
ILLINOIS
EDUCATIONAL
LABOR
RELATIONS
RULES
AND
REGULATIONS

Title 80: Public Officials and Employees
Subtitle C: Labor Relations
Chapter III: Illinois Educational Labor
Relations Board

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Title 80: Public Officials and Employees
Subtitle C: Labor Relations
Chapter III: Illinois Educational Labor
Relations Board

Part 1100 -- General Procedures

Section 1100.10 Definitions.

- a) The term "Act" shall mean the Illinois Educational Labor Relations Act [115 ILCS 5].
- b) This Part incorporates the definitions contained in Section 2 of the Act.
- c) The term "incumbent employee organization" or "incumbent exclusive representative" shall mean the existing exclusive representative of the employees in the bargaining unit.
- d) The term "charging party" shall mean the person who files an unfair labor practice charge.
- e) The term "respondent" shall mean the party named in an unfair labor practice charge or complaint as having allegedly committed the unfair labor practice.
- f) The term "scheduled start of the forthcoming school year" shall mean the first date scheduled for student attendance for that year.
- g) The term "professional instructional personnel" shall mean, in the case of a public school district, any employee whose position requires a certificate issued pursuant to Article 21 of the School Code [105 ILCS 5/Art.21].
- h) The term "professional instructional personnel" shall mean in the case of an employer other than a public school district, any employee whose position includes or could include the provision of academic instruction to students.
- i) The term "legal holiday" shall mean a "legal school holiday" as specified in Sec. 24-2 of the School Code (not to include "special holidays" or "commemorative holidays"), or a holiday observed by the Board.
- j) The term "representation petition" shall include both a petition seeking recognition as exclusive representative

through an election and a petition seeking recognition as exclusive representative through the Board's card check procedures (majority interest petition).

(Source: Amended at 28 Ill. Reg. 7932, effective May 28, 2004)

Section 1100.20 Filing and Service of Documents

- a) All documents relating to any proceeding before the Illinois Educational Labor Relations Board (the Board) shall be filed in either the Board's Springfield or Chicago office. The original and seven copies of each document shall be filed in all proceedings before the members of the Board; the original and three copies of each document shall be filed in any proceeding before a Hearing Officer. Except as otherwise specified in the rules of the Board, documents shall be considered filed with the Board on the date they are received by the Board or on the date they are postmarked if sent by registered or certified mail. Documents sent by any means other than registered or certified mail shall be considered filed on the date they are received by the Board, except that documents shall be considered filed on the date they are tendered to an overnight delivery service, if that service provides a receipt showing the date on which the documents were tendered for delivery. A party may file a document by facsimile if the party also sends a hard copy. A document filed by facsimile shall be considered filed with the Board on the date the Board receives the facsimile or the date the Board receives the hard copy of the document, whichever is first. Filings by e-mail may be permitted with the approval of the General Counsel in any proceeding before the members of the Board; with the approval of the hearing officer in any proceeding before a hearing officer; and with the approval of the Executive Director or Board Agent in any proceeding before the Executive Director.
- b) Whenever 80 Ill. Adm. Code: Subtitle C, Chapter III requires that a document be on a form developed by the Board, the document may be prepared on a form obtained from the Board or on a facsimile thereof. Minor deviations in the form of a document shall not be grounds for objecting to the

document. Minor deviations are those deviations that involve form but not substance and thus do not prejudice any other party to the case.

- c) The Board will serve petitions, intervening claims and unfair labor practice charges on the appropriate parties by either personal service, registered or certified mail, or by leaving a copy at the principal office or place of business of the person required to be served.
- d) All documents, except those listed in subsection (c), will be served on the appropriate parties by the party propounding the document, either by the methods listed in subsection (c), or by first class mail or overnight delivery service. A document filed by facsimile or e-mail may be served by the same means as it is filed. When a party is represented in a proceeding before the Board, service shall be on the party's representative. When a party is not represented, service shall be on the party. Subpoenas will be served by the party requesting the subpoena, but in the manner provided in subsection (c).
- e) Whenever a document is filed with the Board, it shall be accompanied by a certificate of service. A certificate of service shall consist of a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service. In the case of an e-mail, a signature on the certificate of service shall not be required.
- f) Failure of a party to serve a document or failure to attach a certificate of service may be grounds to strike the document, if the failure results in prejudice to another party (such as lack of notice or detrimental reliance) or demonstrates disregard of the Board's processes (such as continued noncompliance).

(Source: Amended at 28 Ill. Reg. 7932, effective May 28, 2004)

Section 1100.30 Computation and Extensions of Time

- a) In computing any period of time prescribed by the Act or this Part or 80 Ill. Adm. Code 1105, 80 Ill. Adm. Code 1110, 80 Ill. Adm. Code 1120, 80 Ill. Adm. Code 1125, 80 Ill. Adm. Code Adm. Code 1130, and 80 Ill. Adm. Code 1135, except

for objections to an election, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included. If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, the time period shall be automatically extended to the next day that is not a Saturday, Sunday or legal holiday.

- b) When a time period prescribed under the Act or this Part is less than seven days, intervening Saturdays, Sundays, or legal holidays shall not be included.
- c) Whenever a time period begins running upon the service of notice or other document upon a party, and service is effected by first-class mail, three days shall be added to the prescribed period. However, three days shall not be added if any extension of time has been granted.
- d) In all proceedings before the Board, extensions of time will be granted only upon timely written motion to the General Counsel, if the matter is before the members of the Board, or the presiding hearing officer if the matter is before a hearing officer, and only upon a specific showing that compliance with the deadline would be unduly burdensome for the party seeking the extension, and the extension will not unduly delay the proceeding (undue delay to be determined by factors including the length of the requested extension, the length of time the matter has been pending, whether the party has previously requested extensions and the impact of delay on other parties).

(Source: Amended at 14 Ill. Reg. 1270, effective January 5, 1990)

Section 1100.40 Hearing Officers

Whenever the Board appoints a hearing officer to preside over a matter, the hearing officer shall have the authority to do any or all of the following:

- a) dispose of procedural requests, motions, or similar matters;
- b) continue or adjourn a hearing to a later date;
- c) subpoena witnesses, administer oaths and affirmations, examine witnesses, receive relevant testimony and evidence,

rule upon offers of proof, and introduce into the record relevant evidence;

- d) take official notice of generally recognized facts; and
- e) generally regulate the course of a hearing.

(Source: Amended at 14 Ill. Reg. 1270, effective January 5, 1990)

Section 1100.50 Recording of Hearings

Whenever a hearing is held under the Act or these rules it shall be recorded by stenographic or other appropriate means. The parties, the hearing officer or the Board may order that the recording be transcribed. Parties shall bear the costs of any transcripts that they order.

Section 1100.60 Representation of Parties

A party may be represented by counsel or any other representative of the party's choosing. The representative shall file a notice of appearance with the Board.

Section 1100.70 Subpoenas

- a) Subpoenas, including subpoenas duces tecum, shall be issued by the Board upon written application of a party to the Chief Administrative Law Judge. The application shall contain the name and address of the party and its representative, and the name of the person to be subpoenaed, and, where applicable, a description of any documents to be produced.
- b) A person objecting to the subpoena may file a motion to revoke the subpoena. Prior to the opening of a hearing, any motion to revoke a subpoena shall be filed with the Chief Administrative Law Judge. After the opening of a hearing, any motion to revoke a subpoena shall be filed with the hearing officer. The motion must be filed by the date on which the person is required to appear, and, in any event, no later than five days after service of the subpoena. Grounds for revocations of subpoenas shall include such factors as irrelevance, burdensomeness of compliance or privilege.
- c) Witnesses appearing at a hearing pursuant to subpoenas are entitled to the same fees and mileage as are allowed witnesses in civil cases in the courts of the State of Illinois,

pursuant to Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3]. Witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

- d) A subpoena duces tecum shall specify the date for production of the documents. If the date so specified is other than at the hearing, the date specified for production shall be a date in advance of the hearing, which shall be no less than 10 days after the receipt of the subpoena by the person or entity to whom it is directed.

(Source: Amended at 28 Ill. Reg. 7932, effective May 28, 2004)

**Section 1100.80 Limitation on Practice
Before the Board by Former Employees**

No person who has been a Board member or an employee of the Board shall engage in practice before the Board or its agents in any respect in connection with any case or proceeding in which he participated which was pending during the time of his membership on the Board or employment with the Board.

(Source: Amended at 14 Ill. Reg. 1270, effective January 5, 1990)

Section 1100.90 Amicus Curiae

Amicus Curiae briefs may be filed by leave of the Board, or at the request of the Board. A motion for leave to file an amicus curiae brief will state the reasons why an amicus curiae brief is desirable. The Board's standards by which to grant leave to file an amicus brief will include the importance of the issue presented, the general application of the issue presented and the need perceived by the Board for additional briefing on the issue presented. The amicus curiae brief shall conform to any conditions imposed by the Board for briefs in the case in which the brief is filed. The amicus curiae brief shall be filed on or before the due date of the initial brief of the party whose position it supports. Amicus curiae parties will be invited to participate in oral arguments heard by the Board.

(Source: Added at 14 Ill. Reg. 1270, effective January 5, 1990)

Section 1100.100 Gender Usage

Whenever the masculine gender is used in 80 Ill. Adm. Code: Subtitle C, Chapter III, that reference also refers to the female gender.

(Source: Added at 14 Ill. Reg. 1270, effective January 5, 1990)

Section 1100.105

Qualifications of Administrative Law Judges

In all contested case hearings, the Hearing Officer shall be an administrative law judge. The administrative law judge shall be an attorney licensed to practice law in Illinois. The administrative law judge shall be an employee of the Board or an individual hired by contract with the Board for the purpose of conducting a particular hearing.

(Source: Added at 26 Ill. Reg. 11472, effective July 23, 2002)

Section 1100.110 Conflict of Interest

At any time prior to the issuance of the recommended decision and order, a party may move to disqualify the administrative law judge on the grounds of bias or conflict of interest. The motion shall be submitted in writing to the General Counsel, with a copy to the administrative law judge, setting out the specific instances of bias or conflict of interest. An adverse decision or ruling, in and of itself, is not grounds for disqualification. The General Counsel may decline to disqualify the administrative law judge or appoint another administrative law judge to hear the case.

(Source: Added at 26 Ill. Reg. 11472, effective July 23, 2002)

Part 1105 – Hearing Procedures
Subpart A: Non-Adversarial Proceedings

Section 1105.10 General Statement of Purpose

This Subpart details the procedures that will be followed in hearings that deal with issues related to the holding of an election, challenged ballots, amendment of certification or unit clarification, pursuant to Section 7 of the Illinois Educational Labor Relations Act [115 ILCS 5/7], (“the Act”), and 80 Ill. Adm. Code 1110.100.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.20 Setting of Representation Hearing

- a) Where a representation petition has been filed and the Illinois Educational Labor Relations Board (the Board) has determined that the petition is supported by an adequate showing of interest and there is reasonable cause to believe that a question of representation exists pursuant to Section 7 of the Act and 80 Ill. Adm. Code 1110.100 a hearing shall be scheduled on any unresolved issues relating to the holding of an election. These issues include (but are not limited to) the scope of the bargaining unit, the exclusion of confidential, supervisory, or managerial employees as defined in the Act, or the existence of a bar to a petition or an election. Where the parties to a representation petition are able to agree to the holding of an election and enter into a consent agreement pursuant to 80 Ill. Adm. Code 1110.100, no hearing will be held.
- b) Where a petition to clarify an existing bargaining unit is filed pursuant to 80 Ill. Adm. Code 1110.160 and it presents unresolved issues of material fact, it shall be set for hearing. When the petition does not present unresolved issues of material fact, the Executive Director will rule on the petition without a hearing. A fact is material to the claim or defense in issue when the success of the claim or defense is dependent upon the existence of that fact.
- c) Where a petition to amend certification is filed pursuant to 80 Ill. Adm. Code 1110.170 and it presents unresolved issues

of material fact, it shall be set for hearing. When the petition does not present unresolved issues of material fact, the Executive Director will rule on the petition without a hearing. A fact is material to the claim or defense in issue when the success of the claim or defense is dependent upon the existence of that fact.

- d) Whenever a challenged ballot is determinative of the results of an election, a hearing shall be set when the challenge presents unresolved questions of material fact. Issues shall include (but are not limited to) whether the challenged ballot shall be counted in the final tally of the election. When the challenge does not present unresolved questions of material fact, the Executive Director will rule on the challenge without a hearing.
- e) When such a hearing is necessary to resolve issues relating to the holding of an election, challenged ballots, amendment of certification or unit clarification, the Chief Administrative Law Judge shall appoint a hearing officer and shall give at least seven days' notice to the parties. That notice shall include:
 - 1) The name of the hearing officer;
 - 2) The nature, location, date, and time of the hearing;
 - 3) A statement of the legal authority and jurisdiction under which the hearing is to be held; and
 - 4) A reference to the particular section of the Act and the rules of the Board involved.
- f) Motions to intervene or participate in the hearing, motions for continuances, and motions to revoke or quash subpoenas shall be directed to the hearing officer, or, in the event that a hearing officer has not been named, to the Chief Administrative Law Judge. All such motions or requests must be in writing, must state with specificity the reasons or grounds for the motion, and must be served on all parties simultaneously with their filing with the hearing officer or Chief Administrative Law Judge.
- g) Unless otherwise provided in the rules of the Board governing specific types of proceedings, the briefing schedule for all motions shall be as follows:

- 1) Any supporting brief by the moving party shall be filed and served on all other parties simultaneously with the motion.
 - 2) Other parties shall have seven days to file a response and serve that response on all other parties simultaneously with the filing.
 - 3) The parties must seek leave of the hearing officer to file any additional briefs. The hearing officer will allow the filing of additional briefs upon demonstration that material issues which could not have been anticipated have been raised.
- h) Motions for continuances will be granted only for good cause shown, such as the unavoidable absence of a person essential to the hearing, and only when the continuance will not unduly delay the hearings. The moving party shall state specifically in the motion the reasons that a continuance is being sought and shall state whether the moving party has discussed the motion with all other parties and whether any other party opposes the motion. If the moving party has based the motion on the existence of a conflicting commitment, the moving party must state that he or she has unsuccessfully attempted to change the conflicting date. If the unavailable person is a witness, the moving party shall state specifically why the evidence or testimony sought to be introduced through that witness cannot be introduced through another witness or other witnesses.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.30 Authority of Hearing Officer

The hearing officer shall have the duty to conduct a fair hearing, to ensure development of a clear and complete record, to take all necessary action to avoid delay, and to maintain order. The hearing officer shall have all powers necessary to these ends including (but not limited to) the authority to:

- a) Require submission of exhibits before the hearing;
- b) Require all parties to state in writing their positions with respect to issues, and to submit pre-hearing information, including a list of all exhibits to be offered by each party in

their case in chief and a copy of each such exhibit, stipulations as to the authenticity and business record status of each such exhibit, and the estimated time proposed for the party's case in chief. Parties submitting pre-hearing information specified above must serve that information on all other parties;

- c) Administer oaths and affirmations or direct the administration of oaths and affirmations by the court reporter transcribing the hearing;
 - d) Examine witnesses, direct witnesses to testify, call or subpoena witnesses not offered by the parties, and examine such witnesses;
 - e) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence;
 - f) Regulate the proceedings of the case, and the conduct of the parties and their counsel, including (but not limited to) determining the order in which the parties shall present evidence after considering the parties' relative access to relevant evidence;
 - g) Enter, on his own motion or motion of a party, such orders as are just when a party fails to comply with any order entered under 80 Ill. Adm. Code 1100, 80 Ill. Adm. Code 1105, 80 Ill. Adm. Code 1110, 80 Ill. Adm. Code 1120, 80 Ill. Adm. Code 1125, 80 Ill. Adm. Code 1130 and 80 Ill. Adm. Code 1135;
 - h) Establish reasonable limits on the frequency and duration of the testimony of any witness and limit repetitious or cumulative testimony;
 - i) Establish reasonable time limits and guidelines for opening or closing statements based upon the number and complexity of the issues;
 - j) Establish deadlines and limitations for the filing of post-hearing briefs, including (but not limited to) requiring each party to elect between offering closing arguments or submitting post-hearing briefs simultaneously on a date set by the hearing officer; and
 - k) Issue decisions pursuant to Section 1105.80 of this Subpart.
- (Source: Amended at 14 Ill. Reg. 1278, effective January 5, 1990)

Section 1105.40 Rights of Parties

- a) All parties to a representation hearing shall have the following rights:
 - 1) To appear on their own behalf, to be represented by counsel, or to be represented by persons experienced and knowledgeable in the matters under consideration;
 - 2) To offer evidence through the testimony of witnesses or through exhibits;
 - 3) To request subpoenas in order to subpoena witnesses or documents for the hearing;
 - 4) To question witnesses offered by other parties or the hearing officer;
 - 5) To object to testimony or exhibits offered by other parties or the hearing officer; and
 - 6) To make opening statements and to make either closing statements or submit post-hearing briefs simultaneously, subject to any limitation established by the hearing officer pursuant to Section 1105.30 of this Subpart.
- b) Misnomer of a party shall not be grounds for dismissal; the name of any party may be corrected at any time while the case is pending.
- c) All representation and decertification petitions may be amended at any time to conform with the evidence presented in the hearing.

(Source: Amended at 14 Ill. Reg. 1278, effective January 5, 1990)

Section 1105.50 Conduct of Hearing

- a) All hearings under this Subpart shall be public.
- b) All witnesses shall be sworn.
- c) All testimony shall be recorded stenographically, or by other means which adequately preserve the record. The parties shall be responsible for obtaining their own copies of the transcript from the reporter. In the event that a party wishes to correct a transcription error in the transcript, the party shall notify the hearing officer in writing within seven days of receipt of the transcript and shall simultaneously serve a copy of that notification upon all other parties.

- d) A party tendering an exhibit for identification or admission into evidence shall be responsible for providing the original and three copies of the exhibit to the hearing officer and one copy to each other party at the time that the exhibit is tendered.
- e) The hearing record in all non-adversarial proceedings shall include:
 - 1) All petitions (excluding showing of interest submitted pursuant to 80 Ill. Adm. Code 1110), motions, briefs, exceptions, and rulings or decisions by the hearing officer;
 - 2) All evidence received by the hearing officer;
 - 3) A statement of all matters of which official notice has been taken;
 - 4) Offers of proof, objections, and rulings thereon;
 - 5) Proposed findings of fact and conclusions of law; and
 - 6) Any ex parte communications prohibited by Section 10-60 of the Illinois Administrative Procedure Act [5 ILCS 100/10-60], but such communications shall not form the basis for any finding of fact.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.60 Admissible Evidence

- a) The Hearing Officer shall follow the rules of evidence as applied in the courts of Illinois pertaining to civil actions. In addition, the Hearing Officer will receive evidence which is material, relevant, and would be relied upon by reasonably prudent persons in the conduct of their affairs provided that the rules relating to privileged communications and privileged topics shall be observed.
- b) Evidence may be presented in the form of testimony, exhibits, or stipulations.

