DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

EMPLOYMENT RELATIONS COMMISSION

GENERAL RULES

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 7, 9a and 27 of 1939 PA 176, MCL 423.7, 423.9a, and 423.27, sections 12 and 14 of 1947 PA 336, MCL 423.212 and 423.214, and Executive Reorganization Orders 1996-2, 2011-4, and 2011-5, MCL 445.2001, MCL 445.2030 and MCL 445.2031)

PART 1. GENERAL PROVISIONS

R 423.101 Definitions; A to C.

Rule 101. As used in these rules:

(a) "Administrative law judge" means a designee authorized by the commission to perform hearing functions and duties under LMA and PERA in the commission's labor relations division.

(b) "Applicant" means a person, public employer, labor organization or duly authorized agent or party representative thereof who files an application for fact finding under LMA or PERA.

(c) "Bureau" means the bureau of employment relations which is the administrative component of the commission.

(d) "Charge" means the document containing the information specified in R 423.151.

(e) "Charging party" means a person, public employer, labor organization or duly authorized agent or party representative thereof, who files a charge alleging an unfair labor practice under LMA or PERA.

(f) "Commission" means the employment relations commission as established under section 3 of LMA, MCL 423.3.

History: 2002 AACS; 2014 AACS.

R 423.102 Definitions; D to L.

Rule 102. As used in these rules:

(a) "Designee" means a commission member or an employee designated by the commission to perform functions and duties under LMA and PERA.

(b) "Fact finder" means a commission member, an employee, or other individual, whether or not a member of the commission's staff, designated by the commission to perform fact finding functions and duties under section 25 of LMA.

(c) "LMA" means 1939 PA 176, MCL 423.1 to 423.30.

History: 2002 AACS; 2014 AACS.

R 423.103 Definitions; M to P.

Rule 103. As used in these rules:

(a) "Mediator" means the commission, a commission member, or an employee designated by the commission to perform the functions and duties of mediation under LMA and PERA in the commission's mediation division.

(b) "PERA" means the 1947 PA 336, MCL 423.201 to 423.217.

(c) "Petition" means the document containing the information specified in R 423.141.

(d) "Petitioner" means a person, public employer, labor organization or duly authorized agent or party representative thereof who files a petition under LMA or PERA.

History: 2002 AACS; 2014 AACS.

R 423.104 Definitions; R.

Rule 104. As used in these rules, "respondent" means a person, public employer, employer or labor organization charged with having engaged in or engaging in unfair labor practices under LMA or PERA as set forth in a complaint issued by the commission.

History: 2002 AACS; 2014 AACS.

R 423.105 Division of commission.

Rule 105. (1) The commission shall exercise its mediation functions under LMA and PERA through its mediation division.

(2) The commission shall exercise its labor relations functions under LMA and PERA through its labor relations division.

History: 2002 AACS.

R423.106 Party representative.

Rule 106. A party to a proceeding before the Michigan employment relations commission may be represented by an attorney or non-attorney, or other agent of his or her choice, or appear on his or her own behalf.

History: 2014 AACS.

PART 2. MEDIATION OF LABOR DISPUTES

R 423.121 Mediation functions.

Rule 121. A mediator shall bring the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute; but the mediator shall not have any power of compulsion in mediation. At the request of 1 of the parties, or when the commission believes that mediation may be of assistance in resolving a dispute between either a public or private employer and employees, the commission on its own motion may, or at the direction of the governor shall, take steps that it deems expedient to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues between the employer and employees.

History: 2002 AACS.

R 423.122 Confidential information.

Rule 122. Information disclosed by a party to a mediator in the performance of mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents, or other papers received or prepared by a mediator while serving as a mediator shall be classified as 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.

History: 2002 AACS.

R 423.123 Mediation conferences.

Rule 123. (1) A mediator may hold separate or joint conferences with parties or their representatives, and the conferences shall be private unless otherwise mutually agreed by the parties and the mediator.

(2) A mediation conference may be conducted at a date, time, and place agreed to by a mediator and the parties or their representatives, except that the mediator may designate the date, time, and place of a conference.

History: 2002 AACS.

R 423.124 Strike elections.

Rule 124. A strike election conducted by the commission under sections 9 and 9a of LMA, MCL 423.9 and MCL 423.9a, shall be governed by the rules in part 4 as applicable. Sections 9 and 9a shall be complied with as a condition to a strike election. Within 48 hours after the close of a strike election, excluding Saturdays, Sundays, and legal holidays, a party may file objections to the conduct of the election or to conduct improperly affecting the results of the election. Objections shall be in writing and shall contain a statement of facts and the reasons therefor upon which the objections are based. A party shall file a signed original and 4 copies of the objections with the commission, and the party filing objections shall at the same time serve a copy upon each of the other parties, with proof of service to the commission. This rule does not apply to public employees as defined in section 1(e) of PERA, MCL 423.201e.

History: 2002 AACS; 2014 AACS.

PART 3. FACT FINDING

R 423.131 Definitions.

Rule 131. As used in this part:

(a) "Advocate" means an individual who has represented management or a union in collective bargaining or labor relations in the 5 years before his or her selection by the commission as a nominee for chair of a fact finding panel under MCL 423.25 and R 423.135. Advocate also means an individual, including an attorney, who is associated with a firm or entity that has represented management or a union in collective bargaining or labor relations in the 5 years before his or her selection by the commission as a nominee for chair of a fact finding panel under section 25 of LMA, MCL 423.25, and R 423.135.

(b) "Commission's panel of fact finders" means those members who are appointed to the Michigan employment relations commission panel of fact finders by the commission.

(c) "Dispute" means a disagreement regarding mandatory subjects of bargaining concerning rates of pay, wages, hours of employment, or other conditions of employment.

History: 2002 AACS; 2014 AACS.

R 423.132 Petitions; initiation by commission of fact finding.

Rule 132. (1) Pursuant to section 25 of LMA, MCL 423.25, a petition for fact finding may be filed by a public employer, a collective bargaining representative of public employees, or, if no representative has been designated or selected, by a majority of any given group of public employees. The petition shall be signed by an authorized agent of the petitioner. The petitioner shall file an original and 3 copies with the commission and shall serve a copy of the petition on the other party or its representative. Petitions for fact finding shall be filed pursuant to R 423.181 and service shall be pursuant to R 423.182.

(2) The applicant may withdraw the petition with the consent of the commission or bureau director.

(3) The commission, on its own motion, may institute fact finding if it is apparent to the commission that matters in disagreement between the parties may be more readily settled if the facts involved in the disagreement are determined and publicly known. If the commission institutes fact finding, the commission may suspend the fact finder selection process in these rules and may appoint a fact finder on its own motion.

History: 2002 AACS; 2014 AACS.

R 423.133 Contents of petitions.

Rule 133. (1) The petition shall contain all of the following information:

(a) The name and address of the public employer involved and the name and telephone number of its principal representative.

(b) The name and address of the collective bargaining representative involved; or, if there is no collective bargaining representative, the name and address of the principal representative of the majority of the members of a given group on whose behalf the petition is being filed.

(c) A description of the certified or recognized collective bargaining unit, or, if there is no such unit, a description of the given group.

(d) The approximate number of employees in the unit or given group.

(e) Contract expiration date.

(f) A statement that the applicant has attempted to engage in good-faith collective bargaining and mediation and that the parties have not succeeded in resolving the matters in dispute.

(g) A statement that the applicant has exhausted the contractual grievance procedure, if applicable.

(h) A listing of any unresolved issue in dispute and the related facts.

(i) A statement of reasons why publicizing the facts and recommendations would assist in resolving the issues in dispute.

(j) If applicable, the name of the fact finder from the commission's panel of fact finders that the parties have mutually selected.

(k) The name and address of the petitioner and the signature and telephone number of the persons executing the petition.

(2) The petition may include a request for combined fact finding with another bargaining unit involving that same employer.

History: 2002 AACS; 2014 AACS.

R 423.134 Answers.

Rule 134. (1) A party upon whom a petition has been served shall file an answer to the petition within 10 days from its service, unless notified by the commission that the circumstances require a specified shorter period of time to file an answer. Upon proper cause shown, the commission may extend the time for filing an answer, or, in exceptional circumstances, may waive the requirement for an answer.

