# **01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**020 MAINE AGRICULTURAL BARGAINING BOARD**

**Chapter 3: RULES OF PROCEDURE FOR THE MAINE AGRICULTURAL BARGAINING BOARD**

**RULE 1. Definitions**. As used in this chapter, unless the context otherwise indicates the following words shall have the following meanings:

 A. **Certification Hearing**. "Certification hearing" means a hearing held by the Board to consider whether a petition by an association of producers for certification, should be affirmed.

 B. **Board**. "Board' means the Maine Agricultural Bargaining Board.

 C. **Hearing**. "Hearing" means a hearing conducted by the Board to determine whether an unfair practice has been committed, or any other matter properly heard by the Board under 13 MRSA §1953, *et seq*.

 D. **Complaint**. "Complaint" shall mean a written statement containing allegations of an Unfair Practice recognized by 13 MRSA §1965, unless the context clearly requires a different meaning.

**RULE 2. Scope**. Except as otherwise indicated the hearing procedures contained in this chapter shall apply to certification hearings, unfair practice hearings and all other hearings held by the Board except rule-making hearings.

**RULE 3. Notice of Hearing**. Upon scheduling a hearing subject to the requirements of this chapter, the Board shall send, by regular mail, not less than 5 nor more than 12 days prior to the date of the hearing, written notice of the hearing to the appropriate parties and to any person who has requested said notice. The notice of hearing shall contain the information, as applicable, required in Rule 10. In any proceeding deemed by the Board to involve the determination of issues of substantial public interest, notice of hearing shall also be given to the public in order to afford interested persons an opportunity to prepare and submit evidence and argument and to petition to intervene pursuant to Rule 12. Notice to the public shall be given in the manner described in Rule 11.

**RULE 4. Who May File Complaints**. Any handler, producer, qualified association or association of producers within the definitions provided by 13 MRSA §1955, may file a complaint alleging an unfair practice within the meaning of 13 MRSA §1965, or request any hearing which is properly held by the Board. When a complaint has been filed by a qualified association or association of producers on behalf of one or more producers, that individual producer or producers may not file a separate complaint regarding the same alleged unfair practice.

**RULE 5. Unfair Practice Complaint**: Form and Filing. The complaint shall be submitted in writing to the Board in original and four (4) copies shall be signed under oath before a Notary Public and shall contain a sworn declaration or affirmation by the person signing, under penalty of perjury, that its contents are true and correct to the best of the subscriber's knowledge and belief. The complaining party shall be expected to support the complaint.

**RULE 6. Contents of Unfair Practice Complaint**. A complaint shall contain, insofar as is known, the following information:

 (1) The full name, address, and affiliation, if any, of the complaining party, and the title of any representative filing a complaint.

 (2) The full name and address of the producer, handler, qualified association or association of producers against whom the complaint is made.

 (3) A copy of any existing bargaining contract or agreement relating to the entity involved in the unfair practice complaint.

 (4) A clear and concise statement of the facts constituting the complaint, including the date and place of occurrence of each particular act alleged, names of persons who allegedly engaged therein, and the sections, including subsections, of the Act alleged to have been violated.

 (5) Allegations which, if proved, are sufficient to warrant the relief requested or some relief under the Act.

 (6) A statement of the relief to which the complaining party deems himself entitled. Such claim for relief shall not limit the powers vested in the Board by the Act.

**RULE 7. Service of Complaint**. No complaint shall be filed with the Board until the complaining party shall have served a copy thereof upon the party against whom such charge is made. Proof of service in the form of either a certified mail return receipt or sheriff's or deputy sheriff's return of service affidavit shall be furnished to the Board.

