to, any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with,

any current labor dispute, or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise; but shall not include any individual employed by his or her parent or spouse, or in the domestic service of any person in his or her home, or any individuals employed only for the duration of a labor dispute, or any individuals employed as farm laborers.

1.01.15 Employer:
Includes any person acting on behalf of, or in the interest of the employer, directly or indirectly, with or without his or her knowledge, but a labor organization, or any officer or agent thereof, shall only be considered an employer with respect to individuals employed by the organization.

1.01.16 Labor Dispute:
Includes, but is not restricted to, any controversy between employers and employees or their representatives, as defined in this section, concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to represent, negotiate, fix, maintain, or change terms and conditions of employment, or concerning the violation of any of the rights granted or affirmed by the Act, regardless of whether the disputants stand in the proximate relation of employer and employee.

1.01.17 Labor Organization:
Any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid and protection, and which is not a company union, as defined in Section 1.01.9.

1.01.18 Managerial Employee:
Those employees who formulate and effectuate management policies by expressing and making operative the decisions of their employers. Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. An employee may be excluded from a bargaining unit as managerial only if he/she represents management's interests by taking or recommending discretionary actions that effectively control or implement employer policy.

1.01.19 Municipal Employee:
Any employee of a municipal employer, whether or not in the classified service of the municipal employer, except:

1) Elected officials and administrative officials;
2) Board and commission members;
3) Certified teachers, police officers, and firefighters;
4) Confidential and supervisory employees;

5) Casual employees, meaning those persons hired for an occasional period to perform special jobs or functions;

6) Seasonal employees, meaning those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who are part of an annual job employment program;

7) Employees of authorities except housing authorities not under direct management by a municipality who work less than twenty (20) hours per week.

1.01.20 Municipal Employer:
Any political subdivision of the state, including any town, city, borough, district, school board, housing authority, or other authority established by law, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees.

1.01.21 Person:
One or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

1.01.22 Policies of Act:
The policies set forth in R.I.G.L. 28-7-2.

1.01.23 Professional Employee:
a) Any employee engaged in work (i) predominantly intellectual and varied in character; as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced, or the result accomplished, cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, or from an apprenticeship, or from training in the performance of routine, manual, or physical processes; or

b) Any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph (a).

1.01.24 Seasonal Employee:
Those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who is part of an annual job employment program.

In connection with this definition, "seasonal basis" shall also mean employment which depends upon, or varies with the seasons of the year (winter, spring, summer and fall) or is dependent upon a particular and regular employment.

1.01.25 Supervisory Employee:
Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

1.01.26 Unfair Labor Practices:
Only those unfair labor practices listed in R.I.G.L. 28-7-13 and 28-7-13.1

1.01.27 Unit Clarification:
A request filed by the exclusive bargaining agent, a municipality, or the State of Rhode Island, seeking any of the following:

a) Accretion of one or more positions to an existing bargaining unit, whether originally constituted through a consent election or a contested election procedure; or

b) Removal of one or more positions from an existing bargaining unit, whether originally constituted through a consent election or a contested election procedure.

1.01.28 Unit Classification:
The original determination of a bargaining unit, whether done by a consent election or a contested election.

SECTION 2.01 BOARD MEMBERS: CODE OF ETHICS

2.01.1 Standard of Conduct:
Pursuant to R.I.G.L. 36-14-5, the Rhode Island State Code of Ethics in Government, Board members shall adhere to the highest standard of ethical conduct, respect the public trust and the rights of all persons, be open, accountable, responsive, avoid the appearance of impropriety, and shall not use their positions for private gain or advantage.

2.01.2 Statement of Conflict:
Board members shall be required to comply with the mandates of R.I.G.L. 36-14-6 and 36-14-7.

2.01.3 Recusal from Participation:
When a Board member recuses himself or herself from participating in any decision of any case presented to the Board, the member shall file a written recusal with the Board's Administrator or Acting Administrator, which shall become part of the official

record of the proceeding. A copy of the recusal shall also be provided to all parties of record and the Ethics Commission, and the recusal shall be referenced in the Board's decision in some manner.

SECTION 3.01 PUBLIC RECORDS

3.01.1 Record of Proceedings Before the Board - Unfair Labor Practice Cases:

a) The record of the proceeding before the Board in unfair labor practice cases shall consist of the charge or amended charge, the pleadings, notices of hearing, notices of argument, motions, orders, stenographic report, exhibits, depositions, findings of fact, conclusions of law and the decision and order.

b) If an unfair labor practice proceeding is predicated, in whole or in part, upon a prior representation proceeding, the record of such prior representation proceeding shall be deemed a part of the record in the unfair labor practice proceeding for all purposes.

3.01.2 Record of Proceedings Before the Board - Representation Cases:

The record of the proceedings before the Board in representation cases shall consist of the petition or amended petition, notices of hearing, notices of argument, motions, orders, stipulations, stenographic report, exhibits, decision and direction of election, report upon secret ballot, objections thereto, certification, dismissal or decision and order.

3.01.3 Record of Proceedings Before the Board - Unit Clarification Cases:

The record of the proceedings before the Board in unit clarification cases shall consist of the petition or amended petition and attachments or exhibits, notices of hearing, investigator's report, responses of parties to investigator's report, notices of argument, motions, orders, stipulations, stenographic report, exhibits, dismissal or decision and order.

3.01.4 Access to Public Records:

The record as defined in Section 3.01.1 through 3.01.3 hereof, shall constitute the public record of the case and shall be made available for inspection or copying under the following conditions; provided, however, nothing contained herein shall be deemed to exempt from disclosure any other records from the case that are "public records" under the Access to Public Records Act:

a) All requests for documents must be specific and set forth in writing. All requests must be made at least five (5) business days prior to the date of the inspection. If the record requested is in active use, or in storage, and therefore, not available at the time the requester seeks access, the Board's Agent shall so inform the requester and make an appointment at a time, as soon as possible, for the requester to examine said documents.

b) At the time of any appointment to review documents, the requesting party shall be required to show identification and sign a log book, indicating the name, address and telephone number of the requesting party.

c) The Board may charge a reasonable fee for the search and retrieval of documents. Hourly costs for such a search and retrieval shall not exceed fifteen dollars ($15.00) per hour, and no costs shall be charged for the first hour of a search or retrieval. The Board shall be permitted to charge a fee not exceeding fifteen cents ($.15) per copy. Payment may be made only by check or money order; cash will not be accepted.

d) Any request for copies, identified with specificity, either after inspection of documents, or without inspection, must be made in writing to the Board. If the request for documents is not denied, the Board's staff shall, within five (5) business days after receipt of the written request for copies, provide an estimate of the costs for the requested documents. Within five (5) business days after providing the estimate of costs, the Board shall transmit the requested documents, by mail, to the requester, together with its invoice for the same.

e) The Board's Agents or employees may deny a request for documents, pursuant to lawful exemptions of the Public Records Act. Any person denied the right to inspect a record of the Board may petition the Chief Administrative Officer (Board's Administrator) for a review of the denial. The Administrator shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the request to review the denial.

f) If the Board's Administrator upholds the decision to deny the request to review documents, the requester may file a complaint with the Attorney General.

g) Written requests for records or other information may be mailed to: Administrator, Rhode Island State Labor Relations Board, 1511 Pontiac Avenue, Building #73, Cranston, R.I. 02920.

3.01.5 <u>Records Control Schedule:</u>
The Board shall develop a "records control schedule" for all "public records" of the Board, as those terms are defined by R.I.G.L. 38-3 et seq, the Public Records Administration Act. The Board shall periodically review its records control schedule for any necessary changes.

3.01.6 <u>Records Retention/Disposition Schedule:</u>
The Board's records retention/disposition schedule was approved by the Rhode Island Auditor General in January 2001. The records retention/disposition schedule shall be indexed with that of the Department of Labor and Training, and is indexed as DLT 1.4.1 through DLT 1.4.4. A copy of the Board's records retention/disposition schedule is attached hereto as Appendix 1.

3.01.7 <u>Record of Votes</u>:
a) A record of all votes taken at all meetings of the Board, listing how each member voted on each issue, shall be a public record and shall be available to the public, at the

offices of the Board, within two (2) weeks of the date of the vote. The minutes shall be public record, and unofficial minutes shall be available to the public, at the Board's offices, within thirty-five (35) days of the meeting or at the next regularly scheduled Board meeting, whichever is earlier, except where disclosure would be inconsistent with law or where the Board, by majority vote, extends the time for filing of the minutes, and publicly states the reason.

b) The minutes of a closed session shall be made available at the next regularly scheduled meeting; unless a majority of the body votes to keep the minutes closed pursuant to R.I.G.L. 42-46-4 and R.I.G.L. 42-46-5.

SECTION 3.02 MEETINGS OF THE BOARD

3.02.1 Notice of Board Meetings and Proceedings:

a) The Board shall give written notice of its regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times and places of the meetings.

b) The Board shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date of the scheduled meeting. The notice shall be posted at the principal office of the Board, on the Board's website (www.dlt.state.ri.us/lrb) and at least in one other prominent place in the agency. The notice shall include, in addition to the date, time and place, a statement specifying the nature of the business to be discussed. Nothing contained therein shall prevent the Board from adding additional items to the agenda, by majority vote of the members.

c) That nothing contained herein shall prevent the Board from holding an emergency meeting, upon an affirmative vote of the majority of the members of the Board, when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If such an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable. The notice shall be posted for viewing at the principal office of the Board, on the Board's website (www.dlt.state.ri.us/lrb), and at least in one other prominent place in the agency.

