

CHAPTER 5
PUBLIC EMPLOYEE - MANAGEMENT RELATIONS ACT

- Part A General
- B Rules of Procedure
- C Procedural Guide for Conduct of Elections

Appendix A. Agreement for Consent or Directed Election.

NOTE: Rule-making authority cited for formulation of regulations for the Public Employee - Management Relations Act by the Director of the Department of Administration, 4 GCA §10116.

Part A. General §5101. Purpose.

- §5102. Policy.
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§5101. Purpose. To recognize and define the role of public employee organizations and to promote effective, equitable and uniform implementation within government of Guam policies, rights and responsibilities prescribed in 4 GCA Chapter 10, commonly called the "Public Employee - Management Relations Act of Guam."

§5102. Policy. (a) It is a policy of the government of Guam that all employees, except those hereinafter specifically excluded or who shall be determined by the Governor, pursuant to the authority granted him by 4 GCA Chapter 10, to be excluded by virtue of the nature of their work, shall have a right to form join and assist any employee organization, or to refrain from such activity, without interference, restraint, coercion or discrimination and without fear of penalty or reprisal.

(b) It is a policy of the government of Guam that no management official shall seek to influence any employee with respect to employee rights granted and guaranteed by Public Law 9-240.

(c) It is a policy of the government of Guam that designated management officials shall consult with representatives of recognized employee organizations, and should, as a matter of good employee relations, encourage such groups to express

themselves concerning the development and implementation of personnel policies and programs affecting working conditions. This policy recognizes that effective communication between employee organizations and management develops respect and creates good will, that employees may express their collective views more freely through an employee organization than individually, and that discussion of mutual problems is of advantage to both the employee and management.

§5103. Exclusions. (a) These rules and regulations shall not apply to any department, office or entity in the Executive Branch which is primarily performing investigative, intelligence or security functions, if the Governor of Guam determines that the provision of this rule cannot be applied, in whole or in part, in a manner consistent with security requirements and considerations.

(b) Excluded are:

- (1) Personnel of the Department of Public Safety whose principal job is law enforcement.
- (2) Port Security Inspectors.
- (3) Alcoholic Beverage Control Inspectors.
- (4) Personnel under the Attorney General's office performing investigative work.
- (5) Personnel of the Department of Corrections whose principal job is prison security.
- (6) Fish and Game wardens.

§5104. Definitions. As used in these rules and regulations:

(a) *Government* means the Executive Branch of the government of Guam, including any political or organizational subdivision thereof, and any corporation, association or authority wholly owned by the government of Guam.

(b) *Department* means the Department of Administration.

(c) *Director* means the Director, Department of Administration.

(d) *Department head* means a director of a government of Guam department or agency of the Executive Branch and such term shall include the chief officer of the governing boards of the autonomous and

semi-autonomous agencies of the government of Guam, including, but not necessarily limited to:

(1) Chairman, Board of Regents, University of Guam.

(2) Chairman, Board of Education.

(3) Chairman, Guam Economic Development Authority.

(4) Chairman, Guam Power Authority.

(5) Chairman, Board of Trustees, Guam Memorial Hospital.

(6) Chairman, Guam Housing and Urban Renewal Authority.

(7) Chairman, Guam Housing Corporation.

(e) *Exclusive recognition* means recognition of a qualified employee organization by the government of Guam as the sole representative of an appropriate unit of public employees for purposes of consultation and negotiation with designated management officials.

(f) *Organization representative* means any representative of an employee organization by the government of Guam nonemployee of the government of Guam, who is designated to deal with government of Guam officials in behalf of the employee organization.

(g) *Public employee* means any person employed in graded and ungraded positions of the classified service of the government of Guam.

(h) *Dispute* means a disagreement between management officials and an employee organization or organizations or between employee organizations concerning the appropriateness of a unit, or the right of an employee organization to exclusive recognition.

(i) *Grievance* means an employee's expressed feeling of dissatisfaction with working conditions and working relationship which are outside his control, including an appeal from adverse disciplinary action not covered by paramount law or regulation.

(j) *Emergency* is a condition of public calamity, resulting from fire, flood, typhoon or like disaster, or through some unusual occurrence not reasonably subject to anticipation.

§5105. Right of Representation. (a) Advisory groups or councils of employees established in a Government department pursuant to regulations of a particular Government component are not employee organization for purpose of this rule. No such group or council will be

organized for employees in any unit in which an employee organization has been accorded exclusive recognition, nor continued for employees in any unit in which an employee organization has been accorded exclusive recognition.

(b) Nothing in this rule or in any agreement entered into under its provisions shall restrict the Government or its officials in situations of emergency from taking any action necessary to carry out the Government's missions.

(c) A department head or his designee will, upon the specific request of an employee organization granted exclusive recognition, negotiate a written agreement which contains as a minimum the following:

(1) Identification of the specific unit for which exclusive recognition is granted.

(2) A statement of the mutual rights and obligations of the employee organization and management and its designated representatives under the provisions of the Public Employee- Management Relations Act of Guam.

