



# Electronic Rule Filing

The Honorable Jennifer Brunner  
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Columbus, OH 43215

It is hereby confirmed that the State Employment Relations Board **original** filed the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

**Package Number:** 70398  
**File Date and Time:** 07/21/2010 03:04 PM  
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## ORIGINAL FILE

Rule Number	Type	FYR?	JE Date	Eff Date	Next FYR	Tagline
4117-11-02	Rescission	Y	09/24/2010			Religious exemption.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4117-11-02      **Religious exemption.**

- (A) An employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion or religious body that has historically held conscientious objection to joining or financially supporting an employee organization and that is exempt from taxation under the provisions of the Internal Revenue Code, may apply to the board to be held exempt from joining or financially supporting any employee organization as a condition of employment. Such application shall include:
- (1) The name of the employee;
  - (2) The name of the employee organization;
  - (3) The name and address of the employer;
  - (4) A statement of the reasons why the employee should be held exempt, including a copy of tenets with designation of applicable sections;
  - (5) The name of the religion or religious body of which the employee is a member, and length of time the employee has been a member;
  - (6) Proof of service upon an officer of the employee organization pursuant to paragraph (B) of rule 4117-1-02 of the Administrative Code.
- (B) Within ten days of service of the application, the employee organization may file with the board and serve upon the employee objections to the granting of a religious objection.
- (C) The board may investigate or hold a hearing to determine whether the employee has proven an exemption. The board shall notify the parties of its determination.
- (D) If the employee has proven an exemption, the board shall declare the employee exempt from becoming a member of or financially supporting the employee organization. The board shall thereupon require the employee, in lieu of the fair share fee, to pay an amount of money equal to such fair share fee to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code, such charitable fund to be mutually agreed upon by the employee and the employee organization to which the employee would otherwise be required to pay the fair share fee. The board shall further require that the employee furnish to the employee organization written receipt evidencing payment to the agreed-upon charitable fund and failure to make such payment or furnish such receipt shall subject the employee to the same sanctions as would nonpayment of dues under the applicable collective bargaining agreement.



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It is hereby confirmed that the State Employment Relations Board **original** filed the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

**Package Number:** 70277

**File Date and Time:** 07/21/2010 01:30 PM

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## ORIGINAL FILE

Rule Number	Type	FYR?	JE Date	Eff Date	Next FYR	Tagline
4117-1-02	Rescission	Y	09/24/2010			Filing and copies; service.
4117-1-02	New	N	09/24/2010			Filing and copies; service.
4117-1-03	Amendment	Y	09/24/2010			Computation of time.
4117-1-04	Amendment	Y	09/24/2010			Motions.
4117-1-05	Amendment	Y	09/24/2010			Continuances and extensions of time.
4117-1-06	Amendment	Y	09/24/2010			Appearances.
4117-1-07	Amendment	Y	09/24/2010			Intervention.
4117-1-09	Amendment	Y	09/24/2010			Subpoenae; witness fees.
4117-1-11	Amendment	Y	09/24/2010			Powers of individuals conducting hearings.
4117-1-12	Amendment	Y	09/24/2010			Rights of parties at hearings; standards for those who practice before the board.
4117-1-13	Amendment	Y	09/24/2010			Exceptions and briefs in support.
4117-5-10	Amendment	Y	09/24/2010			Post-election objections; determination of challenges.
4117-7-04	Amendment	Y	09/24/2010			Answers to unfair labor practice complaints.
4117-9-01	Amendment	Y	09/24/2010			Register of neutrals.
4117-9-02	Amendment	Y	09/24/2010			Notice to negotiate.

<b>Rule Number</b>	<b>Type</b>	<b>FYR?</b>	<b>JE Date</b>	<b>Eff Date</b>	<b>Next FYR</b>	<b>Tagline</b>
4117-9-03	Amendment	Y	09/24/2010			Mutually agreed-upon dispute settlement procedure.
4117-9-04	Amendment	Y	09/24/2010			Mediation.
4117-9-05	Amendment	Y	09/24/2010			Fact-finding.
4117-9-06	Amendment	Y	09/24/2010			Final offer settlement procedure; conciliation.
4117-9-07	Amendment	Y	09/24/2010			Filing of collective bargaining agreement.

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4117-1-02      Filing and copies; service.

## (A) Definitions:

- (1) Electronic filing-the electronic transmission of information to a designated email address of the State Employment Relations Board for case processing.
- (2) Time of filing-an electronic document is filed when it is received by the designated email address of the State Employment Relations Board on or before five p.m. on a business day; electronic filings received by the designated email address of the Board after five p.m. on a business day or on a Saturday, Sunday, legal holiday shall be considered filed on the next business day.
- (3) Service-the delivery of a writ, summons, complaint, or other notice or order by an authorized server upon another, provides official notification that a legal action or proceeding against a party has been commenced or filed.
- (4) Electronic mail-messages sent and received through an electronic service system utilizing the public internet.
- (5) Filer-person who filed an electronic document.

## (B) Under this chapter all documents shall be filed electronically in a read-only format except for:

- (1) Unfair labor practice charges;
- (2) Requests for recognition with showing of interest;
- (3) Petitions for representation election with showing of interest; and
- (4) Petitions for decertification election with showing of interest.

Paper documents shall include an original plus one copy. No paper copies shall be filed with documents filed electronically.

