

# MARYLAND PERB PUBLIC MEETING AGENDA

October 18, 2023

1:00 PM

Present: Chair M. Hayes, R. Steyer, J. Rivlin, H. Cooperman, L. Ohman

Staff: E. Snipes, C. Franzoni, H. Heilman, D. Burrell

## I. Approval of Minutes of September 27 Public Meeting

M. Hayes moved that the Board approve the minutes from the September 27, 2023, J. Rivlin second, all approved. (E. Snipes will post on website)

## II. Introductions:

### A. Deputy Director Heather Heilman.

M. Hayes introduced Deputy Director Heilman, who then greeted the Board members and attendees, described her background, and indicated that she was pleased to begin her work.

### B. Executive Assistant Denise Burrell.

M. Hayes introduced Ms. Burrell and then described her availability for all Board members, staff, and that she would be a new PERB contact for interested parties.

## III. Updates

### A. New Documents/Forms

M. Hayes indicated that forms/documents for filing charges and other materials will be finalized and posted on the Board's Website soon.

## B. Ballots for a Community College Part-Time Faculty Election Being Received; Other Elections in Process.

M. Hayes indicated that the Election and Certification processes have been going smoothly.

## IV. Board Discussion of Draft Regulations

M. Hayes opens a general discussion on the current draft of regulations. He notes that a timeline for publication is not available yet (based on which interested parties would be able to submit comments), but that the Board would now have a public discussion, generally, of regulations it may vote to adopt as proposals that would be put through a public notice and comment process.

Board discussion—topic areas noted in bold:

### **Computation of time** – H. Cooperman

Prehearing submission – p. 9#2, 2a(2), should be 7 days? If this were the case, it doesn't allow sufficient time for a response—which is later indicated to be 15 days.

Under the Federal Rules of Civil Procedure and Maryland Court Rules – if it's less than 10 days, you don't count weekends and holidays, if it is more than 10 days, you do.

For these submission time frames, H. Cooperman notes, we need to look at lengths of time, and make sure that there's ample time for responses, etc. We can give expedited notice if that's an issue, but otherwise, we should be consistent on times. Motions should be due 10 days before hearing, and then we would not count weekends and holidays – we can put this new language under Computation of Time Periods—if the time frame is less than 10 days, we don't count weekends, holidays, days of closure, and if a time frame is more than 10 days, we count by calendar

days.

### **Requests for Subpoenas – H. Cooperman**

Add send a copy of the request to the opposing party?

The Board members had a discussion regarding whether or not this is efficient, and ultimately discovered we already have this suggestion in the regulations, but agreed that we should add e-mail to the ways in which people can be copied on requests for subpoenas.

R. Steyer asked if there are areas where we can say “substantial compliance” is enough, particularly for pro-se parties.

### **Continuance – H. Cooperman**

Shouldn't this be for good cause? All Board members agree, language to be added

### **Failure to Attend Hearing – H. Cooperman**

“may impose sanctions” language added before “may issue”

### **Stipulations and Affidavits – H. Cooperman**

Allowing submissions of affidavits as evidence, precludes the other side from cross examining. We have to be mindful of due process.

M. Hayes agrees we can do better, although the language indicates “may” and at the discretion of hearing officer.

J. Rivlin – affidavits are a last resort, or not encouraged.

H. Cooperman – communication to the parties, we can just say no for various reasons, but it may be better to lay out the criteria under which we would allow affidavits.

Board members had a discussion of affidavits at prehearing, and agree that they would only use affidavits if a witness is unavailable.

## **Amendments – H. Cooperman**

(1) – at any time before the start of the hearing (all agree), also all agree on deletion of “conform to proof”

## **Interpreter – H. Cooperman**

Cost – hearing impaired don’t need to pay the cost, that’s an accommodation. All agree.

## **Ex Parte Communications – H. Cooperman**

B. (2) – get rid of altogether , or get rid of B. altogether. This is the section that defines who members of the Board may communicate with.

## **Transcripts – H. Cooperman**

“appellant” should be “applicant”

## **Board decision – H. Cooperman**

Board shall issue a written decision as soon as “reasonably practicable” after a hearing has concluded. M. Hayes agrees.