(2) The answer shall specifically admit, deny, or explain each of the allegations in the petition, shall contain a statement of the position of the answering party, and shall be signed by the answering party or authorized agent.

(3) The answer and 3 copies shall be filed with the commission. The party filing an answer concurrently shall serve a copy of the answer on the petitioner or its agent, and file proof of service with the commission.

(4) A party on whom a petition has been served may rely on the filing by the opposing party. The proposed withdrawal of the initial petition shall not act to terminate the process unless otherwise ordered by the commission for good cause, which may include the consent of the parties.

History: 2002 AACS; 2014 AACS.

R 423.135 Fact finder selection.

Rule 135. (1) The commission shall establish and appoint a panel of fact finders to be known as the Michigan employment relations commission panel of fact finders. Panel members shall be appointed for indefinite terms, and shall be impartial, competent, and reputable citizens of the United States and residents of the state. The commission may at any time appoint additional members to the panel of fact finders and may remove existing members with or without cause.

(2) If a commission-nominated fact finder is an advocate as defined in R 423.131, either party may notify the other party and ask the commission to delete the fact finder's name from the list of nominees and provide the parties with the name of a fact finder who is not an advocate. The commission shall provide the parties with another fact finder's name and resume. If, within 10 days, a fact finder is not selected from the list to which there has been no objection, then the commission may select a fact finder.

(3) The parties may mutually agree upon the selection of a fact finder from the commission's panel of fact finders or a fact finder who is eligible for membership on that panel and notify the commission of their selection when the petition is filed.

(4) A fact finder's resume shall include all of the following information:

(a) A brief summary of the fact finder's educational and professional background.

(b) A list of the fact finder's past 5 years of employment.

(c) A list of the fact finder's commission arbitration awards and fact finding reports.

(d) A list that shows the percentage of advocacy work, if any, which was performed by the fact finder and the fact finder's firm on an annual basis for the past 5 years.

(5) The commission or bureau director may determine after consultation with the parties that it is appropriate to appoint the same fact finder to hear more than 1 fact finding petition involving that same employer.

(6) If it appears that there is undue delay in the fact finder selection process or there is a delay for reasons the commission considers inappropriate, the commission or bureau director may appoint a fact finder on its own motion.

(7) The commission or bureau director may make administrative decisions related to the appointment of a fact finder.

History: 2002 AACS; 2014 AACS.

R 423.136 Hearings; fact finder powers.

Rule 136. (1) If it appears to the commission that a hearing is warranted, then the commission shall appoint a fact finder and serve upon each of the parties a notice of the person appointed.

(2) A fact finder shall conduct a prehearing conference within 15 days of the fact finder's appointment. It may be conducted by telephone conference call. The commission may waive the requirement for a prehearing conference in exceptional circumstances. The fact finder shall also issue and serve, upon each of the parties, a notice indicating either of the following:

(a) A hearing date.

(b) A hearing is not necessary, and a fact finding report shall be based on the exhibits and briefs filed by the parties.

(3) The fact finder may amend or withdraw a notice of hearing at any time before the start of the hearing.

(4) Before the hearing, the fact finder may require the parties to prepare and submit a prehearing statement identifying the issues in dispute and each party's position on each issue along with copies of any exhibits on which the parties intend to rely during the hearing. The fact finder may permit the submission of rebuttal or response statements and exhibits. The fact finder may also permit the submission of additional exhibits or evidence during the hearing.

(5) The hearing shall be public, but for good cause shown, may be limited to the immediate parties by the fact finder, who shall inquire into pertinent matters necessary to allow the issuance of recommendations concerning the dispute. The fact finder may follow the procedures of section 11 of LMA, MCL 423.11.

(6) A fact finding hearing shall be limited to 2 days but may be extended for good cause if determined by the bureau director in consultation with the fact finder that additional hearing days are necessary.

(7) A fact finder may grant an application for subpoenas, subpoena witnesses, administer oaths and affirmations, examine witnesses, receive relevant testimony and evidence, rule upon offers of proof, and introduce into the record documentary or other evidence. The fact finder may determine the weight, credibility, and sufficiency of evidence submitted by the parties.

(8) No official record will be made unless the parties request one, in which case, the cost of a court reporter and any other costs associated with the preparation of the record shall fully be the responsibility of the parties pursuant to R 423.138.

(9) The fact finder has the authority and powers given to the administrative law judge in R 423.172 (1) and (2).

(10) At any time during the fact finding process, the fact finder may remand the parties to further bargaining with a mediator if the fact finder believes it may be conducive to obtaining a full or partial agreement.

(11) The fact finder shall not receive, consider, or refer to a recommendation from the mediator.

(12) The fact finding hearing, including the filing of post hearing briefs, shall conclude within 90 days after the hearing commences, absent special circumstances warranting an extension of the deadline as determined by the bureau director in consultation with the fact finder.

History: 2002 AACS; 2014 AACS.

R 423.137 Fact finders' reports.

Rule 137. (1) Within 30 days after the close of the record or additional time as the bureau director may permit, the fact finder shall file a report containing all of the following:

(a) The names of the parties.

(b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.

(c) A final summary sheet listing the issues in dispute, the position of each party for each issue, and recommendations with respect to each of the issues in dispute.

(d) Reasons and basis for the findings, conclusions and recommendations. However, the parties may waive the requirements of this subdivision and the fact finder may then issue a report containing only items in subdivisions (a), (b), (c), (e) and (f) of this subrule.

(e) The date the report issued.

(f) The signature of the fact finder.

(2) The fact finder shall file the fact finding report and 2 copies with the commission in accordance with commission requirements and, at the same time, serve a copy on each of the parties.

History: 2002 AACS; 2014 AACS.

R 423.137a Expedited fact finding.

Rule 137a. Upon motion of a party or upon the commission's own motion, the commission may expedite the fact finding proceedings and the issuance of a fact finding report. Prior to reaching a decision to expedite a fact finding proceeding and report, the commission will consider the parties' positions and other circumstances.

History: 2014 AACS.

R 423.138 Costs.

Rule 138. (1) A fact finder shall not charge more than 2 preparation days for each day of hearing unless otherwise permitted in advance by the commission or bureau director.

(2) The costs of subpoenas and witness fees shall be borne by the party at whose request subpoenas are issued and at whose request witnesses appeared.

(3) A party may order a transcript of a deposition at its own expense. The party who requests a deposition shall pay the costs for the court reporter and for a copy of the transcript of the deposition for the fact finding hearing record.

History: 2002 AACS; 2014 AACS.

PART 4. REPRESENTATION PROCEEDINGS

R 423.141 Petitions for elections.

Rule 141. (1) A petition for election to determine a collective bargaining representative or a petition for decertification of a collective bargaining representative shall be prepared on a form furnished by the commission. An original and 4 copies of the petition shall be filed with the commission under section 12 of PERA, section 27 of LMA, and subrule (3) of this rule.

(2) A petition for an election to determine the collective bargaining representative or for decertification shall include, insofar as known, at least all of the following information:

(a) The name of the employer.

(b) The address of the establishment involved.

(c) A description of the bargaining unit claimed to be appropriate.

(d) The name and address of persons or labor organizations who claim to represent employees in the alleged appropriate unit, and brief descriptions of the contracts, if any, covering the employees in the unit.

(e) The number of employees in the alleged appropriate unit.

(f) The name, affiliation, if any, and address of the petitioner.

(g) Any other relevant facts.

(h) Signature of petitioner or its duly authorized agent if filed by an employer.

(i) A statement that 1 or more individuals or labor organizations have presented a claim to be recognized as the bargaining representative.

(3) Where there is a collective bargaining agreement covering employees in the bargaining unit, a petition for election may be filed during the following periods:

(a) Where the petition covers employees of a public school district or public educational institution and the expiration date of the collective bargaining agreement falls between June 1 and September 30, a petition may be filed between January 2 and March 31 of the year in which the collective bargaining agreement expires.

(b) Where the petition covers public employees other than those described in subdivision (a) of this subrule, a petition shall not be filed sooner than 150 days and not later than 90 days before the expiration date of the collective bargaining agreement.

