

RULES AND REGULATIONS
ADOPTED BY THE
LOS ANGELES EMPLOYEE RELATIONS BOARD

As adopted and amended through June 28, 2021



Adopted in accordance with the Los Angeles City
Employee Relations Ordinance, Section 4.810 f (9),
Los Angeles Administrative Code.

TABLE OF CONTENTS

<u>Rule No.</u>	<u>Title</u>	<u>Page</u>
1	Rules Governing General Purpose and Terms	1
2	Rules Governing Filing of Petitions	1
3	Rules Governing Processing of Petitions	2
4	Rules Governing Intervention	3
5	Rules Governing Consent Elections	3
6	Rules Governing Hearing Procedures on Petitions For Representations	3
7	Rules Governing Conduct of Elections, Objections, and, Determination of Objections	4
8	Rules Governing Unfair Employee Relations Practice Claims	6
9	Rules Governing Resolution of Impasse	9
10	Rules Governing Regular and Special Meetings of the Board	11
11	Rules Governing Requests for Arbitration	11
12	Rules Governing Agency Shop Elections	12
13	Rules Governing Access to Personnel Files	12

RULES GOVERNING GENERAL PURPOSE AND TERMS

(Rule 1 adopted December 20, 1971)

1.01 Statement of Purpose and Terms. These Rules supplement Division 4, Chapter 8 of the Los Angeles Administrative Code ("LAAC"). Words and terms used herein shall have the same meaning as in said Chapter as applicable.

(Amended March 8, 1982 & June 28, 2021)

1.02 Document Filing. With the following exception all documents will be considered properly filed with the Board if submitted to its official office in person, by United States Mail, or as an attachment to an electronic mail communication sent to the Board's designated address (e.g., a PDF). Electronic signatures of employees in support of petitions filed pursuant to Rule 2 may not be submitted. Copies of all documents must be served on each interested party. Proof of such service shall be filed with the Board.

The Executive Director may order a party to file within a specific timeframe physical copies of any submitted documents. The number of copies to be submitted will be determined by the Executive Director.

(Added September 28, 2015 & Amended June 28, 2021)

RULES GOVERNING FILING OF PETITIONS

(Rule 2 adopted December 20, 1971)

2.01 Who May File Petitions. A petition for certification as the exclusive representative of the employees in the unit may be filed as prescribed by LAAC Section 4.822b. A decertification petition may be filed as prescribed by LAAC Section 4.822f.

(Amended October 1, 1973 & September 28, 2015 & Amended June 28, 2021)

2.02 Form and Filing of Petition. Petitions shall be in writing on Form ERB-1 as prescribed by the Board. The original shall be filed with the Board. Where the petition is for certification with respect to a unit involving employees represented by a presently certified representative, such representative must be identified in said form. Decertification petitions shall be on Form ERB-1.

(Amended October 1, 1973 & Amended June 28, 2021)

2.03 Showing of Interest.

- (a) Written proof that an organization represents 30% of the regular employees in the proposed unit shall accompany the petition. Written proof that 30% or more of the regular employees in the unit support the decertification petition shall

accompany it.

- (b) Such proof need be filed with the Board only, and shall include one or more of the following: a copy of effective membership cards, a list of employees authorizing current payroll deductions for membership dues, or an authorization statement containing the printed names and signatures of employees. Where the petition is a decertification petition, or is a petition for certification as to a unit involving a presently certified representative such showing of interest shall be only by an authorization statement containing the printed names and signatures of employees, signed within ninety (90) days of the filing of the petition.

- (c) The Board in its sole discretion and upon recommendation by the Executive Director may require a showing of interest to demonstrate that a majority of regular employees in a classification support a petition to accrete said classification to an existing bargaining unit.

(Added September 28, 2015)

- (d) The determination whether such proof is satisfactory to the Board shall be made administratively, and shall not be subject to attack at any hearing.

(Amended October 1, 1973 & August 27, 2012)

2.04 Service of Petition. The Petitioner shall serve a copy of the petition on the General Manager Personnel Department, and shall file proof of service with the Board at the same time the petition is filed. Where the unit involves a presently certified representative, a copy of the petition shall be served on such representative, and proof of such service shall be filed with the Board.

(Amended October 1, 1973)

2.05 Contract Bar; Time to File. A valid written agreement between the City and a certified employee organization or council of employee organizations covering the wages, hours and/or other terms and conditions of employment of employees in an appropriate employee representation unit shall bar the filing of a Petition for Certification or a Petition for Decertification of the representative for such unit during the term of such written agreement, not exceeding two years, unless the life of the certification of such organization or council is altered by the Board. A Petition for Certification or Decertification may only be filed during a period beginning not earlier than 120 calendar days and ending not later than 90 calendar days before the expiration date of any such written agreement or, if

the agreement is for an indefinite term or for a term longer than two years, before the second anniversary date of the agreement or any subsequent anniversary date.

*(Added October 1, 1973;
Amended September 28, 2015)*

2.06 Requests for Amendment of, Accretion to, or Deletion from Existing Units. Either an affected certified representative or the General Manager Personnel Department, during the life of a certification, may request the Board to amend, add classes to, or delete classes from, the certified unit. This shall not affect the term of the certification of the unit. Such request shall include the following information:

1. Name of requestor.
2. Identification of the certified unit.
3. Identification of affected employee organization(s)
4. Department(s) involved.
5. Specific action requested.
6. Reason for requesting action.

The Board shall consider and dispose of such request as is appropriate under the circumstances, which may include granting the request in whole or in part, ordering a hearing, ordering a card check, ordering an election, or refusing the request.

