

# **RULES OF PROCEDURE OF THE UNIFOR PUBLIC REVIEW BOARD**

Made pursuant to Article 18 of Unifor's *Constitution*

## **PREAMBLE**

Effective: May 23, 2014

Last revision: August 21, 2014

The following Rules of Procedure (*Rules*) are promulgated by the Unifor Public Review Board (PRB) pursuant to the authority contained in Article 18 of Unifor's *Constitution*. The purpose of these *Rules* is to make the services of the PRB available to those within its jurisdiction in a fashion which is orderly, as prompt as justice will permit, and fair to all.

Please forward any questions concerning these Rules to the PRB by letter, telephone, fax, email or in person care of the Registrar at:

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## RULE 1      GENERAL

### **a) Application and Interpretation**

1. These *Rules* apply to all proceedings before the PRB. They shall be liberally and purposively interpreted and applied:
  - a) to promote the fair and expeditious resolution of requests for reviews of decisions made or actions taken by lower bodies;
  - b) to allow participants to participate effectively in the review process, whether or not they have a representative; and
  - c) in a manner consistent with the principles enshrined in Unifor's *Constitution*.

### **b) Powers**

2. The PRB may exercise any of the powers conferred upon it – implicitly or explicitly – by Unifor's *Constitution* at the request of any participant or on its own initiative.
3. Subject to any restrictions imposed by Unifor's *Constitution*, the PRB may make such orders or give such directions as it considers appropriate to prevent the abuse of its processes and may vary or waive the application of any rule, at the request of any participant or on its own initiative.

**c) Accommodation**

4. Any participant, representative, witness, or support person is entitled to be accommodated as required by the *Human Rights Code*, R.S.O. 1990, c.H.19 and should notify the PRB as soon as possible if such accommodation is desired.

**d) Courtesy, Respect and Representatives**

5. All persons participating in proceedings before and/or communicating with the PRB must do so in a manner that is courteous and respectful of the PRB and other participants in the proceeding.

6. Participants, at their own expense, may be self-represented or represented by a lawyer, paralegal, or another person of their choice.

7. Representatives:

- a) must provide contact information to the PRB and be available to be contacted promptly;
- b) are responsible for conveying communications and directions between the participants and the PRB to their respective clients in a timely manner; and
- c) should be familiar with these *Rules* and communicate the PRB's expectations to their respective clients.

8. Where a representative begins or ceases to act for a client, the representative must immediately advise the PRB and the other participants in writing, and provide up-to-date contact information for the participant and any new representative.
9. The PRB may disqualify a representative from appearing before it where the representative is not adequately respectful towards the PRB and other participants or where their continued appearance would abuse the process.

**e) Calculation of Time**

10. Where an Order of the PRB or a rule refers to a number of days, the reference is to calendar days.
11. Where an action is to be done within a specified number of days, the days are counted by excluding the first day and including the last day.
12. When the time for doing an act expires on a holiday (i.e., Saturday, Sunday or on a statutory holiday), the act may be done on the next day that is not a holiday.

**RULE 2 DESIGNATION OF DECISION MAKING PANELS**

13. The Chair of the PRB shall designate a panel to consider each request for a review of a decision or action and a PRB member to chair that panel. The panel shall be comprised of three or five PRB members.

## **RULE 3**

## **COMMUNICATION BETWEEN THE PARTICIPANTS AND PRB**

### **a) General**

14. A participant must notify the PRB and all participants in writing of any change or error in their contact information as soon as possible.
15. When a participant has a representative, documents must be sent to the participant care of that representative.
16. Where the PRB is unable to contact a participant in a review proceeding at the location the participant provided, the PRB may decide any relevant issues without further notice to that participant.
17. Participants may communicate with and provide written materials to the PRB and participate in oral hearings before the PRB in either English or French.
18. Participants may, at their own expense, participate in an oral hearing before the PRB in American Sign Language (ASL), Quebec Sign Language (QSL) or in a language other than French or English as long as they are able to provide a court-certified interpreter.

### **b) Communications in Writing**

19. Any communication from a participant to the PRB with respect to a proceeding that has already begun must be in writing, must be copied to all of the other participants,

must be filed with the PRB care of the Registrar, and must include written confirmation of how, when, and to whom the communication was delivered.

20. A Statement of Delivery Form is a form that participants may use to provide written confirmation of when a copy of a communication (e.g., a document) that they intend to file with the PRB has been sent, to whom it was sent, and by what means. A copy of a Statement of Delivery can be found in Appendix A to these Rules and on the PRB's website. Alternatively, participants may provide such written confirmation in a manner of their choosing so long as they do so in writing and include confirmation within (or along with) the communication.