(c) Where the petition covers private employees under the LMA, a petition shall not be filed sooner than 90 days and not later than 60 days before the expiration date of the collective bargaining agreement.

(4) At the request of any party, or on the commission's own initiative, a representative election shall be conducted by the commission, without a showing of interest and notwithstanding the existence of any collective bargaining agreement or agreements, where all of the following occur:

(a) There is a new interlocal agreement for the joint exercise of power entered into under 1967 PA 7, MCL 124.501 to 124.512; or, a new intergovernmental transfer of functions and responsibilities under 1967 PA 8, MCL 124.531 to 124.536; or, the creation of a new authority for the purpose of providing emergency services to municipalities under 1988 PA 57, MCL 124.601 to 124.614.

(b) Multiple labor organizations assert the right to represent all or a part of the workforce or a substantial portion of the transferred employees were not previously represented.

(c) No voluntary agreement exists.

(5) The commission shall determine the appropriate unit pursuant to R 423.146.

History: 2002 AACS; 2014 AACS.

R 423.142 Petitions for self-determination elections.

Rule 142. (1) A petition for an election to determine whether existing bargaining units represented by a single labor organization should be merged may be filed by the labor organization representing these units. A petition for a self-determination election shall be prepared on a form furnished by the commission.

(2) A petition for a self-determination election shall include at least all of the following information:

(a) The name of the employer.

(b) The address of the establishment involved.

(c) Descriptions of the bargaining units sought to be merged.

(d) The approximate number of employees in each existing unit.

(e) A statement that the petitioner is the currently recognized bargaining representative for the units in question.

(f) The name, affiliation, if any, and address of the petitioner.

(g) Any other relevant facts.

(h) Signature of petitioner or its duly authorized agent.

History: 2002 AACS.

R 423.143 Petitions for unit clarification.

Rule 143. (1) A petition to determine the unit placement of a disputed position or classification may be filed by the employer or by a labor organization representing an existing bargaining unit. A petition for unit clarification shall be prepared on a form furnished by the commission.

(2) A petition for unit clarification shall include at least all of the following information:

(a) The name of the employer.

(b) The employer's address.

(c) The position or positions whose unit status petitioner seeks to have clarified.

(d) A statement of the clarification sought, and the reasons set out in detail with the approximate dates the position was created or substantially changed.

(e) Whether the position whose status is to be clarified is currently included in any bargaining unit, and, if so, a description of that unit and the name of the labor organization currently representing that unit.

(f) A description of any bargaining unit that may be affected.

(g) The name, affiliation, if any, and address of the petitioner.

(h) Any other relevant facts.

(i) Signature of petitioner or its duly authorized agent.

History: 2002 AACS; 2014 AACS.

R 423.144 Investigation of petitions; consent election agreements.

Rule 144. The commission or its designee shall investigate the petition. If there is reasonable cause that a question concerning representation exists, then the petitioner and the other parties may, with the approval of the commission or its election agent, enter into a consent election agreement on a form furnished by the commission. The agreement shall include a description of the appropriate bargaining unit, the payroll period to be used in determining the employees within the appropriate unit who shall be eligible to vote, and such other matters as the commission considers appropriate. The time, place,

and manner of the election shall be determined by the commission or its designee after consultation with the parties.

History: 2002 AACS; 2014 AACS.

R 423.145 Showing of interest; intervenors.

Rule 145. (1) A petition for an election to determine a collective bargaining representative, except when filed by an employer, or a decertification petition shall be supported by a showing of interest existing at the time of the filing of the petition of at least 30% of the employees in the unit claimed to be appropriate. A showing of interest is not required for a self-determination election petition.

(2) Evidence of interest shall be submitted at the time of filing a petition. Unless an original showing of interest is received within 48 hours of the filing, the petition will be dismissed.

(3) "Intervenor", as used in this rule, means a labor organization that seeks to appear on the ballot.

(4) Only an employee, group of employees, individual, or labor organization is eligible to become an intervenor to the election by filing a petition supported by a showing of interest of not less than 10% of the employees within the proposed unit. An intervenor may participate in all conferences and any hearings that may be held. The signature of an intervenor is not required on a consent election agreement unless the intervenor demonstrates to the commission that 30% or more of the employees in the unit claimed to be appropriate wish to be represented by the intervenor, in which event, the intervenor's signature on the consent election agreement is required. The determination with respect to the statutory 30% or an intervenor's 10% showing of interest is an administrative action and shall be made exclusively by the commission or its agent. Once a consent election agreement has been signed by all required parties known to the commission, an interested party shall file a written request to intervene and provide a showing of interest within 2 business days of the date of the consent. The date of the consent is the date on which the last required signed copy of the consent agreement is received by the commission. Intervention may be permitted after 2 business days with the agreement of all parties and the approval of the commission or its agent or with the approval of the commission upon a showing of good cause. An intervenor who has not less than a 10% showing of interest but less than 30%, may file a motion with the commission and serve a copy on each of the other parties within 48 hours after a consent election agreement is signed alleging reasons for disallowance of the consent election agreement and requesting a hearing. The commission, or its agent, shall determine whether the petition establishes good cause for holding a hearing. If the commission or its agent decides to hold a hearing on the petition, then the consent election agreement shall be suspended pending disposition of the case by the commission.

(4) Intervention will not be allowed after the close of the hearing without the agreement of all parties and the approval of the commission or its agent, or the approval of the commission upon a showing of good cause.

History: 2002 AACS; 2014 AACS.

R 423.146 Hearing on election petition.

Rule 146. (1) If a consent election agreement is not executed by the required parties, the petition for election shall be referred to an administrative law judge, who, after due notice, may hold a hearing for the purpose of gathering facts on the matters in dispute. R 423.171, R 423.172, R 423.173, and R 423.174 apply to all hearings conducted under this rule. A notice of hearing or other notice shall be served upon all interested parties including any intervenor. The notice of hearing shall set the time, date, and place of the hearing, and, unless by agreement of the parties or in case of special circumstances, the time shall be not less than 5 days after service of the notice.

(2) The commission or its agent may consolidate representation and unfair labor practice proceedings for hearing and decision.

(3) In addition to the duties and powers enumerated in R 423.172, an administrative law judge presiding over a hearing involving an election petition may take evidence regarding issues not specifically raised by the parties.

(4) After the hearing closes, or where there is no material dispute of fact, the commission shall determine the matters in dispute and direct an election, dismiss the petition, or make other disposition of the matter as the commission deems appropriate. The commission may reopen a proceeding under R 423.166 or R 423.167.

(5) If a motion for reconsideration or rehearing of a commission order directing an election is filed, then the commission, during its consideration of the motion, shall conduct the election under its original direction, count the ballots, and issue a certification of results or representation unless a party makes a written request to stay the election or impound the ballots, or both, and the commission determines that it would not effectuate the purpose of the statute to conduct an election or count the ballots, or both, while the motion is pending.

(6) If an appeal of a commission order directing an election is filed with a court, then the commission shall conduct the election under its original direction, count the ballots, and issue a certification of results or representative unless a stay is issued by the court.

History: 2002 AACS; 2014 AACS.

R 423.147 Elections; general procedures.

Rule 147. (1) An election shall be conducted under the supervision and direction of a designee of the commission and shall be by secret ballot.

(2) At least 7 days before the date of an election, or the date of the mailing of the ballots in a mail ballot election, excluding Saturdays, Sundays, and legal holidays, the employer shall submit to the commission and other interested parties a list of the names and addresses of all eligible voters in alphabetical order. This requirement may be modified by mutual agreement of the parties, or by order of the commission, or its agent.

(3) A sample ballot and notice of election, setting forth the date, time, place, and purpose of the election shall be posted in a prominent place or places, as the commission or its designee shall determine, in the employer's establishment, not less than 5 days before the date of the election, or the date of the mailing of the ballots in a mail ballot

election, unless modified by mutual agreement of the parties or by order of the commission or its designee.

(4) The commission may conduct an election in whole or in part by mail ballot by order of the commission, or as determined by its designee after consultation with the parties.

History: 2002 AACS; 2014 AACS.