3.02.2 Meeting Locations:

All meetings of the Board shall be held in a facility which is accessible to handicapped persons, in accordance with the Rhode Island Constitution Articles 1&2, 29 U.S.C. 794 and R.I.G.L. 42-87, et seq, and R.I.G.L. 11-24, et seq.

3.02.3 Minutes of Meetings:

The Board shall keep minutes of all its meetings. The minutes shall include, but need not be limited to:

1) The date, time and place of the meeting;
2) The members of the Board recorded as either present or absent;
3) A record by individual members of any vote taken; and

4) Any other information relevant to the business of the Board that any member of the Board requested be included or reflected in the minutes.

3.02.4 Quorum; Requirement for Participation in Case:

a) Pursuant to R.I.G.L. 28-7-5, a quorum of two (2) Board members is required for action by the Board in any matter.

b) When deciding any matter which has been heard formally, any Board member who was not present for all hearings on the matter must first affirm that he or she has read all the transcripts of the case and briefs filed by the parties (if any), and has reviewed all the evidence submitted therein.

SECTION 4.01 RULE MAKING

4.01.1 Rule Making Initiated by the Board:

Before adopting, amending or repealing any rule, the Board shall:

a) Give at least thirty (30) days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action, or a description of the subjects or issues involved; and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests, from the Board, of advance notice of its rule making proceedings, and shall be published in a newspaper having aggregate general circulation throughout the state. Copies of the proposed rules shall be available at the Board, and by mail, to any member of the public, upon request.

b) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of rules, opportunity for oral hearing must be granted if requested by twenty-five (25) persons, or by a governmental subdivision or agency, or by any association having not less than twenty-five (25) members. The Board shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Board, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

c) Demonstrate the need for the adoption, amendment, or repeal of any rule in the record of the rule making proceeding. The Board shall demonstrate that there is no alternative approach, among the alternatives considered during the rule making proceeding, which would be as effective and less burdensome to affected private persons as another regulation.

d) Determine whether such action would have a significant adverse economic impact on small business, or any city or town. If a significant adverse economic impact on small business, or any city or town may result from the proposed action, the notice of the proposed action shall identify the types of small businesses that would be affected, and the kind of adverse economic impact on small businesses that may result; or the adverse fiscal impact on cities and towns which may result, and shall request

comments on proposals as to how the proposed action can be changed so that the adverse economic impact on small businesses, or cities and towns can be minimized or eliminated.

e) Ensure that any proposed additions, deletions, or other amendments to the rules be clearly marked.

f) If the Board finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon less than thirty (30) days notice, and states in writing its reasons for that finding, the Board may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule so adopted may be effective for a period of not longer than one hundred twenty (120) days, renewable once for a period not exceeding ninety (90) days, but the adoption of an identical rule under paragraphs (a) and (b) above is not precluded.

g) No rule adopted is valid unless adopted in substantial compliance with the procedural requirements heretofore outlined, but no contest of any rule on the ground of noncompliance may be commenced after two (2) years from its effective date.

h) The Board may review its' rules and regulations on an annual basis, with any changes to take effect on January 1st of each year.

4.01.2 <u>Rule Making Initiated by Petition of Interested Party</u>:

a) Any interested person may, using a form provided by the Board, petition the Board, requesting the promulgation, amendment or repeal of any rule. A separate form shall be required for each section of the rules and regulations that a party requests be promulgated, amended, or repealed. In the case of promulgation, the requesting party shall be required to include a proposed section number. All forms shall be filed as a signed original with eight (8) copies.

b) No petition shall be accepted by the Board's staff for consideration unless the same has been fully completed. Once the staff determines that the petition is complete, the staff shall certify the date of completeness and shall thereafter schedule the matter for the Board's next meeting. The Board shall either deny the petition, in writing (stating its reasons for the denial), or initiate rule making proceedings in accordance with Section 4.01.1 above.

c) Any request to promulgate, amend, or repeal any rule shall be submitted by July 31st of each year in order to be considered for the Board's annual review. Any request received after July 31st may be held for review until the following calendar year if there is insufficient time for the requested promulgation, amendment, or repeal to be processed within the time frame as outlined in Section 4.01.1 above.

4.01.3 <u>Request for Declaratory Ruling:</u>

a) Any interested person may file a petition for a declaratory ruling, as to the applicability of any statutory provision or of any rule or order of the Board. The Board's ruling on such petitions shall have the same status as the Board's ruling in contested cases.

b) The Petitioner shall submit a legal memorandum, which fully sets forth the reasons supporting its position.

SECTION 5.01 RULES OF PRACTICE: APPEARANCES OF REPRESENTATIVES

5.01.1 Requirements of Entry:

All person(s) representing any party or appearing pro se, in any proceeding before the Board shall file an entry of appearance, which shall contain the representative's name, address, telephone and facsimile (if applicable) numbers. The entry shall also specify the represented party.

5.01.2 Persons Eligible to Enter an Appearance:

a) Representatives may be, but are not required to be, attorneys licensed to practice in the State of Rhode Island. Attorneys who are not licensed to practice in the State of Rhode Island may not appear before the Board in a representative capacity, unless he/she has complied with the applicable rules and regulations issued by the Rhode Island Supreme Court for practice within the State of Rhode Island. Out-of-state attorneys are advised to contact the Rhode Island Supreme Court at 250 Benefit Street, Providence, Rhode Island 02903 for further information on practicing before the Rhode Island State Labor Relations Board.

b) Business managers, field agents, union stewards or any other member(s) of a labor organization may represent a union, or an individual complainant, in any proceeding before the Board. Likewise, labor consultants, town administrators, managers, personnel managers or any other member designated by the employer shall be permitted to represent any municipality, or the state, in any proceeding before the Board. All representatives must file an entry of appearance, at the time when the party first makes any complaint or answer to a complaint; which entry shall thereafter serve as the official address of record for that proceeding. All notices, and oral or written communication from the Board, shall be directed only to the person or entity who has entered his, her or its appearance. Any subsequent entry of appearance must be accompanied by a withdrawal of appearance from the prior representative, or an affidavit as to why such a withdrawal cannot be produced.

5.01.3 Practice Before the Board; Limited:

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

5.01.4 Motion for Excusal from Appearance:

a) All representatives of record shall file a motion to be excused from appearances, or a copy of a court approved motion for excusal. Said motion, or request for excusal, shall list all cases, by name and case number, in which the requester has entered an

appearance and a copy of the request, shall be sent to all other parties of record.

b) The request for excusal shall also contain a statement to the effect that none of the matters listed have been scheduled for hearing for the requested excusal dates, or that substitute representatives will be present. The request must also include a statement which waives all requirements for hearing(s) to be held by a certain date, if a deadline will occur in the period in which the requester seeks excusal.

c) If the matters listed in the excusal are not scheduled for any hearing or action, the request may be granted administratively; and the staff shall mail to the requester, copy of the motion, as granted.

d) Motions for excusal, which will result in a postponement of any matter, shall only be granted by the Board, and the matter will be taken up at the next regularly scheduled Board meeting.

NOTE: Since Board matters are often scheduled three months in advance, representatives are advised to file motions for excusal as early as possible.

5.01.5 Ex parte Consultations or Communications:
Unless required for the disposition of ex parte matters authorized by law, Board members shall not, directly or indirectly, in connection with any issue of fact or law, communicate with any person or party, or his or her representative, except upon notice and opportunity for all parties to participate; but any Board member:

a) May communicate with other members of the Board or staff, and

b) May have the aid and advice of one or more personal assistants.

5.01.6 Filing Deadlines:
The Board shall follow the practice of the Superior Court Rules of Civil Procedure for filing deadlines, subject to the limitations on fax transmissions set forth in Section 6.01.7 herein. Therefore, where a filing deadline falls on a Saturday, Sunday or legal holiday (as recognized for Rhode Island State Employees), the filing deadline shall be extended to the next earliest business day.

SECTION 6.01 REQUIRED CONTENTS OF PLEADINGS AND OTHER DOCUMENTS

6.01.1 Pleadings; Construction:
All pleadings shall be liberally construed.

6.01.2 Certification of Service:
Every motion, pleading, or other written document, submitted to the Board, must contain a certification that a copy of that document was sent to all other parties of record, and shall specify the date of notice, method(s) of transmission, and name and address of recipient(s) of notice.

6.01.3 Number of Copies Required for Filing:
Every motion, pleading, or other written document submitted to the Board, other than the original charge of an Unfair Labor Practice, Petition for Investigation of Controversies as to Representation, Petition for Clarification and/or Accretion, Petition for Transfer of Bargaining Units or Portions Thereof, or Petition for Affiliation/Merger, must be submitted as an original, with eight (8) copies.

6.01.4 Requirement to Affix Case Law:
Every brief submitted to the Board, for its consideration, shall have appended to it, a copy of every principal federal case cited therein. The Board shall require a total of two (2) copies of every principal federal case cited; one (1) copy for the Board's file, and one (1) copy for the Board's attorney.

6.01.5 Format of Pleadings and Other Papers:
Every motion, brief, or other written document submitted to the Board, other than the original charge of an Unfair Labor Practice, Petition for Investigation of Controversies as to Representation, Petition for Clarification and/or Accretion, Petition for Transfer of Bargaining Units or Portions Thereof, or Petition for Affiliation/Merger, shall be on white paper (8.5 x 11 in size), and shall be double-spaced. Footnotes, whenever possible, shall be located on the bottom of the page wherein the citation occurs. Documents not complying with this requirement may be returned to the sender.

