

Comments of the Independent Regulatory Review Commission



Pennsylvania Labor Relations Board Regulation #104-1 (IRRC #3229)

Board Rules and Regulations

June 6, 2019

We submit for your consideration the following comments on the proposed rulemaking published in the April 6, 2019 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Labor Relations Board (Board) to respond to all comments received from us or any other source.

1. Section 91.2. Appearances. – Consistency with statutes.

Subsection (a) will allow an attorney or other representative, when filing an entry of appearance, to agree to service of letters and orders from the Board by e-mail. Section 10 of the Pennsylvania Labor Relations Act and section 1606 of the Public Employee Relations Act specify how the Board may serve documents:

Complaints, orders[,] and other process and papers of the board, its members or agent may be served, either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.

43 P.S. § 211.10 and 43 P.S. § 1101.1606.

The proposed regulation appears to conflict with the statutory requirements for the Board to serve documents in person, by registered mail, or by leaving a copy at an office or place of business. We ask the Board to explain in the preamble to the final-form regulation how service by e-mail is consistent with these statutes.

2. Section 93.12. Service and filing of papers. – Implementation procedures.

Subsection (b)(2) will allow parties to submit certain filings with the Board by e-mail. This paragraph requires the party to accept responsibility for attaching documents in the proper format, readability of files and disruptions in electronic transmissions. Further, the party must accept “the risk that the e-mailed document may not be properly received or timely filed.” We have two concerns. First, if an e-mailed document is not properly received, will the Board allow a party to resubmit the document? Will the Board allow a party to resubmit filings that are not

properly received on the last day of a time limit for filing? Second, what does the Board consider “timely filed” when a party submits documents by e-mail? We ask the Board to clarify in the preamble to the final-form regulation how it intends to implement e-mail filings by parties.

This comment also applies to § 95.42(c)(2) (relating to filing of papers).

3. Miscellaneous clarity.

- The preamble states that §§ 93.12(b)(2) and 95.42(c)(2) “add the option of agreeing to e-mail service of letters and orders from the Board.” These paragraphs address methods of filing with the Board. These citations should be updated in the preamble to the final-form regulation.
- Section 95.98(a)(1) (relating to decisions of the Board) requires a party to file an original and four copies of a statement of exceptions to a hearing examiner decision. Requirements for an original and copies throughout the regulations are proposed to be deleted. Why wasn’t the requirement in this paragraph deleted?