R 423.148 Observers and challenges.

Rule 148. (1) The parties to the election may each designate a representative, but not a supervisor or full-time labor organization representative unless by mutual agreement of the parties, to observe that ballots are properly cast and votes properly counted. Observers are subject to such reasonable limitations as the election agent may prescribe.

(2) An authorized observer, the commission, or the election agent, before the time the voter's ballot is cast, or before the time the ballots are counted in the case of a mail ballot election, may challenge for good cause the eligibility of any person to participate in the election. A person challenged as an ineligible voter shall be permitted to vote in secret, and the election agent shall set aside the ballot, with appropriate markings. If it is determined by the commission or its election agent that the challenged ballot, or ballots, is decisive of the result, then the commission shall determine the merits of any challenged ballot and decide whether or not the person is an eligible voter.

History: 2002 AACS.

R 423.149 Ballot boxes and ballots.

Rule 149. (1) The commission's designee shall examine the ballot boxes before the opening of the polls and in the presence of any observers. The boxes shall be sealed at the opening of the polls.

(2) The commission's designee shall privately assist any voter in marking a ballot when the voter states under oath, duly administered by the election agent, that the voter is incapable of marking the ballot because of physical disability or inability to read or write.

(3) A voter shall designate a choice on the ballot by making a cross (X) or check mark (√) in the selected circle or block. The intent of the voter shall be followed in the marking of the ballot. If the ballot is defaced, torn, marked in a manner that is not understandable, or identifies the voter, then the ballot shall be declared void. If a ballot is inadvertently spoiled by a voter, it may be returned to the election agent, who shall provide another ballot. The spoiled ballot shall be preserved for the time of counting.

(4) A voter shall fold the ballot so that no part of its face is exposed, and, on leaving the polling booth, shall personally deposit the ballot in the ballot box. If the election is continued for more than 1 period, the ballot box shall remain sealed until the subsequent opening of the polls, and shall so remain in possession of the election agent until time for the counting of the ballots.

(5) An absentee ballot shall be mailed to an individual eligible to vote upon written notice to the commission of the inability to be present at the election because of sickness,

physical disability, military leave or other circumstance as agreed upon by the parties to the election with the approval of the commission or designee. The voted ballot shall be mailed or delivered by the absentee voter to the commission not later than the designated deadline date and time using the official envelopes provided for this purpose. The envelopes containing the ballots shall be opened at the time of the counting of the ballots.

(6) In a mail ballot election, to be valid, each voted ballot shall be personally and individually mailed or delivered by the voter to the commission in the official envelopes provided for this purpose. The time for counting the ballots shall be determined by the commission's designee.

History: 2002 AACS; 2014 AACS.

R 423.149a Counting of ballots; election results.

Rule 149a. The commission's designee shall count the ballots as soon after the polls have closed as practicable, or as provided under R 423.149(6). The commission's designee shall announce the results of the election as soon as the complete results have been tabulated. The election agent shall furnish to the parties a tabulation of results signed by the observers and the election agent. The commission shall furnish the parties with a certification of representative or results.

History: 2002 AACS; 2014 AACS.

R 423.149b Objections to elections; rerun and runoff elections.

Rule 149b. (1) Within 5 days after the election results have been tabulated and furnished to the parties, excluding Saturdays, Sundays, and legal holidays, an interested party may file objections to the conduct of the election or to conduct improperly affecting the results of the election.Objections shall be in writing and shall contain a statement of facts upon which the objections are based and the reasons for the objections. A signed original and 4 copies of the objections shall be filed with the commission, and the party filing objections shall at the same time serve a copy upon each of the other parties to the election with proof of service to the commission.

(2) R 423.171, R 423.172, R 423.173, and R 423.174 shall apply to all hearings conducted under this rule. After the close of the hearing, the commission shall issue its decision with regard to the challenges or objections, or both.

(3) If the commission orders that any challenged ballots be opened and counted, an amended tabulation of election results and an appropriate certificate of results of the election shall be issued.

(4) If the commission sustains objections to an election, it may direct a new election, to be held at such time and under such circumstances and conditions as it deems appropriate. For a runoff or rerun election, the commission may maintain the same eligibility date or establish a new eligibility date for voters.

(5) A runoff election shall be conducted without further order of the commission when an election in which the ballot provided for fewer than 3 choices (for example, at least 2 representatives and "neither") resulted in no choice receiving a majority of the valid votes cast and no objections are filed as provided in this rule.

(6) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(7) The ballot in the runoff election shall provide for a selection between the 2 choices receiving the largest and second largest number of valid votes cast.

(8) Upon the conclusion of the runoff election, this rule shall govern, insofar as applicable.

History: 2002 AACS.

PART 5. UNFAIR LABOR PRACTICE CHARGES

R 423.151 Filing, contents, and service.

Rule 151. (1) A charge that a person has engaged in or is engaging in an unfair labor practice in violation of LMA or PERA, may be filed with the commission. The charge shall, except for good cause shown, be prepared on a form furnished by the commission. Attachments submitted with a charge shall not exceed 25 pages and shall comply with R 423.184. An original and 4 copies of the charge shall be filed with the commission.

(2) A charge shall include, insofar as known, all of the following information:

(a) The name, mailing address, affiliation or title, if any, and signature of a charging party or representative.

(b) The name and mailing address of each charged party.

(c) A clear and complete statement of the facts which allege a violation of LMA or PERA, including the date of occurrence of each particular act, the names of the agents of the charged party who engaged in the violation or violations and the sections of LMA or PERA alleged to have been violated.

(d) Any other information requested on the form furnished by the commission.

(3) Upon filing of a charge, the charging party shall timely and properly serve a copy of the charge and any attachments upon the parties being charged as prescribed in R 423.182, and shall file with the commission a statement that service was completed pursuant to this rule.

(4) Filing and service shall be effected by the charging party within the applicable 6-month limitation period.

(5) Failure to comply with this rule may result in either rejection of a charge by the commission or bureau director, or in dismissal of a charge without a hearing.

History: 2002 AACS; 2014 AACS.

R 423.152 Complaint.

Rule 152. After a charge is filed, the commission or an administrative law judge designated by the commission may serve upon each named respondent a complaint, a copy of the charge upon which the complaint is based, and a notice of hearing, or, at the discretion of the commission or administrative law judge, a complaint, a copy of the

charge upon which the complaint is based, and a notice of prehearing conference. The notice of hearing shall fix the place of hearing at a time not less than 5 days from service thereof. The notice of prehearing conference shall fix the time, date, and place of prehearing conference at a time at least 5 days from service thereof. The commission or administrative law judge designated by the commission may effectuate service of these documents by facsimile transmission with the permission of the person receiving the documents.

History: 2002 AACS; 2014 AACS.

R 423.153 Amendments to charges.

Rule 153. (1) The charging party may file an amended charge before, during, or after the conclusion of the hearing. All amendments made before or after hearing shall be in writing and shall, except for good cause shown, be prepared on a form furnished by the commission. An original and 4 copies of the amended charge shall be filed with the commission and a copy served on each party. Amendments made at hearing shall be made in writing to the administrative law judge or stated orally on the record.

(2) If a request to amend a charge is made in writing, each party opposing the request shall file with the commission a signed original and 2 copies of its objection within 10 days after receipt of the request to amend, and at the same time shall serve a copy of the objection on each party.

(3) Proposed amendments to a charge that are submitted in writing shall clearly indicate any deletions from or additions to the original charge.

(4) The commission or administrative law judge designated by the commission may permit or deny the request to amend upon such terms as are just and consistent with due process.

History: 2002 AACS; 2014 AACS.

R 423.154 Withdrawal of charges.

Rule 154. (1) The charge may be withdrawn by the charging party at any time before the issuance of a proposed decision and recommended order upon approval by the administrative law judge, subject to review by the commission. Any party seeking commission review of an order granting withdrawal must file an objection within 10 days after the issuance of the order granting withdrawal.

(2) The charge may be withdrawn by the charging party following the issuance of a proposed decision and recommended order upon approval by the commission. Upon agreement of the parties, the commission may withhold publication of the decision and recommended order of the administrative law judge. Final determination on publication of the decision and recommended order shall rest solely with the commission.