(Added December 3, 1973)

RULES GOVERNING PROCESSING OF PETITIONS

(Rule 3 adopted December 20, 1971)

3.01 Review of Petition.

- (a) Upon receipt of a petition, the Board shall post notice of its receipt and administratively shall review the same for compliance with the LAAC and these rules.
- (b) Upon receipt of a petition, the Board shall cause to be delivered true copies thereof to all qualified employee organizations.

(Amended June 28, 2021)

3.02 Posting and Notice.

- (a) The Board shall maintain an official bulletin board upon which it shall post a true copy of each petition when it has been determined to meet the requirements of the LAAC and these rules, and it shall note and stamp upon such copy the date of posting.
- (b) Upon the request of the Board, after the posting of a petition, the General Manager Personnel Department shall

cause to be posted copies of a Notice to All Employees at work locations where notices are normally posted affecting the employees in the proposed unit.

Such notices shall set forth: (1) the name of the Petitioner, (2) the description of the proposed unit, and (3) the last date to file a Motion for Intervention.

The notice shall remain posted for a period of ten (10) days, shall be posted conspicuously, and shall not be covered by other material, altered, or defaced.

(Amended March 8, 1982 & June 28, 2021)

- (c) Such postings shall be posted electronically on the Board's website, and whenever feasible, the General Manager Personnel Department shall effectuate an electronic posting on websites normally accessed by impacted employees.

(Added June 28, 2021)

3.03 Response of Personnel Department. The Personnel Department shall, no later than twenty-eight (28) days following the posting of a petition as set forth in Rule 3.02, file with the Board a report and recommendations regarding the unit proposed by the petition as prescribed by LAAC Section 4.822, and shall serve a copy of such response upon the Petitioner and such other employee organizations as are named in the petition or which have intervened. Proof of such service shall be filed with the Board.

(Amended September 24, 2007 & June 28, 2021)

3.04 Actions on Petitions. The Board shall examine the reports, recommendations, and views submitted to it and shall take appropriate action thereon, which may include the approval of a request for withdrawal of the petition, dismissal of the petition, or the setting of a hearing, the scheduling of an election, or the granting of recognition.

(Amended September 24, 2007)

3.05 Certification of Employee Organization Without Election. In the event the Board has verified through a check of petitions, authorization cards and/or union membership cards that a petition for certification is supported by a majority of the employees in a proposed bargaining unit, the Board shall certify the petitioning employee organization as the representative of that unit if no other employee organization is certified to represent any of the employees petitioned for, if no other employee organization files a timely intervening petition, and if the unit petitioned for has been stipulated by the parties or been found by the Board to be appropriate.

(Added September 24, 2007)

RULES GOVERNING INTERVENTION

(Rule 4 adopted December 20, 1971)

4.01 Who May Intervene. A motion to intervene to seek consideration as a majority representative in a representation proceeding seeking certification as majority representative may be filed as prescribed by LAAC Section 4.822c.

(Amended June 28, 2021)

4.02 Form and Filing of Intervention. A motion to intervene shall be in writing on Form ERB-2 as prescribed by the Board.

(Amended June 28, 2021)

4.03 Intervenor's Showing of Interest.

- (a) Written proof that an organization represents ten (10) percent of the regular employees in the unit proposed by the petition which initiated the representation proceeding must accompany the motion.
- (b) Such proof need be filed with the Board only and may include copies of currently effective membership cards, a list of employees authorizing current payroll deductions for membership dues, or authorization cards or petitions signed within ninety (90) days prior to submission.
- (c) The determination whether such proof is satisfactory to the Board shall not be subject to attack at any hearing.

4.04 Time of Filing. A motion to intervene shall be filed no later than fourteen (14) days from the date of posting of the petition, as set forth in Rule 3.02.

4.05 Service of Motion. An Intervenor shall serve a copy of its motion to intervene upon the petitioner and upon the General Manager Personnel Department and shall file proof of service with the Board at the time of filing of the motion to intervene.

4.06 Review of Motion. Upon the filing of a motion to intervene, the Board administratively shall review the same for compliance with the LAAC and its rules and take appropriate action thereon, which may include approval or denial of the motion.

(Amended June 28, 2021)

4.07 Posting of Notice. The Board shall post a true copy of the motion to intervene upon its bulletin board in accordance with the LAAC and its rules.

(Amended May 24, 2021)

RULES GOVERNING CONSENT ELECTIONS

(Rule 5 adopted December 20, 1971)

5.01 Negotiation by the Parties. The parties are expected to meet as soon as possible after the posting of the petition and use their best efforts to secure agreement on the appropriateness of the unit and other matters. The parties shall be the General Manager Personnel Department, the petitioner, and approved interveners.

5.02 Agreement for Consent Election. In any representation proceeding, after the time set by these rules for the filing of a motion to intervene has passed and upon the determination by the Board after hearing of the appropriate unit, a consent election may be ordered. The parties to such proceeding and election shall sign a Consent election stipulation.

RULES GOVERNING HEARING PROCEDURES ON PETITIONS FOR REPRESENTATION

(Rule 6 adopted December 20, 1971)

6.01 Setting of Hearing on Unit Determination. The Board may cause a hearing to be held and notice of hearing to be issued, which shall be delivered to the parties and shall include:

- a) A statement of the time, place and nature of the hearing;
- b) A statement of the unit claimed by the petitioner to be appropriate.
- c) The names of the parties as specified by the Board.

Such notice also shall be posted on the bulletin board and a copy mailed to any qualified employee organization that has previously requested notice as to all proceedings on the petition. Petitions may be amended with permission of the Board by the Hearing Officer prior to or at the hearing and the Board may order the consolidation of petitions.

(Amended January 11, 1982)

6.02 Conduct of Hearing. The Board shall determine whether the hearing will be conducted by the full Board, by one Board member acting as a hearing officer, or, in exceptional circumstances, by a non-member hearing officer.

