

TITLE 4. PROFESSIONS AND OCCUPATIONS**CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD**

Authority: A.R.S. § 23-1381 et seq.

4 A.A.C. 2, consisting of Sections R4-2-101 thru R4-2-105, R4-2-201 thru R4-2-219, R4-2-301 thru R4-2-311, and R4-2-401 thru R4-2-407, adopted effective December 26, 1995 (Supp. 95-4).

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ARTICLE 1. GENERAL PROVISIONS**R4-2-101. Definitions**

In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

“Act” means the Agricultural Employment Relations Act, A.R.S. Title 23, Chapter 8, Article 5, § 23-1381 et seq.

“Administrative Law Judge” or “ALJ” means an individual, or the Board, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency decision.

“Authorization period” means the four pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Bargaining unit” means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).

“Board agent” means any individual acting on behalf of the Board, including the Executive Secretary, the General Counsel, and investigators.

“Calendar year” means the period beginning January 1 and ending December 31.

“Consent election” means an election held following the Board’s approval of a voluntary and complete consent election agreement submitted to the Board.

“Eligibility period” means the three pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Executive Secretary” means the Executive Secretary appointed by the Board under A.R.S. § 23-1388.

“General Counsel” means the attorney representing the Board.

“Independent contractor” means an employer engaged in the business of supplying labor to a farm or ranch.

“Investigator” means a person with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.

“Leave of absence” means an employment status determined by the employer and the employee permitting the employee to cease work for that employer for a specified period of time.

“Pay period” means the seven-day period used by an agricultural employer for payroll purposes. If the agricultural employer does not use a seven-day pay period, pay period means a seven-day period, Sunday through Saturday.

“Signature” means the name or mark of an individual, written by that individual to authenticate a writing.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-102. Strikes

- A.** A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch. A person shall not use a picket sign unless the sign clearly states the person against whom the employees or their representative are conducting the strike.
- B.** Employees or their representative may advertise their dispute with the agricultural employer and picket the employer. Employees or their representative shall not picket so as to interfere with the work of a neutral employer or supplier who is not involved in the dispute.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents

- A.** The attorney of a party to a proceeding under investigation by the Board shall promptly file a Notice of Appearance with the Board. Once filed, the notice shall remain in effect for the duration of the proceeding, or until the Board is notified, in writing, that the attorney is not representing the party.
- B.** A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- C.** A person shall file a document with the Board at its principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays or by mail. A document is considered filed on the date it is received by the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-104. Service of Process and Legal Documents

- A.** A person serving a petition for election, petition for decertification, or subpoena shall serve according to A.R.S. § 23-1391(C).
- B.** If an attorney enters an appearance in a proceeding, service of motions and papers upon the attorney according to A.R.S. § 23-1391(C) constitutes service upon the party.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-105. Computation of Time

In computing any period of time prescribed by this Chapter, by order of the Board, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not included. If the prescribed period of time is less than 11 days, intermediate Saturdays, Sundays, and Arizona legal holidays are not included in the computation. The last day of the period is included, unless it is a Saturday, Sunday, or Arizona legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Arizona legal holiday.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 2. ELECTIONS**R4-2-201. Contents of Petition for Election**

- A.** A petition for certification election filed under A.R.S. § 23-1389(C) by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting on the employees' behalf shall be signed under oath and shall contain the following information:
1. The name of the agricultural employer;
 2. The address of the agricultural employer;
 3. A description of the bargaining unit that the petitioner claims to be appropriate;
 4. The approximate number of employees in the alleged appropriate unit;
 5. A brief statement that the employer declines to recognize the petitioner as a bargaining representative within the meaning of A.R.S. § 23-1382(10) or that the petitioner is currently recognized but desires certification under the Act;
 6. The name, affiliation, if any, and address of petitioner;
 7. The name and address of any other person who claims to represent an employee in the alleged appropriate bargaining unit;
 8. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date the strike or picketing commenced;
 9. A statement that the petition for election is supported by 30 percent or more of the agricultural employees in the bargaining unit; and
 10. Any other relevant fact.
- B.** A petition for decertification election filed under A.R.S. § 23-1389(J) by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting on the employees' behalf shall be signed under oath and contain the following information:
1. The name and address of the petitioner;
 2. A statement that:
 - a. A representative other than petitioner has been certified, or is currently recognized by the employer;
 - b. Petitioner desires to rescind the certification; and
 - c. The unit claimed to be appropriate, a description of the unit, and the number of employees in the unit;
 3. The name, affiliation, if any, and address of the person whose recognition or certification the petitioner seeks to rescind;
 4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
 5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date the strike or picketing commenced;
 6. A statement that the petition for decertification election is supported by 30 percent or more of the agricultural employees in the bargaining unit; and
 7. Any other relevant fact.
- C.** The Board shall not accept for filing a petition for election that does not contain all the information required by subsections (A) or (B).
- D.** The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, send a copy of the petition to the respondent named in the petition. If the Board certified a representative other than the petitioner, a copy of the petition shall also be sent to the certified representative.