History: 2002 AACS; 2014 AACS.

R 423.155 Answers.

Rule 155. (1) Each respondent may file with the commission a signed original and 4 copies of an answer to the complaint and attached charge within 10 days after receipt thereof, and at the same time shall serve a copy of the answer on each party. Upon good cause shown, the commission or administrative law judge designated by the commission may grant an extension of time in which to file the answer. Failure to file an answer shall not constitute an admission of any fact alleged in the charge, nor shall it constitute a waiver of the right to assert any defense.

(2) The answer shall include a specific admission, denial, or explanation of each allegation of the complaint and attached charge, or if the respondent is without knowledge thereof, it shall so state and the statement shall operate as a denial. An admission or denial may be to all or any part of any allegation, but shall fairly meet the substance of the allegation. The answer shall include a specific, detailed statement of each affirmative defense.

History: 2002 AACS.

R 423.156 Amendments to answers.

Rule 156. (1) The commission or administrative law judge designated by the commission may permit or require a respondent to amend the answer before or during the hearing, or at any time prior to issuance of the administrative law judge's recommended order, within a period of time fixed by the administrative law judge.

(2) An original and 4 copies of the amended answer shall be filed with the commission and a copy served on each party.

History: 2002 AACS; 2014 AACS.

R 423.157 Joinder of parties.

Rule 157. Persons having such an interest in the subject of the action that their presence in the action is essential to permit the commission to render complete relief shall be made parties and aligned as charging parties or respondents in accordance with their respective interests. If the persons have not been made parties, then the commission or administrative law judge shall, on motion of either party, order them to appear in the action, and may prescribe the time and order of pleading.

History: 2002 AACS.

R 423.158 Prehearing conference.

Rule 158. (1) The commission or an administrative law judge designated by the commission may direct the parties to appear for a prehearing conference, file a position statement, or both. The prehearing conference may resolve any matter upon which the parties agree or which the commission or administrative law judge may determine is proper for resolution.

(2) Failure to comply with a prehearing order may result in dismissal of the charge or the granting of relief in favor of the charging party.

History: 2002 AACS; 2014 AACS.

PART 6. MOTION PRACTICE

R 423.161 General provisions.

Rule 161. (1) An application to the commission for an order other than that sought for by the unfair labor practice charge shall be by motion. Examples of such motions are set forth in R 423.162 to R 423.167.

(2) All motions made before or after hearing shall be in writing and shall state with particularity the grounds upon which the motion is based and the relief sought. A motion that presents an issue of law shall be accompanied by a brief citing the authority on which it is based. All motions and briefs made before the hearing shall be served as provided in R 423.182.

(3) Each adverse party may file a written brief in opposition to any motion made before or after hearing. The brief shall be filed within 10 days after service of the motion, or within any other period as specified by the commission or administrative law judge designated by the commission, and served as provided in R 423.182.

(4) Motions made before or after hearing shall be ruled upon without notice or oral argument. A request for oral argument by either party shall indicate "oral argument requested" in bold capital letters on the first page under the caption of the motion, response, or other pleading. If the request is granted, the commission or administrative law judge designated by the commission will serve a notice of hearing upon all parties.

(5) All motions made at hearing shall be made in writing to the administrative law judge or stated orally on the record.

(6) All pleadings to the administrative law judge shall include 1 original, and 1 copy, unless otherwise directed.

(7) Rulings by an administrative law judge on any motion, except a motion resulting in a ruling dismissing or sustaining the unfair labor practice charge in its entirety, shall not be appealed directly to the commission, but shall be considered by the commission only if raised in exceptions or cross exceptions to the proposed decision and recommended order filed under R 423.176.

History: 2002 AACS; 2014 AACS.

R 423.162 Motion for more definite statement.

Rule 162. If an unfair labor practice charge fails to comply with R 423.151, the administrative law judge may by his or her own motion, or on the motion of the respondent, order the filing of a more definite statement of the charge or an amended charge. Respondent shall certify that it has already sought a more definite statement of the charge from charging party before bringing its motion.

History: 2002 AACS; 2014 AACS.

R 423.163 Motion to strike.

Rule 163. The commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order stricken from the pleadings redundant, immaterial, impertinent, scandalous, or indecent matter or may strike all or part of a pleading not drawn in conformity with these rules.

History: 2002 AACS.

R 423.164 Motion to consolidate or sever.

Rule 164. The commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order that a charge and any proceeding which may have been initiated with respect thereto, be consolidated with any other proceeding which may have been instituted thereto, or be severed from any other proceeding with which it may have been consolidated under this rule. The commission or administrative law judge designated by the commission shall grant such motion only if the consolidation or severance will promote the just, economical, and expeditious determination of the issues presented.

History: 2002 AACS; 2014 AACS.

R 423.165 Motion for summary disposition.

Rule 165. (1) The commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party. Such a motion, or order to show cause, may be made at any time before or during the hearing.

(2) A motion for summary disposition made under this rule may be based upon 1 or more of the following reasons and may require a supporting affidavit:

(a) The commission lacks jurisdiction over a party.

(b) The commission lacks jurisdiction over the subject matter of the charge.

(c) The charge is barred because of the expiration of the applicable period of limitations.

(d) The charging party has failed to state a claim upon which relief can be granted.

(e) The respondent has filed a pleading that demonstrates it does not have a valid defense to the charge.

(f) Except as to the relief sought, there is no genuine issue of material fact.

(g) A charge or defense to a charge has been abandoned for failure to appear for hearing or pre-hearing conference.

(h) A party fails to timely respond to a dispositive motion or a show cause order or other order, including an order requiring the filing of a pre-hearing position statement or a post-hearing brief.

(3) If the motion for summary disposition is filed before the hearing, then the commission or administrative law judge designated by the commission may issue an

order to the nonmoving party to show cause why summary disposition should not be granted. If a response to the order is not filed in a timely manner, then the motion shall be considered and decided without oral argument.

(4) If the motion for summary disposition is denied, or if the proposed decision and order does not dispose of the entire action or grant all of the relief demanded, then the action shall proceed to hearing according to part 7 of these rules.

History: 2002 AACS; 2014 AACS.

R 423.166 Motion for reopening of record.

Rule 166. (1) A party to a proceeding may move for reopening of the record following the close of a hearing conducted under Part 7 of these rules.

(2) The motion shall be filed with either of the following:

(a) The assigned administrative law judge if before the issuance of a decision and recommended order.

(b) The commission after the issuance of a decision and recommended order.

(3) A motion for reopening of the record may be granted only upon a showing of all of the following:

(a) The additional evidence could not with reasonable diligence have been discovered and produced at the original hearing.

(b) The additional evidence itself, and not merely its materiality, is newly discovered.

(c) The additional evidence, if adduced and credited, would require a different result.

(4) Any motion pursuant to this rule shall not be filed more than 21 days after the issuance of the commission's final order, except as provided under section 216(c) of PERA or section 23(2)(e) of LMA.

History: 2002 AACS; 2014 AACS.

R 423.167 Motion for reconsideration following commission decision.

Rule 167. A party to a proceeding may move for reconsideration after a decision and order is issued by the commission. A motion for reconsideration shall state with particularity the material error claimed and, with respect to any finding of material fact, shall specify the page of the record relied upon. Generally, and without restricting the discretion of the commission, a motion for reconsideration which merely presents the same issues ruled on by the commission, either expressly or by reasonable implication, will not be granted. Any motion pursuant to this rule shall not be filed later than 20 days after the issuance of the commission's final order, except as provided under section 216(c) of PERA or section 23(2)(e) of LMA. The filing and pendency of a motion under this rule shall not operate to stay the effectiveness of the action of the commission unless so ordered.

History: 2002 AACS; 2014 AACS.

PART 7. HEARINGS

R 423.171 General provisions.

Rule 171. (1) A hearing for the purpose of taking evidence upon a petition or complaint and attached charge shall be conducted by the commission or administrative law judge designated by the commission. The hearing shall be public unless otherwise ordered by the commission or administrative law judge for good cause shown.