21. A proceeding with respect to a request for a review of a decision or action begins once Unifor has forwarded a copy of the full record of the matter under review, and confirmation of delivery, to the PRB care of the Registrar.

22. Where it appears that the interests of other individuals can be affected, Unifor shall forward copies of any such communications it sends to or receives from the PRB or another participant to the affected individuals so that they may be aware of, and, if they wish, participate in, the proceedings.

23. Individuals who believe that they may be affected by a review proceeding may apply to the PRB for the purposes of becoming participants.

24. Any communication from the PRB to a participant with respect to a proceeding that has already begun must be in writing and must be copied to all of the other participants.

**c) Method of Delivery**

25. A document may be sent by a participant to another participant:

- a) by fax;
- b) by email;
- c) by delivery in person;
- d) by courier
- e) by process server;
- f) by mail; or
- g) as otherwise directed by the PRB.

26. A document may be sent by the PRB to all participants:

- a) by fax;
- b) by email;
- c) by delivery in person;

- d) by courier
- e) by process server;
- f) by mail; or
- g) as otherwise directed by the PRB.

27. A document may be sent to the PRB by sending it to the Registrar – together with confirmation of when, how, and to whom it was sent – using any of the methods of delivery set out in paragraph 25.

28. Where a document is sent, receipt is deemed to have occurred when it is sent:

- a) by fax, when the person sending the document receives a fax confirmation receipt, but if the fax confirmation receipt indicates a delivery time after 5 p.m., delivery will be deemed to have occurred the next day;
- b) by e-mail, on the day sent or if sent after 5 p.m., delivery will be deemed to have occurred the next day;
- c) by hand, when given to the participant or when left with a person at the participant's last known address;
- d) by courier, on the second day after it was given to the courier;



- e) by process server, on the day served or if served after 5 p.m., delivery will be deemed to have occurred the next day;
- f) by mail, on the fifth day after the postmark date; or
- g) as otherwise directed by the PRB.

29. In the event of a dispute as to if or when a document was received, the participant who sent the document bears the onus of proving when the document was received.

30. Where a participant fails to send documents to another participant as required by these *Rules*, the PRB may refuse to consider the documents or may take any other action it considers appropriate.

#### **RULE 4 PRE-HEARING SUBMISSIONS**

##### **a) General**

31. All participants must adhere to the requirements set out in Rule 3 when communicating with each other and/or the PRB.

32. For the purposes of these *Rules*, the act of filing a document refers to a participant sending the document to the PRB and the PRB receiving it together with confirmation of when, how, and to whom the document was sent.

33. Time limits may be extended upon a written request being filed by one or more of the participants prior to the deadline for filing a document.

## **b) Notice of Pending Review**

34. After the Committee on Constitutional Matters (“Committee”) or National Executive Board (“NEB”) forwards a copy of the full record of the matter to the PRB, the PRB shall provide a Notification of Pending Review to the member seeking redress.

## **c) Statement of Reasons**

35. Unless the PRB directs otherwise, a member must file a Statement of Reasons with the PRB within 15 days of receiving the Notification of Pending Review.

36. The failure of a member to file a Statement of Reasons in accordance with these *Rules* may provide grounds for the request for a review of a decision or action to be dismissed without a hearing, if, in the opinion of the PRB, the interests of justice so require.

37. In the event that a request for a review of a decision or action relates to a matter that does not involve a charge, the Statement of Reasons may include further submissions concerning the full record.

38. In the event that the request for a review of a decision or action relates to a matter involving a charge, the PRB shall not consider any new information or allegations which were not provided to the National Appeals Committee.

**d) Answer(s)**

39. After the National Union receives a copy of the member's Statement of Reasons, it shall file its Answer to the Statement of Reasons.

40. No Answer is required if a member chooses not to file a Statement of Reasons.

41. Each Answer must be responsive to each argument advanced in the member's Statement of Reasons; provided however, where objection is to be made to PRB's jurisdiction to review the decision or action, a Special Answer may be filed limited to a discussion of the jurisdictional issue; and provided further, upon the decision of the PRB to assume jurisdiction, or at its specific request in lieu of such a decision, an Answer responsive to all of the arguments raised in the Statement of Reasons shall be filed.

42. Unless the PRB directs otherwise, all Answers shall be filed with the PRB within 15 days after a participant or affected individual receives a member's Statement of Reasons.

43. Where an additional Answer may be required following the filing of a Special Answer, it shall be filed within 15 days after receipt of the PRB's request or at such other time that the PRB may direct.

44. If Unifor fails to file its Answer within the prescribed time limits, the PRB may render a decision in favour of the member, if, in the opinion of the PRB, the interests of justice so require.