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Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-202. Withdrawal of Petition

The petitioner and respondent may stipulate to withdraw a petition for election that is filed with the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-203. Challenge to Petition; Waiver

- A. The Board is not required to investigate a challenge to a petition for election filed under A.R.S. § 23-1389(F).
- B. If a respondent fails to file a timely challenge to the petition for election under A.R.S. § 23-1389(F), the right to challenge is waived.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-204. Investigation of Petition

- A. The Board or its agent shall notify the agricultural employer by telephone within 10 days after a petition for election is filed. Within seven days of notification, the agricultural employer shall furnish each employment record, payroll signature list, and other pertinent data requested by the Board or its agent to investigate the petition. The agricultural employer shall certify in writing and under oath that the information provided to the Board is true, complete, and accurate.
- B. The Board shall review each authorization submitted under R4-2-205, as soon as practicable, to determine whether there is reasonable cause to believe a question of representation exists under A.R.S. § 23-1389 and R4-2-210.
- C. The Board may conduct any investigation it deems necessary, following a review of the authorizations and pertinent employment data, to determine whether a question of representation exists including, but not limited to, a field investigation.
- D. The Board shall conduct an investigation in a manner that preserves the confidentiality of the identity of an agricultural employee who does or does not sign an authorization. The Board shall not disclose an investigative report or the identity of a person interviewed in conjunction with the investigation except as required by law.
- E. The Board or its agent shall not disclose to any person or party the number of authorizations filed or any other information concerning the investigation, except as required by law.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-205. Time for Submission of Authorizations

- A. A petitioner shall submit every authorization with the petition for a certification election or decertification election. Except as provided in subsection (B), the Board shall not accept an authorization after the petition for certification election or decertification election is filed.
- B. If the Board or its agent initially determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board shall notify the petitioner that additional authorizations may be filed with the Board within the next two business days. An additional authorization is not valid unless it is signed after the day the petition is filed and the individual signing the

authorization is an agricultural employee at the time the authorization is signed and at any time during the eligibility period.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-206. Form and Content of Authorizations

- A. An individual can show interest by completing an authorization card or signing a petition.
- B. An individual authorization card submitted to the Board as evidence of a showing of interest is not valid unless the card contains only one name, one signature, and the following information, which is printed unless otherwise specified by the Board:
 1. The employee's name, name of employer, and social security or employee identification number;
 2. The signature of the employee and date in the employee's own handwriting; and
 3. A statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in this state only, and to file a petition for election under A.R.S. § 23-1389.
- C. A signature petition submitted as authorization to evidence a showing of interest is not valid unless it contains:
 1. The signature of the employee, social security or employee identification number, and date in the employee's own handwriting; and
 2. The name of the employer and a statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in the state of Arizona only, and to file a petition for election under A.R.S. § 23-1389.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-207. Validity of Authorizations

- A. A valid authorization is one that is signed at any time during the authorization period by an individual who is an agricultural employee at the time of signing the authorization, or is signed as prescribed in R4-2-205(B).
- B. An authorization is valid even if the agricultural employee who signed that authorization also signed an authorization for another labor organization.
- C. An authorization signed by an agricultural employee hired after the date the petition is filed is not valid for the purpose of computing the showing of interest.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-208. Confidentiality of Authorizations

An authorization and its contents are confidential except if subject to a lawful subpoena.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-209. Showing of Interest Computation

- A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period by taking the total number of agricultural employees employed in the bar-

gaining unit during that pay period and determining how many of those employees signed a valid authorization as prescribed in this Article.

- B. To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. § 23-1382(1), six months means 132 work days.
- C. The Board shall not include as an employee in the bargaining unit for a pay period an agricultural employee who is eligible for unemployment benefits for the entire pay period.
- D. The Board shall not include in the bargaining unit for a pay period an agricultural employee who is on a leave of absence for the entire pay period unless the following conditions are met:
 1. The employer produces a document, signed by the employee and notarized, stating that the employee was placed on leave of absence for a specified period of time;
 2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed; and
 3. Substantial evidence does not exist establishing that the employee is not on a bona fide leave of absence or will not return from the leave of absence as scheduled.
- E. The Board shall not include in the bargaining unit an agricultural employee who is placed on workers' compensation leave, unless the following conditions are met:
 1. The employer produces a document signed by a licensed physician stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return,
 2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed, and
 3. Substantial evidence does not exist establishing that the employee is not on a bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-210. Existence of a Question of Representation