Parties may electronically serve a document on other parties of record. Electronic service made after five p.m. on a business day or on a Saturday, Sunday, or legal holiday shall be considered complete on the next business day. The proof of service of a document served by electronic filing shall state the email address of the person to whom the document was transmitted and both the date and time of the transmission; otherwise, all documents not served electronically shall include proof of service to the other parties to the proceeding or their representatives. Proof of service shall be signed and shall include the address to which the document is delivered, the manner of delivery, and the date

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of mailing or, if service is not by mail, the date of actual delivery or an acknowledgment of receipt signed by the recipient. Service may be made by mail or by personal service including hand delivery or by leaving a copy at the principal office or personal residence of the party or representative required to be served. Service by mail shall be deemed complete upon mailing. Such documents shall not be accepted for filing unless they contain proof of service signed by the party or the party's representative. Documents for which confidentiality is requested pursuant to paragraph (G) of this rule need not contain proof of service.

- (C) Every document to be filed with the State Employment Relations Board shall be transmitted in format and manner that can be read and downloaded by electronic equipment then in use by the board. All documents filed with the board shall be formatted as follows: double spaced on eight-and-one-half-inch by eleven-inch paper with one-inch margins, in type face no smaller than eleven points, and no more than fifteen pages in length unless prior authorization is received from the board, board member, administrative law judge, executive director, or the office of the general counsel. All documents filed with the board shall have numbered pages, and shall contain the caption of the case, the case number, and a title including the name of the party on whose behalf the document was filed. All case captions shall be submitted in the following format: four-digit year, dash, three-letter case-type designation, dash, two-digit month, dash, four-digit sequential case number assigned by the board. Documents filed with the board concerning a case assigned to a board member or administrative law judge shall state the name of the board member or administrative law judge in the caption.
- (D) All electronic filings shall contain an electronic signature or an /s/ notation followed by the name of the filer, mailing address, telephone number, and email address. Parties shall update any change of their contact information promptly.
- (E) The State Employment Relations Board has discretion to waive technical defects in any document filed with the board if no undue prejudice would result.
- (F) Any party who lacks the technological capability to comply with this rule must file a written motion for relief from the electronic-filing requirements at the time the party makes its initial appearance in a matter; within said motion, a party shall show good cause why it is not feasible to file electronically.
- (G) An individual submitting information may request in writing that affidavits or other investigatory materials be kept confidential. Documents for which confidentiality is requested shall be filed with a written request that confidentiality be maintained. Documents submitted pursuant to a State Employment Relations Board agent's request in the course of an investigation and for which confidentiality is promised shall automatically be kept confidential. Substantial evidence and showings of interest submitted in accordance with rules 4117-3-03 and 4117-5-02 of the Administrative Code will automatically be kept confidential.

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**4117-1-03      Computation of time.**

- (A) In computing any time period prescribed by or allowed by Chapter 4117. of the Revised Code and Chapters 4117-1 to 4117-25 of the Administrative Code, or by order or directive of the board or individual conducting a proceeding, such period shall begin to run on the day following the day of the act, event, or occurrence. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, legal holiday, or a day or part of a day on which the board office in Columbus is closed, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday, or a day or part of a day on which the board office in Columbus is closed.
- (B) When a document is served upon a party by United States mail and that party has the right or is required to do some act or take some proceeding within a prescribed period after service of a document, three days shall be added to the time prescribed for doing such act or taking such proceeding. This provision does not apply to the calculation of time for acceptance or rejection of fact-finding recommendations pursuant to rule 4117-9-05 of the administrative code.

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4117-1-04      **Motions.**

- (A) Motions shall be ~~made~~submitted in writing, ~~via electronic mail~~, except for motions made at a hearing, and shall briefly describe the order, ruling, or action sought, setting forth with particularity the grounds.
- (B) Responses to motions shall conform to the requirements of paragraph (A) of this rule. Responses shall be filed within ten days of service of the motion, which time may be altered by the board, board member, or administrative law judge.
- (C) Rulings on motions filed with the board shall be issued ~~in writing and a copy served upon~~via electronic mail to each of the parties. The board, board member, or administrative law judge may orally rule on the record on a motion at the hearing but shall issue a ruling in writing if such ruling is made after the hearing.
- (D) Motions, rulings, orders, and directives shall become a part of the record. Rulings by a board member or administrative law judge on motions or objections shall not be appealed directly to the board but shall be considered by the board in reviewing the record only if raised in the exceptions to the proposed order or recommended determination, except as provided in paragraph (B) of rule 4117-1-11 of the Administrative Code.
- (E) Motions for reconsideration may be filed with the board no later than ~~forty-five~~thirty days after the issuance of the board's final ruling. These motions must contain a clear and concise statement of the reasons why the board should reconsider its previous decision.
- (F) Motions ~~made in writing~~ shall not be accepted for filing with the board unless they contain proof of service, pursuant to paragraph (B) of rule 4117-1-02 of the Administrative Code.

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**4117-1-05 Continuances and extensions of time.**

- (A) Except as otherwise provided in Chapter 4117. of the Revised Code, the board, board member, or administrative law judge may, upon its own motion or upon the motion of any party, continue the hearing, extend the time to file any document, or change the place at which the hearing is to be held and shall so notify the parties, provided that this provision shall not apply to hearings conducted pursuant to divisions (C) and (G) of section 4117.14 of the Revised Code. ~~Administrative law judges~~The executive director or the office of the general counsel may rule on extensions of time to file exceptions to a proposed order or recommended determination, cross-exceptions, or responses to exceptions.
- (B) Before a party files a motion for an extension of time to file any document or for a continuance of a hearing, the moving party shall consult all other parties to determine whether they have any objection to the motion. If no objections are raised, the moving party shall state that the other parties have been consulted and that they authorize the moving party to represent that they have no objection to the motion. Compliance with this rule does not supplant the service requirement of rules 4117-1-02 and 4117-1-04 of the Administrative Code.