(Amended January 11, 1982)

6.03 Nature of Hearing. The hearing shall be investigatory and not adversary. Its purpose is to develop a full and complete factual record. The rule of relevancy is paramount. There are no burdens of proof and technical rules of evidence shall not apply.

6.04 Rights of Parties and Others. Any party to the hearing shall have the right to be represented by counsel or by other representative, to examine and

cross-examine witnesses, and to offer documentary and other evidence. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. The Board or Hearing Officer shall allow oral argument with appropriate limitations and, after consultation with the parties, may permit briefs to be submitted, in which case the parties shall be granted adequate time for filing same.

(Amended January 11, 1982)

6.05 Report of the Hearing Officer. When a petition is heard by a Board Member acting as a hearing officer or by a non-member hearing officer, the hearing officer shall, within thirty (30) days of the completion of the record, file with the Board Findings and Recommendations, setting forth the relevant facts of the case, the positions of the parties, and the hearing officer's analysis and recommended dispositions of the case. A copy of the Findings and Recommendations shall be served on the affected parties promptly by the Board.

(Amended January 11, 1982)

6.06 Process For Considering Hearing Officer's Report: Upon receipt of the Hearing Officer's Report, the Executive Director will notify the parties of the deadlines to file any exceptions and replies to the Report and of the date for the Board's consideration of the Report. The Executive Director's timeline will be consistent with the parameters set forth in Rules 6.07-6.09. Any party to the matter may request an extension for good cause. The Executive Director shall have the authority to grant continuances to the timeline.

(Amended January 11, 1982 & June 28, 2021)

6.07 Exceptions to the Findings and Recommendations. No less than twenty-one (21) calendar days prior to the scheduled consideration of the Findings and Recommendations by the Board, any affected party may file written Exceptions to the Hearing Officer's Findings and Recommendations with the Board. Any party filing such Exceptions shall serve a copy of such Exceptions simultaneously on all other affected parties; proof of such service shall accompany the filing of the Exceptions with the Board.

(Amended January 11, 1982 & August 27, 2012 & June 28, 2021)

6.08 Rebuttal to Exceptions. No less than fourteen (14) calendar days prior to the scheduled consideration of the Findings and Recommendations by the Board, any affected party may file a written Rebuttal to any Exceptions to the Findings and Recommendations of the Hearing Officer filed by any other affected party.

A party filing such Rebuttal shall serve a copy of such Rebuttal simultaneously on all other affected parties;

proof of such service shall accompany the filing of the Rebuttal with the Board.

(Amended January 11, 1982 & August 27, 2012 & June 28, 2021)

6.09 Consideration of the Findings and Recommendations. The Findings and Recommendations of the hearing officer, together with any Exceptions and Rebuttal to Exceptions thereto, shall be scheduled for the Board's consideration no less than twenty-eight (28) calendar days after service of the Findings and Recommendations on the affected parties.

(Amended January 11, 1982;

Amended and Renumbered June 28, 2021)

6.10 Decision. In accordance with the LAAC Section 4.822c, the Board shall issue a decision dismissing the petition, determining the appropriate unit, directing the election, including organizations that shall appear on the ballot if an election is required, and take other appropriate action. The Board shall forthwith notify the employee organizations and departments concerned, and the General Manager Personnel Department.

(Amended and Renumbered June 28, 2021)

RULES GOVERNING CONDUCT OF ELECTIONS, OBJECTIONS, AND DETERMINATION OF OBJECTIONS

(Rule 7 adopted April 24, 1972)

7.01 Elections: General. Eligible voters shall be regular employees in those classifications determined by the Board to be an appropriate unit except those employees specifically excluded by name, who were so employed not less than thirty-one (31) calendar days immediately prior to the start of the pay period within which the election is held and who are employed by the City in such classifications for that unit on the date of the election, including those who did not work during all or part of such period because of illness, vacation or authorized leave of absence.

7.02 Lists of Eligibility. The General Manager Personnel Department shall provide to the Board and its designated Election Agent and upon request to any employee organization or council(s) of employee organizations which has qualified to be included on the ballot, a list of the eligible voters seven (7) days after the cutoff period as prescribed in Section 7.01. Information to be contained in such lists includes the names of eligible employees in alphabetical order, by polling place, with the employees' identification number, Civil Service classification and department. In addition, in a mail ballot election, the General Manager Personnel Department shall provide to the Board's designated Election Agent, mailing labels of the eligible voters as prescribed in Section 7.01,

including both names and addresses.

(Amended September 24, 2007)

Protests to the accuracy of the list of eligible voters may be made by management or by organizations qualified to be included on the ballot, provided that such protests with the reasons therefor are received in writing by the Board not less than nineteen (19) calendar days prior to the date of the election. Upon receipt of proof satisfactory to the Board, the list of eligible voters may be amended accordingly. The Executive Director will endeavor to seek agreement of management and the organizations qualified to be included on the ballot on an accurate list of eligible voters at the earliest possible date. If such agreement is not reached prior to ten (10) calendar days immediately preceding the date of the election, the Board may make the determination of eligible voters and shall immediately notify the Election Agent of its determination. This list shall then become the official list of Eligible Voters.

7.03 Ballot Content. Every ballot in an election shall contain a choice of "No Organization" in addition to the names of the employee organization(s) or council(s) of employee organizations which the Board has directed to be placed on the ballot. The Board may take action, at the request of an employee organization, to remove said employee organization's name from the ballot or to amend or modify the name which is to appear on the ballot. It shall be the responsibility of the Board to determine the order in which the names of employee organization(s) or council(s) of employee organizations shall appear on the ballot, and to notify the Election Agent of such ballot order not less than thirty (30) calendar days prior to the election. The ballot format shall be designed by the Election Agent and approved by the Board. The ballot shall be controlled by serially numbered ballot stubs.