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

6.01.7 Limit on Use of Transmission by Facsimile (FAX) and Electronic Mail (E-Mail):
The Board will not accept faxed or e-mailed charges of an Unfair Labor Practice, Petition for Investigation of Controversies as to Representation, Petition for Clarification and/or Accretion, Petition for Transfer of Bargaining Units or Portions Thereof, or Petition for Affiliation/Merger. The filing date of a charge or petition shall be the date that the charge or petition, with an original signature, is received in the Board's administrative offices. The charge or petition will be date stamped, by the staff, on the filing date.

Motions, briefs and appendices, where required, shall not be accepted by fax or e-mail transmission and shall not be considered timely filed unless physically received and date stamped by the filing deadline. All other fax and e-mail transmissions must be received by the Board's offices by 3:00 p.m. in order to be considered timely filed for that calendar day.

SECTION 7.01 HEARINGS: GENERAL REQUIREMENTS

7.01.1 Requirements for Hearings:

The Board may conduct informal and formal hearings. An informal hearing shall be conducted pursuant to the procedure set forth in Section 7.02 et seq., hereinafter. A formal hearing for the purpose of taking testimony upon a complaint, or upon a complaint and answer, or upon a petition for investigation and certification, shall be conducted by the Board, if the complaint or petition has not been dismissed after investigation and/or informal hearing(s). Such formal hearings shall be open to the public.

7.01.2 Pre-Hearing Discovery:

The Board's Agent may, in his or her discretion, direct the parties to meet and confer amongst themselves for the purpose(s) of exchanging exhibits and preparing stipulations of facts and joint exhibits.

7.01.3 Failure to Comply with Pre-Hearing Conferences, Hearings, Discovery:

Any complaining or petitioning party that fails, without good cause, to comply with any order of the Board, or its Agent(s), to participate in, or appear at, any conference or hearing, or who fails to, or refuses to comply with discovery requests may be sanctioned by the Board, as set forth by Section 7.03.3 herein.

7.01.4 Rules of Evidence:

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

7.01.5 Powers and Duties of the Board at Hearings:

During the course of any hearing, the Board shall have the full authority to control the conduct and procedure of the hearings, and the records thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections made during the course of the hearing. It shall be the duty of the Board to see that a full inquiry is made into all the facts in issue, and to obtain a full and complete record of all facts necessary for a fair determination of the issues. In any hearing, the Board shall have

the right to call and examine witnesses, to direct the production of papers or documents, and to introduce into the record said papers or documents. Any party who fails or refuses to comply with a Board directive, in a timely fashion, may be sanctioned by the Board, as set forth by Section 7.03.3 herein.

7.01.6 Rights of Parties at Hearings:
In any hearing, all parties shall have the right to call, examine and cross-examine witnesses, and to introduce into the record, papers and documents, or other evidence, subject to the ruling of the Board.

7.01.7 Hearings; Stipulations:
At a hearing, stipulations may be introduced in evidence with respect to any issue, where such stipulation has been joined by all parties.

7.01.8 Continuation of Hearings:
At the discretion of the Board, the Administrator or the Agent(s), hearings may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof, at the hearing by the Board, the Administrator or Agent(s), or by other appropriate notice designated by the Board, the Administrator or Agent(s).

7.01.9 Contemptuous Conduct at Hearings:
Any person who engaged in contemptuous conduct before the Board, or its Administrator or Agent(s), may, in the discretion of the Board, Administrator or Agent(s), be excluded from the hearing room or further participation in the proceeding.

7.01.10 Waiver of Hearing and Consent Order:
Nothing in these general rules and regulations shall prevent the entry of an order, with the consent of the respondent, and on notice to all parties, and without the holding of any hearing or the making of any findings of fact or conclusions of law, if the respondent shall waive the holding of any hearing and making of the findings of fact and conclusions of law.

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

7.01.12 Requests for Postponement or Cancellation of Hearings:
a) Informal Hearings:

1) All requests for postponements shall be made no later than forty eight (48) hours prior to the scheduled hearing, except in the case of extreme emergency

circumstances (i.e.//: including but not limited to death of a family member, emergency hospitalization of a key participant whose appearance is necessary to commence the proceedings).

2) The request must be in writing and shall state, with specificity, the reason for the postponement. A copy of the request must be provided simultaneously to any opposing party.

3) Postponements shall only be permitted under emergency circumstances, and may only be granted by the Board's Administrator or Agent(s). Parties to the hearing shall not postpone hearings without permission from the Board. If all parties fail to appear at a duly scheduled informal hearing, without good cause and notification to the Board's offices, or if the parties together agree to postpone the hearing without first receiving approval from the Board or its Agent(s), then the matter pending shall be dismissed.

4) In the case of an unfair labor practice, if only the charging party has failed to appear at the informal hearing, without notice or good cause, the matter may not be re-filed.

5) In the case of a unit clarification petition, if only the petitioner has failed to appear at the informal hearing without notice or good cause, the matter may not be re-filed for a one (1) year period.

b) Formal Hearings:

Unless otherwise ordered or permitted by the Board, or its duly authorized Agent(s), all formal hearings shall be held at the time, date, and place contained in the notice of hearing. Postponements will not be granted unless good and sufficient grounds, in the discretion of the Board or its Agent(s), have been shown, and the following requirements are met:

1) The request must be in writing, and received in the offices of the Board no later than five (5) business days after receipt of the notice;

2) The request must set forth the grounds for the request, in detail;

3) The position(s) of all other parties of record must be ascertained in advance and set forth in the request;

4) Copies of the request must be served, either in person or by facsimile (not just mailed), simultaneously upon all other parties; and that fact must be so noted on the request for postponement;

5) No request for postponement will be considered unless all of the preceding four (4) requirements have been met;

6) No request for postponement shall be granted during the five (5) business days preceding the date for hearing, except under the most extreme emergency conditions (i.e.//: including but not limited to death of a family member, emergency hospitalization of a key participant whose testimony or appearance is necessary to commence the proceedings);

7) Postponements of formal hearings may result in at least a three (3) month delay.

SECTION 7.02 INFORMAL HEARINGS

7.02.1 Notification of Hearing:

Upon the filing of any Unfair Labor Practice charge, Petition for Investigation of Controversies as to Representation, Petition for Clarification and/or Accretion, Petition for Transfer of Bargaining Units or Portions Thereof, or Petition for Affiliation/Merger, the Board's Agent or Administrator will notify the parties of the time, date, and location of an informal hearing, which will be conducted by the Board's Agent(s) or Administrator.

7.02.2 Parties Required to Appear:

Any party who files an unfair labor practice charge must either attend, or be represented at the informal hearing. The charged party is not required to appear, but is encouraged and advised to do so. In the case of unit clarifications, the petitioner must appear. The respondent, if planning to object to the requested relief, must also appear.

7.02.3 Failure to Appear; Sanctions:

A charging party, or petitioner, who fails to appear at the informal hearing, may have its petition or charge dismissed. Any party who fails to appear within fifteen (15) minutes of the scheduled hearing time, without good cause, whether the hearing is relative to an unfair labor practice charge, or a petition for certification or clarification, may be considered to have "Failed to Appear."

7.02.4 Dismissal after Informal Hearing:

Pursuant to R.I.G.L. 28-7-9 (d), Unfair Labor Practice charges may be dismissed after investigation and informal hearing thereon. All such dismissals shall be in writing.

SECTION 7.03 FORMAL HEARINGS

7.03.1 Notification of Hearing:

After the issuance of an Unfair Labor Practice complaint, the matter will be scheduled for hearing as soon as possible thereafter. The Board's Agent(s) or Administrator will notify the parties of the time, date, and location of the hearing. Parties seeking a continuance or rescheduling of the formal hearing date must follow the procedures set forth in 7.01.12 herein. Parties requesting a continuance may be required to pay for the administrative costs associated therewith.

7.03.2 Parties Required to Appear:

Unless the case has been settled (and the Board has been notified, in writing, of the settlement at least two (2) business days prior to the scheduled hearing date), parties are required to appear at the time and place, on the date set forth in the notice of

hearing. Parties shall not postpone or cancel any hearing scheduled by the Board without first receiving approval from the Board, its Agent(s) or Administrator.

7.03.3 Failure to Appear or to Comply with Board Directive(s); Sanctions:
Parties who fail to appear or to comply with a Board Directive(s), without good cause, at any hearing may:

a) Be defaulted.

b) Be assessed costs, including stenographer's expenses, associated with the rescheduling.

c) Be considered to have forfeited any and all objections it may have had.

Any party who fails to appear within fifteen (15) minutes of the scheduled hearing time, whether the hearing is relative to an unfair labor practice charge, or a petition for certification or clarification, may be considered to have "Failed to Appear."

7.03.4 Application for Subpoenas:
Any party to the proceeding, who is not represented by legal counsel, may apply to the Board for the issuance of a subpoena or subpoena duces tecum, requiring the attendance, during a hearing, of any person, party, or witness, and directing the production, as of the date specified on the subpoena duces tecum, of any books, records, or correspondence, or other evidence relating to any matter under investigation or any question before the Board. Such application, to be considered timely, shall be made no later than fifteen (15) business days prior to the scheduled hearing. The application shall be in writing, and it shall specify the name of the witness or documents or things, the production of which is desired, with such particularity as will enable such documents to be identified for purposes of production, the return date desired, as well as the general nature of the facts to be proved by the witness, or the documents, or things sought to be produced. An original and two (2) copies of such application shall be made and filed with the Board, and need not be served on any other party. The Board, in its discretion, or its Agent(s) or Administrator, may grant or deny such application, in whole or in part, for good cause shown. The Board, or its Agent(s) or Administrator, may make such subpoena returnable forthwith, or at any other time, within its discretion. The Board's subpoena shall be issued and served, by the Board's Agent(s) or Administrator, in person or by certified mail, return receipt requested. If served personally by the Board's Agent(s) or Administrator, an original of the signed subpoena shall be conclusive proof of service. If served by certified mail by the Board's Agent(s) or Administrator, the return receipt shall be filed in the record of the proceedings and shall be conclusive proof of service.