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4117-1-06      **Appearances.**

- (A) An attorney or representative for any party to a proceeding who has filed an initial pleading or notice of appearance for that party shall remain the attorney or representative of record and shall receive correspondence and service unless or until a motion to withdraw or a new notice of appearance has been filed with the board and served on all parties by a successor attorney or representative.
- (B) A separate notice of appearance must be filed via electronic mail for each separate action. An attorney or representative shall update any change of contact information promptly.
- (C) All board communications regarding a pending case will be ~~directed~~ sent via electronic mail to the representative named on the most recent notice of appearance in the particular case.

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4117-1-07      **Intervention.**

- (A) Any person having a significant interest in a proceeding may file with the board a motion to intervene. The board, board member, or administrative law judge may by directive permit intervention to such extent and upon such terms as may be deemed proper. A motion to intervene may be made before or at the time of hearing, except as provided in paragraphs (B) and (C) of this rule.
- (B) Intervention by an employee organization in a representation or decertification election must be filed in writing and supported by evidence that at least ten per cent of the employees in the unit wish to be represented by the intervenor. Evidence shall conform to the requirements of paragraph (A)(6) of rule 4117-5-02 of the Administrative Code. Such intervention will be permitted only if the motion to intervene is filed by the date specified by the board in its official "Notice to Employees."
- (C) When a petition for representation election has been filed by a rival employee organization pursuant to paragraph (C) of rule 4117-5-01 of the Administrative Code, or when a petition for decertification election has been filed pursuant to paragraph (D) of rule 4117-5-01 of the Administrative Code, an incumbent exclusive representative will be treated as a party unless the incumbent disclaims interest in the unit.

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4117-1-09      ~~Subpoenae~~Subpoenas; **witness fees.**

- (A) Upon application of any party, a board member, or ~~at the~~ administrative law judge assigned to conduct a hearing or the board may issue ~~subpoenae~~subpoenas requiring attendance and testimony of witnesses and the production of any evidence, including, but not limited to, books, records, correspondence, or documents in their possession or under their control. Application for ~~subpoenae~~subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the witness whose appearance is requested, the time, date, and place of hearing, and the name and address of the party at whose request it was issued, and the proceeding involved. A subpoena duces tecum shall describe with particularity the documents sought to be produced. Any person served with a subpoena who opposes compliance with it may file promptly, but in no event later than the time specified for compliance, a motion to quash the subpoena. The board may also issue ~~subpoenae~~subpoenas upon its own motion. The person requesting a subpoena is responsible for service of that subpoena and shall complete an affidavit of service and file it with the board via electronic mail.
- (B) Upon the failure of any person to comply with a subpoena issued by the board, a board member, or an administrative law judge, the board may institute proceedings in the appropriate court of common pleas for an order enforcing said subpoena.
- (C) Witnesses subpoenaed to appear before the board, a board member, or an administrative law judge shall be paid the same fees and mileage that are paid witnesses in the courts of Ohio, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of Ohio pursuant to section 2335.06 of the Revised Code.
- (D) Public employees shall be paid witness fees only if subpoenaed to appear at a hearing that they attend during time other than regularly scheduled workhours. Public employees shall be paid by their employer for time they are absent from their work to attend hearings, including board-directed mediations, provided the public employee was subpoenaed or was a party. No employee shall be required to take leave in lieu of pay for attendance. Mileage shall be paid only to persons incurring unreimbursed travel expenses to attend a hearing. Neither parking costs nor food and lodging are reimbursable by the board. Witness fees and mileage shall be taxed as costs to the party requesting the ~~subpoenae~~subpoenas.
- (E) Mileage and witness fees shall not be paid to any witness who fails to register at the hearing for which the witness was subpoenaed.
- (F) Parties may not subpoena themselves.
- (G) In the case of fact-finding or conciliation hearings, the board will issue a subpoena only upon the request of the fact-finder, fact-finding panel, or the conciliator.

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**4117-1-11 Powers of individuals conducting hearings.**

(A) Individuals conducting hearings other than fact-finding or conciliation hearings shall have the authority to take the following actions:

- (1) To administer oaths and affirmations;
- (2) To receive relevant evidence and exclude irrelevant, immaterial, or unduly repetitious evidence;
- (3) To question witnesses;
- (4) To cause depositions to be taken and to regulate the scope and course of prehearing discovery;
- (5) To regulate the time, place, and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) Either prior to or during the course of hearing, to hold conferences for the settlement, simplification, or adjustment of the issues by consent of the parties;
- (8) To subpoena witnesses and the production of books, papers, documents, or other evidence;
- (9) To exclude any person for improper conduct; and
- (10) To take any other action necessary and authorized under Chapter 4117. of the Revised Code or Chapters 4117-1 to 4117-25 of the Administrative Code.

(B) No party may take an interlocutory appeal from any ruling issued by an administrative law judge under this rule or any oral ruling issued by an administrative law judge during a public hearing or prehearing conference unless the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling that represents a departure from past precedent or board practice, and an immediate determination by the board is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the board ultimately reverse the ruling in question.

~~(B)~~(C) For fact-finding and conciliation hearings, paragraph (H) of rule 4117-9-05 and paragraph (F) of rule 4117-9-06 of the Administrative Code apply.

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**4117-1-12      Rights of parties at hearings; standards for those who practice  
before the board.**

Any party shall have the right to appear in person, by counsel, or by any other representative who is knowledgeable about Chapter 4117. of the Revised Code and the rules of the board, to present his or her case ~~by oral, orally documentary, or by other~~ permissible evidence, and to conduct such examination as may be required for a full and true disclosure of the facts. The board or agents thereof may expressly authorize on the record ~~All parties of record may to~~ submit briefs or proposed decisions, directives, or orders to the board, board member, or administrative law judge. Such briefs or proposed decisions, directives, or orders shall be filed within ten days from the close of the hearing or at such other time designated by the board or board member or administrative law judge assigned to hear the case.