(Amended June 28, 2021)

7.04 Mail Ballot. The Board may order the holding of an election in whole or in part by mail ballot if in the Board's discretion a mail ballot procedure is deemed to be appropriate. If an election by mail ballot is ordered, in whole or in part, or if the Board determines that absentee ballots shall be provided, the Board will at that time direct the Election Agent to establish rules and procedures to be subject to approval by the Board.

7.05 Notice of Election. Upon determination by the Board that an election under its jurisdiction is to be held, the Board will consult with its Election Agent and the General Manager Personnel Department prior to the announcement of each election date as to the date(s) such an election shall be held. Not more than twenty (20) calendar days nor less than ten (10) calendar days prior to any election set by the Board,

the Board will cause to be prepared a Notice of Election specifying the date and place or places thereof; the hour the polls will be open; the classifications of employees in the appropriate unit for which the election is to be conducted; rules concerning eligibility to vote; the effect of the rules on new employees and employees transferring after the cutoff period; a sample ballot; and such additional information and instructions as the Board may determine. Copies of the Notice of Election and the sample ballot will be sent to all employee organizations and council(s) of employee organizations appearing on the ballot, the Election Agent and to the General Manager Personnel Department. The General Manager Personnel Department shall cause copies of the Notice of Election and the sample ballot to be posted for at least five (5) calendar days prior to the election at work locations where notices are normally posted for the benefit of employees in the appropriate unit. This posting requirement may be modified by mutual agreement of management and the parties appearing on the ballot upon approval of the Board or may be modified by the Board.

7.06 The Election Agent. The City Clerk or other agency chosen by the Board for the administration of any election shall be designated as the Election Agent. Subject to the approval of the Board, the Election Agent shall prescribe necessary rules and procedures for the conducting of elections for the Board, which rules and procedures shall be binding and effective as if made a part of the rules of the Board. Such rules and procedures shall include sole authority for appointment or removal by the election Agent of one Election Officer to conduct election operations at each voting place, and one or more aides to assist the Election Officer in his duties, provided that no person shall be appointed Election Officer or Election Aide who is an employee of the City of Los Angeles or of any concerned employee organization or council(s) of employee organizations or of the Board, or is a member of any of the above in any status; nor shall an Election Officer or Election Aide be appointed who is in any manner an interested party to the issue or issues to be voted upon. Prior to his appointment of any Election Officer or Election Aide, the Election Agent may require an affidavit attesting to such non-interest and non-involvement to be filed by such person.

7.07 Observers. The employee organizations or council(s) of employee organizations which appear on the ballot may designate not more than two (2) regular employees as Observers at each voting place to observe that ballots are properly cast and votes properly counted. City management may have two (2) regular employees as Observers at each voting place. Observers shall not be supervisors of the

employees voting, management employees, or such officials of employee organizations as are not then employed and performing services as regular employees.

7.08 Report of Election Results. The election Agent shall furnish to the Board an unofficial tally immediately following the election and shall thereafter within fourteen (14) days following the election transmit to the Board the official results of the election. The Board shall, no later than the day after the election, furnish the unofficial tally of the results of votes cast to the parties. All election data concerning each election except ballots shall be preserved by the Election Agent for ninety (90) calendar days following the date of the election, and shall be kept available for review by the Board during that period. Ballots shall be retained under security for that same period by the Election Agent, and shall be processed by the Election Agent only. The ballots which are the subject of dispute as the result of objections will be brought to the Board for the Board's consideration, but continued in the custody of the Election Agent during that period.

7.09 Filing Objections. Within seven (7) calendar days after the date of the election, any party may file with the Board an original and eight (8) copies of objections to the matters involving elections. Such objections shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Copies of such objections must be served simultaneously on the parties by the party filing them, and a statement of service shall be made to the Board.

7.10 Certification. If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the result, and if no runoff election is to be held, the Board shall forthwith declare the official results of the election and notify affected employee organizations and departments of these results and of its certification of the employee organization determined to be the majority representative, where appropriate.

7.11 Investigation of Objections. If objections are filed to matters involving elections, the Executive Director shall conduct an investigation and shall make a recommendation to the Board as to the disposition of the objections.

7.12 Hearing on Objections. The Board may, where appropriate, conduct a hearing to hear the matters alleged in objections. The objecting party shall bear the burden of proof regarding all matters alleged in the objections. The Board shall then determine the validity of the objections and make its

determinations and certification if appropriate.

7.13 Changes in Tally of Ballots. Every tally of ballots shall be attested to by the Election Agent.

7.14 Decertification. The same election procedure outlined above shall apply in a decertification election.

RULES GOVERNING UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIMS

(Rule 8 adopted May 30, 1972)

8.01 Who May File a Claim. A claim that an unfair employee relations practice has occurred may be filed as described by LAAC Section 4.860c. Any claim of an alleged unfair employee relations practice shall be filed with the Board and served at the same time directly on the party or parties against whom the claim is directed.

(Amended January 11, 1982 & June 28, 2021)

8.02 Form and Filing of Claim. Claims shall be submitted in writing on Form ERB-3 or ERB-4, whichever is appropriate, as prescribed by the Board. The claim shall contain a clear and concise statement of the facts constituting the alleged unfair practice and shall include the following statement: "I declare under penalty of perjury that I have read the charge and that the statements herein are true and factual to the best of my knowledge and belief." Proof of such service shall be filed with the Board.

(Amended January 11, 1982 & June 28, 2021)

8.03 Time of Filing. Claims must be filed with the Board in accordance with Section 8.01 of these Rules within one hundred eighty (180) days after the charging party first becomes aware of the occurrence, or should have become aware of the occurrence, of the act or conduct upon which such claim is founded.