Section 1105.70 Official Notice

The Hearing Officer and the Board may take official notice of all facts of which Illinois courts may take judicial notice and of other facts within the specialized knowledge and experience of the Board.

Section 1105.80 Decisions and Exceptions

- a) The hearing officer shall issue a decision and give reasons for that decision in writing pursuant to the time limits established in 80 Ill. Adm. Code 1110.100(h) of the rules of the Board. Any findings of fact in this decision must be based exclusively upon the evidence in the record and on matters of which official notice has been taken.
- b) The parties may file exceptions to the hearing officer's recommended decisions and briefs in support of those exceptions no later than fourteen days after receipt of the recommended decision. Those exceptions and briefs shall be filed with the General Counsel. Exceptions shall specify each finding of fact and conclusion of law to which exception is taken. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. The other parties shall have fourteen days from receipt of the exceptions and supporting brief to file a response with the General Counsel. Such response shall be served on all parties and a certificate of service shall be attached. A party may also file cross-exceptions and a supporting brief no later than 14 days from receipt of another party's exceptions and supporting brief. Those cross-exceptions and supporting brief shall be filed with the General Counsel. Copies of the cross-exceptions and supporting brief shall be served upon all other parties and a certificate of service shall be attached. The other parties shall have 14 days from receipt of the cross-exceptions and supporting brief to file a response with the General Counsel. Such response shall be served upon all parties and a certificate of service shall be attached. Parties shall file the original and seven copies of their exceptions, cross-exceptions and supporting brief or response with the General Counsel. The General Counsel shall provide the Board with copies of the exceptions, cross-exceptions, briefs, and the recommended decision.
- c) The Board shall review the hearing officer's decision and any exceptions pursuant to 80 Ill. Adm. Code 1110.100(j) and will issue and serve upon all parties a written decision giving

the Board's reasons for its determination. *An order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining representative of employees in the bargaining unit, is a final order* (Section 7(d) of the Act). An order of the Board dismissing or granting a petition for clarification of an existing bargaining unit, or dismissing or granting an amendment of certification is a final order.

- d) If no exceptions have been filed within 14 days after the parties' receipt of the Hearing Officer's decision, the parties will be deemed to have waived their exceptions.
- e) In cases removed to the Board pursuant to 80 Ill. Adm. Code 1110.100(e) of the Rules of the Board, the Board shall review the record and briefs submitted by the parties and shall issue and serve upon all parties a written decision and order. This decision and order shall include the Board's reasons for its decision.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Subpart B: Contested Cases

Section 1105.90 General Statement of Purpose

The rules in this Subpart detail the procedures that will be followed in hearings on election objections and unfair labor practice charges pursuant to Sections 8, 14, and 15 of the Act and 80 Ill. Adm. Code 1110.50 and 1120.10 through 1120.60.

Section 1105.100 Setting of Contested Case Hearing

- a) Where the Executive Director has issued a complaint on an unfair labor practice charge pursuant to Section 15 of the Act and 80 Ill. Adm. Code 1120.30 or a finding of probable

- cause with respect to an election objection pursuant to Section 8 of the Act and 80 Ill. Adm. Code 1110.150, a hearing shall be scheduled. Unfair labor practice charges and election objections having a common nucleus of operative facts shall be consolidated for purposes of hearing.
- b) Complaints will issue or probable cause will be found when the investigation has disclosed adequate credible statements, facts, or documents which, if substantiated, and not rebutted in a hearing, would constitute sufficient evidence to support a finding of a violation of the Act. Issuance of a complaint or finding of probable cause that objectionable conduct occurred by the Executive Director is not a decision that an unfair labor practice or objectionable conduct has in fact occurred.
 - c) When such a hearing is necessary, the Chief Administrative Law Judge shall appoint an Administrative Law Judge. When the Executive Director issues a Complaint and Notice of Hearing, the parties shall be given at least seven days' notice of the hearing. That notice and the complaint or finding of probable cause shall include:
 - 1) The name of the Administrative Law Judge;
 - 2) The location, date, and time of the hearing;
 - 3) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - 4) A reference to the particular section of the Act and the rules of the Board involved; and
 - 5) A brief statement of the nature of the matters at issue.
 - d) Motions shall be directed to the Administrative Law Judge, or, in the event that an Administrative Law Judge has not been named, to the Chief Administrative Law Judge. All such motions or requests must be in writing, must state with specificity the reasons or grounds for the motion, and must be served on all parties simultaneously with their filing with the Administrative Law Judge or Chief Administrative Law Judge. Motions that would preclude a hearing, such as a motion to dismiss or to refer the matter to arbitration, should be filed with the Answer. However, such a motion may be

filed at any time with the permission of the Administrative Law Judge or the Chief Administrative Law Judge.

- e) Unless otherwise provided in the rules of the Board governing specific types of proceedings, the briefing schedule for all motions shall be as follows:
 - 1) Any supporting brief by the moving party shall be filed and served on all other parties simultaneously with the motion.
 - 2) Other parties shall have seven days to file a response and serve that response on all other parties simultaneously with the filing.
 - 3) The parties must seek leave of the Administrative Law Judge file any additional briefs. The Administrative Law Judge will allow the filing of additional briefs upon demonstration that material issues which could not have been anticipated have been raised.
- f) Motions for continuances will be granted only for good cause shown, such as the unavoidable absence of a person essential to the hearing, and only when the continuance will not unduly delay the hearing. The moving party shall state specifically in the motion the reasons that a continuance is being sought and shall state whether the moving party has discussed the motion with all other parties and whether any other party opposes. If the moving party has based the motion on the existence of a conflicting commitment, the moving party must state that he or she has unsuccessfully attempted to change the conflicting date. If the unavailable person is a witness, the moving party shall state specifically why the evidence or testimony sought to be introduced through that witness cannot be introduced through another witness or other witnesses.
- g) The Executive Director may amend the complaint prior to the hearing upon motion of a party or on the Executive Director's own motion. Grounds for amendment will include newly discovered evidence, inadvertent exclusions and new allegations. The parties shall receive reasonable notice of the amendment, and the Respondent shall have 15 days after the service of the amended complaint, unless waived by the

Respondent, within which to file an answer to the amended complaint.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.110 Parties

- a) The party filing an unfair labor practice charge or election objection shall be designated the complainant. Any adverse party shall be designated the respondent.
- b) Misnomer of a party shall not be grounds for dismissal; the name of any party may be corrected at any time.

(Source: Amended at 14 Ill. Reg. 1278, effective January 5, 1990)

Section 1105.120 Authority of Hearing Officer

The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order and to ensure development of a clear and complete record. The Hearing Officer shall have all powers necessary to these ends including (but not limited to) the authority to:

- a) Hold pre-hearing conferences for settlement, simplification of the issues, or any other related purposes;
- b) Enter, on his own motion or motion of a party, such orders as are just when a party fails to comply with any order entered under 80 Ill. Adm. Code 1100, 80 Ill. Adm. Code 1105, 80 Ill. Adm. Code 1110, 80 Ill. Adm. Code 1120, 80 Ill. Adm. Code 1125, 80 Ill. Adm. Code 1130 and 80 Ill. Adm. Code 1135.
- c) Regulate the proceedings of the contested case and the conduct of the parties and their counsel;
- d) Administer oaths and affirmations or direct the administration of oaths and affirmations by the court reporter transcribing the hearing;
- e) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence;
- f) Examine witnesses and direct witnesses to testify ;
- g) Establish reasonable time limits and guidelines for opening and closing statements based upon the number and complexity of the issues;

- h) Establish deadlines and limitations for the filing of post-hearing briefs, including (but not limited to) requiring each party to elect between offering closing arguments or submitting post-hearing briefs simultaneously on a date set by the Hearing Officer;
 - i) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding;
 - j) On motion of a party, to amend a complaint before the hearing concludes to conform to the evidence presented in the hearing; and
 - k) Issue decisions subject to appeal to the Board.
- (Source: Amended at 14 Ill. Reg. 1278, effective January 5, 1990)

Section 1105.130 Requests for Documents (Repealed)

(Source: Repealed at 14 Ill. Reg. 1278, effective January 5, 1990)

Section 1105.140 Pre-Hearing Memorandum

- a) The parties shall each file written pre-hearing memoranda with the Administrative Law Judge not less than seven days before the hearing. The pre-hearing memoranda shall include:
 - 1) A list of all exhibits to be offered by each party, and a statement that the parties have exchanged these exhibits;
 - 2) Objections to the authenticity of any of the exhibits tendered by all other parties, and the status of any of the exhibits as business records;
 - 3) A list of proposed witnesses, an estimate of the time that will be required for the direct examination of those witnesses, and a summary of the matters to which they will testify;
 - 4) A joint statement of the uncontested material facts.
- b) The parties may submit individual or joint statements of the contested material facts or contested issues of law with the required portions of the pre-hearing memoranda.
- c) The Administrative Law Judge, on his or her own motion, may waive the filing of the pre-hearing memorandum in

whole or in part when he or she finds that such waiver is needed to avoid unnecessary delay of the hearing or an undue burden to a party.

- d) Failure by a party to disclose an exhibit or the identity of a witness may be grounds for a motion by an opposing party or by the Administrative Law Judge for exclusion of that exhibit or witness where offered in a party's case-in-chief or, in the alternative, for a continuance to allow the opposing party time to review the exhibit or determine the nature of the witness' testimony and prepare to meet or counter such evidence. Such motions shall be granted only upon a showing that the moving party was surprised and placed at a disadvantage by the failure to disclose in the pre-hearing memorandum. Exhibits and witnesses not listed in the pre-hearing memorandum can be presented for rebuttal or impeachment purposes.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.150 Rights of Parties

All parties to a contested case hearing shall have the following rights:

- a) To appear on their own behalf, to be represented by counsel, or to be represented by persons experienced and knowledgeable in the matters under consideration;
- b) To offer evidence through the testimony of witnesses or through exhibits;
- c) To request subpoenas in order to subpoena witnesses or documents for the hearing;
- d) To question witnesses offered by other parties;
- e) To object to testimony or exhibits offered by other parties; and
- f) To make opening statements and to make either closing statements or submit post-hearing briefs simultaneously subject to any limitation established by the Hearing Officer pursuant to Section 1105.100 of this Subpart.

Section 1105.160 Order of Hearing

- a) The following shall be the order of all contested case hearings, subject to modification by the Administrative Law Judge for good cause:
 - 1) Presentation, argument, and disposition of motions preliminary to a hearing on the merits of the matters raised in the complaint;
 - 2) Presentation of opening statements;
 - 3) Complainant's case-in-chief;
 - 4) Respondent's case-in-chief;
 - 5) Complainant's case-in-rebuttal;
 - 6) Complainant's closing argument, which may include legal argument;
 - 7) Respondent's closing argument, which may include legal argument;
 - 8) Complainant's rebuttal argument, which may include legal argument;
 - 9) Presentation and argument of motions regarding removal of the case to the Board pursuant to 80 Ill. Adm. Code 1120.40, where applicable; and
 - 10) A schedule of submission of briefs to the Administrative Law Judge or Board pursuant to 80 Ill. Adm. Code 1120.40.
- b) The order of the contested case hearing will be modified by the Administrative Law Judge for good cause shown, such as upon motion of a party demonstrating that such modification is necessary because of the unavailability of a necessary witness or an attorney and that the moving party has not caused or contributed to such unavailability.
- c) The respondent may, at the close of the complainant's case, move for judgment in favor of the respondent. If the ruling on the motion is favorable to the respondent, an order dismissing the action shall be entered. If the ruling on the motion is adverse to the respondent, the respondent may proceed to adduce evidence in support of the respondent's defense.
- d) The hearing record in all contested cases shall include:

- 1) All pleadings (including all notices and responses thereto), motions, briefs, exceptions, and rulings, or decisions by the Administrative Law Judge;
 - 2) All evidence received by the Administrative Law Judge;
 - 3) A statement of all matters of which official notice has been taken;
 - 4) Offers of proof, objections, and rulings thereon;
 - 5) Proposed findings of fact and conclusions of law; and
 - 6) Any ex parte communications prohibited by Section 10-60 of the Illinois Administrative Procedure Act [5 ILCS 100/10-60], but such communications shall not form the basis for any finding of fact.
- e) Any findings of fact in decisions issued by the Administrative Law Judge or Board shall be based exclusively on the evidence in the Record and on matters of which official notice has been taken.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.170 Conduct of Hearing

- a) All hearings under this Subpart shall be public.
- b) All witnesses shall be sworn.
- c) All testimony shall be recorded stenographically or by other means which adequately preserve the record. The parties shall be responsible for obtaining their own copies of the transcript from the reporter. In the event that a party wishes to correct a transcription error in the transcript, the party shall notify the Hearing Officer in writing within seven days of receipt of the transcript and shall simultaneously serve a copy of that notification upon all other parties.
- d) A party tendering an exhibit for identification or admission into evidence shall be responsible for providing the original and three copies of the exhibit to the Hearing Officer and one copy to each other party at the time that the exhibit is tendered.

(Source: Amended at 14 Ill. Reg. 1278, effective January 5, 1990)

Section 1105.180 Confidentiality

- a) Except as provided in subsection (b) of this Section or in the Board's rules relating to the Freedom of Information Act [5 ILCS 140], no Board member or employee of the Board shall produce or present any files, documents, reports, memoranda, or records of the Board in any contested case proceeding held pursuant to the rules of the Board, whether in response to a subpoena duces tecum or otherwise, without the written consent of the Board. Nor shall any such person testify in behalf of any party in any such proceeding with respect to any information, facts, or other matter coming to his or her knowledge in his or her official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board, whether in answer to a subpoena or otherwise, without the written consent of the Board. The Board will consent upon a demonstration of the absolute necessity of such documents or testimony to the case and the impossibility of obtaining the evidence sought from any other source.
- b) Notwithstanding the prohibitions of subsection (a) of this Section, after a witness called by the charging party or the respondent has testified in a hearing upon an unfair labor practice complaint, the Administrative Law Judge shall, upon motion of the opposing party, inspect in camera any statement (as hereinafter defined) of such witness in the possession of the Board. The Administrative Law Judge shall excise the portions of such statement which, although not relating to the subject matter of the testimony of the witness, do relate to other matters raised by the pleadings. With such material excised, the Administrative Law Judge shall then direct delivery of such statement to the parties for use on cross-examination and redirect. If, pursuant to such procedure, any portion of such statement is withheld from the parties and a party objects to such withholding, the entire text of such statement shall be preserved by the Administrative Law Judge, and, in the event a party files exceptions with the Board based upon such withholding, shall be made available to the Board for the purpose of

determining the correctness of the ruling of the Administrative Law Judge. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the Administrative Law Judge shall order it to be delivered directly to the parties for examination and use for the purpose of cross-examination and redirect. The right to inspect any such statements shall be waived if the motion to have the Administrative Law Judge inspect and deliver the statement for use in cross-examination is not made before the witness is excused from the stand.

- c) The term "statement" as used in this Section means:
 - 1) A written statement made by said witness and signed or otherwise adopted or approved by him; or
 - 2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the party obligated to produce the statement and recorded contemporaneously with the making of such oral statement.

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.190 Admissible Evidence

- a) The Hearing Officer shall follow the rules of evidence as applied in the courts of Illinois pertaining to civil actions. In addition, the Hearing Officer will receive evidence which is material, relevant, and would be relied upon by reasonably prudent persons in the conduct of their affairs provided that the rules relating to privileged communications and privileged topics shall be observed.
- b) Evidence may be presented in the form of testimony, exhibits, or stipulations.

Section 1105.200 Official Notice

The Hearing Officer and the Board may take official notice of all facts of which Illinois courts may take judicial notice and of other facts within the specialized knowledge and experience of the Board.

Section 1105.210**Examination of Hostile Party or Adverse Witness**

The parties to a hearing under this Subpart shall be entitled to call hostile or adverse witnesses as provided by Section 2-1102 of the Civil Practice Law [735 ILCS 5/2-1102].

(Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.220 Decisions and Exceptions

- a) Pursuant to the procedures established in 80 Ill. Adm. Code 1120.40, the Administrative Law Judge shall issue a recommended decision and give reasons for that decision or shall remove the case to the Board.
- b) In cases in which the Administrative Law Judge issues a recommended decision, the parties may file exceptions to the Administrative Law Judge's recommended decision and briefs in support of those exceptions no later than twenty-one days after the receipt of the recommended decision. Those exceptions and briefs shall be filed with the General Counsel. Exceptions shall specify each finding of fact and conclusion of law to which exception is taken. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. The other parties shall have twenty-one days from receipt of the exceptions and supporting brief to file a response with the General Counsel. Such response shall be served on all parties and a certificate of service shall be attached. A party may also file cross-exceptions and a brief in support of those cross-exceptions no later than 14 days after receipt of another party's exceptions. Those cross-exceptions and briefs shall be filed with the General Counsel. Copies of all cross-exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. The other parties shall have 14 days from receipt of the cross-exceptions and supporting brief to file a response with the General Counsel. Such response shall be served on all parties and a certificate of service shall be attached. Parties shall file the original and seven copies of their exceptions, cross-exceptions and supporting brief or response with the

General Counsel. The General Counsel shall provide the Board with copies of the exceptions, cross exceptions, briefs, and the recommended decision.