(2) A party may do all of the following:

(a) Appear at a hearing in person, by counsel, or by other representative.

(b) Call, examine, and cross-examine witnesses.

(c) Introduce into the record documentary or other evidence.

(3) A party may introduce stipulations of fact into evidence at a hearing with respect to any issue at the discretion of the commission, administrative law judge, or fact finder.

(4) An objection to conduct of a hearing, including an objection to introduction of evidence, may be oral or written, and be accompanied by a short statement of the grounds to the objection, and shall be included in the record.

(5) Witnesses subpoenaed before the commission, administrative law judge, or fact finder shall be paid the same fees and mileage that are paid to witnesses in the circuit courts of the state. This payment shall be made by the party at whose request the witness appears and shall be tendered before the time the witness testifies.

(6) Except as authorized by law, an administrative law judge or other agent of the commission shall not make or receive an ex parte communication regarding a matter subject to the hearing process, whether directly through a party or a representative of a party, or indirectly through staff. An administrative law judge or other agent of the commission who makes or receives an ex parte communication shall place it in the official record. If an ex parte communication is so prejudicial that it cannot be cured by exposure in the official record, the administrative law judge or other agent of the commission shall disqualify himself or herself from further involvement in the matter.

(7) When a court has issued injunctive relief in aid of the commission's jurisdiction related to a pending case, either party may seek and may be granted expedited proceedings on the underlying unfair labor practice charge on such terms as may be considered appropriate by the bureau director and the assigned administrative law judge.

(8) The record of any hearing or proceeding shall be taken pursuant to all of the following:

(a) Certification. Only official court reporters certified in accordance with the state court administrative office (SCAO) may record or prepare transcripts of proceedings held by or on behalf of the commission pursuant to these rules. Official court reporters shall, at a minimum, be designated as a certified shorthand reporter (CSR), certified steno mask reporter (CSMR), or certified electronic recorder (CER) as defined by SCAO. The signature line on the certification shall be signed by the court reporter who physically appeared at the proceedings and shall contain a current certification number issued by the SCAO as assigned to that reporter.

(b) Attendance at hearing. A court reporter satisfying the certification requirements specified in subrule (8)(a) of this rule shall attend all hearings conducted by or on behalf of the commission and take a verbatim record of the proceedings, including, but not limited to, opening statements, witness testimony, final arguments, and the reasons given by the administrative law judge for granting or refusing any motion made by a party during the course of hearing.

(c) Furnishing transcript. The court reporter shall furnish within 10 business days, in verbatim record, a transcript of the proceedings or any part of the proceedings taken by him or her to any party on request. A party ordering the transcript shall make satisfactory arrangements with the court reporter for payment of the cost of the transcript.

(d) Filing transcript. The court reporter shall file with the commission and the administrative law judge an original transcript of the record, in legible English, of any proceedings conducted by or on behalf of the commission. The transcript shall include a certification by the court reporter that the transcript is an original, verbatim transcript of the proceedings. The original transcript shall become part of the record in the case, and the commission shall maintain a copy of the transcript for the time period required under R 423.185.

History: 2002 AACS; 2014 AACS.

R 423.172 Duties and powers of administrative law judge or fact finder.

Rule 172. (1) An administrative law judge or fact finder shall inquire fully into the facts involved in the proceeding before him or her.

(2) An administrative law judge or fact finder has the power to do all of the following:

(a) Hold pretrial conferences for settlement or clarification of the issues, either in person or by telephonic or electronic means, and may order the filing of position statements to aid in the pretrial or hearing process.

(b) Dispose of procedural requests, motions, or similar matters.

(c) Continue or adjourn a hearing to a later date.

(d) Take or cause depositions to be taken when the ends of justice would be served thereby.

(e) Grant applications for subpoenas, subpoena witnesses, administer oaths and affirmations, examine witnesses, receive relevant testimony and evidence, rule upon offers of proof, and introduce into the record documentary or other relevant evidence.

(f) Regulate the course of a hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct.

(g) Order a hearing reopened before issuance of an administrative law judge's recommended order or fact finder's report.

(h) Take official notice of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either generally recognized or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(i) Take official notice of common law, administrative law, constitutions, public statutes, private acts, resolutions of public bodies, ordinances, and regulations.

(j) Take any other action necessary and authorized by rules of the commission.

History: 2002 AACS; 2014 AACS.

R 423.173 Oral argument at hearing and briefs.

Rule 173. A party is entitled upon request to a reasonable period at the close of the hearing for oral argument, which shall be made part of the record. A party is entitled, upon request made before the close of the hearing, to file a brief with the administrative law judge, who may fix a reasonable time for the filing. The commission or administrative law judge may direct the filing of briefs when the filing is, in the opinion of the commission or administrative law judge, warranted by the nature of the proceedings or the particular issues involved. An original and 2 copies shall be submitted for any brief filed in a representation proceeding under part 4 of these rules, unless additional copies are requested.

History: 2002 AACS; 2014 AACS.

R 423.174 Rescinded.

History: 2002 AACS; 2014 AACS.

R 423.175 Unfair labor practice case decisions and recommended orders.

Rule 175. (1) In an unfair labor practice case, the administrative law judge shall prepare a decision and recommended order setting forth findings of fact, conclusions of law, and the reasons for his or her determination on all material issues.

(2) The administrative law judge may recommend dismissal or sustain the complaint and attached charge, in whole or in part, and recommend that respondent cease and desist from the unlawful acts found and take action to remedy their effects, including reinstatement of employees with or without back pay, as appropriate.

(3) In the interest of judicial economy, the administrative law judge may issue a decision from the bench following the conclusion of an oral argument or an evidentiary hearing, unless a party requests to file a post hearing brief. The bench decision does not constitute a decision and recommended order until it is incorporated into a written order.

History: 2002 AACS; 2014 AACS.

R 423.176 Exceptions to administrative law judge's decision and recommended orders; cross exceptions and response; brief in support.

Rule 176. (1) Any party may file written exceptions to the decision and recommended order of the administrative law judge, or to any other part of the record or proceedings, including rulings upon motions or objections, and a brief in support thereof. Except as permitted by order of the commission, the combined length of the exceptions and brief is limited to 50 pages, exclusive of tables, indexes and appendixes. The exceptions and brief shall conform to the form and style in R 423.184.

(2) An original and 4 copies of the exceptions and brief shall be filed with the commission, along with all of the following documents:

(a) Two copies of each exhibit, if any, admitted, or offered and marked at hearing by either party.

(b) Two copies of each party's post-hearing briefs.

(c) Two copies of all of the following documents:

(i) Any motion that resulted in a ruling by the administrative law judge dismissing or sustaining the unfair labor practice in whole or part.

(ii) Any brief in support of the motion.

(iii) The response to the motion filed by the opposing party or parties.

(d) Copies of the exceptions and brief and a list of the other documents filed with the exceptions shall be served at the same time on each party to the proceedings, and a statement of service shall be filed under R 423.182

(3) Exceptions and the supporting documents in subrule (2) of this rule shall be filed with the commission, and not with the administrative law judge, within 20 days of service of the decision and recommended order.

(4) Exceptions shall be in compliance with all of the following provisions:

(a) Set forth specifically the question of procedure, fact, law, or policy to which exceptions are taken.

(b) Identify that part of the administrative law judge's decision and recommended order to which objection is made.

(c) Designate, by precise citation of page, the portions of the record relied on.

(d) State the grounds for the exceptions and include the citation of authorities, if any, unless set forth in a supporting brief.

(5) A brief in support of exceptions shall contain only matter included within the scope of the exceptions and shall contain, in the sequence indicated, all of the following:

(a) A title page, stating the full title of the case, including the name of the administrative law judge and the case number.

(b) An index of authorities, listing, in alphabetical order, all case authorities cited, with the complete citations including the years of decision, and all other authorities cited, with the number of the pages where they appear in the brief.

(c) A statement of the questions involved and to be argued.

(d) A clear and concise statement of facts. All material facts, both favorable and unfavorable, shall be fairly stated without argument or bias. The statement shall contain specific page references to the transcript and the legal or other material relied on.

(e) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page references to the transcript and the legal or other material relied on.