## **Investigation – H. Cooperman**

H. Cooperman wants to change certain portions of the draft regulations in this area, but M. Hayes confirms that this language was taken directly from the PERA.

R. Steyer described what would be done with SLRB, and noted that the NLRB did more...interviewing people, etc. What are we asking the Deputy Directors to do?

M. Hayes – wanted to leave this open ended, more than the papers, but maybe not every witness gets interviewed, etc. Do we need different language?

R. Steyer asked if there is the need to explore any of the defenses given by the charged party, and asked what is probable cause for us?

H. Cooperman asked E. Snipes to describe what she did—E. Snipes provided an account of her investigation process in general, but indicated that each case is different and may need other work.

H. Cooperman agreed that each case is different, believes deputy director investigation should be more than what E. Snipes did.

R. Steyer— noted that SLRB would receive communications from responding parties saying that it’s your job to investigate, that they wanted more of an investigation. There was some sense from stakeholders, that more of an investigation was necessary. Don’t take the pleadings at face value, dig in more. We need a discussion. DD shall investigate “all” relevant facts. Remove “at all times” at (2)(3)

H. Cooperman asked that we take out the redundancy regarding seeking informal resolution, ask C. Franzoni to draft a tidier version of seeking informal resolution at the various stages, and to the same revision around bargaining.

### **When to file a petition – H. Cooperman**

remove “for a bargaining unit”

### **Posting Notice of Election – H. Cooperman**

If the notices of the election are defaced, etc., employer has to put new ones up

### **6 month bar on refiling if you’re going to withdraw from election –**

H. Cooperman

Take out “normally”

## **Other areas in Election process – H. Cooperman**

What if bad behavior /intimidation happens in election process, we can set aside an election outcome. Then what?

R. Steyer – NLRB has a brand new approach, we won't have an election, we'll just issue a bargaining order. R. Steyer doesn't like this, we should just call for a new election. Remedies imposed, including new election. All Board members agree.

## **Hearing Determination – H. Cooperman**

If we dismiss a petition, we can suggest another course of action the petitioner may take to resolve the issues? All agree that we should remove this point entirely.

## **Public School area – H. Cooperman**

In appropriate areas, draft regulations say to use either AAA or FMCS? Can't we just use FMCS?. Question answered by noting the "choice" between the two is in the statute.

No one else has anything specific to review from the draft of the regulations.

M. Hayes moved on to general questions about the draft regulations:

1. Additional terms defined in definition section? A lot could be added from former PSLRB regulations. Broad question. All agree they need to think about this further.

2. Who can settle? Board, Deputy Directors, Executive Director? Not Executive Director. H. Cooperman suggested Deputy Director, and said that the Board shouldn't work on settlement. J. Rivlin said if the Board is going to do it, it'd be based on submission of the Deputy Director. R. Steyer doesn't have a problem with the Deputy Director

being the “lead” in settlement but does have a problem with them having the final authority on it, he believes the Board is tasked with this authority. Discussion among Board members on this, Board members agree that Board will provide final approval of settlements.

3. Board presence at a hearing – Quorum or all? Or even just one member? H. Cooperman – goal is to have all Board members present, but not a requirement, having a quorum is required. All Board members agree. Also question as to whether there should be one person from union side, one from management side. Board members agree, but there is a concern with delay. R. Steyer – things should be fair but also look fair. Stakeholders should comment on this issue during the notice and comment period.

4. Intervention of non parties in non representation cases. Any thoughts? R. Steyer said we should keep it out if the regulations, all board members agree with this.

5. Define confidential, managerial, supervisory? H. Cooperman would like to, but R. Steyer says we’re going to have problems if we do...there are already cases that define these terms, plus regulations from other agencies. Rather than trying to define this in regulation, R. Steyer argued we ought to just handle it by cases, that the Board will end up defining these terms in case by case decision.

## V. Question & Answer

Public attendees may ask questions? No one came forward with questions.

The Board unanimously moved to adjourn at 2:19 p.m., and went to Executive Session for legal advice from Counsel.