- c) The Board shall review the Administrative Law Judge's decision and any exceptions pursuant to 80 Ill. Adm. Code 1120.50(b) and shall issue and serve upon all parties its decision and order. This written decision and order shall include the Board's reasons for its decision. This decision is a final decision for the purposes of the Administrative Review Law [735 ILCS 5/Art.III].
 - d) If no exceptions have been filed within 21 days after the parties' receipt of the Administrative Law Judge's recommended decision, the parties will be deemed to have waived their exceptions.
 - e) In cases removed to the Board pursuant to 80 Ill. Adm. Code 1120.40(f), the Board shall review the record and briefs submitted by the parties and shall issue and serve upon all parties a written decision and order. This written decision and order shall include the Board's reasons for its decision.
- (Source: Amended at 28 Ill. Reg. 8710, effective June 6, 2004)

Section 1105.230 Motions for Production of Documents

- a) After a hearing has been scheduled, a party may file a written motion for the production of documents for inspection or copying. The motion shall be filed with the Administrative Law Judge and served upon all parties to the matter. The Administrative Law Judge may grant the motion for good cause shown. Motions for the production of documents shall be filed at least 15 days prior to the hearing and shall provide a reasonable period of time for producing the documents, which shall not be less than seven days and shall be prior to the hearing.
- b) The party from whom production is sought may serve upon the party moving for production and the Administrative Law Judge written objections to producing the documents on the ground that the motion is improper in whole or part. Objections must be filed by the date for production of the

documents. If objections are filed, production of the documents in dispute shall not be required until the objections are ruled upon. Copies of documents may be furnished in lieu of the originals.

- c) This Section does not preclude the use of a subpoena duces tecum requesting the production of documents from a person not a party.
- d) Time limits specified in this Section may be modified by an order of the Administrative Law Judge assigned to the case, or by the Chief Administrative Law Judge.

(Source: Added at 28 Ill. Reg. 8710, effective June 6, 2004)

Part 1110 – Representation Procedures

Section 1110.10 General Statement of Purpose

The regulations contained in this Part detail the procedures that employers, employees, and employee organizations should use for employer voluntary recognition of an employee organization and for instituting representation and related proceedings. These procedures are the exclusive means by which an educational employer may recognize an employee organization after the effective date of this Part if the bargaining relationship and any ensuing collective bargaining agreement are to be pursuant to the Illinois Educational Labor Relations Act (the Act) [115 ILCS 5] and subject to the processes of this Board.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.15 Investigations

The extent and nature of all investigations by the Board or its designated agents in the course of representation proceedings shall be determined by the specific issues and facts raised by the parties.

- a) Investigations of the showing of interest for representation petitions and intervention in elections shall include a review of the evidence submitted to the Board that a sufficient number of employees desire representation by an employee organization for purposes of collective bargaining in order to establish that the levels of interest required by the Act and this Part have been met.
- b) Investigations of the showing of interest for a decertification petition shall include a review of the evidence submitted to the Board that 30 percent of the employees in the bargaining unit no longer desire to be represented by the incumbent bargaining agent. The Board or its designated agent will interview witnesses and take statements when necessary to ascertain whether the evidence was obtained in accordance with the Act and this Part.
- c) Investigations relating to all other matters under this Part shall include a review of all documents and other evidence submitted by the parties and, when necessary, interviews of

representatives of the parties or other persons having knowledge of relevant facts.

Section 1110.20 Employee Organizations Seeking Recognition

- a) An employee organization seeking recognition in a bargaining unit in which no other employee organization has lawfully attained representation rights may either request that the employer voluntarily recognize it or may file a representation petition with the Board.
- b) An employee organization seeking recognition in a bargaining unit in which another employee organization has lawfully attained representation rights may pursue its request only by filing a representation petition with the Board.

Section 1110.30 Employer Responses to Recognition Requests

- a) An employer faced with a request for recognition in a bargaining unit that is not currently represented by an employee organization may file a representation petition with the Board, may decline to respond to the request, or, if an election is sought, may consent to a representation election. Where the bargaining unit is not currently represented, the employer shall recognize an employee organization that seeks voluntary recognition if that organization appears to represent a majority of employees in the unit and if the voluntary recognition procedures specified in Section 1110.40 of this Part are followed.
- b) An employer faced with a request for recognition in a bargaining unit in which another employee organization has lawfully attained representation rights may file a representation petition with the Board, may decline to respond to the request, or, if an election is sought, may consent to a representation election. The employer may not resort to the voluntary recognition procedures in response to such a request.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.40 Voluntary Recognition Procedures

- a) Voluntary recognition procedures may not be used under the following circumstances:
 - 1) whenever an employee organization has lawfully attained representation rights as the exclusive representative of the employees in the bargaining unit;
 - 2) whenever there has been a valid representation election or a majority interest petition has been dismissed within the preceding 12 months;
 - 3) whenever the proposed bargaining unit would include both professional and nonprofessional employees.
- b) An employee organization is not required to follow voluntary recognition procedures prior to employing majority interest procedures.
- c) Whenever a party intends to use the voluntary recognition procedures, the party shall notify the Board of its intent. The notification shall be on a form developed by the Board and shall include:
 - 1) the name and address of the employer;
 - 2) the name, address, and affiliation, if any, of the employee organization to be recognized;
 - 3) a description of the proposed bargaining unit;
 - 4) the approximate number of employees in the proposed bargaining unit;
 - 5) the reasons why the employee organization appears to represent a majority of the employees;
 - 6) the date on which the employer posted or intends to post the voluntary recognition notice; and
 - 7) a copy of the voluntary recognition notice that has been or will be posted.
- d) The employer must post the voluntary recognition notice on the date specified in the notification filed with the Board on bulletin boards and other places where notices for employees in the bargaining unit are customarily placed. The notice must be on a form developed by the Board, and must contain the following:
 - 1) a statement that, subject to Board certification, the employer intends to recognize the employee organization

- if no competing claims of representation are filed with the Board;
- 2) the name and affiliation, if any, of the employee organization to be recognized;
 - 3) a description of the proposed bargaining unit;
 - 4) the date of posting; and
 - 5) the date by which a competing claim of representation must be filed with the Board, which is the date that the posting period is scheduled to terminate.
- e) The notice shall remain posted for a period of at least 20 school days. For purposes of computing the 20-day period, a school day shall not include weekends, days on which holidays are recognized, or any day on which a significant portion of the regularly scheduled work force in the bargaining unit is not scheduled to work. The employer shall attempt to insure that the notice is not removed or defaced and shall replace any notice which is removed or defaced.
- f) During the posting period, any competing employee organization may file a petition with the Board. Prior to, or simultaneously with, its filing with the Board, the petition shall also be served on the employer and the employee organization that was to have been voluntarily recognized. The petition shall be on a form developed by the Board and shall contain:
- 1) the name, address, and affiliation, if any, of the employee organization;
 - 2) the names of the employer and employee organization that the employer intends to voluntarily recognize;
 - 3) a description of the proposed bargaining unit;
 - 4) the date the voluntary recognition notice was posted; and
 - 5) the date the posting period is scheduled to terminate.
- g) A competing employee organization's petition must be supported by a showing of interest by *at least 15 percent of the employees in an appropriate bargaining unit which includes all or some of the employees in the unit intended to be recognized* (Section 7(b) of the Act).
- h) Upon the filing of a competing employee organization's petition, the Board shall treat the notification of intent to use

the voluntary recognition proceedings as a representation proceeding. The Board shall proceed in accordance with Section 7(c) of the Act and Sections 1110.90 -- 1110.150 of this Part.

- i) If no competing employee organization petitions have been filed with the Board by the termination of the posting period, the employee organization shall file with the Board a request for voluntary recognition certification. In the alternative, the employer may file such a request. The request shall be on a form developed by the Board. The request shall be signed and shall contain the following:
 - 1) the name and address of the employer;
 - 2) the name, address, and affiliation, if any, of the employee organization;
 - 3) a description of the proposed bargaining unit;
 - 4) the number of employees in the proposed bargaining unit;
 - 5) the dates and locations of the posting of the voluntary recognition notice;
 - 6) a statement that the notice was not removed or defaced during the posting period; and
 - 7) a statement describing why the employee organization represents the majority of the employees in the bargaining unit.
- j) The petition must be supported by objective evidence that a majority of the employees in the bargaining unit wish to be represented by the employee organization.
 - 1) If authorization cards are offered as evidence, those cards that would not qualify as evidence in support of a representation petition, pursuant to Section 1110.80(c) and (d) of this Part, will not be considered sufficient evidence of majority status.
 - 2) If employees signing such authorization cards have also signed cards authorizing other employee organizations to represent them, those cards will not be considered sufficient evidence of majority status.
- k) The Board will investigate the voluntary recognition request:

- 1) If the Board concludes that the employee organization represents a majority of the employees in the bargaining unit, and that the petition is otherwise consistent with the Act and this Part, the Board shall certify the employee organization as the exclusive representative of the employees.
- 2) If the Board determines that there is insufficient evidence to support the claim of majority status, or that the petition otherwise contravenes the Act or this Part, the Board shall dismiss the petition without prejudice to the filing of a representation petition by either the employer or the employee organization.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.50 Representation Petitions

- a) A representation petition may be filed by:
 - 1) an employee, a group of employees, or an employee organization; or
 - 2) an employer *alleging that one or more labor organizations have presented a claim to be recognized as an exclusive bargaining representative of a majority of the employees in an appropriate unit and that it doubts the majority status of any of the organizations or that it doubts the majority status of an exclusive representative* (Section 7(c)(2) of the Act).
- b) Representation petitions shall be signed by a representative of the petitioning party and shall contain:
 - 1) the name and address of the employer;
 - 2) the name, address, and affiliation, if any, of the employee organization;
 - 3) a description of the proposed bargaining unit which petitioner claims to be appropriate;
 - 4) the approximate number of employees in the proposed bargaining unit;
 - 5) the name of any existing exclusive representative of any employees in the proposed bargaining unit;
 - 6) a brief description of any collective bargaining agreements covering any employees in the proposed

- bargaining unit, and the expiration dates of the agreements;
- 7) the date that the employer recognized any existing exclusive representative of any employees in the proposed bargaining unit, and the method of recognition;
 - 8) election and/or recognition history prior to January 1, 1984, to the extent known;
 - 9) in the case of a petition filed by an employee, a group of employees, or an employee organization, a statement whether the petitioner intends to use the majority interest procedure or the election procedure;
 - 10) in the case of a petition filed by an employer, a statement that one or more employee organizations has demanded recognition and that the employer doubts either their majority status or the continued majority status of the existing representative.
- c) The Board shall serve the representation petition on the appropriate parties.
 - 1) Employer petitions shall be served on the employee organizations that demanded recognition, and on the existing exclusive representative, if any.
 - 2) Employee and employee organization petitions shall be served on the employer and on the existing exclusive representative, if any.
 - d) Employee and employee organization petitions seeking an election shall be accompanied by a showing of interest that at least 30 percent of the employees in the petitioned for bargaining unit wish to be represented by the employee organization. Employee and employee organization majority interest petitions shall be accompanied by a showing of a majority interest.
 - e) A petition may seek joint representation by two or more employee organizations if an instrument, such as a joint council, has been established to effectuate the joint representation. In such instances, the petition shall describe the instrument.
 - f) A petitioner may withdraw a representation petition seeking an election as follows:

- 1) If there are no intervenors, at any time prior to the direction of an election.
 - 2) If there are no intervenors, at any time after the direction of an election, but prior to the election. However, such withdrawal shall bar the petitioner from petitioning for an election or filing a majority interest petition in a bargaining unit covering all or part of the petitioned for unit for one year following the withdrawal.
 - 3) If there are intervenors, the employee organization may not withdraw its petition without the consent of all parties. However, the employee organization may file a statement signed by its authorized representative that it no longer wishes to appear on the ballot. The statement shall be filed no later than ten days prior to the election. Upon receipt of such a statement, the Board shall strike the employee organization's name from the ballot.
- g) A petitioner may withdraw a majority interest petition as follows:
- 1) If there are no intervenors, at any time. However, if the petitioner withdraws the petition after the Board has determined that there is clear and convincing evidence of fraud or coercion in obtaining the showing of interest, such withdrawal shall bar the petitioner from filing a representation petition in a bargaining unit covering all or part of the petitioned for unit for one year following the withdrawal.
 - 2) If there are intervenors that meet the requirements of Section 1110.105(q) and Section 1110.80(b) of this Part, the employee organization may not withdraw its petition without the consent of all parties. However, the employee organization may file a statement signed by its authorized representative that it no longer wishes to appear on the ballot. The statement shall be filed no later than 10 days prior to the election. Upon receipt of such a statement, the Board shall strike the employee organization's name from the ballot.

- h) Failure to complete the petition by listing all of the information contained in subsection (b) of this Section shall not be grounds for dismissal of the petition so long as the unlisted information is available from any other party. A petition seeking an election may be revised by the filing party at any time prior to a hearing or agreement to a consent election. A majority interest petition may be revised by the filing party within 21 days after service of the petition. Notice of any revision shall be served upon all other parties.
(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.60 Decertification Petitions

- a) A petition to decertify an existing exclusive representative may be filed by an employee or group of employees. The Board shall serve the petition on the exclusive representative and on the employer. The petition shall be on a form developed by the Board. It shall be signed and shall contain the following:
 - 1) the name and address of the petitioner;
 - 2) the name, address, and affiliation, if any, of the exclusive representative;
 - 3) the name and address of the employer;
 - 4) a description of the bargaining unit;
 - 5) the approximate number of employees in the bargaining unit;
 - 6) the date that the exclusive representative was recognized and the method of recognition, if known; and
 - 7) a brief description of any collective bargaining agreements covering any employees in the bargaining unit, and the expiration dates of the agreements.
- b) An employer shall not instigate or lend support to a decertification petition. Allegations that an employer has violated this subsection may be raised in motions to dismiss the decertification petition, objections to the decertification election, or unfair labor practice charges.
- c) The majority interest procedure shall not be used to decertify an employee organization.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.70 Timeliness of Petitions and Bars to Elections

- a) Election bar: With respect to any bargaining unit, *no election may be conducted in a bargaining unit, or subdivision thereof, in which a valid election has been held within the preceding 12 month period* (Section 7(d) of the Act). The Board will dismiss majority interest petitions for a bargaining unit, or subdivision thereof, in which a valid election has been held within the proceeding 12 month period. However, petitions seeking an election filed within the last three months of the 12 month period will be processed, and any resulting election will be conducted after the 12 month period has elapsed. Petitions seeking an election filed in the first 9 months of the 12 month period will be dismissed.
- b) Certification bar: With respect to any bargaining unit, absent unusual circumstances the Board will dismiss a representation or decertification petition filed within 12 months following the date of Board certification of an exclusive representative for all or some of the employees in the bargaining unit, as a result of voluntary certification, majority interest proceeding or representation election. Unusual circumstances include when the exclusive representative dissolves or becomes defunct; when as a result of a schism, substantially all of the members and officers of the exclusive representative transfer their affiliation to a new local or international; or the size of the bargaining unit fluctuates radically within a short time.
- c) With respect to petitions with proposed bargaining units containing professional instructional personnel, representation and decertification petitions may not be filed whenever there is in effect a collective bargaining agreement of three years or shorter duration covering all or some of the employees in the bargaining unit. Collective bargaining agreements of longer than three years duration shall serve as a bar for the first three years of their existence. In all cases, representation and decertification petitions may be filed

between January 15 and March 1 of the year in which the collective bargaining agreement is due to expire or in the third year of an agreement of more than three years duration. However, no such petition may be filed if it would otherwise be barred by subsection (a) or (b) of this Section.

- d) With respect to petitions with proposed bargaining units not containing professional instructional personnel, representation and decertification petitions may not be filed whenever there is in effect a collective bargaining agreement of three years or shorter duration covering all or some of the employees in the bargaining unit. Collective bargaining agreements of longer than three years duration shall serve as a bar for the first three years of their existence. In all cases, representation and decertification petitions may be filed between 90 days and 45 days prior to the expiration date of a collective bargaining agreement of three years duration or less, or any time after 90 days prior to the end of the third year of an agreement of more than three years duration.
- e) A collective bargaining agreement shall not bar the filing of a representation or decertification petition if the agreement is between an employer and an employee organization recognized by the employer after the effective date of this Part without having used the voluntary recognition, majority interest or representation election procedures specified in the Act and this Part.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.80 Showing of Interest

- a) Representation petitions filed by employees, groups of employees and employee organizations that seek an election and all decertification petitions must be accompanied by a 30 percent showing of interest. Majority interest petitions must be accompanied by a showing of majority interest.
 - 1) The showing of interest in support of a representation petition seeking an election shall consist of authorization cards, petitions, or other evidence which demonstrates that at least 30 percent of the employees in the proposed bargaining unit desire to be represented for collective

- bargaining by the petitioned for or petitioning employee organization.
- 2) The showing of interest in support of a decertification petition shall consist only of cards or petitions clearly stating that the employee does not want the incumbent employee organization to continue serving as exclusive representative.
 - 3) The showing of interest in support of a majority interest petition shall consist of current dues deduction authorizations, authorization cards, petitions, or other evidence that demonstrates that more than 50 percent of the employees wish to be represented for collective bargaining by the petitioned for or petitioning employee organization. An authorization card including the information in Appendix A of this Part shall be considered sufficient to support a showing of majority interest.
- b) A petition to intervene in an election or majority interest proceeding must be supported by a 15 percent showing of interest when the petition proposes a bargaining unit substantially similar to the originally proposed unit. In the case of a majority interest petition, the requirements of Section 1110.105(q) of this Part also apply. When the intervenor proposes a bargaining unit substantially different from the originally proposed unit, the petition must be supported by a 30 percent showing of interest in the case of a petition seeking an election and a showing of majority interest in the case of a majority interest petition. In determining whether the proposed bargaining units are substantially similar, the Board will consider the number and type of employees in each of the proposed units. The proposed units will not be considered substantially similar whenever less than 50 percent of the employees in the originally proposed unit are included in the unit proposed by the intervenor. An incumbent exclusive representative shall automatically be allowed to intervene without submitting any showing of interest.