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## 4117-1-13      **Exceptions and briefs in support.**

- (A) Exceptions to a proposed order pursuant to section 4117.12 of the Revised Code in unfair labor practice cases and briefs in support thereof shall be filed with the board within twenty days after service of the proposed order. Exceptions and briefs in support in all other cases shall be filed with the board within ten days after service of the recommended determination.
- (B) Where exceptions have been filed, any other party may file a response and/or cross-exceptions within ten days after service of the exceptions. Within ten days after service of cross-exceptions, a party may file a response to the cross-exceptions, but such response must be limited to only new issues raised in the cross-exceptions. No other responses may be filed, unless allowed by the board.
- (C) Exceptions to a proposed order or recommended determination shall contain, in addition to the requirements of rule 4117-1-02 of the Administrative Code, a brief statement of each issue with which the party takes exception, the reason for the exception, and a statement of the precise relief sought. All exceptions shall be filed in a read-only document.

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**4117-5-10      Post-election objections; determination of challenges.**

- (A) Within ten days after service of the tally of ballots, any party may file with the board objections relating to the conduct of the election or conduct affecting the results of the election, and not otherwise covered by section 4117.11 of the Revised Code. Such objections shall contain a brief statement of the reasons therefor and shall be accompanied by data, including but not limited to affidavits, in support of the allegations in the objections. Objections without supporting data may be dismissed by the board. Responses to any post-election objections may be filed with the board within ten days after service of the objections.
- (B) If post-election objections are filed or if challenged ballots are sufficient in number to affect the results of the election, the board shall investigate such objections or challenges. Position statements on challenged ballots must be filed within ten days of the service of the tally of ballots. The board shall issue a directive resolving relevant issues based upon the investigation; ~~provided, however, that~~ Upon a finding of probable cause, ~~disputed~~ issues of material fact may be determined upon an evidential hearing. ~~The~~ If probable cause is not found, the board may dismiss the post-election objections or challenges, direct the counting of some or all of the challenged ballots, or where warranted, set aside the previous election and direct another election. Should another election be directed by the board, it shall be conducted pursuant to the procedures set forth in Chapter 4117-5 of the Administrative Code. Only employees who were eligible to vote in the first election and who remain eligible on the date of the rerun election shall be eligible to vote in the rerun election, unless the board directs otherwise.
- (C) Objections shall not be accepted for filing with the board unless they contain proof of service pursuant to paragraph (B) of rule 4117-1-02 of the Administrative Code.

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4117-7-04      **Answers to unfair labor practice complaints.**

- (A) A respondent's answer to an unfair labor practice complaint shall be filed via electronic mail within ten days from receipt of the complaint or amendment to the complaint but in no event later than the commencement of the hearing whichever is earlier. Such answer shall include a specific admission, denial, or explanation of each allegation of the complaint. If the respondent is without knowledge of an allegation, he or she shall so state in which case such statement shall operate as a denial. Admissions or denials may be made to all or part of a particular allegation. Any allegation not specifically denied is deemed admitted. When a respondent denies an allegation of fact in the complaint, the answer shall state with specificity the basis for the denial. The answer shall include a specific statement of any affirmative defense. Failure to state an affirmative defense in the answer shall constitute a waiver of such affirmative defense, except the defenses of failure to state a cause of action, unconstitutionality of the statute, or lack of subject matter jurisdiction, which defenses may be raised at any time.
- (B) If a respondent fails to file a timely answer to the complaint, such failure shall be deemed to constitute an admission of the allegations contained in the complaint.
- (C) The filing of a motion to dismiss shall not toll the time for filing an answer.

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4117-9-01      ~~Register~~Roster of neutrals.

- (A) The board will accept written applications ~~or nominations~~ for individuals to be included ~~in~~on the SERB ~~register~~roster of neutrals. The board may require applicants ~~or nominees~~ to provide references, writing samples, and information concerning current employment, relevant experience, and ability to function as a neutral. ~~For the cost of copying and mailing, a copy of the biography of any neutral may be obtained from the board upon written request.~~
- (B) Pursuant to the dispute resolution procedures of section 4117.14 of the Revised Code, the board will appoint fact finders and conciliators from the SERB ~~register~~roster of neutrals. For negotiations proceeding under alternate settlement procedures as provided in rule 4117-9-03 of the Administrative Code, the board will make available, upon written request, lists of neutrals from which the parties may select fact finders, conciliators, or arbitrators.
- (C) The board shall establish a maximum rate per day, a maximum limit for actual and necessary expenses, and a maximum charge, if any, for cancellation fees to compensate fact finders and conciliators for their services under the statutory dispute settlement procedures. If a roster member wishes to change his or her fees or expenses, that member shall notify the board in writing at least thirty days prior to the change. Expenses must be documented with receipts. For purposes of this rule only, "day" means any calendar day in which the neutral provides eight hours of service relevant to the assignment. A portion of a day of service shall be compensated at an hourly rate established by the board. ~~Hours of service-~~Compensable time may include time spent by the neutral preparing for and scheduling hearings. A party who fails to pay a neutral's fee within sixty days of issuance of the neutral's bill must also pay to the neutral a late fee of ten per cent of the neutral's fee that was assessed to that party.

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4117-9-02      **Notice to negotiate.**

(A) Any public employer or exclusive representative desiring to terminate, modify, or reopen an existing collective bargaining agreement or negotiate a successor collective bargaining agreement shall, not less than sixty days prior to the expiration date of the existing collective bargaining agreement, or, if there is no relevant expiration date, not less than sixty days prior to the time of the proposed effective date of the termination, successor agreement, modification, or adjustments resulting from a reopener:

(1) ~~Serve written~~ via electronic mail a notice to negotiate stating such desire upon the other party and ~~file a copy of the notice to negotiate with the board, with citation to duration, renegotiation, or impasse resolution provisions of the current collective bargaining agreement;~~

(a) The notice to negotiate shall include:

(i) Duration of any current agreement;

(ii) nature of the bargaining (successor agreement, reopener);

(iii) the impasse resolution provisions of the current collective bargaining agreement; and

(iv) any mutually agreed-upon dispute settlement procedure that may have been entered into by the parties not included in the previous collective bargaining agreement.

