

12 DEPARTMENT OF LABOR

186 STATE BOARD OF ARBITRATION AND CONCILIATION

Chapter 1: GENERAL RULES

SUMMARY: This chapter defines certain terms used throughout the rules of the State Board of Arbitration and Conciliation and contains other rules of general application.

- § 1. **Effective Date.** The rules of the State Board of Arbitration and Conciliation (Board) contained in Chapter 1 are effective as of July 1, 2023. All actions pending as of that date are subject to these rules.
- § 2. **Applicability.** The rules in this chapter apply to parties who have agreed to utilize the Board's services as a board of inquiry or a board of conciliation in the private sector, as a fact finding panel in the public sector, or as a board of arbitration in either the public or private sector.
- § 3. **Fees and Expenses.** The parties are required to share the costs for services rendered and expenses incurred by the Board and any state cost allocation program charges. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter will be scheduled.
- § 4. **Executive Director.** The executive director is the Executive Director of the Maine Labor Relations Board. Whenever a rule refers to the executive director, the action or responsibility may be delegated to the executive director's designee.
- § 5. **Definition of Working Days.** "Working days" means those days when State offices in Augusta are open for business.
- § 6. **Computation of Time Periods.** In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act or event after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

§ 7. Filing

1. **Electronic Filing Required.** Except as provided in subsection 4, all correspondence and any other documents filed with the Board shall be filed electronically via internet transmission to the Board's general email address, sbac@maine.gov, in the manner provided for in this section.
2. **Electronic Filing Procedure.** All documents filed electronically must be filed pursuant to the following procedure.
 - A. The filing shall include an email correspondence to the Board that identifies the name of the person or representative making the filing and the name of the party in whose name the document is being filed.
 - B. Documents filed electronically must be in Microsoft Word® or PDF format and must be capable of being readily printed or otherwise reproduced clearly and legibly on paper 8 and 1/2 inches by 11 inches in size. Documents for filing must be included as an attachment to the email required in paragraph A.
 - C. When a signature is required for a document to be filed with the Board, the document must either be signed by hand and scanned as a PDF file or must be signed electronically in the following format: “/s/ [signatory’s name].”
 - D. Documents submitted to the individual email addresses of Board members, the executive director or other staff members shall be deemed not filed.
3. **Filing Date.** A document submitted to the Board electronically will be deemed to be filed or received on the date and time in which the Board received the document at the Board's general email address, sbac@maine.gov, in accordance with this section. A document will be considered filed on a certain day if it is received electronically as of 11:59 p.m. on that day. The date and time that a document has been received electronically will be noted in a Notice of Electronic Filing, which will be sent by the Board electronically to the filing party.
4. **Filing by Mail or Hand Delivery.** Parties who are unable to submit documents electronically may submit documents by mail, hand delivery or delivery service. Such filings or submissions must include a statement certifying that the party was unable to transmit the documents electronically, including a description of the reasons that electronic transmission of the documents could not be accomplished. The Board may reject any such filings that it finds could have been submitted electronically. A party may hand deliver a document for filing at the Maine Labor Relations Board's office, by prior arrangement, between the hours of 8:30 a.m. and 4:30 p.m. on Monday through Friday, excepting dates on which the office is closed due to State holidays, extreme weather or emergency.
5. **Grievance, Contract and Other Pertinent Documents.** No Arbitration Request Form (BAC Form 1) will be processed unless accompanied by a copy of the grievance, contract and other pertinent documents. Four physical copies of this documentation must be filed with the Board prior to hearing, unless the executive director or Board waives this requirement.

§ 8. Service Upon A Party

1. **Methods of Service.** A paper is served upon a party when it is mailed to the party or the party's attorney, or delivered by hand delivery or delivery service to the recipient or the recipient's office. A paper may also be served electronically, in accordance with subsection 2.
2. **Electronic Service.** Except in the case of service of a BAC Form 1 or subpoena, whenever a rule requires that a party serve a copy of a document on another party, service may be effected exclusively by email.