(Amended January 11, 1982 & June 28, 2021)

8.04 Determination of a Prima Facie Claim. Upon a claim being filed, the Executive Director shall, within thirty (30) days, determine whether the claim states a *prima facie* case. If the Executive Director believes a *prima facie* claim has not been made, she/he shall so advise the parties, and the charging party shall, within thirty (30) days, be permitted to amend the charge, withdraw it without prejudice or appeal the Executive Director's determination to the Board.

(Amended & Renumbered June 28, 2021)

8.05 Informal Settlement Conference. If the Executive Director believes a *prima facie* case has been pled, she/he will direct the parties to review, within fourteen (14) days, the alleged unfair

employee relations practice in joint discussion and to engage in informal attempts to resolve the matter. If such informal attempts are unsuccessful in disposing of the matter, the claim shall then be further processed. Failure of the parties to meet within the prescribed time limits shall not delay the processing of the claim.

(Amended & Renumbered June 28, 2021)

8.06 Response to Claim. The Executive Director shall further direct the party alleged to have committed the unfair employee relations practice to file, within twenty-one (21) days, a response thereto and shall serve such response on the claimant. Proof of such service shall be filed with the Board. The Executive Director may grant an extension for good cause only.

(Amended January 11, 1982; Amended & Renumbered June 28, 2021)

8.07 Investigation and Action on Claim. After the time for response has passed, the Executive Director may further investigate the claim unless the Board shall, prior to or during such investigation, direct the Executive Director otherwise. The Executive Director may direct the parties jointly or separately to meet with her/him at a time and place which the Executive Director shall designate. The charged party may make an offer of settlement to the Executive Director, or may accept a settlement proposed by the Executive Director or the charging party, provided that such settlement is not repugnant to the intent of the Employee Relations Ordinance. In no case shall any offer of settlement be admitted into evidence in any subsequent proceeding concerning the subject charge. Any further investigation by the Executive Director shall not delay the matter being processed and heard by the Board. The Executive Director shall report to the Board, orally or in writing as appropriate, the results of any investigation. The Executive Director may recommend appropriate action on the claim, which may include the acceptance of a settlement offered by the charged party. The Board shall thereafter take appropriate action on the claim, which may include dismissal thereof in whole or in part, acceptance of an offer of settlement which is not repugnant to the intent of the Employee Relations Ordinance, entry of an order, or the issuance of a notice of hearing. If the Executive Director has recommended dismissal for failure to state a *prima facie* case, the Board shall not consider any new or additional facts not included in the original claim form or in any amendments thereto.

(Amended & Renumbered June 28, 2021)

8.08 Deferral to Arbitration. If the subject matter of a claim of unfair employee relations practice is within the scope of a grievance procedure agreed upon by the parties which ends in arbitration, the Board may, on the motion of any party to the claim or

on its own motion, defer further processing of the claim until the grievance procedure has been exhausted and the arbitrator's award has been received. When deciding whether to so defer the processing of a claim, the Board may seek from the defendant to the arbitration a binding waiver of any procedural defense to arbitration, including the expiration of time limits, the existence of an election of remedies clause, etc.

(Amended January 11, 1982; Renumbered June 28, 2021)

8.09 Notice of Receipt of Arbitrator's Award. Upon receipt of the arbitrator's award, the charging party shall transmit a copy of the award to the Board, and shall advise the Board in writing that it wishes either to proceed with the unfair employees relations practice claim or to withdraw it. A copy of such notice shall be served simultaneously on the other party(ies) to the claim.

(Amended January 11, 1982; Renumbered June 28, 2021)

8.10 Review of Arbitrator's Award. If the charging party advises the Board that it wishes to further process the unfair employee relations practice claim, or upon the Board's own motion, the Board shall review the award of the arbitrator. If, in the opinion of the Board, the arbitrator has fairly dealt with the issues contained in the unfair employee relations practice claim and the arbitrator's award is not repugnant to the Employee Relations Ordinance and if the parties have complied with the arbitrator's award, the Board may then dismiss the claim without further processing. If appropriate, the Board may issue its own decision and / or order based on the facts set forth in the decision of the arbitrator.

(Renumbered June 28, 2021)

8.11 Setting a Notice of Hearing. The Board may cause a hearing to be held and a notice of hearing to be issued which shall be delivered to the parties and shall include the time, date, and place of the hearing which shall not be less than fourteen (14) days from the issuance thereof. In determining the date of the hearing, the Executive Director shall attempt to ascertain the available dates of the representatives of each party and shall attempt to accommodate the schedules of the parties, their representatives and the Hearing Officer or the Board. If any party fails to cooperate promptly in this regard, the hearing may be scheduled without consideration of that party's availability.

(Amended January 11, 1982; Renumbered June 28, 2021)

8.12 Hearing Continuance. Any party may request a continuance in a hearing date once set. Continuances shall be granted for good cause only; good cause shall not include the failure of any party

to adequately prepare for a properly scheduled hearing. In granting a continuance the Board, the Executive Director, or the Hearing Officer may consider a stipulation of the parties to that effect. If the continuance is not requested within 30 days of the hearing, the party or parties requesting the continuance shall be responsible for the payment of any cancellation fees incurred from the hearing officer or hearing reporter.

*(Amended January 11, 1982;
Amended and Renumbered June 28, 2021)*

8.13 Appointment of Hearing Officer. In accordance with Section 4.810f(4) and 4.810f(8) of the Employee Relations Ordinance, the Board shall determine whether the hearing will be conducted by the Board, or by one Board Member acting as a hearing officer, or by a non-member hearing officer. The Board shall select and appoint a hearing officer from its list of qualified non-member hearing officers when appropriate. When selecting a non-member hearing officer, the Board may consider the nature of the charge before it, a stipulation of the parties requesting that a particular person be selected, or other factors that the Board may consider relevant.