- c) If authorization cards or petitions are submitted as a showing of interest, each signature appearing thereon should be dated by the employee.
- d) Each signature appearing on an authorization card or petition shall be effective for six months from the date it was given.
- e) In the case of a petition seeking an election, whenever an employee has signed authorization cards or petitions for two or more employee organizations, each card or petition shall be counted in computing the required showing of interest. In the case of a majority interest petition, whenever an employee has signed authorization cards or petitions for two or more employee organizations, neither card or signature on a petition shall be counted in computing the required showing of interest.
- f) The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties.
- g) The Executive Director will determine whether the evidence submitted demonstrates the appropriate level of showing of interest pursuant to subsections (a) and (b). Except as provided in Section 1110.105 of this Part, the showing of interest shall not be subject to collateral attack and shall not be an issue at hearing. However, any person who has evidence that the showing of interest was fraudulent or was obtained through misrepresentation or coercion may bring the evidence to the attention of the Board's agent investigating the petition.
- h) If the Executive Director determines that the evidence submitted does not demonstrate the appropriate level of showing of interest, the petitioner or intervenor shall have 48 hours to provide the necessary showing of interest to the Executive Director, except as provided by Section 1110.105(p) of this Part. If the petitioner or intervenor is unable to present any necessary additional evidence of showing of interest within that time, then the petition shall be subject to dismissal.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.90 Posting of Notice

Following the filing of a representation or decertification petition, the Board shall provide the employer with a notice that shall be posted, by the day after the employer receives the notice, on bulletin boards and other places where notices for employees in the bargaining unit are customarily posted, or in conspicuous places in the absence of a customary posting location.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.100 Processing of Petitions Seeking an Election

- a) All parties served with a representation petition seeking an election or a decertification petition shall respond to the petition within seven days after service. The response shall set forth the party's position with respect to the matters asserted in the petition, including, but not limited to, the appropriateness of the bargaining unit. A party that fails to file a timely response without good cause shall be deemed to have waived its right to a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely response.
- b) Upon receipt of the petition, the Board or its agent shall investigate the petition. If the investigation discloses that *there is no reasonable cause to suspect that a question of representation exists*, as defined in Section 7(c)(1) or (2) of the Act, the petition will be dismissed; provided that, the dismissal may be appealed within 14 days to the Board. If the investigation discloses that *there is reasonable cause to suspect that a question of representation exists*, as defined in Section 7(c)(1) or (2) of the Act, the matter will be set for hearing before a hearing officer. All parties shall be given a minimum of seven days notice of the hearing.
- c) Petitions to intervene may be filed with the Board no later than 14 days prior to the date set for the election. Any intervenor who files after the date set for hearing, or if no hearing is held, after the approval of a consent election agreement or the direction of an election pursuant to

subsection (j) of this Section, shall have waived objections to the bargaining unit.

- d) Interested persons who wish to participate in the hearing shall direct such requests to the hearing officer. The request shall be in writing and shall state the grounds for participation. In determining whether to grant the request, the hearing officer shall base his decision on the timeliness of the request, the degree to which the person requesting participation has a real interest at stake, the ability of the parties to represent the interests of the person requesting participation and the complexity of the proceeding.
- e) The hearing officer shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the hearing officer. Within seven days after the close of the record, the hearing officer shall rule on the motions. The hearing officer may also order the case removed to the Board on his own motion within seven days after the close of the record. If the hearing officer orders a case removed, he shall certify that there are no determinative issues of fact that require a hearing officer's recommended decision.
- f) Within seven days after removal, a party may move the Board to remand the case to the hearing officer, identifying in detail the material factual issues in dispute. If the Board fails to rule on the motion within 14 days, the motion will be deemed denied; the General Counsel will set a briefing schedule for briefs to be submitted to the Board. In cases removed to the Board, the Board shall remand the case if, at any time, it determines that the case presents issues of material fact requiring a hearing officer's recommended decision.
- g) In cases not removed to the Board and in cases remanded to the hearing officer, the hearing officer shall file and serve on the parties a recommended decision within 21 days after the

conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time is required due to the length of the record and the complexity of the issues involved. Such additional time shall not exceed 90 days.

- h) Parties may file exceptions to the hearing officer's recommendation and briefs in support of those exceptions no later than 14 days after receipt of the recommendation. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of the cross-exceptions and supporting brief shall be filed with the Board and served on all parties. Any other party may file a response to the cross-exceptions and supporting brief within 14 days from receipt of the cross-exceptions and supporting brief. Such response shall be filed with the Board and served upon all parties. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.
- i) The Board will review the hearing officer's recommendation upon request by a party or on its own motion. If the Board determines that a question concerning representation exists, as defined in Section 7(c)(1) or (2) of the Act, the Board shall direct that an election be held and a notice of election be posted. An election shall not be held on a date on which a substantial portion of the regularly scheduled work force in the bargaining unit is not scheduled to work.
- j) Within seven days following the direction of an election, the employer shall furnish all other parties and the Executive Director with a list of the names and addresses of the employees eligible to vote in the election.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.105 Processing of Majority Interest Petitions

- a) Majority interest procedures may not be used when another employee organization has lawfully attained representation rights as the exclusive representative of the employees in the bargaining unit.
- b) The employer shall provide to the Board and the employee organization a list of employees as of the date of the petition within seven days after receipt of the petition, unless more time, not to exceed 14 days, is granted by the Board due to the size of the unit.
- c) Upon request of the Board, the employer shall provide to the Board and to the employee organization examples of the employees' signatures within 14 days after the Board's request, unless more time, not to exceed 21 days, is granted by the Board due to the size of the unit. If the employer does not provide the list of employees or the signature examples within the allotted time, the Board shall administratively determine the adequacy of the showing of interest, based upon the evidence submitted by the employee organization. A grant of more time to provide a list of employees or signature examples shall, if necessary, extend the time limitation for certifying an employee organization as exclusive representative.
- d) Within 21 days after receipt of the petition, parties served with the petition shall file a written response to the petition. The response shall set forth the party's position with respect to the appropriateness of the unit, any proposed exclusions from the unit, any allegations of fraud or coercion in obtaining the showing of interest, and any other issues raised by the petition. A party that fails to file a timely response without good cause shall be deemed to have waived its right to a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely response.
- e) Upon receipt of the petition, the Board or its agent shall investigate the petition. The Board shall certify the

employee organization as the exclusive representative within 30 days after service of the petition if:

- 1) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;
 - 2) there are no issues of fraud or coercion in obtaining the showing of interest;
 - 3) the petition is otherwise consistent with the Act and with this Part; and
 - 4) either there are no unit appropriateness or exclusion issues or the number of contested positions or employees is not sufficient to affect the determination of majority status.
- f) Where fraud or coercion in obtaining the showing of interest is alleged, the party or employee alleging fraud or coercion must provide its evidence of fraud or coercion to the Board and to the other parties, including a synopsis of any affidavits submitted to the Board, within 21 days after receipt of the petition or the posting of notice, unless additional time is granted by the Executive Director for good cause shown, such as a joint request, an emergency or whenever the Executive Director believes that it would further the purposes of the Act. The petitioner may file a response no later than seven days following the receipt of that evidence, unless additional time is granted by the Executive Director for good cause shown. The Executive Director shall issue his decision within 21 days following the receipt of the petitioner's response.
- g) The employee who alleges fraud or coercion or the parties may file exceptions to the Executive Director's decision and briefs supporting those exceptions no later than seven days after receipt of that decision, and a response to those exceptions may be filed no later than seven days after receipt of such exceptions and briefs. The Board shall issue its decision no later than 45 days from the date that the last brief must be filed pursuant to this subsection. If no exceptions are filed within the seven-day period, the parties and any employee who alleges fraud or coercion will be deemed to

have waived their exceptions. The filing of exceptions shall not stay the certification if the alleged fraud or coercion is not sufficient to affect the majority status of the petition.

- h) If the Executive Director determines that there is clear and convincing evidence of fraud or coercion sufficient to affect the majority status of the petition and no exceptions are filed to that determination, or if the Board makes such a determination, an election will be conducted according to the procedures set forth in this Part. The election shall be conducted within 45 days after the Executive Director's or the Board's determination, unless proceedings concerning the appropriateness of the unit, exclusions from the unit sufficient to affect majority status, or the timeliness of the petition are pending.
- i) If the Executive Director determines that there is not clear and convincing evidence of fraud or coercion sufficient to affect the majority status of the petition and no exceptions are filed to that determination, or if the Board makes such a determination, the Board shall certify the employee organization as the exclusive representative immediately after the Board's determination or within 10 days after service of an unappealed Executive Director's decision if:
 - 1) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;
 - 2) the petition is otherwise consistent with the Act and with this Part; and
 - 3) there are no unit appropriateness or exclusion issues, those issues have been resolved, or the number of contested positions or employees is not sufficient to affect the determination of majority status.
- j) If there are unit appropriateness or exclusion issues, but the number of contested positions or employees is not sufficient to affect the determination of majority status, a party may invoke the Board's unit clarification procedures. Invocation of the Board's unit clarification procedures shall not stay the issuance of a certification.

- k) If there are unit appropriateness or exclusion issues, and the number of contested positions or employees is sufficient to affect the determination of majority status, a hearing shall be conducted to resolve these issues. A hearing shall also be conducted when there are issues of material fact concerning the timeliness of the petition under Section 1110.70 of this Part. The hearing shall commence no later than 30 days from service of the petition. The Board shall proceed in accordance with 80 Ill. Adm. Code 1105.10-1105.80, except that:
- 1) The hearing officer's recommended decision shall be issued not later than 21 days after the conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time (not to exceed 21 days) is required due to the length of the record or the complexity of the issues involved.
 - 2) The parties may file exceptions to the recommended decision and briefs in support of those exceptions no later than seven days after receipt of the decision. Any party to the proceeding may file a response to any exceptions and supporting briefs within seven days from receipt of a party's exceptions and supporting brief. Exceptions and briefs shall be simultaneously filed with the Board and served on the parties. A party may also file cross-exceptions and a supporting brief within seven days from receipt of another party's exceptions and supporting brief. Any other party may file a response to the cross-exceptions and supporting brief within seven days from receipt of the cross-exceptions and supporting brief. Cross-exceptions and briefs shall be simultaneously filed with the Board and served on the parties. The Board shall issue its decision no later than 45 days from the date that the last brief must be filed. If no exceptions have been filed within seven days after service of the hearing officer's recommended decision, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within seven days after receipt of another party's exceptions and supporting

brief, the parties will be deemed to have waived their cross-exceptions.

- l) Interested persons who wish to participate in the hearing shall direct such requests to the hearing officer. The request shall be in writing and shall state the grounds for participation. In determining whether to grant the request, the hearing officer shall base his decision on the timeliness of the request, the degree to which the person requesting participation has a real interest at stake, the ability of the parties to represent the interests of the person requesting participation and the complexity of the proceeding.
- m) The hearing officer shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the hearing officer. Within seven days after the close of the record, the hearing officer shall rule on the motions. The hearing officer may also order the case removed to the Board on his own motion within seven days after the close of the record. If the hearing officer orders a case removed, he shall certify that there are no determinative issues of fact that require a hearing officer's recommended decision.
- n) Within seven days after removal, a party may move the Board to remand the case to the hearing officer, identifying in detail the material factual issues in dispute. If the Board fails to rule on the motion within 14 days, the motion will be deemed denied; the General Counsel will set a briefing schedule for briefs to be submitted to the Board. In cases removed to the Board, the Board shall remand the case if, at any time, it determines that the case presents issues of material fact requiring a hearing officer's recommended decision.
- o) The Board shall certify the employee organization as exclusive representative immediately upon issuance of the Board's opinion and order, or upon expiration of the time for

filing exceptions to the hearing officer's recommended decision, if:

- 1) the bargaining unit found to be appropriate by the Board is sufficiently similar to the petitioned for bargaining unit that the showing of majority interest remains sufficient;
 - 2) the employee organization agrees to represent the bargaining unit found to be appropriate;
 - 3) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;
 - 4) there is not clear and convincing evidence of fraud or coercion in obtaining the showing of interest; and
 - 5) the petition is otherwise consistent with the Act and this Part.
- p) If the bargaining unit approved by the Board is not sufficiently similar to the petitioned for bargaining unit that the showing of majority interest remains sufficient, the petitioner may submit a supplemental showing of interest within seven days after receipt of the Board's ruling, may participate in an election according to subsection (r), or may withdraw the petition.
- q) Petitions to intervene may be filed no later than 14 days after the notice is posted. Intervention shall only be allowed when, as a result of the evidence submitted by the intervenor in support of its showing of interest, the original petitioner no longer has a valid showing of majority interest.
- r) If the valid evidence presented by the employee organization to support its claim of majority status does not constitute a majority showing of interest, but demonstrates that at least 30 percent of the employees in the unit found appropriate desire to be represented for collective bargaining by the employee organization, the Board shall conduct an election in the unit found appropriate if the petition is otherwise consistent with the Act and this Part.
- s) Upon the filing of a petition or at any time thereafter that the case is pending, a party may allege that *the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were*

subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer (Section 7(c-5) of the Act). The party must submit its evidence in support of the allegation at the time that it makes the allegation, unless additional time is granted by the Executive Director for good cause shown. Any other party may submit its response to the allegation no later than seven days from receipt of the submission of the party making the allegation, unless additional time is granted by the Executive Director for good cause shown. The Board or its agent shall investigate the allegation. If the Executive Director finds that there is an issue of law or fact that such conduct occurred, the matter shall be set for hearing. The hearing shall be conducted according to the Board's procedures for contested case hearings (80 Ill. Adm. Code 1105-90-1105.220), except that:

- 1) The Administrative Law Judge's recommended decision shall be issued no later than 21 days after the conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time (not to exceed 21 days) is required due to the length of the record or the complexity of the issues involved.
- 2) The parties may file exceptions to the recommended decision and briefs in support of those exceptions no later than seven days after receipt of the decision. Any other party may file a response to the exceptions and briefs no later than seven days after receipt of those exceptions and briefs. Exceptions and briefs shall be simultaneously filed with the Board and served on the parties. A party may also file cross-exceptions and a supporting brief within seven days from receipt of another party's exceptions and supporting brief. Any other party may file a response to the cross-exceptions and supporting brief no later than seven days from receipt of the cross-exceptions and supporting brief. Cross-exceptions and briefs shall be simultaneously filed with the Board and

served on the parties. The Board shall issue its decision within 45 days from the date that the last brief was due.

- t) If the Administrative Law Judge, or the Board on review, *determines that a labor organization would have had a majority interest but for an employer's fraud, coercion, or unfair labor practice, it shall designate the labor organization as an exclusive representative without conducting an election* (Section 7(c-5) of the Act).
- u) In order for an employee's dues deduction authorization, authorization card, signature on a petition or other evidence to be counted in determining whether an employee organization has demonstrated a majority interest, the employee must be in the bargaining unit on the date the petition was filed.
- v) In cases where the proposed unit includes professional and nonprofessional employees, the Board will determine majority status separately for each group. If the employee organization has demonstrated majority status for each group, the Board will conduct a vote to determine whether a majority of each group desires a combined unit. If the majority does not vote for a combined unit, the Board will issue separate certifications for the resulting units.
- w) In cases where the proposed unit includes craft and non-craft employees, the Board will determine majority status separately for each group. If the employee organization has demonstrated majority status for each group, the Board will conduct a vote to determine whether a majority of the craft employees desire a combined unit. If the majority of the craft employees does not vote for a combined unit, the Board will issue separate certifications for the resulting units.

(Source: Added at 28 Ill. reg. 7938, effective May 28, 2004)

Section 1110.110 Consent Elections

- a) Where the parties agree to the holding of an election, a stipulation for a consent election shall be filed as follows:
 - 1) The stipulation must be signed by the petitioner, the employer, the employee organization seeking to

represent the employees, and any intervenor that has filed a timely petition.

- 2) The stipulation must specify the bargaining unit; the eligibility date for participation in the election; the date, place, and hours of the election.
 - b) All consent elections shall be conducted under the direction and supervision of the Board. Upon receipt of a stipulation for a consent election, the Board shall review the stipulation. If the Board determines that the stipulation is consistent with the Act and this Part, the Board shall direct the holding of the consent election.
 - c) Within seven days following the Board's approval of the consent election agreement, the employer shall furnish the Executive Director and all other parties with a list of the names and addresses of the employees eligible to vote in the election. The Board shall provide copies of the list to the other parties to the election proceeding upon request.
- (Source: Amended at 14 Ill. Reg. 1297, effective January 5, 1990)

Section 1110.120 Bargaining Unit Determinations

- a) In determining the appropriateness of a unit for purposes of collective bargaining, the Board shall consider all relevant factors, including, *but not limited to, such factors as historical pattern of recognition, community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours, and other working conditions of the employees involved, and the desires of the employees* (Section 7(a) of the Act).
- b) In cases where employees have historically been represented by employee organizations for purposes of collective bargaining, such historical pattern of recognition will not be negated or interfered with unless a majority of the employees so represented express a contrary desire under the procedures set forth in the Act and this Part.
- c) Any party seeking to represent a bargaining unit limited to employees of a craft shall submit a representation petition or intervening claim pursuant to Section 7(a) of the Act

supported by a 30 percent showing of interest within the craft in the case of a petition seeking an election and a showing of a majority interest within the craft in the case of a majority interest petition. Whenever a party has so intervened, the Board shall proceed in accordance with Section 1110.105(w) in the case of a majority interest petition, and the election shall proceed in accordance with Section 1110.140(f) in the case of a petition seeking an election.

- d) Whenever a petition is filed alleging a bargaining unit that includes professional and nonprofessional employees, the petition shall so state. In the case of a majority interest petition, the Board shall proceed in accordance with Section 1110.105(v) of this Part. In the case of a petition seeking an election, the election shall be conducted in accordance with Section 1110.140(g) of this Part.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.130 Eligibility of Voters

- a) To be eligible to vote in an election, an employee must have been in the bargaining unit for the payroll period immediately prior to the date of the direction of the election or the approval of a consent election agreement, and must still be in the bargaining unit on the date of the election.
- b) To be eligible to vote in a runoff election, an employee must have been eligible to vote in the original election and still be in the bargaining unit on the date of the runoff.

Section 1110.140 Conduct of the Election

- a) The election shall be conducted under the supervision of the Board. Voting shall be by secret ballot.
- b) Absentee ballots will be allowed only where an individual submits a written request to the Board no later than 10 days prior to the election and demonstrates in that request that he is not able to be physically present at the polling place at the time for which the election is scheduled and therefore would be unable to cast a ballot. The request must set forth the factual basis for the claim. Mere inconvenience to the

individual shall not be cause for the issuance of an absentee ballot.

- c) Each party shall be entitled to an equal number of observers as determined by the Board or its agent. The number of observers allowed shall be based on the number of polling locations and the number of eligible voters. The identity and conduct of observers are subject to such limitations as the Board or its agent shall prescribe in order to insure that voters are free from interference, coercion, or intimidation.
- d) The Board's agent is authorized to prescribe the area in proximity to the polling place in which electioneering shall be prohibited. The specified area shall be based on the size and nature of the specific polling place.
- e) Ballots shall list all employee organizations that properly petitioned or intervened in the election, the incumbent exclusive representative, and the choice of "No Representative".
- f) Where an election involves a bargaining unit that includes craft employees, and there has been a proper petition for a separate craft unit, craft employees shall be given two ballots: one to vote for or against craft severance and a second to vote on choice of representative. Noncraft employees shall only be given ballots for voting on choice of representative.
- g) Where an election involves a bargaining unit containing professional and nonprofessional employees, all employees shall be given two ballots: one for indicating whether they desire a combined professional-nonprofessional unit and a second for indicating choice of representative, except as provided for in Section 1110.105(v) of this Part.
- h) Ballot boxes shall be examined in the presence of the observers immediately prior to the opening of the polls and shall be sealed at the opening of the polls. The seal shall allow for one opening on the top of the ballot box for voters to insert their ballots.
- i) The Board's agent or any authorized observer may question the identity of any voter. A voter whose identity has been questioned may establish his identity by showing a driver's

license or any other equally reliable piece of identification. Challenged voters shall be permitted to vote in secret with their ballots set aside by the Board's agent with appropriate markings.