For service of an Arbitration Request Form (BAC Form 1) and accompanying pertinent documents, service will be considered complete on the date that service was provided to the other party by email, so long as service by mail, hand delivery or delivery service occurred on the same calendar day.

3. **Certificate of Service.** Whenever a rule requires that a party serve a copy of a document on another party, the serving party may demonstrate compliance with the requirement of service by submitting to the Board a signed statement certifying service. The statement should include a written declaration of the names and addresses of the parties served and the date and manner of service. The following is an example of a statement certifying service: "I, _____, certify that on _____, I served a copy of this document on _____ (name of party) by emailing/ mailing/ hand delivery/ delivery via _____ delivery service (indicate which method), at the following address: _____."

A properly completed Arbitration Request Form (BAC Form 1) satisfies the certificate of service requirement. Proof of service such as a certified mail return card is not required but will also satisfy this requirement.

- § 9. Official Transcripts.** A party to a Board hearing seeking to have the hearing transcribed may, with prior approval of the Board, make arrangements for transcription by a qualified court reporter and shall assume the costs of the service. If such arrangements are made and a transcript is produced, a copy must be furnished to the Board without cost and to the other parties upon request and tender of the appropriate fee. If the transcript is agreed by the parties to be or, in appropriate cases, determined by the Board to be the official record of the proceeding, it must be made available to the other party for inspection at a time and place determined by the Board.

- § 10. Enlargement of Time Periods and Postponement of Proceedings.** When an act must be done within a specified time period or if a proceeding has been scheduled, and, prior to the expiration of that period or the date of the proceeding the Board receives a request for enlargement of that time, the Board may in its discretion with or without motion or notice enlarge that time period for good cause shown. Upon motion made after the expiration of the specified period, the Board may extend the period where the failure to act was the result of excusable neglect.

- § 11. **Witnesses and Subpoenas.** A party to a proceeding before the Board may request the attendance of witnesses voluntarily or by subpoena. If witnesses or documents are sought by subpoena, the requesting party must first make a written request to the Board or presiding official for the issuance of the subpoena. When the subpoena is issued, it is the responsibility of the requesting party to serve the subpoena or cause it to be served on the named individual. When a witness is subpoenaed, the witness fee and transportation allowance established by 16 M.R.S.A. §251 must be provided at the time the subpoena is served. If the Board, on its own motion, requires the attendance of witnesses through subpoenas, the Board will cause the subpoena to be served on the named individual and will be responsible for paying the required witness fee and transportation allowance.
- § 12. **Discovery.** Upon request of either party in a grievance arbitration dispute pending before the Board and for good cause shown, the chair of the panel assigned to hear the matter may issue a subpoena duces tecum, returnable at such date, time and place in advance of the hearing as determined by the chair, to secure copies of such relevant records and documents in the possession of the other party as may be necessary for the prosecution of the requesting party's case.
- § 13. **Rules Regarding Evidence.** The strict rules of evidence observed by courts do not apply in matters before the Board. The following rules regarding evidence apply:
1. **Evidence.** The Board shall admit evidence if it is the kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or unduly repetitive evidence may be excluded.
 2. **Rules of Privilege.** The Board shall observe the rules of privilege recognized by law.
 3. **Written Evidence; Exception.** No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.
- § 14. **Confidential Information.** When the Board is functioning as a board of inquiry or a board of conciliation in the private sector, as a fact finding panel in the public sector, or as a board of arbitration in either the public or private sector, its proceedings are confidential and any information disclosed by either party to a dispute to the Board or any of its members in carrying out their duties shall be confidential, except as may be provided in 26 M.R.S.A., Chapter 9, Subchapter 2-A.
- § 15. **Official Notice.** The Board may take official notice of any facts of which judicial notice could be taken, and may take official notice of technical or scientific matters within their specialized knowledge. They may also take official notice of statutes, regulations and nonconfidential agency records. Parties will be notified of the Board's intention to take official notice and will be afforded a reasonable opportunity to contest the substance or materiality of the facts involved. Members of the Board may utilize their experience, technical competence and specialized knowledge in evaluating the evidence presented to them.