The party served with a Board issued subpoena, or subpoena duces tecum, shall have a right to file a Motion to Quash the subpoena, in writing, at the Board's office at least five (5) business days prior to the formal hearing date. The party requesting the Board to issue the subpoena, or subpoena duces tecum, shall have a right to file a written Objection to the Motion to Quash at any time prior to the commencement of the formal hearing. The parties shall have the right to argue orally before the Board relative to the

Motion to Quash. The Board shall issue a written Decision on the Motion to Quash prior to proceeding with any further formal hearings on the matter.

Parties represented by legal counsel shall have their legal counsel issue a subpoena or subpoena duces tecum on their behalf, and shall not have the right to request the Board to issue a subpoena.

7.03.5 Issuance of Subpoenas by Board for Production of Documents:
In its discretion, the Board may issue subpoenas, at any time, requiring persons, parties, or witnesses to attend or be examined or give testimony, and to produce any books, records, correspondence, documents or other evidence that relate to any matter under investigation, or any question before the Board.

7.03.6 Introduction of Exhibits at Formal Hearing:
Any party who wishes to introduce exhibits at a formal hearing must provide the Board with nine (9) copies of each exhibit introduced, as well as provide one (1) copy for each opposing party or parties participating in the formal hearing.

7.03.7 Oral Arguments or Briefs: Unfair Labor Practice Hearings:
In all hearings under the Act, the Board may, in its discretion, permit the parties to argue orally before it at the close of the hearing, or to file briefs or written statements with it. The time used for oral argument, filing the briefs or written statements shall be fixed by the Board.

7.03.8 Oral Arguments or Briefs: Representation Hearings:
At the close of formal hearings, the Board shall permit the parties to file briefs or written statements, which shall be addressed and submitted to the Board. The time for filing such briefs or written statements shall be fixed by the Board. Any request for oral argument before the Board shall be made at the close of the hearing. The granting or denial of permission to argue orally before the Board shall be within the discretion of the Board.

7.03.9 Administrative Requirements for Written Briefs:
a) All briefs shall be typewritten on 8.5 x 11 paper. The font size shall be no smaller than 12, and the brief shall be double-spaced, except for footnotes, which may be reduced to font size 10 and may be single spaced. Footnotes shall appear at the bottom of the page noted upon.

b) Any brief containing a principal citation to any non-Rhode Island case shall be accompanied by an appendix, which shall contain copies of the entire case for all principal non-Rhode Island cases cited therein. The Board shall require a total of two (2) copies of any principal non-Rhode Island cases cited; one (1) copy for the Board's file, and one (1) copy for the Board's attorney.

c) One original, signed by the author in ink, together with nine (9) full copies shall be filed. Only two (2) copies of the appendix need to be filed; one (1) copy for the Board's file, and one (1) copy for the Board's attorney. Each brief shall also contain a

certification that a copy was sent to all other parties of record. The certification shall contain the names and addresses of the other parties, and the date that the copy was sent.

d) Briefs shall be filed by the date set by the Board upon the conclusion of the formal hearing. The Board's Administrator shall have the discretion, upon good cause shown, to grant extensions of time for filing briefs. All requests for filing extensions must be made, in writing, and should be by agreement of the parties, no later than five (5) business days prior to the filing date.

SECTION 8.01 PETITION FOR THE INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

8.01.1 General Requirements for All Petitions:

A petition for certificationsmay be filed with the Board by an employee, or his or her representative, or by an employer. The petition shall be in writing. The signed original and two (2) copies of the petition shall be filed with the Board. Petition forms will be gratuitously supplied by the Board, upon request.

8.01.2 Sufficiency of Petition:

a) Pursuant to RIGL 28-7-9, the Board shall require a labor organization to submit cards of interest signed by at least thirty percent (30%) of the employees in the appropriate bargaining unit indicating a desire to be represented by the designated labor organization. Cards of Interest signed by at least twenty percent (20%) of the employees in the appropriate unit are required to intervene. The Board shall certify the authenticity of all Cards of Interest submitted. A petition for representation may be dismissed, without prejudice, if the petition is filed by a labor organization without a sufficient showing of interest.

b) A petition in a proceeding under R.I.G.L. 28-7-16 shall not be dismissed, with prejudice, for failure of the petitioner to set forth, in the petition, all the information required. The Petition may, however, be returned to the Petitioner for substantial completion and shall not be considered filed until completed satisfactorily, and the original is received in the Board's administrative offices.

8.01.3 Petition; Withdrawal or Amendment:

At any time before the issuance of a notice of hearing on a petition for investigation of certification, the Board may permit the amendment of the petition, or its withdrawal, in whole or in part. At any time after the issuance of such notice of hearing, the Board, upon motion, may permit withdrawal of the petition, in whole or in part, and the Board may permit amendment thereof. Withdrawal of the petition, in whole or in part, shall not be permitted, once the Board's Notice of Election has been posted. In the event of a withdrawal of a petition, in whole or in part, by a labor organization, the Cards of Interest submitted pursuant to R.I.G.L. 28-7-9 and Section 8.01.2 herein, shall be returned only to the labor organization that submitted the original petition. If the petition

is withdrawn, in part, the labor organization shall request, in writing, the specific Cards of Interest it seeks to have returned.

8.01.4 Abeyance by Preemption of Unit Clarification/Accretion Petition:
If a unit clarification/accretion petition is filed prior to an election petition relative to the same positions, then the election petition shall be held in abeyance, pending the outcome of the unit clarification/accretion petition.

SECTION 8.02 REPRESENTATION PETITIONS

8.02.1 Petition for Investigation of Controversies as to Representation; Contents:
A petition, when filed by an employee, his or her representative, a labor organization, or an employer, shall contain:

1) An indication of whether the petition is being filed by or on behalf of employees, or by an employer;
2) The name, address, and labor relations representative (if known) of the employer;
3) A list of the titles of positions in the unit in question, with attached job descriptions (if available);
4) The number of employees in the unit sought or unit involved in the controversy. If the employees are currently represented by a labor organization, the petitioner must verify that the petition is filed within the appropriate time frame as outlined in R.I.G.L. 28-7-9, as well as providing the name, address and Board's certification number for the incumbent labor organization;
5) A list of any other employee organizations known to have an interest in the employees petitioned for.

Cards of Interest shall be submitted along with the petition at the time of filing in accordance with R.I.G.L. 28-9-9(b)(1); the Cards of Interest must be in alphabetized order, by last name.

8.02.2 Certification of Authenticity of Cards of Interest:
Upon receipt of a Petition for Investigation of Controversies as to Representation, the Board shall certify the authenticity of all Cards of Interest submitted in accordance with R.I.G.L. 28-7-9 (b)(1). A copy of the petition and any attachments will be provided to the employer prior to the scheduling of the card confirmation, by facsimile (FAX).

8.02.3 Determination of Representatives on Consent:
Subject to the approval of the Board, the parties to a representation proceeding may waive a hearing, and agree on the method by which the Board shall determine the question of representation.

8.02.4 Investigation; Ascertainment of Desires of Employees; Hearing; Notice:

In the course of its investigation of a question or controversy concerning representation, the Board may provide for an appropriate hearing, upon due notice, and may direct an election or elections, or use other suitable methods, to ascertain the wishes of employees, either in conjunction with a proceeding instituted under the Act, or otherwise. When a hearing has been directed, the Board, or its Agent, shall prepare, and cause to be served upon the parties, a notice of hearing before the Board, at a time and place fixed therein. A copy of the petition shall be served with the notice of hearing.

8.02.5 Elections; Terms and Conditions:

If the Board determines, as a part of its investigation of a question or controversy concerning representation, that an election or elections by secret ballot shall be held, it shall provide that such election or elections be conducted by an Agent(s) of the Board at such time and place, and upon terms or conditions, as the Board may specify.

Every effort shall be made to schedule the election to reasonably accommodate all work shifts. Notices of observers for elections must be sent, in writing, to the Board's offices no later than five (5) business days prior to the date of the election. Copies must be sent to all other parties, and the notice shall contain a certification of said notification. Failure to provide the appropriate written notification, as outlined above, may result in a party being denied the opportunity to have an observer present at the election.

8.02.6 Challenged Ballots:

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

8.02.7 Determination of the Scope of the Bargaining Unit:

a) In a contested case, the Board's task is to determine "an" appropriate unit, not the "most" appropriate unit.

b) The petitioning party has the burden of defining an appropriate unit.

c) The burden to show that the unit is inappropriate falls to the objecting party.

d) Bargaining units will be decided on the basis of whether or not the particular employees share a "Community of Interest", and to determine a unit that has a direct relevancy to the circumstances in which collective bargaining is to take place. In applying the "Community of Interest" standard, the Board may consider a number of criteria including, but not limited to: those factors set forth in the definition of Community of Interest at Section 1.01.8 herein.

e) The Board has significant discretion in determining the scope of a bargaining unit and can decide, in each instance, what weight shall be applied to the various criteria. There is no set formula for determining the proper scope of a bargaining unit.