- j) A voter shall mark a cross (X) or check (√) in the circle or block designating his choice in the election. The intent of the voter shall be followed in the marking of the ballot. If the ballot is defaced, torn, marked in such a manner that it is not understandable, or identifies the voter, the ballot shall be declared void. If the voter inadvertently spoils a ballot, he may return it to the Board's agent who shall give the voter another ballot and shall preserve the spoiled ballot.
- k) A voter shall fold his ballot so that no part of its face is exposed and, on leaving the voting booth, shall deposit the ballot in the ballot box. If the election is continued for more than one period, the ballot box shall be sealed until the subsequent opening of the polls and shall remain in the custody of the Board's agent until the counting of the ballots.
- l) The Board's agent may privately assist any voter who, due to physical or other disability, is unable to mark his ballot.
- m) Prior to the close of the polls, each party shall designate a representative to observe the tallying of the ballots.
- n) Immediately upon the conclusion of the polling, the votes shall be tallied as follows:
 - 1) The Board's agent shall attempt to achieve a voluntary resolution of all ballot challenges before the ballots are counted.
 - 2) If there was only one polling location, the Board's agent shall tally the votes in the presence of a representative designated by each party and shall serve a written tally on each of the representatives.
 - 3) If there was more than one polling location, the Board's agent shall seal the ballot boxes and bring them to a predetermined central location. When all the ballot boxes have arrived, they shall be opened, the ballots shall be commingled, and the votes shall be tallied in the presence of a representative designated by each party.

The Board's agent shall serve a written tally on each of the representatives.

- 4) The Board's agent shall count the number of challenged ballots separately. If the challenged ballots cannot affect the outcome of the election, the challenges will not be resolved. If the challenged ballots could affect the outcome of the election, the Board's agent shall again attempt to achieve a voluntary resolution of all the challenges.
- 5) If challenges to ballots have not been resolved, and if the challenges could affect the outcome of the election, the challenged ballots shall be investigated by the Executive Director, who shall issue a recommended decision concerning the application of Sections 2, 7, 8 and 9 of the Act and this Part to the challenged ballots. Parties may file exceptions to the Executive Director's recommendation and briefs in support of those exceptions no later than 14 days after receipt of the recommendation. Copies of all exceptions and briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions. The Board will review the Executive Director's recommendation upon request by a party or on its own motion.
- 6) When the election includes a vote on craft severance, the craft employee ballots on craft severance shall be tallied first. If a majority of the craft employees casting valid ballots choose craft severance, the craft and noncraft ballots on choice of representative shall be tallied separately. If a majority of the craft employees casting valid ballots do not choose craft severance, the ballots on choice of representative shall be tallied together.

- 7) When the election includes a vote on a combined professional-nonprofessional unit, the ballots on unit preference shall be tallied first. Separate tallies shall be made for professional and nonprofessional employees.
 - 8) If a majority of the employees casting valid ballots in each group vote for a combined unit, the ballots on choice of representative shall be tallied together. If a combined unit fails to receive a majority vote in either or both groups, the ballots on choice of representative shall be tallied separately.
 - o) In all cases, the recipient of a majority of the valid ballots cast by those voting shall prevail.
 - p) When there are three or more choices on the ballot (two or more employee organizations and "No Representative") and no choice receives a majority, the Board shall conduct a runoff election between the two choices that received the most votes. The results of votes taken during the first election on craft severance and combined professional-nonprofessional units shall be binding on the runoff election.
 - q) Where there are three or more choices on the ballot, and either the vote is split equally among all of the choices, or there is a tie for second place, the Board shall declare the election inconclusive and shall order a new election. The results of the craft severance and combined professional-nonprofessional unit votes in the first election shall be binding on the rerun election.
 - r) The Board shall preserve all ballots until such time as any objections to the election have been resolved and the results have been certified and served on the parties.
- (Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.150 Objections to the Election

- a) Any party to the election may file objections with the Board *alleging that improper conduct occurred which affected the outcome of the election* (Section 8 of the Act).
- b) Objections must be received by the Board no later than five working days after the final tally was served on the representatives. For purposes of this rule, a working day is

any day on which the Board offices are open for business. Pending challenges to ballots shall not stay the time for filing objections.

- c) The objecting party shall furnish evidence to the Executive Director sufficient to provide a prima facie case in support of the objections before any investigation commences.
- d) The evidence described above in paragraph (c) (except for affidavits) must also be served simultaneously on all parties involved in the matter and proof of service must be provided to the Board.
- e) The evidence for each objection filed must include the following facts:
 - 1) The date on which the alleged improper conduct took place;
 - 2) The location at which the alleged misconduct took place;
 - 3) The name and job title of the person who allegedly engaged in the improper conduct; and,
 - 4) A statement or description of the alleged improper conduct.
- f) Failure to provide the evidence described above in subsections (c), (d), and (e) within five working days after filing the objections shall subject the objections to dismissal.
- g) The Board *shall promptly investigate the allegations, and if it finds probable cause that improper conduct occurred and could have affected the outcome of the election, it shall set a hearing on the matter on a date falling within two weeks of when it received the objections. If it determines, after hearing, that the outcome of the election was affected by improper conduct, it shall order a new election and shall order corrective action which it considers necessary to insure the fairness of the new election. If it determines upon investigation that the alleged improper conduct did not take place or that it did not affect the outcome of the election, it shall promptly certify the election results* (Section 8 of the Act).

(Source: Amended at 14 Ill. Reg. 1297, effective January 5, 1990)

Section 1110.160

Petitions for Clarification of the Bargaining Unit

- a) An exclusive representative or an employer may file a petition to clarify an existing bargaining unit. The Board shall serve the petition on the other party. The petition shall be signed and shall contain the following:
 - 1) the name and address of the employer;
 - 2) the name, address, and affiliation, if any, of the exclusive representative;
 - 3) a description of the existing bargaining unit; and
 - 4) the nature of the proposed clarification and the reasons therefor.
- b) The exclusive representative or employer may file an answer to the petition within 14 days following service of the petition. Failure to answer without good cause shall be deemed a waiver of objections to the petition and a waiver of a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely answer.
- c) The Executive Director or his agent shall investigate the petition and, if the petition does not present unresolved questions of material fact, the Executive Director shall then issue a Recommended Decision and Order. Parties may file exceptions to the Executive Director's recommendation and briefs in support of those exceptions no later than 14 days after receipt of the recommendation. Copies of all exceptions and briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions. The Board will review the Executive Director's recommendation upon request by a party or on its own motion. If the petition

presents unresolved questions of material fact, the Executive Director shall set it for a hearing.

- 1) Interested persons desiring to intervene in the hearing shall submit a written request to the hearing officer. The hearing officer shall base his decision on whether to allow intervention upon the timeliness of the request, the degree to which the person requesting intervention has a real interest at stake, the ability of the parties to represent the interests of the person requesting intervention, and the complexity of the proceeding.
- 2) The hearing officer shall inquire into all matters in dispute and shall obtain a full and complete record. The hearing officer shall file and serve upon the parties a recommended disposition of the matter.
- 3) Parties may file exceptions to the hearing officer's recommendations and briefs in support of their exceptions within 14 days after receipt of the recommendation. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of all cross-exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any other party may file a response to any cross-exceptions and supporting briefs within 14 days from receipt of a party's cross-exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within 14 days after service of the hearing officer's recommended decision, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions

and supporting brief, the parties will be deemed to have waived their cross-exceptions.

- 4) The Board will review the hearing officer's recommendation if a party has filed exceptions pursuant to Section 1105.80(b), or on the Board's own motion. The Board will issue its decision in accordance with 80 Ill. Adm. Code 1105.80(c) and (e).
- d) The parties may clarify the composition of the bargaining unit by stipulation. The stipulation shall be filed with the Board. A notice of the stipulation shall be posted on bulletin boards and at other places where notices for employees in the bargaining unit are customarily posted. The notice shall advise employees of the terms of the stipulation and direct persons objecting to the stipulation to file objections with the Board. The notice shall remain posted for at least 20 school days. The employer shall attempt to insure that the notice is not removed or defaced during the posting period and shall replace any notice which is removed or defaced.
- e) During the posting period, interested persons may file objections with the Board. Objections shall be served on the employer and the exclusive representative prior to, or simultaneously with, their filing with the Board.
- f) Following the posting period, if no objections have been filed, the Board shall approve or disapprove the clarification depending upon whether the clarification is consistent with the Act. If objections have been filed, the Board shall proceed in accordance with subsection (c).

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.170 Petitions to Amend Certification

- a) An exclusive representative shall file a petition with the Board to amend its certification whenever there is a change in its name or structure. The Board shall serve the petition on the employer. The petition shall be signed and shall contain:
 - 1) the name and address of the employer;
 - 2) the name, address, and affiliation, if any, of the exclusive representative, as certified by the Board;
 - 3) a description of the proposed amendment; and

- 4) the reasons for the proposed amendment.
 - b) Within three days of receiving the petition, the employer shall post a notice of the proposed amendment in accordance with Section 1110.160(d) of this Part.
 - c) Interested persons, including the employer, may file objections to the proposed amendment with the Board during the posting period. Objections shall be served on the exclusive representative prior to, or simultaneously with, filing with the Board.
 - d) If, at the conclusion of the posting period, no objections have been filed, the Board may approve or disapprove the amendment or take any other action on it necessary to effectuate the purposes of the Act.
 - e) If objections have been filed during the posting period, the Board shall proceed in accordance with Section 1110.160(c).
- (Source: Amended at 14 Ill. Reg. 1297, effective January 5, 1990)

Section 1110.180 Petitions for Self-Determination

- a) Adding to an Existing Bargaining Unit
 - 1) A self-determination petition to add unrepresented employees to an existing bargaining unit, where a question concerning representation would be presented by their inclusion, may be filed by an employee, a group of employees, or exclusive representative of the existing bargaining unit. The Board shall serve the petition on the appropriate parties. The petition shall be on a form developed by the Board. It shall be signed and shall contain the following:
 - A) the name and address of the petitioner;
 - B) the name, address and affiliation, if any, of the exclusive representative;
 - C) the name and address of the employer;
 - D) a description of the bargaining unit;
 - E) the approximate number of employees in the bargaining unit;
 - F) a description of the employees who would be added to the existing unit;

- G) the approximate number of employees who would be added;
 - H) a statement whether the petitioner intends to use the majority interest procedure or the election procedure;
 - I) the date that the exclusive representative was recognized and the method of recognition, if known; and
 - J) a brief description of any collective bargaining agreements covering any employees in the bargaining unit, and the expiration dates of the agreements.
- 2) The self-determination petition seeking an election shall be accompanied by a showing of interest that at least 30 percent of the employees sought to be added to the existing unit wish to be represented by the exclusive representative. A majority interest self-determination petition shall be accompanied by a showing of majority interest among the employees sought to be added to the existing unit.
 - 3) In any election conducted pursuant to this subsection, only those employees that the petition seeks to add to the unit shall vote on the question of representation. In any majority interest proceeding conducted pursuant to this subsection, a showing of majority interest among only the employees the petition seeks to add to the unit shall be required.
 - 4) No unit will include *both professional employees and nonprofessional employees unless a majority of employees in each group vote for inclusion in the unit* (Section 7 of the Act).
- b) Merging Bargaining Units
 - 1) A petition to merge two or more existing bargaining units, where a question concerning representation would not be presented by their inclusion, may be filed by an employee, a group of employees, or exclusive representative of either existing bargaining unit. The Board shall serve the petition on the appropriate parties. The petition shall be on a form developed by the Board. It shall be signed and shall contain the following:
 - A) the name and address of the petitioner;

- B) the name, address and affiliation, if any, of the exclusive representative;
 - C) the name and address of the employer;
 - D) a description of the proposed bargaining unit;
 - E) the approximate number of employees in the proposed bargaining unit;
 - F) a description of the employees in each of the existing units;
 - G) the approximate number of employees who would be added in each existing unit;
 - H) the date that the exclusive representative was recognized and the method of recognition, if known; and
 - I) a brief description of any collective bargaining agreements covering any employees in the bargaining units, and the expiration dates of the agreements.
- 2) In any election conducted pursuant to this subsection, employees shall vote only on the question of unit merger.
 - 3) No unit will include *both professional employees and nonprofessional employees unless a majority of employees in each group vote for inclusion in that unit* (Section 7 of the Act).

(Source: Added at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.APPENDIX A Model Authorization Card

I authorize (employee organization) to be my
exclusive collective bargaining representative for all purposes of
collective bargaining with my employer, _____

_____.

Name (printed or typed)

Employment position

Signature

Date

(Source: Added at 28 Ill. Reg. 7938, effective May 28, 2004)

Part 1120
Unfair Labor Practice Proceedings

Section 1120.10 General Statement of Purpose

The regulations contained in this Part detail the procedures for initiating, processing and resolving charges that an employer or an employee organization has committed, or is committing, an unfair labor practice in violation of Sections 14(a) and 14(b) of the Act.

Section 1120.20 Filing of a Charge

- a) An unfair labor practice charge may be filed with the Illinois Educational Labor Relations Board (the Board) by an employer, an employee organization, or an employee.
- b) Unfair labor practice charges shall be on a form developed by the Board, shall be signed by the charging party, and shall contain:
 - 1) the name, address, and affiliation, if any, of the charging party;
 - 2) the name, address, and affiliation, if any, of the respondent;
 - 3) a clear and complete statement of facts supporting the alleged unfair labor practice, including dates, times and places of occurrence of each particular act alleged, and the sections of the Illinois Educational Labor Relations Act [115 ILCS 5] (the Act) alleged to have been violated; and
 - 4) a statement of the relief sought, provided that the statement shall not limit the Board's ability to award relief based on the record.
- c) The Board shall serve a copy of the charge upon the respondent.
- d) Unfair labor practice charges may be filed no later than six months after the alleged unfair labor practice occurred.
- e) A charging party may withdraw without prejudice a charge at any time prior to the issuance of a complaint. After issuance of a complaint, a charging party may withdraw a charge only with the approval of the Executive Director.

The Executive Director shall approve such withdrawal when he finds that the withdrawal is consistent with the Act and this Part and was not obtained fraudulently or through duress.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.30 Charge Processing and Investigation, Complaints and Responses

- a) The Board hereby delegates to its Executive Director the authority to investigate charges and issue complaints.
- b) Upon receipt of a charge, the Executive Director shall investigate the charge. Procedures for investigating requests for injunctive relief are set forth in Section 1120.60.
 - 1) The charging party shall submit to the Executive Director all evidence relevant to or in support of the charge. Such evidence may include documents and affidavits.
 - 2) The respondent shall submit to the Executive Director a complete account of the facts, a statement of its position in respect to the allegations set forth in the charge and all relevant evidence in support of its position. Such evidence may include documents and affidavits.
 - 3) The Executive Director may hold an investigatory conference with the parties when the Executive Director determines that such investigatory conference will facilitate efforts, to explore whether the charge can be resolved informally or the facts stipulated, and to further develop the record for determination of whether the charge states an issue of law or fact.
 - 4) If the Executive Director concludes that the investigation has established that there is *an issue of law or fact* sufficient to warrant a hearing, he shall issue a complaint (Section 15 of the Act). In determining whether the issues of law or fact are sufficient to warrant a hearing, the Executive Director shall consider whether the charge states a cause of action upon which relief can be granted under the Act and whether the facts provided in the course of the investigation state a prima facie case. The

- complaint shall specify the charges and shall be served on the respondent and the charging party.
- 5) If the Executive Director concludes that the investigation has established that there is not an issue of law or fact sufficient to warrant a hearing, the Executive Director shall dismiss the charge. In determining whether the issues of law or fact are sufficient to warrant a hearing, the Executive Director shall consider whether the charge states a cause of action upon which relief can be granted under the Act and whether the facts provided in the course of the investigation state a prima facie case. Notice of dismissal shall be served on the respondent and the charging party.
 - c) The charging party may file exceptions to the Executive Director's dismissal of the charge and briefs in support of those exceptions. Exceptions must be filed with the Board no later than 14 days after service of the notice of dismissal. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. The Board may review the Executive Director's decision on its own motion. In reviewing the exceptions, the Board will consider whether the Executive Director's decision is consistent with the Act and this Part and whether there has been an abuse of discretion.
 - d) Whenever an unfair labor practice complaint is issued, the respondent must file an answer within 15 days after service of the complaint.
 - 1) The answer shall include a specific admission, denial or explanation of each allegation of the complaint or, if the respondent is without knowledge thereof, it shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the allegation.

- 2) The answer shall also include a specific, detailed statement of any affirmative defenses including, but not limited to, allegations that the violation occurred more than six months before the charge was filed, that the Board lacks jurisdiction over the matter, or that the complaint fails to allege an unfair labor practice.
- 3) Failure to file a timely answer shall be deemed an admission of all allegations in the complaint. Failure to respond to any particular allegation of the complaint shall be deemed to be an admission of that particular allegation. Filing of a motion will not stay the time for filing an answer.
- 4) When a party has failed to file a timely answer, the Administrative Law Judge shall issue an order to show cause why allegations of the complaint should not be deemed admitted. Leave to file a late answer may be granted by the Administrative Law Judge in the absence of prejudice to the other parties if substantial justice is being done between the parties and if it is reasonable, under the circumstances, to compel the other parties to go to hearing on the merits. If leave to file a late answer is granted, the answer shall be deemed timely.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.40 Hearings

- a) Upon the issuance of a complaint, the Executive Director shall set the matter for hearing before an Administrative Law Judge. All parties shall be given at least five days' notice of the hearing. The notice shall comply with Section 10-25(a) of the Illinois Administrative Procedure Act [5 ILCS 100/10-25(A)].
- b) Interested persons who wish to intervene in the hearing shall direct such requests to the Administrative Law Judge. The request shall be in writing and shall state the grounds for intervention. The Administrative Law Judge shall have

discretion to grant or deny the request for intervention. In determining whether to grant the request, the Administrative Law Judge shall base his decision on the timeliness of the request, the degree to which the person requesting intervention has a real interest at stake, and the ability of the parties to represent the interests of the person requesting intervention.