**RULE 8. Response to Charge and Joint Statement**. The party against whom a complaint has been filed shall file a response to said complaint with the Board in original and four (4) copies and shall serve said response upon the complaining party, within fifteen (15) days of the date of the filing of the complaint with the Board. The response shall fairly meet each unresolved allegation contained in the complaint, and shall include a specific admission denial, or denial based on insufficient information of each such allegation. Attached to the response should be a joint statement of any matters of agreement reached by the parties. Failure to file a response as provided herein shall be grounds for the Board to render a default order against the respondent.

**RULE 9. Notice and Hearing**

 A. After receipt of the complaint and after time for filing the response has elapsed, the Board shall provide all parties with notice and an opportunity to be heard and a written notice of any hearing shall be served on the parties in accordance with Rule 3. The notice shall include the time, date, and place of the hearing and, if notice is given to the public, the notice shall include a short statement as to the nature and subject matter of the proceeding. Parties may waive the right to this notice, by their attendance at the hearing without objection. Failure of a complainant, after notice, to attend such a hearing may be grounds for dismissal of the complaint and failure of a respondent to attend such a hearing may be grounds for entry of a default order against said respondent. Such dismissal or default shall be with prejudice unless a-reason for any other order is apparent and is stated in the order of dismissal or default. Such order shall be final unless the Board finds that such failure to attend the hearing is the result of excusable neglect.

 B. Prospective witnesses shall be identified by the parties and their names and addresses shall be provided to the Board and to any opposing party prior to the hearing date. The Board may fix a time prior to the hearing before which witness lists must be filed and served. Any change in the list of prospective witnesses shall be communicated by each party to the other(s) and to the Board before the hearing date.

 C. Complaints may be amended with permission of the Board Chairperson or presiding officer prior to or at the hearing and the Chairperson or presiding officer may order consolidation of complaints.

 D. **Rights of Parties** - Any party shall have the right to be represented by counsel or by other representatives, to examine and cross-examine witnesses, and to offer documentary and other evidence.

 E. Stipulations may be offered with respect to any issue. The Chairperson or presiding officer shall allow oral argument with appropriate limitations, and, after consultation with the parties, may require briefs to be submitted.

 F. **Decision** - The Board shall render a written decision within a reasonable time either dismissing the complaint or determining the appropriate remedy. Failure of the Board to render such a decision within 30 calendar days of the date of the final closing of the hearing shall be deemed a denial of the complaint. The Board may vacate a denial based on the Board's failure to render a written decision within 30 days if:

 1) the Board, despite due diligence, had been prevented from reaching a decision by circumstances beyond its control, and

 2) there is a likelihood that the Board will reach and render a decision within an additional 30 days.

 The Board must act to vacate a denial within 10 calendar days after the date the complaint is deemed denied. Failure of the Board to render a written decision within 30 calendar days from the date the earlier denial was vacated, shall be deemed a final dismissal of the complaint.

**RULE 10. Contents of Notice of Opportunity for Hearing and Notice of Hearing**. To the extent applicable, notices of opportunity for hearing and notices of hearing shall contain the following information:

 A. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;

 B. A reference to the particular substantive statutory and rule provisions involved;

 C. A short and plain statement of the nature and purpose of the proceeding and of the matters asserted;

 D. A statement of the time and place of the hearing, or the time within which a hearing may be requested;

 E. A statement of the manner and time within which evidence and argument may be submitted to the agency for consideration, whether or not a hearing has been set; and

 F. When a hearing has been set, a statement of the manner and time within which applications for intervention under Rule 12 may be filed.

**RULE 11. Notice to the Public**. Notice to the public, when given by the Board, shall be given as follows:

 A. By publication at least twice in a newspaper of general circulation in the area of the state affected; and

 B. By publication in any other trader industry professional or interest group publication which the Board deems effective in reaching persons who would be entitled to intervene as of right under Title 5 MRSA §9054, sub-§1 and;

 C. In any other manner deemed appropriate by the Board.

**RULE 12. Intervention and Public Participation**

 A. **Intervention as of right**. On application, the Board shall allow any person or a class of which that person is a member or any other agency of federal, state or local government, to intervene as a party in the proceeding upon a showing that the proceeding may have a direct and substantial effect on the person, class or agency.