(Amended April 11, 1982; Renumbered June 28, 2021)

8.14 List of Qualified Non-Member Hearing Officers. The Board shall establish and maintain a list of qualified non-member hearing officers, from which non-member hearing officers shall be selected. When establishing and revising the list the Board may request the City and a committee of the qualified employee organizations to jointly select and submit to the Board nominees for inclusion on the list. The Board shall choose among the persons thus nominated, or other persons the Board deems qualified, those shall constitute the list. The Board may, whenever it deems appropriate, add persons to or remove persons from the list.

(Amended April 11, 1977; Renumbered June 28, 2021)

8.15 Qualifications of Non-Member Hearing Officers. Any person broadly representative of the public, who, in the opinion of the Board, has broad experience in the field of employee relations and is impartial, may be included in the list of qualified non-member hearing officers by the Board.

(Amended April 11, 1977; Renumbered June 28, 2021)

8.16 Request to Withdraw. Within five (5) days after receipt of the Notice of Hearing, any party may request the hearing officer to withdraw by filing an affidavit with the Board setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the Board, such affidavit is filed with due diligence and if upon due inquiry it is found sufficient, it shall disqualify him/her and he/she shall be withdrawn from the proceeding. If the Board does not disqualify him/her, it shall so rule

and the hearing shall proceed.

(Amended April 11, 1977; Renumbered June 28, 2021)

8.17 Substitution of Hearing Officer. If a hearing officer becomes unavailable after the hearing has been opened or concluded, the Board may transfer the case to another hearing officer for the purpose of further hearing or preparation of the report pursuant to Rule 8.23.

*(Amended April 11, 1977;
Amended and Renumbered June 28, 2021)*

8.18 Rights of Parties at Board Ordered Hearings. Any party to the hearing, as determined by the Board, shall have the right to be represented by counsel or by other representative to examine and cross-examine witnesses, to offer documentary and other evidence. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. Technical rules of evidence shall not be controlling, but may be considered. The burden of proof shall rest with the claimant. The Board or Hearing Officer shall allow oral argument with appropriate limitations and after consultation with the parties may permit briefs to be submitted, in which case the party shall be granted adequate time for filing same.

*(Renumbered and amended September 24, 2007;
Amended and Renumbered June 28, 2021)*

8.19 Mediation of Unfair Practice Claims. Where ordered by the Board, all parties to an unfair practice proceeding for which the Board has directed that a hearing be conducted shall participate in a mediation session in an effort to resolve the dispute. The person designated to conduct said mediation session shall determine its format. Unless agreement is reached to resolve all or part of the dispute, which resolution may be reduced to writing, the content of the mediation session will not be maintained, recorded or disclosed.

As determined by the Chair or his/her designee, the mediation session shall be conducted by:

- a) The State Mediation and Conciliation Service, or other service deemed appropriate by the Board;
- b) A Board member or a hearing officer, if the parties agree not to challenge the neutrality of said member or hearing officer if the matter proceeds to hearing;
- c) The Executive Director.

(Added September 24, 2007; Renumbered June 28, 2021)

8.20 Amendments and Withdrawals. The Board or hearing officer may permit an amendment to the claim or response at any time on such terms as may be deemed just and consistent with due process. At the conclusion of the hearing, the claim or answer on

motion of a party may be amended as necessary to conform to the evidence. The claim may be withdrawn by the claimant with the approval of the Board. If the withdrawal is without the approval of the other party, the withdrawal shall be with prejudice.

(Renumbered September 24, 2007 & June 28, 2021)

8.21 Authority of Hearing Officer. The Hearing Officer shall have the authority to render such rulings and issue such orders as are necessary for the efficient, full adjudication of the matter and as are necessary to effectuate the purposes of the Employee Relations Ordinance.

(Added September 24, 2007; Renumbered June 28, 2021)

8.22 Stay of Election. An election may be stayed pending the decision of an unfair employee relations practice claim relating to the unit petitioned for.

(Renumbered June 28, 2021)

8.23 Process For Considering Hearing Officer's Report: Upon receipt of the Hearing Officer Report, the Executive Director will notify the parties of the deadlines to file any exceptions and replies to the Report and of the date for the Board's consideration of the Report. A copy of the Hearing Officer's report shall accompany such notices. The Executive Director's timeline will be consistent with the parameters set forth in Rules 8.24-8.26. The Executive Director shall have the authority to grant continuances to the timeline.

(Amended & Renumbered June 28, 2021)

8.24 Exceptions to the Hearing Officer's Report Findings and Recommendations. No less than twenty-one (21) calendar days prior to the scheduled consideration of the Findings and Recommendations by the Board, any affected party may file written Exceptions to the Hearing Officer's Report with the Board. Any party filing such Exceptions shall serve a copy of such Exceptions simultaneously on all other affected parties; proof of such service shall accompany the filing of the Exceptions with the Board.

*(Amended January 11, 1982 & August 27, 2012;
Amended & Renumbered June 28, 2021)*

8.25 Rebuttal to Exceptions. No less than fourteen (14) calendar days prior to the scheduled consideration of the Hearing Officer Report by the Board, any affected party may file a written Rebuttal to any Exceptions to the Findings and Recommendations of the Hearing Officer filed by any other affected party.

A party filing such Rebuttal shall serve a copy of such Rebuttal simultaneously on all other affected parties; proof of such service shall accompany the filing of the Rebuttal with the Board.

(Amended January 11, 1982 & August 27, 2012;

Amended and Renumbered June 28, 2021)

8.26 Consideration of the Hearing Officer's Report. The Hearing Officer's Report, together with any Exceptions and Rebuttal to Exceptions thereto, shall be scheduled for the Board's consideration no less than twenty-eight (28) calendar days after service of the Hearing Officer's Report.