(6) An exception to a ruling, finding, conclusion, or recommendation that is not specifically raised is waived.

(7) An exception that fails to comply with this rule may be disregarded.

(8) Within 10 days after service of exceptions, a party may file 1original and 4 copies of cross exceptions and briefs in support thereof, or 1 original and 4 copies of a brief or legal memorandum in support of the decision and recommended order. Copies of these documents shall be served on each party to the proceedings.

(9) Within 10 days after service of cross exceptions, an opposing party may file 1 original and 4 copies of a brief or legal memorandum responding specifically to the issues raised in the cross exceptions that were not addressed in the exceptions.

(10) An amicus curiae brief may be filed on motion granted by the commission. The motion and proposed brief shall be filed within 20 days of the date that the brief in support of the decision and recommended order is due. The brief is limited to the issues raised by the parties.

(11) The commission may, on its own motion, reopen a record in any case and receive further evidence, may close the case upon compliance with the administrative law judge's recommended order, or may make other disposition of the case.

History: 2002 AACS; 2014 AACS.

R 423.176a Extension of time to file certain pleadings after issuance of decision and recommended order.

(1) A party may file with the commission a written request for an extension of time to file 1 of the following:

(a) Exceptions.

(b) Cross exceptions and supporting brief.

(c) Brief or legal memorandum in support of the decision and recommended order.

(d) Responses to cross exceptions.

(2) Written requests to extend the filing deadline for such pleadings shall be filed with the commission and served on the other party before the expiration of the filing deadline.

(3) One 30-day extension may be granted, unless a shorter period is ordered by the commission.

(4) The new filing deadline shall apply to all parties and no subsequent extensions of time for filing that same form of pleading shall be granted unless all parties to the case consent to the additional extension of time or the requesting party shows exceptional circumstances, which justify another extension under subrule (5) of this rule.

(5) Exceptional circumstances for the purposes of a subsequent extension of time under this rule include any of the following:

(a) Severe injury, severe illness, or death of an individual who is either a party or party representative.

(b) Severe injury, severe illness, or death of a member of that individual's immediate family or household.

(c) Similarly dire circumstances.

(6) Medical documentation supporting an assertion of a severe injury or illness shall be submitted with any request for a subsequent extension unless all parties to the case have consented to the additional extension.

History: 2014 AACS.

R 423.177 Compliance and enforcement.

Rule 177. (1) A compliance request made under this rule shall be limited to a controversy concerning the meaning, interpretation, or scope of a commission order. A request for enforcement of a commission order shall be made in the court of appeals under MCL 423.216(d) and MCL 423.23(2)(e). Both of the following apply:

(a) If, at any time after entry of a commission order or entry of a final court judgment enforcing a commission order, a controversy exists between the parties concerning compliance with the order which cannot be resolved without a formal proceeding, the prevailing party may request that the commission conduct a hearing on such issues.

(b) An original and 4 copies of the ~~a~~ request shall be filed with the commission, together with a proof of service of a copy on all other parties, as prescribed in R 423.181 and R 423.182.

(2) If the controversy concerns the amount of back pay due, then the request for compliance shall specifically and in detail show, for each employee, the back pay periods broken down by calendar quarters, the specific figures and basis of computation of gross back pay, and the interim earnings and expenses for each quarter, the net back pay due, and any other pertinent information.

(3) If the controversy concerns matters other than the amount of back pay due, then the request shall contain a clear and concise description of the respects in which the respondent has failed to comply with a commission or court order, including the remedial acts claimed to be necessary for compliance by the respondent.

(4) Each respondent alleged in the request to have compliance obligations shall, within 10 days of service of the request, file an original and 4 copies of an answer with the commission, together with proof of service of copies of such documents on all other parties. The answer shall specifically admit, deny, or explain each allegation in the request, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross back pay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the request or the premises upon which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(5) If the respondent fails to file any answer to the request within the time prescribed by this rule, then the commission may, either with or without taking evidence in support of the allegations in the request for compliance and, without further notice to the respondent, enter an appropriate order. If the respondent files an answer to the specification but fails to deny any allegation in the request in the manner required by subrule (4) of this rule, and the failure to deny is not adequately explained, then such allegation shall be admitted as true, and may be found by the commission without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(6) Upon proper cause shown by any party, the commission may by written order extend the time within which the answer to the request for compliance is filed.

(7) After the filing of a request for compliance and the issuance of a notice of hearing, the requirements in part 7 shall be followed as applicable.

History: 2002 AACS; 2014 AACS.

R 423.178 Oral argument before commission.

Rule 178. If a party desires to argue orally before the commission, a written request shall accompany the exceptions, cross exceptions, or the brief in support of the decision and recommended order, and at the same time, the request shall be served on all other parties. The request must indicate "oral argument requested" in bold capital letters on the first page of the pleading under the caption. The commission, on its own motion, may also direct oral argument. The commission shall notify the parties of the time and place of oral argument. The commission may limit the time for oral argument by each party.

History: 2002 AACS; 2014 AACS.

R 423.179 Commission action.

Rule 179. (1) Upon the filing of exceptions or cross exceptions, the commission may adopt, modify, or reverse the administrative law judge's decision and recommended order, or grant such other relief as the commission deems necessary to effectuate the purposes of the act.

(2) If the commission identifies an issue not raised by the parties, it may on its own motion direct the parties to file briefs on the issue, or remand the matter to the administrative law judge for additional findings of fact.

History: 2002 AACS; 2014 AACS.

PART 8. FILING, SERVICE, RENTENTION, AND DISPOSAL OF DOCUMENTS

R 423.181 Filing of documents and other pleadings.

Rule 181. (1) "Filing" of a document, pleading, or other paper with the commission is considered complete on the date it is delivered to any office of the commission and received and accepted by the commission, administrative law judge, or other agent designated to receive the document, with the intent to enter it in the record. Filing may be accomplished by hand delivery, registered, certified or regular mail, private delivery service, or any other means specifically authorized by the commission or an administrative law judge designated by the commission.

(2) When LMA, PERA, or any of these rules require the filing of an original and extra copies of a document, filing is considered complete on the date a copy is filed, but the original and remaining copies shall be filed within 5 business days.

History: 2002 AACS.

R 423.182 Service of documents and other pleadings.

Rule 182. (1) Service on any party or parties of any document authorized or required by LMA, PERA, or these rules, except service required by section 9 of LMA, may be effected by hand delivery, registered, certified or regular mail, private delivery service, or by leaving a copy at the principal office or place of business of the person required to be served, or by any other means specifically authorized by the commission or an administrative law judge designated by the commission. Service required by section 9 of LMA shall be made as prescribed therein.

(2) Where service of any document or pleading, other than an unfair labor practice charge filed under R 423.151, is effected by mail or private delivery service, the date of service is the date of deposit with the United States post office or other carrier. For service of an unfair labor practice charge filed under R 423.151, or where service of any document or pleading is effected by hand, by facsimile transmission, or by any other method authorized by these rules, the date of service is the date of receipt.

(3) The person or party serving the papers or process on other parties under this rule shall submit a written statement of service with the commission or assigned administrative law judge designated by the commission stating the names of the parties served and the date and manner of service. The statement of service may be included at the end of the document at filing. Failure to timely file a statement of service will not affect the validity of service.

(4) If, subsequent to the receipt of the statement of service, a question is raised with respect to proper service, then the person or party serving the papers or process on other parties in conformance with this rule shall submit a proof of service. When service is made by registered or certified mail, the return post office receipt shall be proof of service. When service is made by private delivery service, the receipt from that service showing delivery shall be proof of service. When service is made in any other manner authorized by these rules, verified proof of service shall be made by oath or affirmation of the person or party serving the papers or process. Disputes with respect to proper service will be resolved by the commission or administrative law judge designated by the commission.

(5) The commission or administrative law judge designated by the commission may decline to consider any document or pleading not served in accordance with these rules. The commission or administrative law judge designated by the commission shall decline to consider any unfair labor practice charge filed under R 423.151 that is not served within the applicable period of limitations.

History: 2002 AACS; 2014 AACS.

R 423.183 Computation of time.