- c) The Board will encourage Administrative Law Judges to schedule voluntary prehearing conferences with the parties when it appears that such conferences will aid in narrowing or resolving issues.
- d) On motion of a party made prior to the close of the hearing and with the approval of the Chief Administrative Law Judge, the Administrative Law Judge may certify an issue to the Board for a ruling prior to the issuance of the Administrative Law Judge's recommended decision and order. An issue may be certified to the Board only if the Administrative Law Judge finds that the case involves an issue of law as to which there is substantial ground for difference of opinion and that an immediate appeal on the issue may materially advance the termination of the case. The Administrative Law Judge shall rule on the motion within seven days after a response to the motion is received or is due pursuant to 80 Ill. Adm. Code 1105.100(e)(2). The parties may file briefs concerning the certified issue no later 21 days after the Administrative Law Judge's certification. Within 60 days after the last day that briefs must be filed, the Board shall rule on the certified issue or shall remand the issue to the Administrative Law Judge upon a finding that certification of the issue is inappropriate. Intermediate rulings of the Administrative Law Judge shall not otherwise be subject to interlocutory appeal. Parties may raise objections to such intermediate rulings in their exceptions to the Administrative Law Judge's recommended decision, or if there is no recommended decision, in their briefs to the Board.

- e) The Complainant shall present the case in support of the complaint. *The respondent may present evidence in defense against the charges* (Section 15 of the Act).
- f) The Administrative Law Judge shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the Administrative Law Judge. Within 14 days after the close of the record, the Administrative Law Judge shall rule on the motions. The Administrative Law Judge may also order the case removed to the Board on his own motion within fourteen days after the close of the record. If the Administrative Law Judge orders a case removed, he shall certify that there are no determinative issues of fact that require an Administrative Law Judge's recommended decision.
- g) Within seven days after removal, a party may move the Board to remand the case to the Administrative Law Judge identifying in detail the material factual issues in dispute. If the Board fails to rule on the motion within 60 days, the motion to remand will be deemed denied. In cases removed to the Board, the Board shall remand the case if at any time it determines that the case presents issues of material fact requiring an Administrative Law Judge's recommended decision. A fact is material to the claim or defense in issue when the success of the claim or defense is dependent upon the existence of that fact.
- h) In cases not removed to the Board and in cases remanded to the Administrative Law Judge, the Administrative Law Judge shall file and serve on the parties a recommended decision as promptly as possible based on the length of the record and the complexity of the issues involved.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.50 Consideration by the Board

- a) In cases in which there is a recommended decision, the parties may file exceptions to the Administrative Law

Judge's recommendation and briefs in support of those exceptions. Briefs and exceptions shall be filed no later than 21 days after service of the recommendation. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 21 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of the cross-exceptions shall be filed with the Board and served on all other parties, and a certificate of service shall be attached. Any other party may file a response to the cross-exceptions and supporting brief within 14 days from receipt of the cross-exceptions and supporting brief. Such response shall be filed with the Board and served upon all parties, and a certificate of service shall be attached. If no exceptions have been filed within the 21 days after service of the Administrative Law Judge's recommended decision, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.

- b) The Board will review the Administrative Law Judge's recommendation if a party has filed exceptions pursuant to 80 Ill. Adm. Code 1105.220(b) or on the Board's own motion. In cases removed to the Board, the parties will file briefs in the manner directed by the Board, the manner to include the dates on which briefs will be due and the subjects to be addressed in the briefs, as specified by the Board. In cases in which exceptions are filed and those which are removed to the Board, the Board shall issue and serve on all parties its decision and order in accordance with 80 Ill. Adm. Code 1105.220(c) - (e).
- c) Oral argument shall be allowed only at the discretion of the Board. The Board shall direct oral argument when it

determines that oral argument will assist determination of the issues.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.60 Requests for Preliminary Relief

The charging party may request the Board to seek preliminary relief pursuant to Section 16(d) of the Act. The charging party will provide the basis for and evidence in support of its request for injunctive relief when it files its charge. The Executive Director will request the charged party to submit evidence in support of its position. The charging party shall have the burden of demonstrating to the Board that if preliminary relief is not sought it will suffer irreparable harm and that the remedies available from the Board will be inadequate.

(Source: Amended at 14 Ill. Reg. 1322, effective January 5, 1990)

Section 1120.70 Compliance Procedures

- a) The compliance procedures set forth herein shall commence once a Respondent
 - 1) has failed to file exceptions to a Recommended Decision and Order of an Administrative Law Judge;
 - 2) has failed to appeal a final order of the Board; or
 - 3) when the appellate process initiated by a party after a final Board order has been exhausted and there remains an order requiring a Respondent to take certain affirmative action or to refrain from engaging in any action.
- b) If upon the occurrence of any of the events designated in Section 1120.70(a), compliance has not occurred, a compliance hearing shall be conducted.
- c) The compliance hearing shall be conducted by the Executive Director or his designee and shall be in the nature of a fact-finding hearing, be recorded stenographically or by other appropriate means, at which the parties to the matter shall be afforded the opportunity to present documents, affidavits, and/or any other information, in addition to their positions, on the matter of Respondent's compliance with the order.

- d) Within 30 days after the compliance hearing described in Section 1120.70(c), or a determination made under Section 1120.70(b) that compliance has taken place, the Executive Director shall cause to be served upon the parties a Recommended Decision and Order in which all issues of law and all issues of fact bearing on compliance with the order shall be resolved.
- e) For purposes of Section 1120.70(d), issues of fact are all issues bearing on the question of Respondent's compliance with the order other than those factual issues turning exclusively on the demeanor of a witness or witnesses.
- f) Parties may file exceptions to the Executive Director's recommendation and briefs in support of those exceptions no later than 14 days after receipt of the recommendation. Copies of all exceptions and briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of the cross-exceptions and supporting brief shall be served upon all other parties and a certificate of service shall be attached. Any other party may file a response to the cross-exceptions and supporting brief within 14 days from receipt of the cross-exceptions and supporting brief. Such response shall be filed with the Board served upon all parties, and a certificate of service shall be attached. If no exceptions have been filed within 14 days after service of the Executive Director's recommendation, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions. The Board will review the Executive Director's recommendation upon request by a party or on its motion.

(Source: Added at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.80 Sanctions

- a) *The Board's order may in its discretion also include an appropriate sanction, based on the Board's rules and regulations, if the other party has made allegations or denials without reasonable cause and found to be untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation. The State of Illinois or any agency thereof shall be subject to these provisions in the same manner as any other party.* (Section 15 of the Act)
- b) The Board may award sanctions for such written *allegations* or *denials*, including statements stenographically recorded during the course of Board proceedings.
- c) *The sanction may include an admonition or reprimand; striking an offending allegation or denial; an order to pay the other party or parties' reasonable expenses including costs and reasonable attorney's fees* (Section 15 of the Act) or an appropriate portion thereof; and/or any other *appropriate sanction*. Sanctions are to be awarded only against a party or parties to the proceeding.
- d) Any party to an unfair labor practice proceeding may move for sanctions. The motion for sanctions must be a succinct statement identifying the *allegations* and/or *denials* and/or incidents of *frivolous litigation* alleged to be subject to sanctions, with citations to the record, and succinct arguments. The party subject to the motion for sanctions shall have 14 days after service of the motion to respond or withdraw the paper or position that is the basis of the motion. Neither the motion for sanctions nor the response may be used as an additional brief on the merits of the underlying case.
 - 1) Motions for sanctions may be filed with the Executive Director while an unfair labor practice charge is pending before the Executive Director. Such motions shall be filed no later than 7 days after receipt of the Executive Director's notice that investigation of the unfair labor

practice charge has been completed, or that a party has withdrawn the unfair labor practice charge. Sanctions before the Executive Director may only be sought for instances of frivolous litigation.

- 2) Once an unfair labor practice complaint has been issued, motions for sanctions may be filed with the Administrative Law Judge or, in the event that an Administrative Law Judge has not been named, with the Chief Administrative Law Judge, while an unfair labor practice complaint is pending before the Administrative Law Judge or the Chief Administrative Law Judge. Such motions shall be filed no later than 7 days after receipt of the last post-hearing brief scheduled to be filed, or no later than 7 days after the close of the hearing, if no briefs are to be filed. Sanctions before the Administrative Law Judge or Chief Administrative Law Judge may be sought for both allegations or denials made without reasonable cause and found to be untrue and/or instances of frivolous litigation.
 - 3) Once the Administrative Law Judge has issued a Recommended Decision and Order, or the Executive Director has issued a Recommended Decision and Order dismissing an unfair labor practice charge, the Recommended Decision and Order is pending before the Board. Such motions shall be filed no later than 7 days after receipt of the last brief scheduled to be filed with the Board, or no later than 7 days after oral argument before the Board, if such argument occurs after all briefing is completed. Sanctions before the Board may be sought for both allegations or denials made without reasonable cause and found to be untrue and/or instances of frivolous litigation.
- e) A party may request sanctions from the Board for an *allegation or denial made without reasonable cause and found to be untrue* even though it did not move for sanctions on that *allegation or denial* before the Administrative Law Judge, and even though the Administrative Law Judge did not recommend sanctions on such *allegation or denial*.

- f) A party may not request sanctions from the Board for alleged *frivolous litigation for the purpose of delay or needless increase in the cost of litigation* before the Executive Director or Administrative Law Judge, unless it requested sanctions from the Executive Director or Administrative Law Judge as to such alleged incident of *frivolous litigation*, or unless the Executive Director or Administrative Law Judge recommended sanctions as to such alleged incident of *frivolous litigation*.
 - g) Except as provided in subsection (h) below, an order for sanctions shall be included in the Executive Director's Recommended Decision and Order, the Administrative Law Judge's Recommended Decision and Order, or the Board's Opinion and Order.
 - h) If neither party has moved for sanctions, the Executive Director, Administrative Law Judge, or Board may sua sponte issue an Order to Show Cause why this rule has not been violated. The party or parties to whom the Order to Show Cause is directed shall have 14 days from the service of that Order to file a response. Any other party or parties shall have 14 days from service of that response within which to file a reply. The Order to Show Cause shall recite the conduct or circumstances at issue.
 - i) An order leveling sanctions shall recite the conduct or circumstances for which sanctions are sought, and explain the basis for the sanction imposed.
 - j) These amendments apply to *allegations or denials* and *frivolous litigation* occurring on or after January 1, 1992. Any deadline provided above for filing a motion for sanctions shall be waived for *allegations and denials* and *frivolous litigation* occurring between January 1, 1992 and the effective date of these amendments, providing that such motions are filed by September 30, 1992.
- (Source: Added at 16 Ill. Reg. 13500, effective August 25, 1992)

Part 1125 – Fair Share Fee Objections

Section 1125.10 General Statement of Purpose

- a) The Illinois Educational Labor Relations Board (Board) finds that Sections 3(a), 11, and 14(a)(1) and 14(b)(1) of the Illinois Educational Labor Relations Act (the Act) [115 ILCS 5/3(a), 11, 14(a)(1) and (b)(1)] govern the collection and/or expenditure of fair share fees over an employee's objection. The procedures in this Part provide the exclusive method for handling fair share fees upon the filing of an objection by an employee. Failure to abide by these procedures violates Section 14(a)(1) and (b)(1) of the Act. The nature of this unfair labor practice requires that special procedures be adopted for its efficient resolution.
- b) The procedures set forth in this Part do not preclude the filing of unfair labor practice charges pursuant to 80 Ill. Adm. Code 1120 alleging violations of Section 11 of the Act resulting from fees in excess of *the dues uniformly required of members or fees for contributions related to the election or support of any candidate for political office* (Section 11 of the Act).

(Source: Amended at 28 Ill. Reg. 7984, effective May 28, 2004)

Section 1125.20 Notice of Fair Share Fees

- a) At least fourteen (14) calendar days prior to commencement of payroll deductions of fair share fees, the exclusive representative shall provide notice to all nonmembers of the fair share fee and the right to file an objection. Such notice shall be provided to nonmembers in a manner calculated to provide proper notice, which may include personal delivery, notice by mail, or notice by posting in a place where employee notices are customarily posted or, if no such place exists, posting in a conspicuous place.
- b) Notice shall be on a form developed by the Board or a form developed by the exclusive representative and shall contain the following information:

- 1) the names of the employer and exclusive bargaining representative;
 - 2) the effective date and duration of the collective bargaining agreement authorizing the fair share fee;
 - 3) the amount of the fair share fee expressed either as a dollar amount or as a percentage of regular union dues and the period for which it is assessed;
 - 4) a description of how the fair share fee was calculated, including the major categories of expenses made by the exclusive representative during the most recent fiscal year, verified by an independent auditor;
 - 5) a statement that the nonmember has the right under the Act to object to the amount of the fee by filing an objection with the Board and that the nonmember can obtain additional information about the objection procedure from the Board; and
 - 6) a statement advising fee payers that employees who object to payment of a fair share fee because of *bonafide religious tenets, or teaching of a church or religious body of which such employees are members may pay an amount equal to their fair share contribution to a non-religious charitable organization* as provided in Section 11 of the Act.
- c) Whenever there is a change in the amount of the fair share fee, an updated notice shall be provided to nonmembers in a manner consistent with subsection (a) of this Section.
 - d) Upon request, the employer shall give the exclusive representative access to appropriate bulletin boards and other locations for purposes of posting the notice required by this Section.
 - e) The exclusive representative shall certify in writing to the employer that notice has been provided to nonmembers in accordance with this Section. No payroll deductions of fair share fees shall be made until at least 14 calendar days after such certification.
 - f) Once notice of the fair share fee has been provided to a newly hired employee in accordance with this Section, fair share fees may be collected from such employee fourteen

(14) calendar days after the employee's first day of employment.

- g) Compliance with this Section does not mean that the exclusive representative has complied with all legal notice requirements as may be required by judicial decisions. The legal responsibility for providing adequate notice remains with the exclusive representative.

(Source: Amended at 13 Ill. Reg. 1784, effective January 31, 1989)

Section 1125.30 Objections to Fair Share Fees

- a) A nonmember may file an objection to the fair share fee with the Board no later than six (6) months after the first payroll deduction of the fair share fee.
- b) The objection shall be on a form developed by the Board and shall contain the following:
 - 1) the name, address and telephone number of the employee filing the objection and of the employee's representative, if any;
 - 2) the name, address and telephone number of the exclusive representative;
 - 3) the name, address and telephone number of the employer;
 - 4) the amount of the fair share fee certified by the exclusive representative, and the amount disputed by the employee. The employee may choose to object to the entire amount of the fee by so stating.
 - 5) a brief description, to the extent known, of the bargaining unit covered by the collective bargaining agreement.
- c) The Board shall serve the objection on the employer and the exclusive representative in accordance with 80 Ill. Adm. Code 1100.20(c).
- d) An objection is effective on the date it is filed with the Board. Nonmembers waive their objections to any fees deducted from their pay prior to their filing of objections, unless they can establish that they were not properly notified of the fees as required by Section 1125.20 of this Part. Objections are effective only for the year for which the fair share fee is sought.

(Source: Amended at 13 Ill. Reg. 1784, effective January 31, 1989)

Section 1125.40 Escrow Accounts

- a) Upon service of an objection, the employer shall continue to deduct the fair share fee from the objecting employee's pay, but shall not pay the fee to the exclusive representative, unless the exclusive representative maintains an escrow account in accordance with subsections (b) and (c) and the exclusive representative has so notified the employer. The employer shall transmit the fee to the Board which shall hold the fee in escrow in an account established for that purpose. If the objecting employee has disputed only part of the fee, the employer shall pay the undisputed amount to the exclusive representative and shall transmit the disputed amount to the Board. The employer shall continue to transmit all such fees to the Board until further order of the Board.
- b) An exclusive representative may maintain an escrow account for the purpose of holding fair share fees to which employees have objected. If an exclusive representative maintains such an account, the employer shall continue to transmit an objecting employee's fair share fee to the exclusive representative. Upon service of an objection, the exclusive representative shall deposit the objecting employee's fair share fee into the escrow account which it maintains. If the objecting employee has disputed only part of the fee, the exclusive representative shall pay the disputed amount into the escrow account and may retain the undisputed amount. The exclusive representative shall continue to pay into the escrow account all fair share fees or the disputed portion of the fees until further order of the Board.
- c) An escrow account maintained by an exclusive representative shall meet the following standards:
 - 1) The account shall be maintained in a federally insured financial institution.
 - 2) The account shall earn interest of at least the rate provided by commercial banks for regular passbook savings accounts.

- 3) If the account combines the fair share fees of more than one objector, separate records must be kept of each objector's fee, prorating the interest earned on the account.
 - 4) The escrow account may contain the fees of objecting employees in different bargaining units.
 - 5) Any charges resulting from a financial institution for the cost of maintaining an escrow account shall be borne by the exclusive representative.
- d) Within 45 days after service of the objection, the exclusive representative may file a motion to reduce the amount of the escrow. The motion shall be filed with the Executive Director. The exclusive representative shall attach to the motion any documents it wishes to have considered in support of this motion. The motion and supporting documents shall be served on the objecting employee and the employer in accordance with 80 Ill. Adm. Code 1100.20(d). The exclusive representative shall have the burden of demonstrating that its proposed reduction in the amount of the escrow will clearly not prejudice the constitutional and statutory rights of the objecting employee.
 - e) The objecting employee shall have 15 days computed in accordance with 80 Ill. Adm. Code 1100.30 to respond. The response shall be served on the exclusive representative and the employer in accordance with 80 Ill. Adm. Code 1100.20(d).
 - f) If the Executive Director determines that reduction of the amount of the escrow will clearly not prejudice the constitutional and statutory rights of the objecting employee, he shall order the escrow reduced to an amount necessary to protect the rights of the parties in a written decision containing his reasons. The order shall be served on the objecting employee, the exclusive representative, and the employer. Thereafter, the employer shall transmit the reduced escrow amount to the Board and the remainder to the exclusive representative, unless the exclusive representative maintains an escrow account in accordance with subsections (b) and (c). If the exclusive representative

maintains such an escrow account, the exclusive representative shall pay the reduced escrow amount into the escrow account and may retain the remainder.