*(Added October 6, 1976; Amended September 24, 2007;
Amended & Renumbered June 28, 2021)*

8.27 Decision and Order of the Board. The Board shall issue its Decision and Order, in writing, pursuant to the parties requesting that a particular person be selected, or other factors that the Board may consider relevant to and consistent with its powers under LAAC Section 4.810f.

(Amended & Renumbered June 28, 2021)

8.28 Shortening Time Limits or Staying Further Processing. The Board, on application of a party and sufficient showing being made, after affording all parties an opportunity to be heard, may order accelerated action on a claim without regard to the time limits otherwise provided herein, or may order a stay of further processing of a claim on such terms as are appropriate.

(Renumbered June 28, 2021)

8.29 Representation of Parties. An employee, or group of employees, filing an unfair employee relations practice claim in accordance with Section 8.01 of these rules shall not designate or be represented by any officer or employee of any employee organization other than the exclusive representative of such employee(s) if such exclusive representative has been certified by the Board prior to the filing of the claim. The designation of, or representation by, such an officer or employee, in violation of this rule, shall make the claim subject to dismissal.

(Added June 2, 1976; Renumbered June 28, 2021)

8.30 Charging Party Inaction. Upon a determination by the Executive Director that no action has been taken by a Charging Party to pursue an unfair practice claim for a period of two years, the Board shall place on its agenda consideration of whether the unfair practice charge should be dismissed and the case closed. A determination as to whether good cause exists for the delay will be made by the Board itself. Notice of the proposed action shall be served on the parties.

(Added September 24, 2007; Renumbered June 28, 2021)

RULES GOVERNING RESOLUTION OF IMPASSES

(Rule 9 adopted May 7, 1973 and amended October 1, 1973, February 9, 1987, September 24, 2007 and September 27, 2012.)

9.01 Scope. This rule governs the general procedures relating to mediation and factfinding in resolution of impasses under LAAC Section 4.840b; this rule does not govern impasses under LAAC Section 4.840a.

9.02 Notice of Impasse. If, after a reasonable period of time, the management representative and the representative of a certified employee organization reach an impasse, either party to the meeting and conferring may file a written notice of such impasse with the Board and simultaneously serve a copy on the other party involved. Proof of such service shall be filed with the Board. The notice of impasse shall contain the following:

- 1) Name, address, zip code and telephone number of the certified employee organization and the name and telephone number of its principal representative to be contacted.
- 2) Name and telephone number of the principal management representative to be contacted.
- 3) Identification of the bargaining unit by the nomenclature on the certification.
- 4) Dates and duration of negotiation sessions held.
- 5) A clear and concise statement of the issue(s) in dispute.
- 6) A statement noting whether the request is joint or unilateral.
- 7) Proof that a copy of the notice of impasse was served on the other party to the meeting and conferring.

9.03 Investigation of Impasse. If a party to the meet and confer process contends that no impasse exists, as defined in LAAC Sec. 4.801 or that the parties have not devoted sufficient time or effort to resolving their differences, it shall state that position by filing a notice of contention with the Board and serve it on the other party within five (5) days of the date of service of the notice of impasse, excluding Saturdays, Sundays, and holidays. Proof of such service shall be filed with the Board. If such notice of contention is filed, the Board shall, after hearing the parties' respective positions, decide whether an impasse exists.

If the Board determines that an impasse does not exist, it shall order the parties to resume meeting and conferring until they reach an agreement or arrive at an impasse.

If the Board determines that an impasse exists, it may send the matter to mediation or factfinding, or both, as it deems appropriate. In referring any matters to factfinding, the Board shall identify the issues in accordance with LAAC Section 4.801.

(Amended June 28, 2021)

9.04 Mediation and Factfinding.

- (a) The Board may appoint, as appropriate, a mediator(s) or factfinder(s) promptly. Any person, broadly representative of the public, who has been selected by the Board for listing on its register of mediators and factfinders, may act in such capacity when appointed by the Board. The Board shall give effect to any designation of a mediator or factfinder jointly desired by the parties to the impasse.
- (b) The mediator(s) shall report to the Board the results of the mediation efforts in such form as the mediator considers appropriate, which report shall include a statement of the dates of the meetings held, and a statement of issues still unresolved, if the mediator recommends that the matter be referred to factfinding. The report and recommendations shall not be made public except by the Board. The failure of the mediator to report the results of the mediation efforts shall not delay further appropriate action by the Board; the Chair or the Executive Director may authorize the initiation of factfinding immediately upon completion of mediation, provided, however, that any disputes regarding the appropriateness of proceeding to factfinding shall be referred to the Board for resolution unless factfinding in the impasse in question has been previously authorized by the Board.
- (c) Any hearings convened by the factfinder(s) shall be private unless all parties and the factfinder(s) agree to have them public. The factfinder may request of the Board the issuance of subpoenas to compel the attendance of witnesses and the production of books and papers relating to any matter under inquiry, investigation or hearing. The factfinder may administer oaths and affirmations. The factfinder shall file an original and five (5) copies of the factfinder's report and recommendations with the Board.
- (d) The use of a hearing reporter or reporters shall not be required by the factfinder or by either party to the impasse; however, any party may utilize a hearing reporter provided that the utilization of such reporter shall not extend the time limits established herein. It shall be the responsibility of any party or parties desiring the use of a hearing reporter's services to schedule the hearing reporter and to pay the hearing reporter's fee.

Disputes over the scheduling of any hearing reporter utilized or over the payment of any hearing reporter's fee shall be resolved by the Executive Director, the Executive Director's decision may be appealed to the Board.