- § 16. **Rights of Parties.** Any party to the hearing shall have the right to be represented by counsel or by other representative, at the party's expense, to examine and cross-examine witnesses, and to offer documentary and other evidence. Documentary and other evidence must be offered in 4 copies, unless the executive director or Board permit the parties to submit evidence electronically. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. The Board shall allow oral argument upon request, and, after consultation with the parties, may require briefs to be submitted. Any brief permitted to be filed must be filed in the original and 3 copies, unless the executive director or Board permit the parties to submit briefs electronically. A copy of any brief filed with the Board must simultaneously be served on all parties to the matter.
- § 17. **Ex Parte Communications Prohibited.** No party or other person(s) legally interested in the outcome of a hearing may communicate *ex parte* either directly or indirectly with the Board assigned to the case in connection with any issue of fact, law or procedure except upon notice and opportunity for all parties to participate. Discussions between each party and its respective partisan Board member during conciliation or attempted conciliation, prior to convening the hearing in an arbitration case, or such dialogue during interest fact-finding do not constitute prohibited *ex parte* communications within the meaning and intent of this rule.
- § 18. **Board Award.** After the close of the record in fact finding and arbitration matters, the Board will issue an award within the time established by applicable statute, rule or collective bargaining agreement, or, in the absence of such controlling time limit, within a reasonable time. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless that party notifies the Board of its objection prior to the delivery of the award to that party. The opinion shall include findings of fact sufficient to constitute the basis of the decision and record the vote of each member of the Board. Any member of the Board may prepare a dissenting decision or a decision concurring in part and dissenting in part and such separate decision will be disseminated in the same manner as the majority decision. The Board shall deliver the award to each party personally, or by certified mail, or in the manner provided in the agreement to arbitrate.
- § 19. **Change of Award by Arbitrators.** Either party may file an application with the Board for modification or correction of an award. Such application must be filed with the Board within 20 days after delivery of the award to the applicant. The applicant shall give notice of the application forthwith to the other party, stating that such party must serve its objections thereto, if any, within 10 days from receipt of the notice. Upon review of the application and any objections, the Board may modify or correct the award where there was an evident miscalculation of figures, an evident mistake in the description of any person, thing, or property referred to in the award, or the award is imperfect in a matter of form, not affecting the merits of the controversy. Any award so modified or corrected is subject to review as provided in the following section.
- § 20. **Review of Arbitration Awards.** Either party may seek review by the Superior Court of a binding determination by an arbitration panel. For grievance arbitrations, the review must be sought pursuant to the provisions of the *Uniform Arbitration Act*, 14 M.R.S.A. §§ 5927-5949. For interest arbitration decisions, the review must be sought in accordance with *Maine Rules of Civil*

Procedure, Rule 80B. The binding determination of the Board is final on all questions of fact, in the absence of fraud. The Court may, after consideration, affirm, reverse or modify any such binding decision based upon an erroneous ruling or finding of law. An appeal may be taken to the Law Court as in any civil action.

§ 21. Other Procedural Issues. In the event that procedural issues arise that are not addressed by the State Board of Arbitration and Conciliation Statute, 26 M.R.S.A. §931 *et seq.*, or by the *Uniform Arbitration Act*, 14 M.R.S.A. §5927 *et seq.*, the Board will look to the Labor Arbitration Rules promulgated by the American Arbitration Association for guidance in resolving such questions.

STATUTORY AUTHORITY:

26 M.R.S.A. §931

EFFECTIVE DATE:

October 3, 2005 – filing 2005-397

AMENDED:

July 1, 2023 – filing 2023-086