**e) Reply(ies)**

45. After a member receives a copy of an Answer, such member may file a Reply to that Answer.

46. The restriction against relying on new facts and documents when filing a Statement of Reasons related to a charge applies equally to a Reply.

47. Unless the PRB directs otherwise, a Reply to an Answer shall be filed with the PRB within 15 days of a member receiving that Answer.

**f) Review Record**

48. The Review Record is comprised of the written communications between the participants and the PRB to date.

49. After receipt of a Reply or after the time to file a Reply has passed, the PRB may provide a copy of a Review Record to each participant.

50. Nothing in these *Rules*, however, prevents the PRB from dismissing a request for a review without preparing or distributing a Review Record.

51. Each participant who receives a Review Record shall notify the PRB of any deficiency in the Review Record in writing within 15 days after receipt or at such other time that the PRB may direct.

**g) Motions**

52. At any point after the review proceeding has begun, a participant may file a motion in writing seeking an Order from the PRB to require a specific action.

53. Other participants may, but shall not be required to, file a response within 15 days of receiving a motion or at such other time that the PRB may direct.

54. Motions shall be decided by the PRB without oral argument, unless otherwise indicated.

**RULE 5 THE HEARING**

55. It is in the PRB's discretion, in light of the circumstances, to:

- a) decide a request for review of a decision or action on the basis of written submissions;
- b) decide a request for review of a decision or action by way of an oral hearing;  
or
- c) decide not to hear a request for review of a decision or action because of jurisdictional reasons.

56. Any participant may request an opportunity to have a review of a decision or action decided by any of the hearing methods set out in paragraph 55. Such a request should be made no later than 15 days after receipt of the Review Record.

57. The PRB may authorize the recording or transcription of its proceedings. Where a participant wants to record a proceeding, it should indicate its desire to do so no later than 10 days after receipt of the Review Record, and, at its own expense, must be prepared to use an officially recognized court reporter and provide the PRB and any other participants with an official transcript of the hearing.

58. Where a participant has been notified of a hearing and fails to attend, the PRB may:

- a) proceed in the participant's absence;
- b) determine that the participant is not entitled to further notice of the proceedings;
- c) determine that the participant is not entitled to present evidence or make submissions to the PRB;
- d) decide the Appeal based solely on the materials before it; and/or
- e) take any other action it considers appropriate.

59. A request for a review of a decision or action will not be finally disposed of without written reasons, regardless of whether or not a hearing is held.

## **RULE 6 SCHEDULING OF HEARINGS AND OTHER EVENTS**

60. The PRB may schedule hearing dates or other dates in a proceeding as the PRB considers appropriate, with or without consulting the participants.
61. The Chair of the PRB shall designate the time and place of hearing of any matter meriting an oral hearing.
62. Written notice of such time and place shall be sent to all of the participants at least 15 days in advance of the hearing, except where such notice is waived by the participants.

## **RULE 7 ADDITIONAL EVIDENCE AT HEARINGS**

63. Additional evidence refers to evidence that a participant wants to rely upon in addition to the evidence contained in the Review Record.
64. Additional evidence cannot be considered by the PRB in requests for reviews of decisions involving charges.
65. Additional evidence may be presented only in the following situations:
- a) On consent of all of the participants or where no participant objects to the admission of such evidence; OR
  - b) Where a written request is filed with the PRB at least 15 days before the hearing and the chair of the decision making panel of the PRB is satisfied that

there would be no substantial prejudice, there would be no undue delay to the proceedings and it is necessary for the PRB to consider such evidence to reach a just decision.

## **RULE 8 FINAL DECISIONS**

### **a) General**

66. For the purposes of these *Rules*, a final decision refers to the result or outcome of the PRB's resolution of any matter before it.

67. The PRB shall commit all final decisions to writing based on a majority vote of the panel of members designated to participate.

68. Decisions will be reached by way of a hearing or, at the discretion of the PRB, without a hearing where the interests of justice permit it.

69. The PRB's decision shall be sent to all participants. At the PRB's discretion, copies may be sent to various colleges and universities, libraries, news media, private publishing services, and individual subscribers to the decisions of the PRB.

### **b) Final decision regarding a request for review not involving a charge**

70. In the case of a request to review a decision not involving a charge, the PRB shall render a written decision which may:

- a) Uphold the decision or action of the Committee or NEB; or



- b) If the decision is unreasonable, refer the matter back to a lower body with instructions, or substitute another decision which is appropriate in all of the circumstances.

**c) Final decision regarding a request for review involving a charge**

71. In the case of a Request to review the disposition of a charge, the PRB shall render a written decision which may:

- a) Uphold the decision of the NEB; or
- b) Overturn the decision if it is unreasonable, and substitute a decision that is appropriate in all of the circumstances including a direction that the matter be reheard by a lower body.