- (e) Any post-hearing briefs utilized in factfinding proceedings shall be submitted within ten (10) calendar days of the conclusion of the hearing; the submission of post-hearing briefs shall not extend the time limits established herein except as specifically provided in Rule 9.04 (f).
- (f) The factfinder's report shall be submitted to the Employee Relations Board no more than thirty (30) calendar days from the conclusion of the factfinding hearing or the receipt of any post-hearing briefs, whichever is later, provided, however, that the factfinder's report shall be submitted to the Employee Relations Board no more than one-hundred twenty (120) calendar days from the date on which the Employee Relations Board determines that an impasse exists in accordance with Rule 9.03.
- (g) The Board shall promptly transmit copies of the factfinder's report and recommendations to the parties in interest. The report and recommendations shall not be made public except by the Board.
- (h) The parties to the impasse shall file with the Board and serve on all other parties, with proof of service filed with the Board, a written notification of acceptance or rejection in whole or in part, and reasons therefor, within fifteen (15) calendar days after the receipt of the factfinder's report and recommendations, unless the parties have reached agreement.
- (i) The time limits provided herein may be modified only by the mutual agreement of the parties, or by the Chair, the Executive Director, or the Employee Relations Board on request of either party to the impasse and upon showing of good cause. Any factfinder who fails to comply with the time limits established herein shall be subject to sanctions imposed by the Board in accordance with its "Policy on the Submission of Decisions, Awards, and Reports."

RULES GOVERNING REGULAR AND SPECIAL MEETINGS OF THE BOARD

(Rule 10 adopted July 1, 1974)

10.01 Notice of Regular and Special Meetings.

Notice of any regular or special meeting of the Board shall be given by the Executive Director not less than seven (7) calendar days prior to the date of the meeting.

10.02 Agenda for Regular and Special Meetings.

An agenda of items to be considered at a regular or special meeting of the Board shall accompany or may be incorporated into the notice of meeting. The agenda shall include a brief statement of each matter to be considered. Any party wishing to place an item on the agenda of a regular or special meeting shall deliver to the Executive Director a written request therefor setting forth the matter to be placed on the agenda. Such request must be received by the Executive Director not less than ten (10) calendar days prior to the date of the meeting.

If, in the case of a bona fide urgency, a party requests a matter be placed on the agenda of a regular or special meeting of the Board utilizing a period of notice shorter than herein above provided, the Executive Director shall determine the existence of the urgency and the diligence of the requesting party in processing the request in a timely fashion. If the Executive Director determines that the matter is of an urgent nature and that the party in the exercise of due diligence could not have requested the addition of the matter within the time period herein above set forth, the Executive Director in that event may add the item to the agenda giving special notice thereof. If the Executive Director adds such an item, the Board will only act on the item if the Board Members unanimously agree to do so and only if such action is done in compliance with applicable law.

The Board shall not consider or make determinations on matters not included on the agenda of the regular or special meeting.

RULES GOVERNING REQUESTS FOR ARBITRATION

(Rule 11 adopted January 2, 1975)

11.01 Requests for a List of Arbitrators shall be made in accordance with LAAC Section 4.865a(4). Such requests shall be in writing, served on the other party to the dispute with proof of service sent to the Board and shall contain the following information:

- 1) Name, address, and telephone number of requesting party.
- 2) Name, address and telephone number of grievant.
- 3) Name, address and telephone number of respondent.
- 4) Representation Unit affected.

- 5) Date of MOU containing grievance procedure.
- 6) Evidence that all prior steps in the grievance procedure have been satisfied.
- 7) Copy of the notice to other party of the desire to arbitrate.

(Amended March 8, 1982, September 24, 2007 & September 28, 2015)

11.02 Upon Receipt of a Request for a List of Arbitrators the Executive Director shall verify that the aggrieved employee is a member of a representation unit covered by a valid Memorandum of Understanding which contains a grievance procedure and shall satisfy him/herself that the parties have complied with the requisite steps of the grievance procedure.

(Amended September 28, 2015)

11.03 The Executive Director shall select seven (7) names from the Board's Register of Arbitrators. Mutual requests from both parties for the inclusion or selection of any individual from the Register shall be given full consideration. The Executive Director shall forward the list of names to the parties in writing.

(Amended September 28, 2015)

11.04 Upon the Parties' Selection of an Arbitrator, the Executive Director shall then notify the Arbitrator in writing of the selection. Copies of such notification shall be sent to the parties.

(Amended & renumbered September 28, 2015)

11.05 If the Arbitrator selected is not able to serve, a new arbitrator shall be selected by following Rules 11.03-11.05.

11.06 The Arbitrator shall notify the Board in writing of the final disposition of the case, and shall submit to the Board a copy of any written decision given to the parties.

RULES GOVERNING AGENCY SHOP ELECTIONS

(Rule 12 was adopted January 11, 1982 but was deleted on June 28, 2021 due to the United States Supreme Court's ruling in *Janus v. American Federation of State, County & Municipal Employees, Council 31* (2018) 131 S.Ct. 2448.

RULES GOVERNING ACCESS TO PERSONNEL FILES

(Rule 13 adopted September 24, 2007)

13.01 Personnel File Access Under California Labor Code Section 1198.5. Any employee claiming his/her rights under California Labor Code Section 1198.5 have been violated must exhaust the procedure set forth herein before pursuing any available judicial remedy.

- (a) Personnel File Access Complaint must be filed with the Board and served on the personnel officer for the department from which access to the records is sought. Proof of service shall be filed with the Board.
- (b) The department has fifteen (15) calendar days after service to respond to the allegation that access was denied.
- (c) The Executive Director shall, within fifteen (15) calendar days of receipt of the department's response schedule a mediation session in an effort to resolve the dispute.
- (d) As determined by the Chair or his/her designee, the matter will be referred to either a Board member or an outside Hearing Officer to investigate, either through hearing or report, and render a decision.
- (e) Said decision will be deemed the determination of the Board, which shall take no further action on the matter.

(Added September 9, 2007)