

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

From: Warren R. Mowery, Jr., Chief Counsel
Nathan Bortner, Secretary

Date: March 31, 2020

RE: Filing documents with the Pennsylvania Labor Relations Board during the mandatory office closing due to the Covid-19 pandemic

The Governor of Pennsylvania's emergency declaration closing Commonwealth offices due to the spread of the coronavirus, including the offices of the Pennsylvania Labor Relations Board, effective March 13, 2020, has raised several questions regarding the ability of parties to timely file documents, charges and petitions with the Board. Under the Governor's directive, PLRB staff is diligently working from home to the best of their abilities and technological capabilities. There are, however, some elements of filing, docketing, and issuance of orders that are hampered by the inability to access the physical offices of the Board, including prompt daily receipt of U.S. mail. This memorandum is intended to provide some level of guidance to the PLRB staff and the public regarding the methods available to preserve timely filing with the Board due to the current unprecedented emergency circumstances.

Effective February 8, 2020, the PLRB amended its Rules and Regulations to allow for filing of documents with the Board by e-mail (except in the case of a representation petition where a showing of interest is required). Specifically, the means of filings under the Board's newly promulgated regulations are as follows:

Filing of papers.

(a) When the act, this chapter or an order of the Board requires the filing of a motion, brief, exception or other paper in a proceeding, the document shall be received by the Board or the officer or agent designated by the Board to receive the document before the close of business of the last day of the time

limit, if any, for the filing. Exceptions to this requirement will be at the discretion of the Board.

(b) Charges and petitions may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in Pittsburgh. Charge and petition forms are available at Board offices.

(c) Methods of Filing with the Board.

(1) In person at the principal office of the Board in Harrisburg, or with the regional office of the Board in Pittsburgh. If mailed to the Board through the United States Postal Service or third-party courier, the date of filing shall be the date of receipt by the Board in its Harrisburg or Pittsburgh office.

(2) Except for a Joint Election Request (Form PERA-3), Petition (Form PLRB-13 or Form PERA-4), or other document with a showing of interest, filing by electronic mail by e-mailing a portable document format (PDF) file of the scanned complete signed document, including attachments and exhibits thereto, to the Board at the Board's designated e-mail address. The date of filing of an e-mailed document shall be the date of receipt by a Board officer or agent in accordance with section 95.42(a).

34 Pa. Code §95.42; and 34 Pa. Code §93.12.

The Board's Rules and Regulations are designed for "the efficient operation of the Labor Relations Board and the orderly administration of the acts. They are to be liberally construed for the accomplishment of these purposes and may be waived or suspended by the Labor Relations Board at any time and in any proceeding unless the action results in depriving a party of substantial rights." 34 Pa. Code §91.5.

The Board cannot alter the four-months statute of limitations for unfair practices under Section 1505 of the Public Employee Relations Act, the six-weeks statute of limitations under Section 9(e) of the Pennsylvania Labor Relations Act, or the statutory window-period for a representation petition under Section 605(7)(ii) of PERA. However, this does not prohibit the

Board from liberally construing its own regulations, including Sections 93.12 and 95.42, to accommodate the methods of filings under the present emergency circumstances.

In this regard, the Board's new Rules and Regulations provide for three methods of filing: 1) in person; 2) by U.S. Mail or overnight courier; or 3) by e-mail. In light of the emergency circumstances caused by the Covid-19 pandemic, a temporary emergency liberal construction of the Board's Regulations, as permitted by Section 91.5, should be applied as follows:

- 1) In Person in the Pittsburgh or Harrisburg office.** In person filings at the Board offices is presently unavailable. As of the date of this memorandum, the City of Pittsburgh and Harrisburg are under a stay-at-home order of the Governor of Pennsylvania, and both the Harrisburg and Pittsburgh office buildings are closed to public access.

- 2) By U.S. Mail or third-party courier to the Pittsburgh or Harrisburg offices.** Sections 93.12(b)(1) and 95.42(c)(1) of the Board's Regulations provide that documents mailed to the Board are filed when received. Under normal operations, mail is received daily and processed the same day. However, under present circumstances, daily receipt and processing of the mail by a Board employee cannot be assured. A reasonable liberal construction of the Board rules would be to deem a document received for purposes of filing on the date the mail is delivered in Harrisburg or Pittsburgh and destined for delivery to the PLRB offices. Sections 93.12 and 95.42 may be liberally construed under the circumstances to allow that tracking information from the USPS or third-party courier would evidence delivery in Harrisburg or Pittsburgh to the PLRB office. Examples of methods that allow tracking of delivery include USPS certified mail, or overnight delivery by USPS, FedEx or UPS. Where tracking information is available on the face of the mailing, PLRB staff may access the delivery service website and tracking information to identify the date the document was received in Harrisburg or Pittsburgh and was destined for delivery in the PLRB office. That date can then be used as the date of filing with the Board in accordance with Section 93.12(b)(1) or 95.42(c)(1) of the Board Regulations.

3) **By emailing a PDF file to RA-LIPLRB-FILING@PA.GOV**. Except for a Representation Petition with a showing of interest, charges, unit clarifications, or any other document may be filed with the PLRB by email. When a filing is emailed to the Board, an autoreply is generated noting that a filing has been received, and the date and time of filing is reflected on the emails. Currently, PLRB staff working from home under the Governor's emergency declaration, have access to, and are monitoring, the PLRB's email filing account. While processing of documents submitted to the Board by email may be delayed, the date of filing is preserved as reflected in the emails. If there are any questions concerning filing by email, please see the PLRB's FAQs for email filing at <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/plrb/Documents/E-FilingFAQs.pdf>.

If filing in person with the Board is the **only** option available to preserve your filing date, or if there are any questions concerning filing by mail or by email under the emergency circumstances caused by the Covid-19 pandemic, please email wamowery@pa.gov or leave a voicemail with a call-back number at 717-783-6016.