Rule 183. In computing any period of time prescribed or allowed by LMA, PERA, or these rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day, which is neither a Saturday, Sunday, nor legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever

a party has the right or is required to do some act within a prescribed period after being served with a document or pleading by mail, 3 days shall be added to the prescribed period. However, 3 days shall not be added if any extension of time has been granted.

History: 2002 AACS.

R 423.184 Form and style of motions, briefs, and other pleadings.

Rule 184. (1) Motions and briefs filed with the commission or an administrative law judge designated by the commission shall be typewritten on 1 side only of 8 ½ by 11-inch plain white paper, shall have margins not less than 1 inch on each side, shall be in a typeface not smaller than 12 point and shall be double-spaced, except that quotations and footnotes may be single-spaced. Unless expressly increased or decreased by order of the administrative law judge, commission or designee, or other provision under these rules, the size of any pleading is limited to 50 pages, exclusive of tables, indexes, and appendixes.

(2) The original of all pleadings shall be firmly bound with 1 staple in the upper left hand corner or secured with metal fasteners through a standard 2-hole punch perforation at the top. No other method of securing original motions and briefs is acceptable. Copies of pleadings may be secured by any reasonable format.

(3) The first page of each pleading shall bear the caption, case number or numbers, and name of the administrative law judge, if any, or the commission.

(4) Failure to comply with the requirements of this rule may be a basis for rejection of the document.

History: 2002 AACS; 2014 AACS.

R423.185 Retention and disposal of commission materials.

Rule 185. All documents, records, non-records and other materials, public and nonpublic, official and unofficial, shall be maintained and disposed of using the general and bureau specific retention and disposal schedules under section 5 of 1913 PA 271, MCL 399.5, and section 491 of the Michigan penal code, 1931 PA 328, MCL 750.491.

History: 2014 AACS.

PART 9. NOTICE OF PUBLIC SCHOOL STRIKE OR LOCKOUT

R 423.191 Notice; filing; service.

Rule 191. (1) A public school employer alleging an illegal strike by 1 or more public school employees under section 2a of PERA shall notify the commission, in writing, on a form provided by the commission, which shall be accompanied by an affidavit signed by an agent for the public employer.

(2) The initial notice shall contain all of the following information and items:

(a) The name and address of the bargaining representative.

(b) The name and home address of each public school employee allegedly on strike.

(c) The pay rate of each alleged striking employee based on a daily rate.

(d) Two sets of mailing labels containing the names and home addresses of the public school employees allegedly on strike.

(e) An affidavit which is signed and dated by an agent of the public school employer and which includes the following information supported by specific facts:

(i) A statement of how the affiant has personal knowledge of the facts recited in the affidavit.

(ii) The date each employee was absent from his or her position and how each employee has abstained, in whole or in part, from the full, faithful, and proper performance of the duties of his or her employment for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment or for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice committed by the public school employer.

(3) Upon filing a written notice and affidavit with the commission, the public school employer shall simultaneously serve each named bargaining representative and public school employee with a copy of the written notice and affidavit by first-class mail, postage prepaid. The copy served upon the employee shall state that the public school employer has filed a written notice and affidavit with the commission that the named employee has engaged in an illegal strike and that statutory penalties are being sought. Proof of service shall be filed with the commission together with the initial notice.

(4) A bargaining representative representing public school employees alleging an illegal lockout of public school employees under section 2a of PERA shall notify the commission, in writing, on a form provided by the commission, which shall be accompanied by an affidavit signed by an agent of the bargaining representative.

(5) The initial notice shall contain both of the following:

(a) The name and address of the public school employer allegedly liable under section 2a of PERA.

(b) An affidavit which is signed and dated by an agent of the bargaining representative and which includes all of the following information supported by specific facts:

(i) A statement of how the affiant has personal knowledge of the facts recited in the affidavit.

(ii) A statement of the actions of the public school employer taken in order to bring pressure upon the affected employees or the bargaining representative, or both, to accept the employer's terms of settlement of a labor dispute.

(iii) The date of commencement of the lockout.

(iv) The number of days of the lockout.

(v) Whether the lockout is continuing.

(6) Upon filing a written notice and affidavit with the commission, the bargaining representative shall simultaneously serve the public school employer with a copy of the written notice and affidavit by first-class mail, with postage prepaid. The notice

shall state that the bargaining representative has filed a written notice with the commission that an illegal lockout has occurred and that statutory penalties are being sought. Proof of service shall be filed with the commission together with the initial notice.

History: 2002 AACS.

R 423.192 Compliance; notice of hearing; service; postponement.

Rule 192. Upon receipt of notice and affidavit, the commission or its representatives shall review the notice and affidavit for compliance with R 423.191. If a filing is not in compliance with these rules, a filing may be rejected and proceedings shall not be held on the filing. Within 5 days of receipt of sufficient notice and affidavit, the commission shall serve a notice of hearing on the public school employer, the bargaining representative, and public school employees named in the notice. The notice of hearing shall fix the date of hearing not less than 15 days from the date of service by mail. The hearing will be conducted before the commission or an administrative law judge designated by the commission and shall be on the record. A postponement of the hearing will not be granted without the consent of the commission.

History: 2002 AACS.

R 423.193 Answers; defenses.

Rule 193. (1) A person or party alleged in the initial notice to have violated section 2 of PERA shall file an answer and any affirmative defenses with the commission within 10 days of the date of service of notice of hearing and shall simultaneously serve the party filing the initial notice.

(2) Only pleadings filed in a timely fashion in accordance with this rule shall be considered unless good cause is shown for late filing.

History: 2002 AACS.

R 423.194 Hearings.

Rule 194. (1) A hearing shall be convened, in accordance with proper notice, at which the parties shall be given the opportunity to present evidence of their claims and defenses.

(2) The commission decision and order shall be based on the record of the hearing.

(3) The commission or a designated administrative law judge shall conduct the hearing under R 423.171(2) to R 423.172. The hearing shall be public unless otherwise ordered by the commission or administrative law judge for good cause shown. If an administrative law judge or commissioner designated to conduct the hearing becomes unavailable after the hearing has opened, the commission may transfer the case to another administrative law judge or commissioner. A party is entitled, upon request,

to a reasonable period at the close of the hearing for oral argument, which shall be made part of the record. Except as otherwise provided in these rules, the provisions of R 423.171(1) and R 423.173 to R 423.179 are not applicable to this part.

(4) At the discretion of the administrative law judge, parties may submit post-hearing briefs.

(5) The commission shall issue its decision and order within 60 days of receipt of the notice filed under R 423.191.

History: 2002 AACS.

R 423.401 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.403 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.405 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.407 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.411 Rescinded.

History: 1979 AC; 2002 AACS.

PART 2. MEDIATION OF LABOR DISPUTES

R 423.421 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.422 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.423 Rescinded.

History: 1979 AC; 2002 AACS.

PART 3. FACT FINDING

R 423.431 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.432 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.433 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.434 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.435 Rescinded.

History: 1979 AC; 2002 AACS.

PART 4. ELECTIONS

R 423.441 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.442 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.443 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.444 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.445 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.446 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.447 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.448 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.449 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.450 Rescinded.

History: 1979 AC; 2002 AACS.

PART 5. UNFAIR LABOR PRACTICE CHARGES

R 423.451 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.452 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.453 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.454 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.455 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.456 Rescinded.

History: 1979 AC; 2002 AACS.

PART 6. HEARINGS

R 423.461 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.462 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.463 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.464 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.465 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.466 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.467 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.468 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.469 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.470 Rescinded.

History: 1979 AC; 2002 AACS.

PART 7. SERVICE OF DOCUMENTS

R 423.471 Rescinded.

History: 1979 AC; 2002 AACS.

R 423.472 Rescinded.

History: 1979 AC; 2002 AACS.

PART 8. NOTICE OF PUBLIC SCHOOL STRIKE OR LOCKOUT

R 423.481 Rescinded.

History: 1995 AACS; 2002 AACS.

R 423.482 Rescinded.

History: 1995 AACS; 2002 AACS.

R 423.483 Rescinded.

History: 1995 AACS; 2002 AACS.

R 423.484 Rescinded.

History: 1995 AACS; 2002 AACS.