8.02.8 Board Determination of Exclusion of Ineligible Employees:

The Board shall, whenever requested or required to do so, in each instance, determine who are Managerial, Supervisory, Administrative, Confidential, Casual, and Seasonal Employees, as these terms are defined in Section 1.01 herein.

8.02.9 Procedure Following Elections; Objections:

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

8.02.10 Certification of Representatives:

The Board, upon the completion of its investigation, shall certify, to the parties, the name or names of the representative, or make other disposition of the matter.

8.02.11 Certification; Life of; Exceptions:

When a representative has been certified by the Board as having been designated or selected, such certification shall remain in effect for one (1) year from the date thereof, and thereafter, until such time as it shall be made to appear to the Board that the certified representative does not represent a majority of the employees within an appropriate unit. In any case where unusual or extraordinary circumstances require

such action, or where probable cause is shown that such action may be necessary to prevent the occurrence or continuation of an unfair labor practice, the Board, in its discretion, may shorten or extend the life of the original certification. When the Board shall find that, during the life of a certification, the employer has refused to bargain collectively with the certified representative, the time of the continuance of such refusal to bargain shall not be a part of the time limited in computing the life of the certification.

8.02.12 Voluntary Revocation of Certification by Union:
An employee organization currently certified to represent a bargaining unit may request the Board to revoke its certification by filing a written request, accompanied by a statement that the employee organization disclaims all interest in continued representation of the bargaining unit. A copy of the request shall be served upon the employer of the bargaining unit.

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

a) The ballot provided for a choice among two (2) or more employee organizations and "no representation"; and the votes cast are equally divided among the several choices;

b) The number of ballots cast for one (1) choice in an election is equal to the number cast for another choice, but less than the number cast for the third choice (which did not receive a majority of valid votes cast);

c) The ballot provided for a choice among two (2) or more employee organizations and "no representation"; and no one (1) choice receives a majority of the votes cast, a run-off election will be held among the top two vote-getters, in accordance with R.I.G.L. 28-7-18;

d) A run-off ballot provided for a choice between two (2) employee organizations, and the votes are equally divided.

If the Board concludes that the results of the prior election are invalid due to objectionable conduct of the election, or objectionable conduct affecting the results of the election, the Board may exercise this option, sua sponte.

8.02.14 Consent Elections:
Where a petition has been duly filed, the employer, employee organization, or person or persons representing a substantial number of employees involved, and any intervener(s) which has submitted the required showing of interest may, subject to the approval of the Board, enter into a stipulation for the waiving of the hearing, and the conducting of a consent election. Such stipulation shall be in the form of an affidavit, which must be executed by the appropriate representatives of the employer and the employee organization(s), and shall also contain:

a) A description of the appropriate unit, including the names of the titles of the positions, and the names of the employees currently holding said positions;

b) A description of the duties of each position, and a statement as to why each position is appropriate for inclusion in, or exclusion from, the bargaining unit. If written and adopted job descriptions exist, they must be attached as an exhibit to the stipulation;

c) A statement indicating that the parties waive formal hearing by the Board;

d) The time, date, and place for the holding of the consent election.

The Board may either accept or reject the stipulation, in whole or in part, and may:

a) Request additional statements, or information relative to any position(s);

b) Order formal hearings on any position(s) it deems appropriate.

No consent election agreement or stipulation shall be executed at any informal hearing held pursuant to the filing of a petition for representation, if the parties in interest cannot agree on the inclusion or exclusion of certain employees constituting in number more than ten percent (10%) of the bargaining unit found to be appropriate. The matter shall then be scheduled before the Board, as soon as practicable, for determination on how to proceed with the contested position(s). If the Board establishes that further investigation of the contested position(s) in question is to proceed, the matter shall be expedited. The determination of eligibility of the position(s) in dispute shall be resolved by the Board subsequent to the formal hearing(s).

8.02.15 <u>Prohibited Election Conduct</u>:

1) No electioneering (campaigning) will be permitted on the day of the election in the building or other facility where the balloting is taking place, or within two hundred (200) feet of said building or other facility. In the event that any party shall engage in prohibited conduct, as ascertained by the Board or its staff, the Board shall reschedule said election; and the party which has engaged in the prohibited conduct shall be responsible for all costs associated with the rescheduling.

2) Failure of the Employer to post the notice of election at least five (5) business days prior to the election.

3) A promise of, or an award by the Employer upon any employee or employees of any benefit not required by contract or law which would tend to influence the outcome of an election.

4) Unlawful polling.

5) Any other conduct that would tend to interfere with, restrain, or coerce employees from exercising their rights to participate in elections.

SECTION 8.03 PETITION FOR REPRESENTATION WHEN UNFAIR LABOR PRACTICE CHARGE PENDING

8.03.1 <u>Blocking Charge Bar to Elections; General Rule:</u>

While there is an Unfair Labor Practice charge (ULP) pending before the Board, or before the Court, the Board generally will not entertain a Petition for Representation by

any labor organization, or any individual, until the Unfair Labor Practice charge has been finally resolved. However, where an Unfair Labor Practice charge is filed too late to permit a proper investigation before a scheduled election, the Board or its Administrator may:

a) Postpone the election;

b) Conduct the election and impound the ballots; or

c) Conduct the election, and then proceed to investigate.

8.03.2 Exceptions to the Blocking Charge Bar to Elections:

a) The Board will normally proceed with the election, if the party who filed the charge so requests. However, the Board may refuse to conduct the election if, in the Board's view, the conduct complained of could have an impact on the employees' exercise of their free choice in the election. The Board will consider the following factors when deciding whether to proceed with a representation case once a ULP has been filed:

1) The length of time the representation proceeding has been pending;
2) The fact that employees in the unit have been without an election;
3) Whether any previous charges based upon the same unlawful conduct have been dismissed;
4) The timing of the filing of the charge in relation to the date for election;
5) The presence of a strike;
6) Any past practice to the effect that the charging party has used an Unfair Labor Practice as a tactic to delay a representation proceeding.

b) The Board may also decide to proceed, even in the absence of a request, if it determines that a fair election can be held.

c) If the Unfair Labor Practice charge is found to have merit, the Board will make a determination as to whether the alleged unlawful conduct would affect the election; if so, the petition will generally be held in abeyance until the Unfair Labor Practice has been resolved.

d) If the Unfair Labor Practice charge is dismissed, after investigation, the "block" is removed, and the election may proceed.

SECTION 8.04 PETITION FOR UNIT CLARIFICATION: ACCRETION

8.04.1 Contents of Petition; Sufficiency:

Either a Union or an Employer may, at any time, file a request to add or "accrete" positions to an existing bargaining unit. Petition forms will be gratuitously supplied by the Board, upon request. The request should include:

a) An indication as to whether the petition is being filed by a labor organization or an employer.

b) The name, address, and labor relations representative (if known), of the employer.

c) The name and address of the certified bargaining agent, Board's certification number, and date of Board certification.

d) Number of employees in the existing unit and number of employees in the proposed unit. If the petitioner is seeking to accrete positions totaling more than twenty percent (20%) of the existing bargaining unit, then cards of interest for more than fifty percent (50%) of the employees holding the positions that the petitioner seeks to accrete must accompany the petition; and the accretion petition may require that an election (for accretion purposes) be held.

e) The title of each disputed position, name(s) of individual(s) holding the said title(s), length of time the incumbent(s) held the position(s). A copy of the job description(s), if available, should be attached to the request.

f) List of any other employee organization(s) that may claim to represent any of the employees affected by the petition.

8.04.2 Processing of Petition:

Upon receipt of a petition, an informal hearing shall be scheduled within thirty (30) days. If, upon conclusion of the informal hearing, the parties cannot agree to the accretion of the position(s), the Board's Administrator shall cause an investigation to commence.

Upon completion of the investigation, the Agent shall provide a written investigative report to the Board and to the parties. Upon receipt of the Agent's report, each party shall have a period of thirty (30) days from the date of mailing to file any written responses or statement it deems appropriate, under the circumstances. The Board's Administrator shall have the discretion, upon good cause shown, to grant one (1) extension of the date for filing a response. All requests for filing extensions must be made no later than five (5) business days prior to the filing date, in writing, and should be by agreement of the parties. Any party filing a response to the Investigator's report must send an original and eight (8) copies to the Board's Office, and must send a copy to the opposing party or parties, and must certify the same therein. At the end of this thirty (30) day response period, the record of proceedings shall be closed, and the case shall be referred to the Board for its consideration. The Investigator's report and the responses of the parties shall be considered as, and included within, the public record on the matter.

After consideration of the matter, the Board may either order additional investigation or informal hearings, or grant or deny the requested action.

8.04.3 Formal Hearings after Preliminary Determination to Accrete:

The Board shall notify all parties, in writing, of its preliminary determination as to whether or not the requested position(s) shall be accreted in the existing bargaining unit. The said written notification shall be sent to all parties of record by certified mail. Pursuant to R.I.G.L. 28-7-9 (d), the matter shall be set down for a formal hearing only if requested by either party within thirty (30) days of the written notice of the Board's preliminary determination. If none of the parties involved in the matter request a formal

hearing, in writing, within the thirty (30) day period referenced above, and the Board's preliminary determination includes an accretion of a position(s), then the accretion will take effect on the date of the written notification to the parties. If any of the parties of record request a formal hearing, and the Board issues a formal written decision indicating an accretion of a position(s), then the effective date will be the date of the Board's formal written decision and order.

If a formal hearing is requested by any of the parties of record, but prior to the Board's final written decision and order, the parties reach an agreement on the inclusion and/or exclusion of any position(s) in question, the parties shall submit a Consent Agreement and Affidavit in accordance with Section 8.04.11, herein.