A question of representation exists in the bargaining unit if a showing of interest of at least 30 percent is made in the final pay period of the eligibility period and in either of the other two pay periods of the eligibility period.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-211. Notice of Hearing

- A. The Board shall issue a Notice of Hearing as prescribed in Article 4 if a question of representation exists.
- B. A person may, by written request to the Board, receive notice of the filing of a petition for election and a related notice of hearing.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-212. Intervention by a Subsequent Labor Organization

- A. An ALJ may allow a subsequent labor organization to intervene only at the initial session of the pre-election hearing on a

petition filed by the first labor organization and may place the subsequent labor organization on an election ballot only if the ALJ finds:

1. The subsequent labor organization filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the 30 percent showing of interest required to establish a question of representation under R4-2-210, and
 2. The subsequent labor organization filed its petition and authorizations not later than seven days before the scheduled start of the initial session of the pre-election hearing.
- B. In determining the validity of an authorization filed by a subsequent labor organization, the Board shall use the same authorization period as that of the original petitioner.
 - C. In determining the showing of interest for a subsequent labor organization, the Board shall use the same eligibility period as that of the original petitioner.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-213. Peak Employment During Eligibility Period and Election

- A. A bargaining unit is at peak when the number of employees in the unit is not less than 66 2/3 percent of the maximum number of employees who have been or will be employed in the bargaining unit during the current crop growing season.
- B. In determining the total number of bargaining unit employees who have been or will be employed at any one time during the current growing season, the ALJ shall consider:
 1. The employer's prior peak employment figures,
 2. The types of crops grown,
 3. The past and present acreage for the crop or crops in question,
 4. The number of employees at other farms with the same or similar crops and similar acreage, and
 5. Any other relevant fact.
- C. A question of representation exists in a bargaining unit only if the bargaining unit is at peak during the eligibility period as required by R4-2-210. The respondent named in a petition has the burden to allege and prove that the bargaining unit is not at peak during a pay period in an eligibility period.
- D. The Board shall hold an election when the bargaining unit is at peak. If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-214. Election Procedures

- A. Only an individual who is an agricultural employee in the appropriate bargaining unit on the date of an election is eligible to vote in the election.
- B. A party may be represented by two observers of the party's selection, subject to the following limitations:
 1. A union shall not select as an observer an official of any labor organization, and
 2. An agricultural employer shall not select as an observer a supervisor or company official.
- C. A party or the Board's agent may challenge, for good cause, the eligibility of an individual to participate in an election. The Board shall impound the ballot of a challenged individual.

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- D. The Board shall issue a tally of the ballots upon the conclusion of the election.
- E. If there are enough challenged ballots to affect the results of the election, the Board shall, as soon as practicable, investigate the challenges, issue a revised tally, and serve the revised tally upon all parties.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-215. Objections to Election

- A. Within seven days after the tally of the ballots by the Board, a party may file with the Board an objection to the conduct of the election or conduct affecting the results of the election. The party filing the objection shall specifically set forth each fact and allegation in support of the objection. The party filing the objection shall simultaneously serve a copy of the objection on all other parties and file a statement of service with the Board. The party filing the objection shall not raise in the objection an issue that was or could have been raised in either a challenge to the petition or the pre-election hearing.
- B. The Board shall not take further action if an objection to the conduct of the election or conduct affecting the results of the election is not filed timely, or does not comply with subsection (A). The Board shall send a written notice to all parties that it will take no further action.
- C. The Board shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate, if:
 1. Objections are not filed within the time prescribed in subsection (A), or
 2. The number of challenged ballots is insufficient to affect the election results, and
 3. A run-off election is not required under R4-2-217.
- D. A party may appeal the Board's decision as prescribed in Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-216. Investigation of Objections to Election

- A. The Board shall investigate objections to the conduct of an election or conduct affecting the results of an election if the objections meet the requirements of R4-2-215(A). The Board shall dismiss the objections and certify the results of the election on the basis of an administrative investigation if the Board determines that the objections are invalid.
- B. An aggrieved party may appeal the Board's dismissal of the objections as prescribed in Article 4, within 30 days after the party receives the notice of dismissal of the objection. The Board may extend the time for filing an appeal for good cause.
- C. If the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing.
- D. Any hearing under this Section and any objection to the ALJ's decision shall be initiated and conducted as prescribed in Article 4.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-217. Run-off Elections

- A. If an election ballot provides for a choice among at least two labor organizations and "no union," and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.
- B. In a run-off election, only an individual who is an agricultural employee in the appropriate bargaining unit on the date of the run-off election is eligible to vote.
- C. The ballot in a run-off election shall provide for a selection between the labor organization receiving the highest number of votes in the original election and "no union."
- D. The Board shall administer a run-off election as prescribed in R4-2-214 through R4-2-216.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-218. Consent-election Agreements