(2) Offer to bargain collectively with the other party for the purpose of modifying, reopening, or terminating any existing agreement or negotiating a successor agreement; and

(3) ~~File via electronic mail with the board a copy of the existing collective bargaining agreement or a certification that the current agreement previously has been filed with the board~~ or a copy of the existing collective bargaining agreement.

(B) Where a collective bargaining agreement has not been in effect between an employer and a newly certified exclusive representative, the employer or exclusive representative may, at any time after the board votes to certify the exclusive representative, file via electronic mail with the board and serve notice upon the other party offering to meet, for a period of ninety days, with the other party for the purpose of negotiating a collective bargaining agreement. Such notice shall set forth the name, ~~and mailing address, and email address~~ of the party and the name, mailing-address, and telephone number, and email address of its principal representative.

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- (C) Where the filing party wishes to engage in multi-unit bargaining, the party shall file via electronic mail a separate notice to negotiate for each unit. With the notices to negotiate, the party shall file with the board and serve upon the other party a ~~written~~ notice of the party's desire to engage in multi-unit bargaining. ~~An Agreement-~~agreement with the proposed multi-unit bargaining must be filed via electronic mail with the board and served upon the other party within ten days of service of the notice or the board will consider the parties to be engaging in single-unit bargaining.
- (D) For purposes of Chapter 4117-9 of the Administrative Code, "negotiation period" means:
- (1) For negotiations in anticipation of the expiration of a current collective bargaining agreement, the period of sixty days after the notice to negotiate is served via electronic mail upon the other party and filed with the board, or the sixty-day period preceding the expiration of the collective bargaining agreement, whichever period expires later unless there is an agreement to extend;
  - (2) For a newly certified employee organization that has not been a party to a collective bargaining agreement with the employer, the period of ninety days after the notice to negotiate is served via electronic mail upon the other party and filed with the board, unless there is an agreement to extend;
  - (3) For collective bargaining negotiations under a reopener provision of an effective collective bargaining agreement, the period of sixty days after the notice to negotiate is served via electronic mail upon the party and filed with the board, ~~unless the parties specify by mutual agreement an alternate sixty-day negotiation period and identify the date on which the negotiation period ends~~there is an agreement to extend.
- (E) Except as the parties may modify the negotiation process by mutually agreed-upon dispute settlement procedures, the parties shall continue in full force and effect all the terms and conditions of any existing collective bargaining agreement, without resort to strike or lockout, for a period of sixty days after the party gives notice, until the expiration date of the collective bargaining agreement, or the statutory dispute settlement procedures are exhausted, whichever occurs later.
- (F) Following the filing of a notice to negotiate, the board will continue with the timely application of the statutory procedure set forth in divisions (C)(2) to (C)(6), (D), and (G) of section 4117.14 of the Revised Code unless:
- (1) The parties are subject to a mutually agreed-upon dispute settlement procedure pursuant to rule 4117-9-03 of the Administrative Code;
  - (2) A motion to stay for good cause shown is granted by the board; ~~or~~however, the board may delegate to the executive director or the office of the general counsel

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authority to grant a stay conditionally, pending action at the next meeting of the board, in accordance with this paragraph;

- (3) The parties file with the board a joint written notification of settlement or tentative agreement. In the event of written notification of a tentative settlement, the board shall suspend the statutory dispute settlement procedure until notified in writing by either party that the tentative agreement has been rejected. The board may delegate to the administrator of the bureau of mediation or the executive director authority to suspend procedures in accordance with this paragraph.
- (G) A notice to negotiate or motion relating to a notice to negotiate shall not be accepted for filing with the board unless it contains proof of service pursuant to paragraph (B) of rule 4117-1-02 of the Administrative Code.

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4117-9-03      **Mutually agreed-upon dispute settlement procedure.**

- (A) The parties may, at any time, agree to submit any or all issues in dispute to any mutually agreed-upon dispute settlement procedure authorized by section 4117.14 of the Revised Code, which procedure shall supersede the procedures set forth in rules 4117-9-04, 4117-9-05, and 4117-9-06 of the Administrative Code, and in divisions (C)(2) to (C)(6), (D), and (G) of section 4117.14 of the Revised Code.
- (B) A mutually agreed-upon dispute settlement procedure shall be ~~in writing, signed by--~~ representatives of both parties, and filed filed via electronic mail with the board within five days of its execution. Where a mutually agreed-upon dispute settlement procedure is a provision in an existing collective bargaining agreement, a copy of the provision shall be filed with the notice to negotiate, and the notice shall contain a citation to the pertinent provision of the collective bargaining agreement.
- (C) For employees who are prohibited from striking under division (D)(1) of section 4117.14 of the Revised Code, a mutually agreed-upon dispute settlement procedure must provide for final and binding resolution of disputed issues by a neutral third party. The procedure shall not permit or attempt to permit the employees to strike.
- (D) For employees who are permitted to strike under division (D)(2) of section 4117.14 of the Revised Code, a mutually agreed-upon dispute settlement procedure may provide for final and binding resolution of issues by a neutral third party. In such a procedure, the employee organization waives its right to strike.
- (E) A mutually agreed-upon dispute settlement procedure shall not require any action by the board or impose any obligation upon the board. Parties to the mutually agreed-upon dispute settlement procedure shall regularly, or upon request, keep the board informed of the status and/or progress of the mutually agreed-upon dispute settlement procedure via electronic mail. Either party to the mutually agreed-upon dispute settlement procedure may, upon showing of good cause, move the board to declare the mutually agreed-upon dispute settlement procedure concluded and to reassert jurisdiction. The board in its discretion will determine the point at which the parties will enter the statutory procedure. Pursuant to a mutually agreed-upon procedure and upon written request, the board will provide a list of neutrals for use by the parties.
- (F) ~~Except as provided in paragraphs (G) and (L) of rule 4117-9-05 of the Administrative Code, any mutually agreed-upon deviation from the timelines or procedures~~ Parties may, by agreement filed via electronic mail with the board, abandon a mutually agreed-upon dispute settlement procedure and jointly move for application of the statutory dispute settlement procedure set forth in divisions (C)(2) to (C)(6), (D), and (G) of section 4117.14 of the Revised Code, must be in writing and shall constitute a mutually agreed-upon dispute settlement procedure and shall be subject to the provisions of this rule. If the parties enter into a mutually agreed-upon dispute