- g) In making the determination, the Executive Director will consider court decisions interpreting the constitutional and statutory rights of employees, patterns of expenditures by the exclusive representative, prior adjudications involving the exclusive representative, and other relevant factors as substantiated by material submitted by the parties.
- h) The Executive Director's decision on the motion may be appealed to the Board. Notice of appeal, together with any supporting briefs, shall be filed no later than 15 days after service of the Executive Director's decision. Parties may file briefs in accordance with 80 Ill. Adm. Code 1105. Subpart B. The Board shall review the Executive Director's decision to determine whether it is in accordance with the Act, this Part, and the evidence submitted by the parties.

(Source: Amended at 14 Ill. Reg. 2873, effective February 9, 1990)

Section 1125.50 Responses to Objections (Repealed)

(Source: Repealed at 13 Ill. Reg. 1784, effective January 31, 1989)

Section 1125.60 Consolidation of Fair Share Fee Objections

The Board shall consolidate in a single proceeding all fair share fee objections involving the same bargaining unit. The Board shall consolidate objections involving two or more bargaining units whenever it determines that the exclusive representatives are affiliated with a common employee organization, the exclusive representatives use similar methods for determining fair share fees, the consolidation would not prejudice the constitutional and statutory rights of the objecting employees, and the consolidation would efficiently and expeditiously resolve the objections.

Section 1125.70 Investigation of Fair Share Fee Objections

- a) The Board's Executive Director shall investigate and process all fair share fee objections and shall issue complaints or dismiss objections in accordance with 80 Ill. Adm. Code 1120.30(a) and (b).

- b) If the Executive Director dismisses a fair share fee objection, the objecting employee may file exceptions with the Board within fourteen (14) days of the date of receipt of the Executive Director's decision. The exclusive representative may file a response within fourteen (14) days of receipt of the exceptions. In reviewing the exceptions, the Board will consider whether the Executive Director's decision is consistent with the Act and this Part and whether there has been an abuse of discretion (e.g., failure to issue a complaint when questions of law or fact exist).

(Source: Amended at 13 Ill. Reg. 1784, effective January 31, 1989)

Section 1125.80 Hearings

- a) Except as provided below, hearings on fair share fee objections shall proceed in the same manner as hearings in both contested cases, as set forth in 80 Ill. Adm. Code 1105, Subpart B, and hearings in unfair labor practice proceedings, as set forth in 80 Ill. Adm. Code 1120.40.
- b) The Chief Administrative Law Judge shall appoint a fair share Administrative Law Judge to hold an evidentiary hearing and render a Recommended Decision and Order on the fair share fee objections.
- c) The burden of proof shall be on the exclusive representative.
- d) The hearing set forth in subsection (b), shall commence no later than 60 days from the last day for filing of an objection pursuant to Section 1125.30(a) of this Part. When objections involving two or more bargaining units are consolidated pursuant to Section 1125.60 of this Part, the hearing shall commence no later than 60 days from the last day for filing of an objection for any of the bargaining units. A Recommended Decision and Order shall be issued within 60 days of the close of the record, unless additional time (up to 30 days) is required due to the length of the record and/or the complexity of the issues involved. The Recommended Decision and Order or a summary of the Recommended Decision and Order shall be served on all parties to the proceeding. A party receiving a summary of the Recommended Decision and Order shall be entitled to

receive a copy of the full Recommended Decision and Order on request.

- e) Within 21 days after receipt of the Recommended Decision and Order, any party may file exceptions and briefs in support of those exceptions with the Board. A party may also file cross-exceptions and a supporting brief within 14 days after receipt of another party's exceptions and supporting brief. If no exceptions have been filed within 21 days after service of the Recommended Decision and Order, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.
- f) If timely exceptions are filed, the Board shall issue and serve on all parties a copy or a summary of its decision and order. A party receiving a summary of the Board's decision and order shall be entitled to receive a copy of the full decision and order on request.
- g) Upon direction of the Board, the employer shall cease transmitting the fee to the Board and shall deduct, from the objector's pay, the amount determined by the Board to be appropriate and pay same to the exclusive representative. The Board shall disburse the amount held in escrow to the employee and the exclusive representative in accordance with its determination in the case. Interest earned by disputed fees during the time they were held in escrow shall be apportioned pro rata between the employee and the exclusive representative.

(Source: Amended at 28 Ill. Reg. 7984, effective May 28, 2004)

Section 1125.90 Consideration by the Board (Repealed)

(Source: Repealed at 13 Ill. Reg. 1784, effective January 31, 1989)

Section 1125.100 Internal Review Procedure

Nothing in this Part shall preclude an exclusive representative from establishing an internal procedure to review challenges to its fair share fees.

(Source: Added at 13 Ill. Reg. 1784, effective January 31, 1989)

**Part 1130 –
Collective Bargaining and Impasse Resolution**

Section 1130.10 General Statement of Purpose

The regulations contained in this Part detail the procedures for giving required notices during collective bargaining, for resolving impasses in collective bargaining, and for the making of appointments to the Illinois Educational Labor Mediation Roster and the selection of mediators, fact finders and arbitrators from the Roster.

Section 1130.20 Notices and Timetable for Bargaining

- a) With respect to collective bargaining in units for which exclusive representatives have been newly certified, the rules in this subsection shall apply. For purposes of this subsection, newly certified representatives are representatives which have not yet reached a collective bargaining agreement after their certification under the Act.
 - 1) *Upon demand of either party, collective bargaining must begin within 60 days of the date of certification of the exclusive representative by the Board. Once commenced, collective bargaining must continue for at least a 60 day period, unless a contract is entered into.*
 - 2) If no agreement has been reached within 45 days after bargaining was initiated, the parties shall file a second notice with the Board. In addition to the requirements of Section 1130.20(e), this notice shall state that no agreement has been reached and whether the parties have agreed to mediation using privately selected *individuals or organizations such as the Federal Mediation and Conciliation Service or the American Arbitration Association*. If by this date, mediation has not been initiated, the Board shall invoke mediation.
- b) With respect to collective bargaining in units that contain professional instructional personnel represented by existing exclusive representatives, the rules in this subsection shall apply:

- 1) If no agreement has been reached within 90 days prior to the scheduled start of the forthcoming school year, the exclusive representative and the employer shall file a notice with the Board.
 - 2) If no agreement has been reached 45 days prior to the scheduled start of the forthcoming school year, either party may request the Board to invoke mediation, or the Board may invoke mediation on its own motion.
 - 3) If no agreement has been reached 15 days prior to the scheduled start of the forthcoming school year, the parties shall file a notice with the Board. In addition to the requirements of Section 1130.20(e), this notice shall state that no agreement has been reached and whether the parties have agreed to mediation using privately selected *individuals or organizations such as the Federal Mediation and Conciliation Service or the American Arbitration Association*. If by this date, mediation has not been initiated, the Board shall invoke mediation.
- c) With respect to collective bargaining in units that do not contain professional instructional personnel but are represented by existing exclusive representatives, the rules in this subpart shall apply:
- 1) If no agreement has been reached 45 days prior to the date that the existing collective bargaining agreement is scheduled to expire, the exclusive representative and the employer shall file a notice with the Board.
 - 2) If no agreement has been reached 45 days prior to the scheduled expiration date of the existing collective bargaining agreement, either party may request the Board to invoke mediation, or the Board may invoke mediation on its own motion during this period.
 - 3) If no agreement has been reached 15 days prior to the scheduled expiration date of the existing collective bargaining agreement parties shall file a notice with the Board. In addition to the requirements of Section 1130.20(e), this notice shall state that no agreement has been reached and whether the parties have agreed to mediation using privately selected *individuals or*

organizations such as the Federal Mediation and Conciliation Service or the American Arbitration Association. If by this date, mediation has not been initiated, the Board shall invoke mediation.

- d) All notices filed under this Section may be filed jointly, signed by both parties. If the notice is not filed jointly, each party shall file a separate notice and serve a copy on the other party. Notices under this Section will be considered filed on the date they are received by the Board.
- e) All notices filed under this Section shall be on a form developed by the Board, and shall contain the following:
 - 1) the name, affiliation, if any, and address of the exclusive representative;
 - 2) the name and address of the employer;
 - 3) the expiration date of the existing collective bargaining agreement, if any;
 - 4) where the unit contains professional instructional personnel, the date of the scheduled start of the forthcoming school year; and
 - 5) a brief report on the status of negotiations, including the date negotiations began.

Section 1130.30 Mediation

- a) Mediation services will be provided at any time upon joint request of the parties.
- b) Mediation may be invoked as follows:
 - 1) upon request of one party or upon the Board's own motion, within 45 days prior to the scheduled start of the forthcoming school year for units containing professional instructional personnel or within 45 days prior to the scheduled expiration date of the collective bargaining agreement for units not containing professional instructional personnel;
 - 2) automatically by the Board, 45 days after bargaining has begun in units for which exclusive representatives have been newly certified or 15 days prior to the scheduled start of the forthcoming school year in units that contain professional instructional personnel and are represented

by existing exclusive representatives or 15 days prior to the expiration date of the existing collective bargaining agreement for units that do not contain professional instructional personnel but are represented by existing exclusive representatives. Within two days after the Board automatically invokes mediation, the parties may submit a stipulation to defer selection of a mediator. The stipulation shall be on a form developed by the Board and shall include a provision that the parties will maintain the status quo with respect to existing terms and conditions of employment and will not engage in a strike until at least ten days after the stipulation is withdrawn. Either party may withdraw the stipulation at any time by giving notice to the other party and to the Board.

- c) Requests for mediation shall be in writing. Joint requests for mediation may be made by telephone to the Board's Springfield office, but a written request, signed by both parties, shall follow as soon as physically possible.
- d) Requests and joint requests for mediation shall be on a form developed by the Board and shall include:
 - 1) the name, affiliation, if any, and address of the requesting party;
 - 2) the name, affiliation, if any, and address of the other party to collective bargaining;
 - 3) the date collective bargaining began;
 - 4) the date the existing contract, if any, is scheduled to expire; and
 - 5) where the unit contains professional instructional personnel, the date of the scheduled start of the forthcoming school year.
- e) When the Board receives a request from one party, it shall investigate the request. If the Board's investigation discloses that the request was properly filed under these rules, and that the bargaining has not resulted in an agreement and the Board concludes that mediation would assist the parties, the Board shall invoke mediation. In determining whether mediation would assist the parties, the Board shall consider such factors as the number of meetings that have occurred,

the number of issues in dispute, the significance of the issues in dispute, the degree of experience of the representatives of the parties in the bargaining process, and the collective bargaining history of the parties.

- f) Whenever the Board receives a joint request for mediation, or whenever the Board invokes mediation pursuant to Section 1130.30(b)(1), or whenever the Board has not approved a stipulation to defer selection of a mediator within two days after automatic invocation of mediation, or whenever such a stipulation has been withdrawn, the Board shall submit to the parties, a panel of three proposed mediators selected from the Illinois Educational Labor Mediation Roster. Within three days following receipt of the panel, the parties shall select one of the names on the panel or any other person they choose to serve as mediator. Whenever the parties agree to select a mediator through the Federal Mediation and Conciliation Service, the American Arbitration Association, or any other source, they shall notify the Board of their selection. If the parties fail to agree on a mediator within the three day period, the Board shall appoint a mediator.
- g) The mediator may hold joint and separate conferences with the parties. The conferences shall be private unless the mediator and the parties agree otherwise.
- h) Information disclosed by a party to a mediator in the performance of mediation functions shall not be disclosed voluntarily or by compulsion. All files, records, reports, documents, or other papers prepared by a mediator shall be confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the mediator, on behalf of any party to any cause pending in any type of proceeding.

Section 1130.40 Notice of Intent to Strike

- a) *Educational employees . . . shall not engage in a strike unless at least 10 days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional*

superintendent and the Illinois Educational Labor Relations Board. (Section 13 of the Act)

- b) For purposes of this Section, 10 days shall mean 10 calendar days. Intervening Saturdays, Sundays or legal holidays shall be included. The day on which the notice of intent to strike is given shall not be included. The last day of the period shall be included regardless of whether the last day falls on a Saturday, Sunday or legal holiday.
- c) Notice of intent to strike shall be in writing and shall include:
 - 1) the name, address and affiliation, if any, of the exclusive representative;
 - 2) the name and address of the employer;
 - 3) a description of the bargaining unit; and
 - 4) a statement of intent to strike.
- d) Notice of intent to strike shall be considered given to the Board on the date written notice is received by the Board, unless telephonic notice is given the Board's Executive Director or his designee during the Board's regular office hours, and confirmed immediately by written notice personally delivered to the Board's office or mailed to the Board's office by certified or registered mail.

(Source: Amended at 28 Ill. Reg. 7989, effective May 28, 2004)

Section 1130.50 Fact Finding and Interest Arbitration

- a) The parties may agree to the use of fact finding or interest arbitration in settling their disputes.
- b) Upon joint request of the parties, the Board shall provide one panel of no more than seven arbitrators for use by the parties in selecting a fact finder or interest arbitrator. Such request shall be on a form developed by the Board. The parties shall attach a copy of their agreement to use fact finding or interest arbitration to the request.

Section 1130.60 Filing of Agreements

Within 60 days after a collective bargaining agreement has been reached, each educational employer shall file a copy of the agreement with the Board.

Section 1130.70 Grievance Arbitration and No Strike Clauses

- a) Every collective bargaining agreement between an employer and an employee organization shall contain a grievance procedure which has as its last step final arbitration. *The agreement shall also contain appropriate language prohibiting strikes for the duration of the agreement.*
- b) Whenever the parties request, the Board shall provide a panel of grievance arbitrators selected from the Illinois Educational Labor Mediation Roster. The size of the panel shall be specified by the parties in their request, but shall not exceed seven. If the parties are unable to select an arbitrator from the first panel, the Board shall provide a second panel. The Board shall not provide more than two panels.

Section 1130.80 Illinois Educational Labor Mediation Roster

- a) The Board shall establish an Illinois Educational Labor Mediation Roster. The Roster shall list qualified mediators, fact finders, interest arbitrators, and grievance arbitrators. A person may be qualified in more than one category.
- b) Appointment to the Roster shall be by the Board, after application by the individual. The application shall be on a form developed by the Board.
- c) In making appointments to the Roster, the Board shall consider such factors as experience and training, membership on other mediation or arbitration panels, education, prior published awards, current advocacy in employment relations matters, letters of recommendation supporting the application, and any other material supplied by the applicant or any clarifying or supplemental material requested by the Board which serves to establish these factors.
- d) Persons appointed to the Roster shall file with the Board a brief biographical sketch, a concise resume of their experience relevant to the position for which they are listed and a fee schedule. Whenever an individual is selected to serve in a case that individual shall not charge a fee greater than that listed in the fee schedule the individual has filed

with the Board. A minimum of 30 days notice shall be given for changes in fee schedules.

- e) Whenever the Board provides the parties with a panel selected from the Roster, the Board shall provide copies of the biographical sketches and fee schedules of the panelists.
- f) The parties may jointly request that panels submitted to them contain or omit specific individuals. No party may unilaterally make such a request.

Part 1135
University Of Illinois Bargaining Units

Section 1135.10 General Statement of Purpose

This Part sets forth presumptively appropriate bargaining units for educational employees employed by the Board of Trustees of the University of Illinois. Nothing in this Part shall negate historical units created prior to January 1, 1984 or units certified by the Illinois Educational Labor Relations Board prior to the effective date of these regulations. Nothing in this Part shall be construed to supersede this Part or rights of educational employees under Section 7 of the Act. Presumptively appropriate means that a bargaining unit has been found to have the requisite community of interest under Section 7a of the Educational Labor Relations Act (the Act) [115 ILCS 5/7(a)], unless the appropriateness is rebutted by contrary evidence.

Section 1135.20 Presumptively Appropriate Bargaining Units

- a) With respect to educational employees employed at the Urbana-Champaign campus or employed in units located outside Urbana-Champaign which report administratively to the Urbana-Champaign campus, the following units shall be presumptively appropriate for collective bargaining:
 - 1) Unit 1: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time, nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms, but excluding all faculty members of the College of Law and the College of Veterinary Medicine. A terminal degree is the highest degree attainable in a discipline.
 - 2) Unit 2: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure track faculty members of the College of Law.

- 3) Unit 3: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure track faculty members of the College of Veterinary Medicine.
 - 4) Unit 4: All full-time non-visiting academic professionals exempted as Principal Administrative Employees from Section 36e of the State Universities Civil Service Act [110 ILCS 70/36e], who have a .50 or greater appointment in that position.
 - 5) Unit 5: All full-time and regular part-time professional employees, as that term is defined in Section 2(k) of the Illinois Educational Labor Relations Act [115 ILCS 5/2(k)] who are not exempt from the State Universities Civil Service Act.
 - 6) Unit 6: All full-time and regular part-time technical and paraprofessional employees not exempt from the State Universities Civil Service Act [110 ILCS 70/36e]. A technical and paraprofessional employee is a person who performs work that is typically laboratory or field work.
 - 7) Unit 7: All full-time and regular part-time non-professional administrative and clerical employees not exempt from the State Universities Civil Service Act.
 - 8) Unit 8: All full-time and regular part-time service and maintenance employees not exempt from the State Universities Civil Service Act.
- b) With respect to educational employees employed at the Chicago campus or employed in units located outside Chicago which report administratively to the Chicago campus, the following units shall be presumptively appropriate for collective bargaining:
- 1) Unit 1: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time, nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms, but

excluding all faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry.

- 2) Unit 2: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure-track faculty members of the College of Dentistry.
- 3) Unit 3: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure-track faculty members of the College of Medicine.
- 4) Unit 4: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure track faculty members of the College of Pharmacy.
- 5) Unit 5: All full-time non-visiting academic professionals exempted as Principal Administrative Employees from Section 36e of the State Universities Civil Service Act who have a .50 or greater appointment in that position.
- 6) Unit 6: All full-time and regular part-time professional employees, as that term is defined in Section 2(k) of the Illinois Educational Labor Relations Act [115 ILCS 5/2(k)] who are not exempt from the State Universities Civil Service Act.
- 7) Unit 7: All full-time and regular part-time technical and paraprofessional employees not exempt from the State Universities Civil Service Act.
- 8) Unit 8: All full-time and regular part-time non-professional administrative and clerical employees not exempt from the State Universities Civil Service Act.
- 9) Unit 9: All full-time and regular part-time service and maintenance employees not exempt from the State Universities Civil Service Act.