An agricultural employer may enter into a consent-election agreement with one or more individuals or labor organizations that present to the employer a claim to be recognized as the representative of a designated bargaining unit. The parties shall submit to the Board an agreement containing a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit are eligible to vote. The Board shall conduct a consent election if the Board finds the consent-election agreement fair and noncollusive. The Board shall conduct a consent election consistent with the methods followed by the Board in conducting elections.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-219. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 3. UNFAIR LABOR PRACTICES**R4-2-301. Unfair Labor Practice Charges**

Any person may make a charge that a person has engaged in or is engaging in an unfair labor practice. The charge may be withdrawn by the charging party before the hearing and thereafter with the consent of the ALJ. If a complaint has issued under R4-2-304 and the charge is withdrawn, the Board may dismiss the complaint on the advice of the General Counsel.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-302. Form and Contents of Charge

- A. A charging party shall include the following in the charge:
 1. The full name, address, and telephone number of the individual, agricultural employer, or labor organization making the charge;
 2. If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit;
 3. The full name and address of the individual, agricultural employer, or labor organization against whom the charge is made; and

4. A clear and concise statement of the facts constituting the alleged unfair labor practice.
- B.** A charging party shall make the charge in writing, sign the charge, and declare under penalty of perjury that its contents are true and correct to the best of the charging party's knowledge, information, and belief.
- C.** The Board shall not accept a charge for filing unless it contains all the information required in subsections (A) and (B).

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-303. Investigation of Charge

- A.** The Board shall serve a copy of a filed charge upon the individual, agricultural employer, or labor organization against whom the charge is made.
- B.** The General Counsel or designee shall conduct a preliminary investigation of the charge under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may:
1. Refuse to issue a complaint; or
 2. File a complaint against any individual, agricultural employer, or labor organization named in the charge that the General Counsel believes may have committed an unfair labor practice; and
 3. Seek appropriate injunctive relief, as provided for in A.R.S. § 23-1390.
- C.** An investigative report, note, memorandum, oral or written statement, tape recording, and any other information or work product prepared or obtained by the General Counsel or designee during an investigation is not subject to subpoena powers of the Act and a person shall not disclose this information to any person without the consent of the General Counsel, unless otherwise provided by law.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-304. Complaint

- A.** If the General Counsel decides after investigating a charge that a formal proceeding should be instituted, the General Counsel shall issue and serve on each party a complaint stating the alleged unfair labor practice. The General Counsel shall include in the complaint a clear and concise statement of the facts upon which the assertion of the Board's jurisdiction is based and a clear and concise description of the act that is claimed to constitute an unfair labor practice. The General Counsel shall include a notice of hearing issued under Article 4 with the complaint.
- B.** After the hearing date is set, the General Counsel shall not amend the complaint unless the ALJ grants a motion to amend made by the General Counsel.
- C.** The General Counsel may withdraw a complaint before the hearing. After the opening of the hearing, the complaint may be withdrawn upon motion by the General Counsel with consent of the ALJ.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-305. Refusal to Issue Complaint

- A.** If, after a charge is filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to re-

sue it, the General Counsel shall advise each party in writing, accompanied by a statement of the grounds for the action. The charging party may file a request to reconsider the refusal to issue or reissue the complaint with the General Counsel within 10 days of receipt of notice of the refusal and shall simultaneously serve a copy on all other parties. The General Counsel shall file any response to the request within seven days of receiving it. The General Counsel shall advise all parties of the decision, in writing and within seven days of the date the decision is made.

- B.** The charging party may file a request to reconsider with the General Counsel if, after the General Counsel refuses to issue or reissue a complaint, newly discovered material evidence is found that could not with reasonable diligence have been discovered at the time the original charge was filed. The request shall be filed immediately upon the discovery of the evidence.
- C.** Nothing in this Section prohibits or limits the General Counsel from issuing or reissuing a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint.
- D.** If a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-306. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-307. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-308. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-309. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-310. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-311. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 4. HEARINGS**R4-2-401. Hearings**

The Board shall use the uniform administrative hearing procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-402. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-403. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-404. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-405. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-406. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-407. Rehearing or Review of Decision; Basis

- A.** A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B.** The Board shall grant a rehearing or review of a final administrative law decision for any of the following causes materially affecting the moving party's rights:
1. The decision is not justified by the evidence or is contrary to law;
 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 3. One or more of the following has deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the Board, the ALJ, or the prevailing party; or
 - c. Accident or surprise that could not have been prevented by ordinary prudence; or
 4. Excessive or insufficient sanction.
- C.** The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).