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settlement procedure during pendency of the statutory procedure, board involvement ceases under the statutory procedure.

- (G) ~~Parties may, by written agreement filed with the board, abandon a mutually agreed-upon dispute settlement procedure and jointly move for application of the statutory - dispute settlement procedure set forth in divisions (C)(2) to (C)(6), (D), and (G) of - section 4117.14 of the Revised Code. The joint motion must contain a commitment by the parties to complete the statutory procedure without deviation and without reinstitution of a mutually agreed-upon dispute settlement procedure. The board in its discretion will determine the stage at which the parties will enter the statutory procedure. The parties may mutually agree and notify the board via electronic mail, to extend timelines for voting on a fact-finder's report, establish methods of delivery of reports, establish a rate of pay in excess of the rate established by the board, designate another agency to provide mediation services, or by mutual agreement, modify other non-substantive procedural requirements without entering into a mutually agreed-upon dispute settlement process.~~
- (H) ~~If the parties are in dispute as to the existence of a mutually agreed-upon settlement procedure, the board shall implement the statutory procedure set forth in divisions (C)(2) to (C)(6), (D), and (G) of section 4117.14 of the Revised Code. Upon motion, the board in its discretion may stay the statutory procedure pending resolution of the dispute and direct a hearing to resolve the dispute and to determine whether a mutually agreed-upon settlement procedure or the statutory procedure applies.~~

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4117-9-04      **Mediation.**

When the statutory procedures of divisions (C)(2) to (C)(6) of section 4117.14 of the Revised Code apply, mediation shall be conducted in accordance with these terms:

- (A) At any time subsequent to the serving and filing of the notice to negotiate pursuant to paragraph (A), (B), or (C) of rule 4117-9-02 of the Administrative Code, the parties may, ~~by mutual written agreement,~~ notify the board of existence of an impasse. Upon receipt via electronic mail of the parties' notification of impasse, the board shall appoint a mediator to assist the parties in the collective bargaining process.
- (B) Forty-five days prior to the expiration of the negotiation period, if a mediator has not already been appointed pursuant to paragraph (A) of this rule, the board shall appoint a mediator to assist the parties in the collective bargaining process.
- (C) The board may continue mediation at any time, order the parties to engage in collective bargaining until the expiration of the negotiation period, or both.
- (D) Upon board appointment, the mediator is available to assist the parties until a settlement is reached in negotiations.

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4117-9-05      **Fact-finding.**

When the statutory procedures of divisions (C)(2) to (C)(6) of section 4117.14 of the Revised Code apply, fact-finding shall be conducted in accordance with these terms:

- (A) Subsequent to receipt of a ~~written request~~ via electronic mail from either party for fact-finding and to the appointment of a mediator, the board shall send to the parties a list of five fact finders from the board's ~~register~~ roster of neutrals. Other than a joint request ~~signed~~ by the parties, a ~~written request~~ via electronic mail for fact-finding must be filed with the board, served upon the other party, and include proof of service pursuant to rule 4117-1-02 of the Administrative Code. A second list shall be issued only pursuant to a ~~written~~ statement showing good cause.
- (B) Not later than seven days after the date that the board sent to the parties a list of fact finders, the parties shall submit ~~in writing~~ to the board via electronic mail a mutually selected fact-finding panel of one or three members. The names of mutually selected alternates to the preferred panel also shall be submitted ~~in writing~~ to the board via electronic mail at this time. Such selections shall be made by alternate striking of the names, unless the parties mutually agree to another means of selection. If the parties cannot agree to the number of members on the panel, the board shall appoint a one-member panel.
- (C) The parties may mutually select any fact finder from the board's ~~register~~ roster of neutrals instead of selecting from the list provided by the board. However, selection of a fact finder not listed on the ~~register~~ roster shall constitute a mutually agreed-upon dispute settlement procedure and preclude appointment of the fact-finding panel by the board.
- (D) Upon receipt of notice of the fact-finding panel selected by the parties, the board shall appoint a fact-finding panel ~~consisting of one or three members~~ no later than fifteen days after receipt of the request for fact-finding or the appointment of a mediator, whichever occurs later. If the parties have not submitted a selected fact-finding panel to the board within the time designated in these rules, the board shall, in its sole discretion, appoint a fact-finding panel consisting of one member.
- (E) In those cases where selected fact finders are unavailable, the parties may select another fact finder from the same list and notify the board via electronic mail within three days. If no selection is made, the board shall appoint a fact finder at its discretion.
- (F) Pursuant to division (C)(3)(a) of section 4117.14 of the Revised Code, upon notice of appointment of the fact-finding panel and no later than five p.m. on the last business day prior to the hearing, each party shall submit via electronic mail to the fact-finding panel and ~~serve on the other party a~~ written position statement. A failure to submit via electronic mail such a ~~written~~ position statement to the fact finder and the