 B. **Permissive intervention**. On timely application, the Board may in its discretion permit any other person to intervene and participate as a full or limited party to the proceeding. This subsection shall not be construed to limit public participation in the proceeding in any other capacity.

 C. **Participation limited or denied**. When participation of any person is limited or denied, the Board shall include in the record an entry to that effect and the reasons therefore.

 D. **Consolidation of presentations**. Where appropriate, the agency may require consolidations of evidence and argument by members of a class entitled to intervene under this Section.

**RULE 13. Ex Parte Communications: Separation of Functions**

 A. **Communication prohibited**. In any proceeding subject to the requirements of this chapter, no Board member shall communicate directly or indirectly in connection with any issue of fact, law or procedure with any party or other persons legally interested in the outcome of the proceeding except upon notice and opportunity for all parties to participate.

 B. **Communication permitted**. This section shall not prohibit Board members from speaking with each other, or from having the advice of agency staff, counsel or consultants retained by the Board who have not participated and will not participate in the proceeding in an advocate capacity.

**RULE 14. Hearings to be Conducted by Board's Presiding Officer**. Hearings held subject to the requirements of this chapter shall be conducted before the Board. The chairperson of the Board shall serve as presiding officer, but if he or she is not present, those Board members in attendance shall choose a presiding officer from among them. The chairperson or presiding officer shall administer oaths and affirmations conduct the hearing, set the time and place for continued hearings, determine the order of testimony, fix the time for filing of such additional evidence, briefs and other written submissions as may be allowed or required make rulings as to the admissibility of evidence, the existence of privileges and other evidentiary matter, and take such other action of a similar nature relating to the proceeding as may be necessary. Whenever a presiding officer is disqualified or it becomes impracticable for him to continue in that capacity, another presiding officer may be chosen to continue the hearing, provided that, if it is shown that the substitution will cause substantial prejudice to any party, the substitute presiding officer shall commence the hearing anew.

**RULE 15. Opportunity to be Heard**. The opportunity for hearing shall be afforded without undue delay. Unless limited by stipulation under Rule 9, or by Board order under Rule 12, or unless otherwise limited by the Board to prevent repetition or unreasonable delay in proceedings, every party shall have the right to present evidence and arguments on all issues, and at any hearing to call and examine witnesses and to orally cross-examine any person present and testifying.

**RULE 16. Evidence**

 A. **Rules of privilege**. Unless otherwise provided by statute, the Board need not observe the rules of evidence observed by courts,, but shall observe the rules of privilege recognized by law.

 B. **Evidence**. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Board may exclude irrelevant or unduly repetitious evidence.

 C. **Witnesses**. All witnesses shall be sworn.

 D. **Written evidence; exception**. No sworn written statement shall be admitted unless the author is available for cross-examination except for good cause shown.

**RULE 17. Record**

 A. **Generally**. In proceedings subject to this chapter, the Board shall make a record consisting of:

 (1) All applications, pleadings, motions, preliminary and interlocutory rulings and orders;

 (2) Evidence received or considered;

 (3) A statement of facts officially noticed;

 (4) Offers of proof, objections and rulings thereon; and

 (5) The decision of the Board.

 B. **Hearings recorded**. The Board shall record unfair practice hearings in a form susceptible to transcription. The Board way record other hearings, meetings and proceedings as it determines necessary, or at the request of any party made at least two days prior to the hearing date. Portions of the record as required and specified in subsection A may be included in the recording. The Board shall transcribe any recording related to the appeal upon the request of any party which has filed an appeal.

 C. **Record; copies**. The Board shall make copies of the record, copies of recordings or transcriptions of recordings available to any person at actual cost. Notwithstanding the provisions of this subsection, the Board shall withhold, obliterate or otherwise prevent the dissemination of any portions of the record which are made confidential by state or federal statute or any other lawful means, but shall do so in the least restrictive manner feasible.