8.04.4 Charge of an Unfair Labor Practice filed after Preliminary Determination to Accrete:

If an Unfair Labor Practice charge is filed based on a preliminary determination by the Board to accrete a position(s) into a bargaining unit, prior to the formal hearing process, the matter will proceed to informal hearing in accordance with R.I.G.L. 28-7-9(b)(5). The matter will then be scheduled on the next Monthly Board Meeting Agenda, for the Board to determine whether the Unfair Labor Charge should be placed into abeyance based on the outcome of the Petition for Accretion, or a complaint to issue, or dismissal of the case.

8.04.5 Vacant Positions:

a) If the position is vacated after a petition has been filed and prior to informal hearing, the petition will be denied; and the requesting party will be instructed to resubmit the request, if and when the position is filled.

b) If the position is vacated after informal hearing, but prior to investigation, the petition will be denied; and the requesting party will be instructed to resubmit the request, if and when the position is filled.

c) If the position is vacated after informal hearing and investigation, but prior to the formal hearing (if applicable), then the matter will be treated as moot; and no further action shall be taken, unless and until the employer notifies the Board that the position has been filled, in which case, the matter will be placed back on the formal hearing calendar.

d) If the position is vacated after the formal hearing, but prior to the written decision and order being rendered, the Board will decide the inclusion or exclusion of the position based on the evidence adduced at the formal hearing.

8.04.6 Burden of Petitioner:

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

8.04.7 Subsequent or Repetitive Requests by the Same Petitioner to Accrete:

Once a position has been reviewed for accretion by the Board, and has been denied, the same position may not be the subject of a subsequent petition unless:

a) A period of at least one (1) year has passed from the date of the denial, and;

b) There has been a substantial change in circumstances of the position, and;

c) The request is accompanied by an affidavit alleging a substantial change in circumstances. The affidavit shall describe the substantial change in circumstances in sufficient detail; and

d) The Board shall have the right to return any petition and affidavit that the Board or its Agent(s) finds insufficient to meet these terms. No processing shall commence until the petition is sufficient for review.

8.04.8 Factors Considered in Accretion:

In reviewing a petition to accrete a position(s) into an existing bargaining unit, the Petitioner shall provide the Board with information concerning the community of interest (as defined in Section 1.01.8 herein) shared by the position(s) sought and the bargaining unit.

8.04.9 Requests for Abeyance:

Since R.I.G.L. 28-7-9 (b) (3) allows for unit clarification petitions to be filed at any time, the parties shall not be allowed to request that a unit clarification petition be held in abeyance. If the petitioner does not wish to proceed with the informal hearing and/or the investigation, the matter must be withdrawn.

8.04.10 Abeyance by Preemption of Election Petition:

If an election petition is filed prior to a unit clarification petition relative to the same position(s), then the unit clarification shall be held in abeyance, pending the outcome of the election petition.

8.04.11 Consent Agreement and Affidavit:

If, prior to the completion of the Board's investigation on a petition for unit clarification, the parties determine that they can agree on an inclusion and/or exclusion of any position(s), the requesting party must withdraw the request for clarification upon submission of the Consent Agreement and Affidavit. The Consent Agreement must be signed by both parties; the Affidavit must outline why it is appropriate to either include or exclude the position(s) from the bargaining unit. Included as part of the Consent Agreement and Affidavit, shall be an indication of a proposed effective date for the accreted and/or excluded position(s) agreed upon.

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

SECTION 8.05 PETITION FOR UNIT CLARIFICATION: EXCLUSION

8.05.1 Contents of Petition; Sufficiency:

Either a Union or an Employer may, at any time, file a request to remove positions from an existing bargaining unit. Petition forms will be gratuitously supplied by the Board, upon request. The request should include:

a) An indication as to whether the petition is being filed by a labor organization or an employer;

b) The name, address, and labor relations representative (if known), of the employer;

c) The name and address of the certified bargaining agent, Board's certification number, and date of Board certification;

d) Number of employees in the existing unit and number of employees in the proposed unit;

e) The title of each disputed position, name(s) of individual(s) holding the said title(s), length of time the incumbent(s) held the position(s). A copy of the job description(s), if available, should be attached to the request;

f) List of any other employee organization(s) that may claim to represent any of the employees affected by the petition.

8.05.2 Processing of Petition:

Upon receipt of a petition, an informal hearing shall be scheduled within thirty (30) days. If, upon conclusion of the informal hearing, the parties cannot agree to the removal of the position(s), the Board's Administrator shall cause an investigation to commence.

Upon completion of the investigation, the Agent shall provide a written investigative report to the Board and to the parties. Upon receipt of the Agent's report, each party shall have a period of thirty (30) days from the date of mailing to file any written responses or statement it deems appropriate, under the circumstances. The Board's Administrator shall have the discretion, upon good cause shown, to grant one (1) extension of the date for filing a response. All requests for filing extensions must be made no later than five (5) business days prior to the filing date, in writing, and should be by agreement of the parties. Any party filing a response to the Investigator's report must send an original and eight (8) copies to the Board's Office, and must send a copy to the opposing party or parties, and must certify the same therein. At the end of this thirty (30) day response period, the record of proceedings shall be closed, and the case shall be referred to the Board for its consideration. The Investigator's report and the responses of the parties shall be considered as, and included within, the public record on the matter.

After consideration of the matter, the Board may either order an additional investigation, an additional informal hearing, or grant or deny the requested action.

8.05.3 Formal Hearings After Preliminary Determination to Exclude:
The Board shall notify all parties, in writing, of its preliminary determination as to whether or not the requested position(s) should be excluded from the existing bargaining unit. The said written notification shall be sent to all parties of record by certified mail. Pursuant to R.I.G.L. 28-7-9 (d), the matter shall be set down for a formal hearing only if requested by either party within thirty (30) days of the written notice of the Board's preliminary determination. If none of the parties involved in the matter request a formal hearing, in writing, within the thirty (30) day period referenced above, and the Board's preliminary determination involves exclusion of a position(s), then the exclusion will take effect on the date of the written notification to the parties. If any of the parties of record request a formal hearing, and the Board issues a formal written decision indicating exclusion of a position(s), then the effective date will be the date of the Board's formal written decision and order.

If a formal hearing is requested by any of the parties of record, but prior to the Board's final written decision and order, the parties reach an agreement on the inclusion and/or exclusion of any position(s) in question, the parties shall submit a Consent Agreement and Affidavit in accordance with Section 8.05.6, herein.

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

8.05.5 Requests for Abeyance:
Since R.I.G.L. 28-7-9 (b) (3) allows for unit clarification petitions to be filed at any time, the parties shall not be allowed to request that a unit clarification petition be held in abeyance. If the petitioner does not wish to proceed with the informal hearing and/or the investigation, the matter must be withdrawn.

8.05.6 Consent Agreement and Affidavit:
If, prior to the completion of the Board's investigation on a petition for unit clarification, the parties determine that they can agree on an inclusion and/or exclusion of any position(s), the requesting party must withdraw the request for clarification upon submission of the Consent Agreement and Affidavit. The Consent Agreement must be signed by both parties; the Affidavit must outline why it is appropriate to either include or exclude the position(s) from the bargaining unit. Included as part of the Consent Agreement and Affidavit, shall be an indication of a proposed effective date for the accreted and/or excluded position(s) agreed upon.

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

SECTION 8.06 PETITION FOR DECERTIFICATION

8.06.1 Processing of Petition:

a) A petition may be filed by an employee, an employer, or a rival labor organization to displace or decertify a certified or recognized labor organization. Petition forms will be gratuitously supplied by the Board, upon request. CAUTION: THE FILING OF A PETITION BY THE EMPLOYEES OR A RIVAL ORGANIZATION DOES NOT RELIEVE AN EMPLOYER FROM THE DUTY TO BARGAIN WITH THE EXISTING LABOR ORGANIZATION.

b) A petition filed by an employer must be accompanied by evidence that the employer has a good faith objective basis for doubting that the union continues to represent a majority of the bargaining unit employees.

c) No election may be conducted under this section in a bargaining unit within which, in the preceding twelve (12) months, a valid election has been held.

d) No election for decertification may be conducted when there exists a collective bargaining agreement; provided, that the Board may consider such petition within a thirty (30) day period immediately preceding sixty (60) days prior to the expiration of such collective bargaining agreement. To serve as "bar" to decertification, the contract must:

1) Be in writing and be signed by the employer and the labor organization;
2) Address substantial terms and conditions of employment; and
3) Exist for a definite duration.

e) No election for decertification shall be conducted for "partial" bargaining units, even in situations where changed circumstances may indicate that the originally certified unit is no longer appropriate.

f) When thirty percent (30%) or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization requiring membership in a labor organization as a condition of employment file a petition alleging that they desire that the authority of the labor organization to make such an agreement be rescinded, the Board's Agent shall conduct a secret ballot of the employees in such unit and certify the results thereof, in writing, to the labor organization and to the employer.

g) Any petition filed must be accompanied by a "showing of interest", which may be in the form of individual cards or pieces of paper, with dated signatures or dated signatures on the petition. The date of the signatures must be within twelve (12) months of the date on which the petition is filed.

h) In the event that the election results in a tie vote, the labor organization cannot be decertified, and the Board will issue a "Certification of Results of Election".

i) In the event that the election results in the labor organization losing majority support, the Board will issue a "Certification of Removal of Representative".

j) In the event that a rival labor organization has filed the Petition and the election results in decertification, the rival labor organization does not automatically become certified as the next certified representative. The rival organization must then follow the procedures for certification as representative as set forth in Section 8.01 herein.