(Source: Amended at 28 Ill. Reg. 7993, effective May 28, 2004)

Section 1135.30 Bargaining Unit Determinations

- a) The units set forth in Section 1135.20 are presumptively appropriate. Petitions for units other than those set forth in this Part may be filed and shall be processed in accord with the regular rules of this agency concerning representation

cases (80 Ill. Adm. Code 1110). Units of educational employees of the Board of Trustees of the University of Illinois other than those set forth herein shall be established only if the petitioner can show the following by clear and convincing evidence:

- 1) that the unit is otherwise appropriate under Section 7 of the Illinois Educational Labor Relations Act;
 - 2) that special circumstances and compelling justifications make it appropriate for the Illinois Educational Labor Relations Board to establish a unit different from those set forth above;
 - 3) that establishment of a different unit will not cause undue fragmentation of bargaining units or proliferation of bargaining units. Undue fragmentation of bargaining units or proliferation of bargaining units means that the number of bargaining units is such as to threaten to interrupt services, cause labor instability, and cause continual collective bargaining and a multitude of representation proceedings.
- b) Nothing in this Part shall be construed to prohibit a representation petition combining two or more of the bargaining units set forth in Section 1135.20(a)(5), (6), (7) and (8) or Section 1135.20(b)(6), (7), (8) and (9), respectively.
 - c) With respect to the bargaining units listed in Section 1135.20(a)(5), (6), (7) and (8) or Section 1135.20(b)(6), (7), (8) and (9), the individual units may be added to existing units by means of self-determination elections.
 - d) Notwithstanding the above, nothing shall prevent the Illinois Educational Labor Relations Board from holding hearings concerning the specific job classifications to be included in, or excluded from, each of the units listed in Section 1135.20 and from establishing additional rules about such matters.

Title 2: Governmental Organization
Subtitle E: Miscellaneous State Agencies
Chapter XLVIII: Illinois Educational Labor Relations Board

PART 2675
Public Information, Rulemaking,
Organization and Personnel

Subpart A: Public Information

Section 2675.10 General Information

The Illinois Educational Labor Relations Board (IELRB or Board) has jurisdiction of labor relations matters involving educational employees and educational employers within Illinois. The IELRB maintains offices at 320 West Washington, Suite 260, Springfield, Illinois 62701, (217) 782-9068, and 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601, (312) 793-3170. General information regarding the IELRB and its activities may be obtained by writing or telephoning the IELRB at either office. Information regarding the docket of cases pending before the IELRB or pending hearings may be obtained by contacting the IELRB's General Counsel at the Chicago Office. Information regarding the docket of cases pending investigation may be obtained by contacting the Executive Director at the Chicago Office. The IELRB's office will be open to the public from 8:30 a.m. to 5:00 pm. on days other than Saturdays, Sundays and legal holidays.

(Source: Amended at 28 Ill. Reg. 12818, effective September 7, 2004)

Section 2675.20 Procedural Information

Information on the procedures followed by the IELRB in discharging its statutory responsibilities is set forth in detail in the IELRB's various procedural rules. Those rules are promulgated by the Board and cover the following subjects: General Procedures, 80 Ill. Adm. 1100; Hearing Procedures, 80 Ill. Adm. 1105; Representation Proceedings, 80 Ill. Adm. 1110; Unfair Labor Practice Proceedings, 80 Ill. Adm. 1120; Fair Share Fee Objections, 80 Ill. Adm. 1125; Collective Bargaining and Impasse Resolution,

80 Ill. Adm. 1130; University of Illinois Bargaining Units, 80 Ill. Adm. 1135.

Section 2675.30 Access to Board Materials

The IELRB will provide copies of its regulations, and of the forms to be used by parties in practice before it, without charge to persons who request them, subject to limitations upon the number requested by any person and provided that the Board has copies on hand when such a request is made. The Board will make available for public inspection at its offices its annual report to the Governor and General Assembly, as well as other publications and materials disseminated for public information, and its final orders, decisions and opinions determining cases. For information governing access to other Board documents and material, consult the Board's rules entitled "Freedom of Information," at 2 Ill. Adm. Code 2676.

Subpart B: Rulemaking

Section 2675.110 Procedures

Rules of the Board are subject to the requirements of the Illinois Administrative Procedure Act [5 ILCS 100].
(Source: Amended at 28 Ill. Reg. 12818, effective September 7, 2004)

Section 2675.120 Petitions for Rulemaking

- a) Any interested person may petition the Board for the adoption, amendment or repeal of a rule.
- b) Petitions for rulemaking shall be in writing and shall be addressed to the Executive Director at either of the Board's offices.

Subpart C: Organization

Section 2675.210 Composition of the IELRB

The IELRB is composed of a Chairman and four Members, all of whom are appointed by the Governor with the advice and consent of the Senate. Their terms are set by Section 5 of the Act [115 ILCS 5/5].

(Source: Amended at 28 Ill. Reg. 12818, effective September 7, 2004)

Section 2675.220 Executive Director and General Counsel

The Board shall employ an Executive Director and a General Counsel who shall be responsible for the operations of the offices of the Board. The Executive Director and General Counsel shall report directly to the Board.

Section 2675.230 Office of the Executive Director

The Board, through the Office of the Executive Director under the general supervision and direction of the Executive Director, performs the following operations:

- a) Investigating unfair labor practice charges pursuant to 80 Ill. Adm. Code 1120.30, 80 Ill. Adm. Code 1105 and 80 Ill. Adm. Code 1120;
- b) Conducting all necessary investigations of voluntary recognition and representation petitions pursuant to 80 Ill. Adm. Code 1105 and 80 Ill. Adm. Code 1110;
- c) Advising the Board on legal issues which may arise in the course of the Board's official duties;
- d) Training of arbitrators and mediators as directed by the Board;
- e) Implementing and maintaining the Board's Labor Mediation Roster;
- f) Administering the Board's public information officer program;
- g) Serving as the Board's Freedom of Information Officer.

Section 2675.240 Office of the General Counsel

The members of the IELRB, personally, and through the Office of the General Counsel under the general supervision and direction of the General Counsel, perform the following operations:

- a) Reviewing all recommended decisions of its hearing officers and Executive Director;
- b) Drafting and issuing all unfair labor practice and representation decisions of the Board;

- c) Advising the Board on legal issues which arise in the course of the Board's official duties;
 - d) Assisting the Officer of the Attorney General in representing the Board in all legal matters pending in the courts;
 - e) Representing the Board in legal proceedings before other agencies and courts;
 - f) Conducting representation and unfair labor practice hearings;
 - g) Reviewing and revising the Board's Rules and Regulations.
- (Source: Amended at 28 Ill. Reg. 12818, effective September 7, 2004)

Section 2675.250 Administrative Operations

The following administrative operations are performed by the staff of the IELRB under the general supervision and direction of the Executive Director:

- a) Administering all financial transactions, including the processing of all state vouchers and related fiscal matters;
- b) Preparing the budget for the IELRB and appropriation requests for review by the IELRB and submission to the General Assembly;
- c) Assigning all clerical and administrative staff within the offices of the IELRB.

The IELRB's staff is organized as depicted in Appendix A.

Section 2675.260 Advisory Committee

The IELRB may establish an advisory committee, including subcommittees thereof, composed of individuals who appear before the Board, or who otherwise do business with our Board, in order to act in an advisory capacity to the Board on certain Agency matters.

Section 2675.APPENDIX A
Illinois Educational Labor Relations Board
Staff Organization Chart

Part 2676 -- Freedom Of Information

Section 2676.10 General Categories of Board Records

- a) The Illinois Educational Labor Relations Board (the Board) maintains the following general categories of records:
 - 1) Case records, covering the processing and disposition of representation and unfair labor practice cases.
 - 2) Mediation/Arbitration records, including the Board's roster of mediators/arbitrators, requests for panels therefrom, and related records.
 - 3) Collective Bargaining Agreements filed with the Board by employers under the Board's jurisdiction.
 - 4) Minutes of Board Meetings.
 - 5) Administrative, fiscal and personnel files, covering the Board's internal business affairs.
 - 6) General Correspondence.
 - 7) Legislative and rulemaking files, covering analyses of bills and proposed rules, comments thereon, and related records.
- b) Within these general categories, some records are readily available to the public for inspection, others are available upon notice or subject to limitations, and some are deemed confidential and exempt from disclosure under any circumstances. The following Section 2676.20 provides examples.

Section 2676.20 Availability of Certain Records

- a) The following records maintained by the Board are readily available for public inspection, meaning they are subject to disclosure and copies are maintained in such a fashion as to ordinarily be accessible for inspection on short notice:
 - 1) Dockets of cases filed with the Board.
 - 2) Pending Representation Petitions (including for certification, decertification, clarification and amendment of certification).
 - 3) Current certifications of exclusive bargaining representatives and certifications of result.

- 4) Pending unfair labor practice charges.
 - 5) Decisions and Orders rendered by hearing officers, the Executive Director and the Board.
 - 6) The Labor Mediation Roster, including vitae of roster members.
 - 7) Minutes of Board meetings.
 - 8) Freedom of Information Requests and the records showing their dispositions.
 - 9) Files in unfair labor practice and representation cases that have been closed for six months or more.
- b) The following records are deemed accessible for public inspection, but may not be available on short notice; advance arrangements should be made:
- 1) Hearing Records, including transcripts, briefs filed to hearing officers and exceptions and briefs filed with the Board and other record materials from Board-conducted hearings in both closed representation and unfair labor practice cases.
 - 2) Mediation/Arbitration records, including requests to the Board for the appointment of mediators, fact-finders and arbitrators pursuant to Section 12 of the Act, the Board's responses to such requests, and the reports filed with the Board by fact-finders and interest arbitrators.
 - 3) Rulemaking files, covering the Board's proposal, review and adoption of regulations.
 - 4) Collective Bargaining Agreements filed with the Board by covered employers.
 - 5) Files in unfair labor practice and representation cases that have been closed less than 6 months.
- c) The following records are regarded as confidential and exempt from disclosure under all circumstances:
- 1) Showings of Interest submitted to the Board in conjunction with petitions in representation cases, and materials generated by the Board's investigations of such showings.
 - 2) Files in pending unfair labor practice and representation cases.

- 3) Records in representation cases potentially identifying voters (or non-voters) and the character of their votes in secret ballot elections conducted by the Board.
 - 4) Internal Personnel Files regarding Board employees.
 - 5) Preliminary drafts, notes, recommendations and memoranda by Board members or Board personnel in which opinions are expressed or policies or actions are proposed or formulated.
 - 6) Drafts, notes, recommendations, memoranda and other materials relating to pending litigation involving the Board.
- d) All other records maintained by the Board shall be available for public inspection, to the extent mandated by the Freedom of Information Act [5 ILCS 140], pursuant to the procedures specified in Section 2676.30.
- (Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

Section 2676.30 Requests for Access to Records

Requests under the Freedom of Information Act for access to public records of the Illinois Educational Labor Relations Board shall be submitted to the Executive Director, Illinois Educational Labor Relations Board, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601. Each request submitted by mail should be enclosed in an envelope clearly marked "FOIA REQUEST".

(Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

Section 2676.40 Initial Response to Request

- a) The Board will respond, through its staff, to the request within 7 working days after its receipt unless, within that period, the staff notifies the requester that it will require an extension of up to 7 additional working days. A notice of such an extension shall state the reasons why the extension is needed.
- b) If the staff approves a request for public records, it will notify the requester when the records will be made available for inspection. If the request is for copies of records, the copies shall be provided after the requester has tendered

payment in full to the Board for the applicable copy fees specified in Section 2676.70 of this Part.

- c) If the Board, through its staff, denies in whole or in part a written request for records, notice of the denial shall be given in writing stating the reasons therefor. The notice shall also identify by name and title the staff person(s) responsible for the denial, and shall advise the requester that the denial may be appealed to the Board. If the denial goes to only a portion of the requested records, the notice shall advise how and when the request will otherwise be granted. A request for categories of records which is unduly burdensome to the Board will be denied only after affording the requester an opportunity to confer and to narrow the request to manageable proportions.
- d) The Board's failure to respond to a request within the period of time prescribed in Subsection 2676.40(a) of this Part may be treated by the requester as a denial of the request.

Section 2676.50 Appeal of Denial of Access

- a) A person whose written request for public records has been denied by the staff of the Board may appeal the denial to the Board. The appeal must be in writing and must include a copy of the original request, a copy of the denial (if any), and a statement of the reasons why the denial should be overturned.
- b) An appeal to the Board shall be addressed to it, to the attention of the General Counsel, at 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601, and shall be clearly designated: "ATTN: FOIA APPEAL".
- c) The Board shall determine a requester's appeal within 7 working days after its receipt. If the Board grants the appeal, a written notice to that effect shall inform the requester how and when the records will be made available. If the Board denies the appeal, in whole or in part, a written notice shall inform the requester that judicial review of the denial is available under Section 11 of the Freedom of Information Act [5 ILCS 140/11].

- d) The Board's failure to determine an appeal within 7 working days after its receipt may be treated by the requester as a denial of the appeal.

(Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

Section 2676.60 Place and Time of Inspection

Public records maintained by the Board will be made available for inspection pursuant to this Part at the Board's offices at either 320 West Washington Street, Suite 260, Springfield, Illinois 62701 or 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601, during regular office hours (8:30 a.m. to 5:00 p.m.) on days other than Saturdays, Sundays and legal holidays. The Board will determine at which office the records will be available.

(Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

Section 2676.70 Copies

Upon proper request, the Board will furnish copies of public records which are available for public inspection at a charge of fifteen cents per page, plus appropriate postage if the copies are to be mailed. Copies will not be released to the requester until payment in full, by check or money order, of the copying and postage fees has been received.

Title 4: Discrimination Procedures
Chapter XXXIII: Illinois Educational
Labor Relations Board

Part 900 -- Americans With Disabilities Act
Grievance Procedure

Section 900.10 Purpose

- a) This Americans With Disabilities Act (ADA) Grievance Procedure (Procedure) is established pursuant to the Americans With Disabilities Act of 1990, 42 USC Section 12101 et seq., and specifically Section 35.107 of the Title II regulations, 28 CFR Part 35, requiring that a grievance procedure be established to resolve grievances asserted by qualified individuals with disabilities. Should any individual desire to review the ADA or its regulations to understand the rights, privileges and remedies afforded by it, please contact the Designated Coordinator.
- b) In general, the ADA requires that each program, service and activity offered by the Illinois Educational Labor Relations Board (Board), when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.
- c) It is the intention of the Board to foster open communication with all individuals requesting readily accessible programs, services and activities. The Board encourages supervisors of programs, services and activities to respond to requests for modifications before they become grievances.

Section 900.20 Definitions

- a) Complainant
A complainant is an individual with a disability who files a Grievance Form provided by the Board under this procedure.
- b) Designated Coordinator
The Designated Coordinator is the persons appointed by the Chairman of the Board who is/are responsible for the coordination of efforts of the Board to comply with and carry out its responsibilities under Title II of the ADA including

investigation of grievances filed by complainants. The Designated Coordinator may be contacted at 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601. See 28 CFR 35.107.

c) Grievance

A grievance is any complaint under the ADA by an individual with a disability who:

- 1) meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by the Board, and
- 2) believes he or she has been excluded from participation in, or denied the benefits of, any program, service or activity of the Board or has been subject to discrimination by the Board.

(Source: Amended at 28 Ill. Reg. 7927, effective May 28, 2004)

Section 900.30 Procedure

- a) Grievances must be submitted through the channels defined below in the form and manner as described within the specified time limits. It is mutually desirable and beneficial that grievances be satisfactorily resolved in a prompt manner. Time limits established in this procedure are in calendar days, unless otherwise stated, and may be extended by mutual agreement in writing by the complainant and the reviewer, at the Designated Coordinator and Final Levels.
- b) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure within the specified time limits, shall mean that the complainant has withdrawn the grievance or has accepted the last response given in the grievance procedure as the Board's last response.
- c) The Board shall, upon being informed of that individual's desire to file a formal grievance, instruct the individual how to receive a copy of this Procedure and the Grievance Form.

Section 900.40 Designated Coordinator Level

- a) If an individual desires to file a formal written grievance, the individual shall promptly, but no later than 180 days after the alleged discrimination, submit the grievance to the

Designated Coordinator in writing on the Grievance Form prescribed for that purpose. The Grievance Form must be completed in full in order to receive proper consideration by the Designated Coordinator.

- b) Upon request, assistance shall be provided by the Board to complete the Grievance Form.
- c) The Designated Coordinator, or his/her representative, shall investigate the grievance and shall make reasonable efforts to resolve it. The Designated Coordinator shall provide a written response to the complainant and Chairman within ten (10) business days after receipt of the Grievance Form.

Section 900.50 Final Level

- a) If the grievance has not been resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the Chairman of the Board for final review. The complainant shall submit these documents to the Chairman, together with a short written statement explaining the reasons for dissatisfaction with the Designated Coordinator's written response, within five business days after receipt by the complainant of the Designated Coordinator's response.
- b) The Chairman shall appoint a three-member panel to review the grievance at the Final Level. One member so appointed shall be designated chairman.
- c) The complainant shall be afforded an opportunity to appear before the panel. Complainant shall have a right to appoint a representative to appear on his/her behalf. The panel shall review the Designated Coordinator's written response and may conduct interviews and seek advice as it deems appropriate.
- d) Upon reaching a concurrence, the panel shall make recommendations in writing to the Chairman as to the proper resolution of the grievance. All recommendations shall include reasons for such recommendations and shall bear the signatures of the concurring panel members. A dissenting member of the panel may make a recommendation to the

Chairman in writing and shall also sign such recommendation.

- e) Upon receipt of recommendations from a panel, the Chairman shall approve, disapprove or modify the panel's recommendations, shall render a decision thereon in writing, shall state the basis therefor, and shall cause a copy of the decision to be served on the parties. The Chairman's decision shall be final. If the Chairman disapproves or modifies the panel's recommendations, the Chairman shall include written reasons for such disapproval or modification.
 - f) The Grievance Form, the Designated Coordinator's response, the statement of the reasons for dissatisfaction, the recommendations of the panel, and the decision of the Chairman shall be maintained in accordance with the State Records Act [5 ILCS 160], or as otherwise required by law.
- (Source: Amended at 28 Ill. Reg. 7927, effective May 28, 2004)

Section 900.60 Accessibility

The Board shall ensure that all stages of the Procedure are readily accessible to and usable by individuals with disabilities.

Section 900.70 Case-by-Case Resolution

Each grievance involves a unique set of factors that includes but is not limited to: the specific nature of the disability; the essential eligibility requirements, the benefits to be derived, and the nature of the service, program or activity at issue; the health and safety of others; and whether an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on the Board. Accordingly, termination of a grievance at any Level, whether through the granting of relief or otherwise, shall not constitute a precedent on which any other complainants should rely.