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other party no later than five p.m. on the last business day prior to the ~~day of the~~ hearing, shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing. The statement shall include:

- (1) The name of the party and the name, mailing address, email address, and telephone number of the principal representative of the party;
  - (2) A description of the bargaining unit including the approximate number of employees;
  - (3) A copy of the current collective bargaining agreement, if any; and
  - (4) A statement defining all unresolved issues and summarizing the position of the party with regard to each unresolved issue.
- (G) The parties may mutually agree to an extension of the statutory fact-finding timelines at any time subsequent to the appointment of the fact-finding panel. An extension must be ~~in writing~~, specific as to duration, ~~signed~~ agreed to by both parties, and submitted to the panel and filed with the board via electronic mail within five days of its execution. An extension may be continued, provided the original extension procedures are followed. The fact-finding panel has no authority to extend the statutory timelines absent mutual agreement of the parties.
- (H) The fact-finding panel must hold an evidential hearing except that the parties may stipulate facts and waive hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Costs associated with a meeting room shall be the obligation of the parties.
- (I) Fact-finding hearings are to be held in private.
- (J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- (K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:
- (1) Past collectively bargained agreements, if any, between the parties;

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- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
  - (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
  - (4) The lawful authority of the public employer;
  - (5) Any stipulations of the parties;
  - (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.
- (L) No later than fourteen days after the appointment of the fact-finding panel, unless the parties mutually agree ~~in writing~~ to an extension, the fact-finding panel, acting by a majority of its members, shall serve on the parties and the board via electronic mail - written findings of fact, written recommendations on the unresolved issues, and a separate summary of each recommendation. Any subsequent change or adjustment by the fact-finding panel in the fact-finding report must be based upon error or omission and must be submitted by the fact-finding panel to the board for consideration and imposition of new time periods. If the fact-finder's report contains an error that needs correction, the parties shall contact the fact finder to raise the concern. If the report contains a substantive error that requires an adjustment to the report, the fact finder shall file a request with the board for authorization to adjust the report. Unless the parties agree to extend the voting period, the parties should conduct a vote upon the report as issued without correction. Once the board grants authorization for the fact finder to adjust the report, new timelines will be established for conducting a new vote to accept or reject the report as adjusted. Obvious typographical errors admitted by the fact finder do not require a board authorized adjustment.
- (M) Immediately upon receipt, the exclusive representative shall make available, by posting or by other method reasonably calculated to inform the members of the employee organization in the unit, the findings, recommendations, and summaries of the fact-finding panel together with a notice of the dates, times, and places where the employee organization's members in the unit may vote to approve or reject the recommendations of the fact-finding panel. A secret ballot election shall be conducted by the exclusive representative at the dates, times, and places set forth in the notice. Such election shall be conducted not later than seven days after the findings, recommendations, and summaries of the fact-finding panel are served pursuant to paragraph (C) of rule 4117-1-02 of the Administrative Code. Each

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member of the employee organization in the unit shall at the time and place of election be issued a ballot containing a choice of "approve" and a choice of "reject" the recommendations of the fact-finding panel. There shall be no voting by proxy. The ballots shall be tallied immediately upon the conclusion of the election. ~~Written verification~~ Verification by electronic mail of the date of the election, the vote tally, and the number of members of the employee organization in the unit shall be served upon the board and served upon the employer within twenty-four hours after the tally of ballots, but in no event later than twenty-four hours after the expiration of the seven-day voting period. The ~~written~~ verification must contain proof of service upon the employer pursuant to rule 4117-1-02 of the Administrative Code. Failure to serve upon the board and the employer the required voting information within twenty-four hours of the expiration of the seven-day voting period shall constitute failure to reject the recommendations, and the recommendations shall be deemed accepted as the resolution of issues submitted to fact-finding. Oral notification to the board or the employer shall not constitute timely compliance with this rule.

- (N) Immediately upon receipt, the employer's representative shall make available to the appropriate legislative body the findings, recommendations, and summaries of the fact-finding panel. Not later than seven days after the findings, recommendations, and summaries of the fact-finding panel are served pursuant to paragraph (C) of rule 4117-1-02 of the Administrative Code, the legislative body shall meet and vote to accept or reject the recommendations of the fact-finding panel. ~~Written verification -~~ Verification by electronic email of the date of the vote, the vote tally, and the number of members of the legislative body shall be served upon the board and the exclusive representative within twenty-four hours after the vote count but in no event later than twenty-four hours after the expiration of the seven-day voting period. The ~~written~~ verification must contain proof of service upon the employee organization pursuant to rule 4117-1-02 of the Administrative Code.

Failure to serve upon the board and the employee organization the required information within twenty-four hours of the expiration of the seven-day voting period shall constitute failure to reject the recommendations, and the recommendations shall be deemed accepted as the resolution of issues submitted to fact-finding. Oral notification to the board or the employee organization shall not constitute timely compliance with this rule.

- (O) If neither party rejects by a three-fifths vote the recommendations of the fact-finding panel, not later than seven days after the recommendations are sent, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted to the fact-finding panel and a collective bargaining agreement shall be executed, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement.
- (P) If the recommendations of the panel are rejected by a three-fifths vote of either party and the rejection information required by paragraph (M) or (N) of this rule is timely served upon the board and the other party, the board shall post a copy of the fact-

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finding report and the notice of rejection in its Columbus offices and shall mail copies to the press, with recipients determined at the board's discretion. A board-provided notice of the rejection and a copy of the fact-finding report shall be posted by the employer and the employee organization in conspicuous locations where employees will be reasonably apprised of the contents. The "date of publication" is the date the board mails the notice and report to the press. A notice of rejection shall remain posted for a period of thirty days or until settlement occurs, whichever is earlier.