(3) Clauses specifying policies and working conditions in the employee unit which have been agreed to by the employee organization and the department head or his designee, which policies and working conditions shall be limited to matters over which the department head exercises discretion.

(d) Such written agreement as may be negotiated by and between an employee organization and a department head or his designee shall not take effect until approved by the Governor. A copy of each agreement approved by the Governor shall be filed with the Civil Service Commission, Department of Labor and Department of Administration.

§5106. Employee Units. (a) For purpose of exclusive recognition requested by qualified employee organizations, appropriate units of employees shall be established by the Director on any reasonable basis, such as departmental, functional, craft or other basis which will assure a clear and identifiable community of interest in employment conditions among the employees involved.

(b) No unit shall be established which includes Government managerial officers, supervisors or personnel workers in other than clerical positions, nor a unit which includes both professional employees and non-professional employees unless a majority of such professional employees and a majority of such non-professional employees vote to combine into one unit. The Director shall determine if an employee position is professional or not. [As Amended by Executive Order 79-17.]

(c) Eligible employees for purpose of establishing an appropriate unit for exclusive recognition are those remaining in the unit after the required exclusions have been made.

(d) Determination as the existence of a clear and identifiable community of interest sufficient to warrant recognition of the employees concerned as an appropriate unit is necessarily a flexible one which must be made in light of specific circumstances. In making such determination, factors such as supervision, skills, duties, working conditions, place of work, organizational structure, similarity of skills, distinctiveness of functions performed, and the existence of integrated work processes will be considered.

(1) In determining the organizational scope of a unit, consideration shall be given to the common employment interest of the employees in an organization unit.

(2) Craft units normally will consist of a homogeneous group of skilled journeymen, craftsmen and their apprentices or helpers. Among factors to be considered in determining the appropriateness of a craft unit are separate supervision and the inclusion of all such craftsmen working in the installation. Either single crafts comprised of workers with basically the same training or multi-craft units, or councils in which there are a variety of crafts involved, may be established.

(3) Employees with dissimilar skills may have a community of interest as parts of a homogeneous group, such as employees engaged in maintenance and/or production, which may form the basis for an

appropriate unit.

(4) Although functionally distinct organizational units may exist, the presence of an integrated work process may make a large single unit more appropriate for recognition than a number of separate units.

(5) An employee organization may request informal and preliminary discussion concerning the appropriateness of a proposed employee unit with the department or agency head before such proposal is submitted in writing.

(6) A unit may be established on any reasonable basis which will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized. [As Amended by Executive Order 79-17.]

(e) An employee organization which meets the qualifying requirements of Public Law 9-240 may petition the Director or the appropriate management official of an autonomous or semi- autonomous agency for recognition as exclusive bargaining agent for an employee unit which it has proposed as appropriate.

(f) After receipt of a petition for recognition as exclusive bargaining agent, the Director shall cause to be published in a newspaper of general circulation in the territory of Guam for a minimum of two (2) times, seven (7) days apart, a notice of the petition. Notice of the petition shall also be posted on the bulletin board of the department or agency involved. [As Amended by Executive Order 79-17.]

(g) Within thirty (30) days exclusive of Saturdays, Sundays and legal holidays, after receipt of said petition, the Director shall either certify the unit as acceptable or furnish, in writing, to the petitioning organization reasons for rejection of said petition. A notice of the Director's certification or noncertification shall also be published at least once in a newspaper of general circulation in the territory of Guam. [As Amended by Executive Order 79-17.]

(h) An employee organization which made a proposal for recognition as an exclusive bargaining agent or an employee organization which filed written objection or opinion to the initial petition may appeal the decision concerning the appropriateness of the unit. An appeal shall be filed no later than fifteen (15) calendar days after the decision has been announced and shall be addressed to the Governor. It shall state in writing the reason for disagreeing with the unit determination and shall be accompanied by correspondence, records or other documents relied upon by the objecting organization. The Governor shall render a decision on an appeal and communicate it in writing to the employee organization within thirty (30) calendar days after the appeal is filed. A notice of the Governor's decision shall also be published at least once in a newspaper of general circulation in the territory of Guam. [As Amended by Executive Order 79-17.]

(i) An employee organization which has filed a petition under 2 GAR §5106(c) [Article 7(C)] and fails to obtain the necessary majority may withdraw the petition but may not file a similar petition within six (6) months after the Director's determination. [Added by Executive Order 79-17; Article 12.]

§5107. Exclusive Recognition. (a) The Governor shall have sole power to grant to an employee organization recognition as the exclusive bargaining agent for an appropriate employee unit.

(b) An employee organization which desires exclusive recognition in an employee unit it proposes as appropriate must address a petition to the Director or the appropriate management officials of an autonomous or semi-autonomous agency. Such petition shall be accompanied by evidence that the petitioning employee organization has:

(1) Majority membership in the unit; or

(2) A minimum of at least ten percent (10%) membership and a sufficient number authorization cards to indicate at least fifty percent (50%) of the eligible employees in the unit desire the petitioning organization to be the exclusive bargaining agent; or

(3) A total of at least twenty percent (20%) membership within the unit to justify an election.