 D. The decision of the Board shall be based solely on the record before it as described in Rule 17(A).

 E. **Documentary evidence**. Documentary evidence may be incorporated in the record by reference if the materials so incorporated are made available for examination by the parties and such evidence has been admitted pursuant to Rule 16.

**RULE 18. Subpoenas**

 A. **Generally**. The Board may issue subpoenas at the request of any party to require the attendance and testimony of witnesses and the production of any evidence relating to any issue of fact in the proceeding, provided that the issuance of the subpoena has been approved by the Attorney General or a Deputy Attorney General as set forth in 5 MRSA §9060. Subpoenas may be signed on behalf of the Board by the Chairperson or presiding officer.

 B. The Board may prescribe the form of subpoena, but it shall adhere, insofar as practicable, to the form used in civil cases before the courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the courts, unless other territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fees for attendance as in civil cases before the courts. Such fees, as well as the costs of serving the subpoena, shall be paid by the party requesting the subpoena.

 C. Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.

 D. Any witness subpoenaed may petition the Board to vacate or modify a subpoena issued in its name. The Board shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Board considers appropriate, it may grant the petition, in whole or in part, upon a finding that the testimony or the evidence sought to be produced does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.

 E. Failure to comply with a subpoena lawfully issued in the name of the Board and not revoked or modified by the Board as provided in this section shall be punishable as for contempt of court.

**RULE 19. Discovery**. Parties may obtain discovery to the extent permitted and in the manner set forth in *Administrative Court Rules* 26 through 37. The phrase "the court" appearing in those rules shall be deemed to refer to the Board, as the sense of the situation requires.

**RULE 20. Conclusion of Hearing Reopening of Record; Further Proceedings**. Upon the conclusion of the hearing, no other evidence or testimony shall be permitted unless the record is held open by the Board for the receipt of additional material specifically designated. The Board may reopen the record for further proceedings at any time prior to decision upon provision of appropriate notice to parties and other interested persons.

**RULE 21. Decisions**. Every decision made at the conclusion of a proceeding subject to this chapter shall be in writing and stated in the record. A copy of the decision shall be delivered or promptly mailed to each party to the proceeding or his/her representative of record. Written notice of the party's rights to review of the decision by the courts, and of the action required and the time within which such action must be taken in order to exercise the right to review, shall be given to each party with the decision. The Board shall maintain a record of the vote of each Board member with respect to the decision. A majority of the Board members voting is required to support a finding of an unfair practice under 13 MRSA §1965.

**RULE 22. Finding of Fact and Conclusions of Law**. Upon the request of any party made within 5 days after notice of a decision, the Board shall make its written findings of fact and conclusions of law.

**RULE 23. Service of Written Materials**. Copies of all pleadings, briefs,, motions or documentary evidence filed by a party with the Board shall also be served upon all other parties to the proceeding or upon their attorneys, if represented by counsel.

 Except for the complaint, service upon a party or an attorney may be effected by, and is complete when the paper is mailed, delivered in-hand or delivered to the office of the party or attorney. For violation of this rule the presiding officer may refuse to accept the material filed in the record.

**RULE 24. Time Periods**. In computing any time period prescribed or allowed by these rules, the *Maine Agricultural Marketing and Bargaining Act of 1973*, or any other applicable statute or order,, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be 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, Sunday, or a holiday. When the period of time prescribed or allowed is less than ten days, intermediate Saturdays, Sundays and holidays shall not be included in the computation.

 For the purpose of this section, legal holidays shall include days designated by the Governor as paid holidays for the purposes of state employment.

**RULE 25. Conflict of Interest; Duty to Excuse**. A member of the Board should disqualify himself or herself in any proceeding in which the member has reason to believe that he or she could not act with complete impartiality, or in a proceeding in which his or her impartiality might reasonably be questioned.

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