SECTION 8.07 AFFILIATION/MERGER

8.07.1 Requirements of Request to Board:

Employees represented by an independent labor organization or association may seek to merge with a national organization while a contract is in existence by filing a Petition for Affiliation/Merger of Bargaining Representatives with the Board (Petition forms will be gratuitously supplied by the Board, upon request), together with:

1) A copy of the notice of meeting of employees that will take place to discuss and vote on merging/affiliating with the national organization;
2) An affidavit, signed by the duly authorized representative of the independent association or organization, which indicates that a majority of the members of the bargaining unit have voted to affiliate/merge. The affidavit shall set forth the total number of employees in the bargaining unit, and the total number of employees voting for the merger.
3) A certified copy of the minutes of the meeting at which the vote to merge/affiliate took place.
4) A letter from the national organization requesting the Board to merge/affiliate the two organizations by certification.

8.07.2 Notification to Employer:

The Board's Agent shall notify the employer of the request to merge/affiliate. The employer shall be directed to submit its objection, if any, within five (5) business days, together with a clear and concise statement of its reasons for its objections.

8.07.3 Action by Board:

Upon receipt of the request and the required documents, and after receipt of any objection, the Board will process the request as follows:

1) The Board's Agent shall verify the number of employees in the current bargaining unit;
2) The Board shall undertake review of the request, and any objections filed, and may either grant the request to merge/affiliate and amend the certification, refer the matter to its Agent for further investigation, or may deny the request.

8.07.4 Notification of Board's Action:

The Board's Agent shall notify the Petitioner, in writing, of the results of the Board's action.

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

SECTION 8.08 TRANSFER OF BARGAINING UNITS / OR PORTIONS THEREOF

8.08.1 Required Documentation:
In order to effectuate a transfer of an entire bargaining unit, or a portion thereof, the requesting party must submit the following documentation:

1) An affidavit indicating the number of employees holding the positions, the duties, and why the parties feel it is appropriate to transfer the bargaining unit, or portion thereof.
2) A Consent Agreement and Affidavit executed between the Union(s) and the Employer.
3) A petition containing the signatures of at least fifty-one percent (51%) of the bargaining unit, or portion thereof, being transferred.

SECTION 9.01 PROCEDURES FOR THE PREVENTION OF UNFAIR LABOR PRACTICES

9.01.1 Charge; Persons Eligible To File:
A charge that any person has engaged in, or is engaging in any unfair labor practice may be made by any person, employer, or labor organization. Any person who is a member of a labor organization must first seek to have the labor organization file the unfair labor practice charge(s) on his or her behalf. Any person who demonstrates that his or her exclusive bargaining agent has refused to file the charge(s) on the bargaining unit member's behalf shall be permitted to file his or her own charge, which shall be subject to all the rules, regulations, and requirements of this section. Any person filing a charge directly shall attach, to the charge, an affidavit which attests to the labor organization's refusal to file.

9.01.2 Charge; Form and Filing; Deadline:
A charge shall be in writing. The signed original and two (2) additional copies of the charge shall be filed with the Board. Blank forms for making the charge will be gratuitously supplied by the Board, upon request. Charges must be filed with the Board within six (6) months from the date of knowledge of the alleged unfair labor practice.

9.01.3 Contents of Charge:

A charge shall contain:

1) The name, address, and labor relations representative (if known) of the employer;
2) The name and address of the employee organization;
3) An indication of whether the charge is being filed against an "Employer" or an "Employee Organization;"
4) An enumeration of the specific subsection or subsections of R.I.G.L. 28-7-13 or 28-7-13.1 that the complainant is alleging has been violated;
5) A summary of the basis for the charge; including, where known, the approximate dates and places of the alleged acts, and the names of the respondent's agents, or other representatives by whom the acts were committed. In the event it is alleged that an employee or employees have been discharged, refused employment or suffered discrimination in violation of the Act, the name or names of such employees;
6) The remedy requested by the complainant;
7) An indication as to whether the charge is being filed on behalf of an "Individual," "Employee Organization," or an "Employer."

Charges which, in the opinion of the Board or its Agent(s), do not provide sufficient detail of factual allegations and the legal theory underlying the alleged unfair labor practice(s), or fail to provide adequate and due notice to the accused, shall be returned to the complainant, without prejudice to re-file; provided however, any such re-filing is completed within the six (6) month period set forth in Section 9.01.2 above.

9.01.4 Amendment of Charge:

Otherwise than as set forth in Section 9.01.7 hereof, such charge may be amended at any time prior to the issuance of the final decision and order of the Board. The complaint may thereupon be amended, in accordance with the provisions of Section 9.02.8 hereof.

9.01.5 Investigation of Charge; Report of Investigator:

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

9.01.6 Informal Hearing with Charging Party and Respondent:

Upon the filing of the charge, the Respondent will be notified of the charge, and be provided with a copy of the charge. The Board's Administrator or Investigative Agent(s) will schedule an informal conference with the parties to define the issues.

9.01.7 Withdrawal of Charge:
A charge, or any part thereof, may be withdrawn only with the consent of the Board, and upon such terms and conditions as the Board may deem just and proper. Upon withdrawal of any charge at any time prior to the issuance of the complaint thereon, or upon application of the person, employer, or labor organization filing the charge, the Board may permit the withdrawal of the whole, or any part thereof. At any time subsequent to the issuance of a complaint thereon, and upon motion of the person, employer, or labor organization filing the charge, the Board may permit the withdrawal of such charge, or any part thereof. The complaint may there upon be withdrawn or amended, in accordance with Sections 9.02.8 and 9.02.11 hereof.

9.01.8 Dismissal of Charge After Informal Hearing:
Pursuant to R.I.G.L. 28-7-9(d), after investigation and informal hearing, and after consideration of the investigator's confidential report, the Board may dismiss the charge without issuing a complaint against the respondent.

9.01.9 Unfair Labor Practice Charges Held in Abeyance:
Once an unfair labor practice charge has been filed, the matter will be scheduled for informal hearing. The Board will only hold a charge in abeyance, upon request by the charging party, with the consent of the opposing party. Status letters will be sent to the charging party, with a copy sent to the responding party, every sixty (60) days, requesting an update. Failure to respond to any request for a status update may result in the unfair labor practice charge being dismissed.

SECTION 9.02 ISSUANCE OF UNFAIR LABOR PRACTICE COMPLAINT BY BOARD

9.02.1 Investigative Report Not Part of Complaint:
The report of the Board's Investigator shall not be deemed or considered as part of the complaint, or a part of the public record as defined in Section 3.01.1 herein.

9.02.2 Complaint and Notice of Hearing; Other Disposition of Charge:
(a) After a charge has been filed, the Board may issue, and cause to be served upon the parties to the proceeding, a complaint in the name of the Board, containing a concise statement as to the alleged violations of the Act, together with a notice of hearing, at a place therein fixed and at a time not less than five (5) business days after the service of the complaint; provided, however, that the parties to the proceedings may waive the five (5) business days notice by stipulating thereto in writing.

(b) After the Board, in its discretion, and after informal hearing thereon, may determine that no complaint shall be issued on a charge filed with it, the Board shall dismiss the charge by issuing a letter of dismissal to both the charging party and the respondent.

9.02.3 Service and Filing of Answer:
The respondent against whom the complaint is issued shall have the right to file an answer within five (5) business days from the service of the complaint. Such answer

shall be in writing, the original being signed by the respondent or his, her or its representative. The respondent or his, her or its representative shall file, with the Board, an answer and copies thereof for each party to the proceeding.

9.02.4 Extension of Time to File Answer:
The Board may extend the time within which the answer shall be filed, upon request or motion of the respondent.

9.02.5 Failure to File Answer:
Upon failure of the respondent to file an answer within the time period provided in Section 9.02.3 hereof, the Board may proceed to hold a hearing at a time and place specified in the notice of hearing, and may make its findings of fact and enter its order upon the testimony so taken. The respondent, however, in the event of such failure, shall have the right to appear at such hearing, and cross-examine all witnesses, but shall not have the right to interpose or seek to establish any affirmative defense without permission of the Board.

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

9.02.7 Defense and New Matter:
Any allegation of new matter contained in the answer is to be deemed denied without the necessity of a reply.

9.02.8 Amendment of Complaint:
In the discretion of the Board, the Board's Agent may amend the complaint upon due notice to all parties, at any time before the issuance of the final decision and order. Where a charge has been amended in accordance with Section 9.01.4 hereof, the Board may amend the complaint. Such amendment or amendments to the complaint may be made on notice to all parties in accordance with this section, upon such terms as may be deemed just and proper, at any time prior to the issuance of a final order and decision based thereon.

9.02.9 Amendment of Answer by Motion:
After the answer is filed, it may be amended upon motion of the party filing it, upon due notice to all parties, upon such terms as may be deemed just and proper. Such amendment or amendments of the answer may be permitted at any time prior to the issuance of a final order based upon the complaint.

9.02.10 Amendment of Answer by Right:
In any case where a complaint has been amended, the respondent shall have an opportunity to amend his or her answer within such period as may be fixed by the Board, after it permits an amendment to the complaint.

9.02.11 Withdrawal of Complaint:
Any such complaint or amended complaint, or any part thereof, may be withdrawn by the Board, on its own motion, or on motion of the Board's Agent, at any time before the issuance of a final decision and order, upon notice to all parties to the proceeding.