- (Q) The parties shall share the cost of the fact-finding panel in a manner agreed to by the parties. If the parties cannot agree on how to share the cost of fact-finding, the parties shall each pay one-half of the remaining cost.

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4117-9-06      **Final offer settlement procedure; conciliation.**

Members of a police or fire department, members of the state highway patrol deputy sheriffs, dispatchers employed by a police or fire or sheriff's department or the state highway patrol or civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire, sheriff's department, or emergency medical or rescue personnel and units, an exclusive nurse's unit, employees of the state school for the deaf or the state school for the blind, employees of any public employee retirement system, correction officers, guards at penal or mental institutions, special policemen or policewomen appointed in accordance with sections 5991.14 and 5123.13 of the Revised Code, psychiatric attendants employed at mental health forensic facilities, or youth leaders employed at juvenile correctional facilities, or members of law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board are prohibited from striking. Unless the parties are subject to a mutually agreed-upon dispute settlement procedure in compliance with paragraph (C) of rule 4117-9-03 of the Administrative Code, these conciliation procedures shall apply:

(A) If the parties are unable to reach an agreement within seven days after the publication of the findings and recommendations of the fact-finding panel, then the board shall issue to the parties an order pursuant to division (D)(1) of section 4117.14 of the Revised Code requiring the parties to engage in settlement by conciliation by a conciliator selected by the parties in accordance with paragraph (B) of this rule. The board may delegate to the bureau of mediation or the executive director responsibility for ordering conciliation when no substantive issues have been raised and when these conditions have been met:

- (1) The fact-finding report was rejected timely by at least one party by a three-fifths majority of the individuals who were eligible to vote;
- (2) The vote on the fact-finding report was served timely upon ~~SERB~~ the board and the other party;
- (3) Publication of the fact-finding report did occur in which the effective date of publication is stated on the board-issued notice of rejection of the fact-finding report; and
- (4) At least seven days have passed since the effective date of publication of the fact-finding report, and the parties have not reached a settlement.

Concurrent with its order, the board shall provide to the parties a list of five neutrals from which the conciliator will be selected.

(B) The parties shall select a conciliator from the list by alternate striking of names. The parties may select any conciliator from the board's ~~register~~ roster of neutrals rather

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than selecting from the list submitted by the board. If the parties agree to select a conciliator who is not listed on the board's ~~register~~roster of neutrals, the selection shall constitute a mutually agreed dispute settlement procedure.

- (C) The parties shall within five days of the issuance of the list notify the board ~~in writing~~ via electronic mail of their mutually selected conciliator and of any mutually selected alternates to the preferred conciliator. When selected conciliators are unavailable, the board shall appoint a conciliator chosen at its discretion.
- (D) If the board has not received ~~written~~ notification via electronic mail of a mutually selected conciliator within five days after issuance of the conciliation order and list of conciliators, on the sixth day after issuance of the order and list, the board shall appoint a conciliator at its discretion. ~~Oral notification~~ Notification via electronic mail to a ~~SERB~~the bureau of mediation staff member within five days of issuance of the order and list will be sufficient ~~notice if written confirmation is served upon the board within the five-day period.~~
- (E) Upon notice of the conciliator's appointment, each party shall submit via electronic mail to the conciliator and ~~serve on~~ the other party a ~~written~~ position statement. A failure to submit such a ~~written~~ position statement to the conciliator, to the other party, and to the board five calendar days prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the ~~written~~ position statement that was submitted prior to the hearing. The statement shall include:
  - (1) The name of the party and the name, mailing address, email address, and telephone number of the principal representative of the party;
  - (2) A description of the bargaining unit including the approximate number of employees;
  - (3) A copy of the current collective bargaining agreement, if any;
  - (4) A report defining all unresolved issues, stating the party's final offer as to each unresolved issue, and summarizing the position of the party with regard to each unresolved issue. If, after submission of the parties' reports, mediation efforts result in a change in a final offer, a party or parties may, by mutual agreement, submit a revised final offer to the conciliator.
- (F) The conciliator shall hold a hearing within thirty days of the effective date of the board's order to conciliate, or as soon thereafter as practicable. For purposes of the hearing, the conciliator shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the conciliator. A conciliator may not

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choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. The conciliator shall make provisions allowing for a written record of the hearing. The conciliator's notes shall constitute the record for the conciliation hearing, unless the parties agree otherwise.

- (G) Conciliation hearings are to be held in private.
- (H) The conciliator shall take the following into consideration in resolving the dispute between the parties:
  - (1) Past collectively bargained agreements, if any, between the parties;
  - (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
  - (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
  - (4) The lawful authority of the public employer;
  - (5) The stipulations of the parties; and
  - (6) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.
- (I) The conciliator shall make written findings of fact and promulgate a written opinion and order upon the issues presented and upon the record made at the conciliation hearing and shall ~~mail or~~ deliver via electronic mail ~~otherwise deliver~~ a true copy thereof to the parties and the board within thirty days of the last date of hearing, unless the parties mutually agree to an extension although failure of the conciliator to meet the thirty-day deadline does not affect the validity of the conciliation award.
- (J) The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award.
- (K) The parties shall bear equally the cost of conciliation.

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4117-9-07      **Filing of collective bargaining agreement.**

- (A) One executed copy of any collective bargaining agreement accompanied by a completed State Employment Relations Board contract data summary sheet shall be filed via electronic mail with the board by the employer within thirty days of execution.
- (B) For the purpose of this rule, the term "collective bargaining agreement" includes contract, memorandum of understanding, extension, amendment, modification, reopener, settlement, or other addendum entered into between an employee organization and employer.
- (C) All wage information shall be submitted with the collective bargaining agreement. Any amendments or renegotiation of wage information accompanied by a completed State Employment Relations Board contract data summary sheet shall be filed via electronic mail by the employer upon execution of the amendment or renegotiated provision.