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

SECTION 10.01 PARTIES TO PROCEEDINGS

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

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

10.01.3 Intervention; Procedure; Contents; Filings and Service:
Any person, employer, or labor organization desiring to intervene in any proceeding, shall file with the Board a sworn petition and two (2) copies thereof, in writing, setting forth the facts upon which such person, employer, or labor organization bases its claim of interest in the proceeding. Such petition must be served on all the parties and, in a proceeding under the Act, on the Board's Agent. Petitions must be filed with the Board, with proof of service, at least two (2) business days prior to the first hearing. Failure to serve or file such petition, as above provided, shall be deemed sufficient cause for the denial thereof, unless it shall be determined that good and sufficient reason exists why

it was not served, or filed, as herein provided. The Board shall rule upon all such petitions and may permit intervention to such an extent, and upon such terms or conditions, as it shall determine may effectuate the policies of the Act.

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

10.01.5 Subpoenas: Witnesses and Failure to Obey or Testify:
a) If a person or witness, refuses or fails, without reasonable excuse, to obey a subpoena requiring him or her to attend at a hearing and be examined, or so to attend and bring with him or her books, records, correspondence, papers, other matter, or refuses or fails to testify or answer any question which has been ruled pertinent and proper by the Board, in its discretion, the Board may strike from the record the testimony given by such person or witness, or so much thereof as the Board shall decide is related to the question which the person or witness has refused to answer, or to the matter called for in the subpoena. The Board, in its discretion, may preclude the reintroduction of any such testimony so stricken.

b) If a party fails or refuses, without reasonable excuse, to obey a subpoena requiring the production of books, records, correspondence, documents, papers or other matter, the Board may, in its discretion, preclude any such party from introducing any proof concerning such books, records, correspondence, documents, papers, or other matter in evidence.

c) Where a party is a corporation, this section shall apply to failures and refusals of its officers or directors; or where the party is a labor organization, this section shall apply to failures and refusals of its business agents and officers.

SECTION 11.01 PROCEDURES AT FORMAL HEARINGS

11.01.1 Order of Presentation of Case:
In each case, the petitioning party shall present its case first and shall have the burden of establishing its petition, by a fair preponderance of the credible evidence.

11.01.2 Evidence as to Transactions Had at Informal Conferences:
The Board's Agent shall accept relevant documents, as determined by the Agent, at an informal hearing; but such documents will not be considered part of the public record in any case, unless or until such documents are submitted as exhibits in a formal hearing proceeding.

11.01.3 Motions Made During Pendency of Hearing:
All motions made at or during the pendency of a hearing, except motions hereinafter specifically required at all times to be made to the Board, shall be stated orally, shall be included in the stenographic report of the hearing, and shall be decided by the Board in due course, except, that motions made to intervene shall be made in the manner set forth in Section 10.01.3 of these rules and regulations. All motions, rulings, decisions and order shall be and become part of the record in the proceeding.

11.01.4 Motion Made Before or After Hearing:
All motions made, other than those made during the pendency of a hearing or hearings, shall be filed, in writing, with the Board, together with appropriate supporting affidavits, and shall briefly state the order or relief applied for, and the grounds for such motion. The moving party shall serve copies of all such papers on all parties, and shall, within three (3) business days thereafter, file an original, with proof of due service, and two (2) copies of all papers with and for the use of the Board. Answering affidavits, if any, must be served on all parties, and an original thereof, with proof of due service, and two (2) copies shall be filed with the Board within three (3) business days after service of the moving party or parties, unless otherwise directed by the Board. All motions shall be decided by the Board upon the papers filed with it, unless the Board, in its discretion, shall decide to hear oral argument, or take testimony, in which event the Board shall notify the parties of such fact, and of the time and place for such argument or such testimony.

11.01.5 Motions and Objections at Hearings:
Motions made during the hearing, and objections with respect to the conduct of the hearing, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing.

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

11.01.7 Consolidation or Severance:
Two or more proceedings under the Act may be consolidated by the Board, in its discretion, and such proceeding may be severed by the Board, in its discretion.

SECTION 12.01 AGENTS AND LEGAL COUNSEL OF THE BOARD

12.01.1 Powers and Duties of the Administrator:
The Administrator of the Board, in addition to all powers hereinabove conferred upon him/her, is hereby designated by the Board as its Agent:

1) To conduct and be in full charge and control of any and all informal hearings and the records thereof;

2) To accept service of subpoenas duces tecum for Board records;

3) In the absence of the Board's investigator(s), to serve subpoena(s) or subpoena duces tecum issued by the Board, in person or by certified mail in accordance with Sections 7.03.4 and 7.03.5 herein;

4) In the event the Board is without legal counsel for any period of time, to accept service on court summons, subpoenas, or complaints, on appeals of Board cases;

5) To oversee the daily operations and responsibilities of the RI State Labor Relations Board's Administrative Office, as well as the planning, directing, and management of the staff engaged in the investigations and clerical activities; and to work for and under the direction of the RI State Labor Relations Board and its Chairperson as required;

6) To do any and all things necessary and proper to effectuate the policies of the Act and these general rules and regulations.

12.01.2 <u>Powers and Duties of the Investigators:</u>

All investigators, now or hereafter, in the employ of the RI State Labor Relations Board, are hereby designated by the Board as its Agents:

1) To conduct any inquiry necessary to the functions of the Board;

2) To investigate concerning the representation of employees, including the taking of secret ballots of employees in accordance with the Act;

3) To have access to, and the right to copy evidence, to administer oaths and affirmations, in connection with his or her investigations, to examine witnesses, and to receive evidence, in accordance with the Act;

4) To conduct and be in full charge and control of informal hearings and the records thereof;

5) To serve subpoena(s) or subpoena duces tecum issued by the Board, in person or by certified mail, in accordance with Sections 7.03.4 and 7.03.5 herein.

12.01.1 <u>Powers and Duties of the Legal Counsel</u>:

Pursuant to R.I. General Laws 28-7-7, the Board has the authority to select its own legal counsel.

1) To attend formal hearings.

2) To prepare Board decisions.

3) To accept service, on behalf of the Board, of court summons, subpoenas, or complaints, relative to Labor Board matters.

4) To represent the Board before the RI Superior Court and the RI Supreme Court, on appeals; and to prepare briefs.

5) To advise the Board on legal questions and on the Board's rights and autonomy under the Act.

6) To represent the Board before tribunals, committees, courts, and on legislative matters, when requested.

7) To do any and all things necessary and proper to effectuate the policies of the Act and these general rules and regulations.

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

SECTION 13.01 MISCELLANEOUS ADMINISTRATIVE PROCEDURES

13.01.1 Service Upon Representative:
If a party appears by his, her or its representative all papers shall be served as hereinafter provided, upon such representative with the same force and effect as though served upon the party.

13.01.2 Certification of Documents By Administrator or Person Designated by the Board:
The Administrator of the Board, or in his or her absence or disability, such other person as may be designated by the Board, is hereby authorized and empowered to certify copies of all papers or documents which are a part of any of the files or records of the Board.

13.01.3 Processes and Papers of the Board:
a) Complaint(s), investigative report(s) in unit clarification petition(s), and subpoena(s), and subpoena(s) duces tecum shall be served by certified mail - return receipt requested, or shall be served personally by leaving a copy thereof in the proper office or place of business of persons to be served. The return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt therefore, when certified and mailed as aforesaid, shall be proof of service of the same.

b) All other service by the Board shall be made by first class mail, postage pre-paid, only to each party's designated representative, who has filed an entry of appearance.

13.01.4 Signing and Issuance of Complaints:
The Board's Administrator, or in his or her absence or disability, such other person as may be designated by the Board, is hereby authorized and empowered to sign or issue all complaints authorized to be issued by the Board.

13.01.5 Proposed Findings of Fact; Conclusions of Law; Proposed Decision and Order; Exceptions, etc.:

The Board shall, at any time after the close of a formal hearing, issue its findings of fact, conclusions of law, decision and order. Such findings of fact, conclusions of law, decision and order, shall contain but need not be limited to:

1) A statement of the case and preliminary procedure before the Board;
2) Findings of Fact;
3) Conclusions of Law;
4) Decision and Order.

The Board may include, if it be found that the respondent has engaged or is engaging in the alleged unfair labor practice, a recommendation as to what action shall be taken by the respondent to effectuate the policies of the Act.

13.01.6 Variance Between Pleading and Proof:

A variance between an allegation in a petition for certification, or a pleading in an unfair labor practice proceeding, and the proof is not material, unless it is so substantial as prejudicially to mislead any party or the Board. Where a variance is not material, the Board may admit such proof, and the facts may be found accordingly. Any party, or the Board, may move to conform the pleadings to the proof.

SECTION 14.01 CONSTRUCTION, AMENDMENT AND APPLICATION OF GENERAL RULES AND REGULATIONS

14.01.1 Construction of Rules:

These general rules and regulations shall be liberally construed and shall not be deemed to limit the powers conferred upon the Board by the Act.

14.01.2 Amendments; Rules and Regulations:

Any rule or regulation may be amended or rescinded by the Board, at any time, but such amendment or rescinding shall not be effective until the same is filed in the Office of the Secretary of State, in accordance with the Administrative Procedures Act.

14.01.3 Application of General Rules and Regulations:

These general rules and regulations, and any amendments thereto, shall govern all proceedings filed with the Board on or after, January 1, 2005, and all other proceedings or charges then pending, except to the extent that, in the judgment of the Board, their application to such proceedings or pending charges and petitions would not be feasible or would work an injustice, in which event, these general rules and regulations shall not apply.