(c) Final determination of majority status is the responsibility of the Director. An election shall not be held if otherwise satisfactory evidence exists that a majority of the eligible employees in an appropriate unit either belong to the employee organization seeking exclusive bargaining recognition or have indicated in writing that they desire to be represented by the organization.

(d) Authorization cards submitted by an employee organization shall be valid only when signed within one (1) year from the date of filing by eligible employees of the unit consideration. The one-year time limit on authorization cards shall cease to run during any proceeding under this rule. Authorization cards may be used only for representation purposes.

§5108. Elections. (a) The Director shall order and conduct a secret ballot election to determine what, if any, employee organization shall be granted recognition as exclusive bargaining agent for an appropriate unit when:

(1) A valid petition is filed by one or more employee organizations pursuant to 2 GAR §5107(b)(3), provided, however, that no employee organization may file an initial petition for recognition more often than once every twelve (12) months.

(2) A valid petition is filed pursuant to 2 GAR §5107(b) challenging the right of an employee organization currently recognized as exclusive bargaining agent to continue in that status, provided, however, that no such petition shall be entertained during the first twelve (12) months of the employee organization's status as exclusive bargaining agent.

(3) The Director determines that because of conflicting claims made by employee organizations seeking recognition as exclusive bargaining agent under 2 GAR §5107(b)(1), an election would be a fair way to resolve the conflict.

(4) A valid petition is filed at any time during the period of recognition by at least twenty percent (20%)

of the employees in the bargaining unit questioning the majority status of the exclusive bargaining agent. [Added by Executive Order 79-17.]

(b) Upon determining that an election is necessary, the Director shall:

(1) Order an election held within a reasonable period of time.

(2) Cause to be published in a newspaper of general circulation within the territory of Guam a notice of the election. Such notice shall appear at least once a week for three (3) consecutive weeks before the election is held. Such notice shall identify the appropriate unit which shall be the subject of the election and contain a sample ballot showing the election options that shall be available to the employee. Such notice shall state the time, date and place where the balloting shall be conducted. Copies of such notice shall also be posted on the bulletin boards of the department or agency involved.

(3) Prepare a list of eligible voters based upon current employee records. No supervisory personnel shall be permitted to vote, nor shall supervisory personnel be included in calculating the total number of persons within the appropriate unit. Such list of eligible voters shall be provided at least seven (7) calendar days prior to the election to each employee organization which shall be represented on the ballot. Such list of eligible voters shall be posted on the bulletin boards of the department or agency involved. [As Amended by Executive Order 79-17.]

(4) Prepare a ballot which shall indicate the election options that shall be available to the eligible voters. A block will be provided on each ballot for an employee to indicate that he does not wish to be represented by any employee organization listed.

(5) Take such other actions as the Director determines necessary for the conduct of the election.

(c) Upon receiving notification that an election shall be held and in which it shall be involved, an employee

organization may:

(1) Submit to the Director in writing not less than seventy-two (72) hours before the election a list of persons who shall be authorized to represent the employee organization as poll watchers during the election. No employee organization shall have more than two (2) persons at a time on duty at a given polling place. If an employee organization fails to submit a list of authorized poll watchers, the Director may, in his discretion, permit the employee organization to have one poll watcher present at each polling place.

(2) Challenge at any time before or at the election the eligibility of any person the Director has declared to be or omitted as an eligible voter.

(A) In the case of a challenge made at least twenty-four (24) hours before an election, the Director shall issue a written opinion answering the challenge. A copy of the opinion shall be delivered to each employee organization which shall be represented on the ballot, and additional copies shall be posted on the bulletin boards of the department or agency involved.

(B) In the case of a challenge made after the twenty-four (24) hour deadline provided for in (c)(2) a, the individual whose right to vote has been denied by the Director or challenged by an employee organization shall be permitted to vote, provided, however, that his ballot shall be sealed in a special envelope and held by the Director until he shall issue a written opinion answering the challenge.

(d) Part C of these Rules and Regulations shall apply to all elections conducted pursuant to Public Law 9-240. [Added by Executive Order 79-17.]

(e) No election shall be necessary when a proper petition is filed, after the first year of exclusive recognition, by a majority of the employees in the bargaining unit requesting the Governor's withdrawal of exclusive recognition previously granted an employee organization.

After receipt of such petition, the Director shall investigate the matter and make appropriate recommendations to the Governor. [Added by Executive Order 79-17.]

§5109. Certification of Election Results, Notification of Exclusive Recognition and Appeal of Election Results.

(a) Immediately upon the conclusion of an election, the Director shall:

(1) Cause a tally of the election results to be made. Each employee organization which was represented on the ballot shall be permitted by the Director to have no more than four (4) representatives present to observe the tally. Such representatives shall not, however, be permitted to assist in the making of the tally in any way.

(2) After the tally required in (a)(1) has been made, certify the election results in writing to the Governor and to each employee organization which was represented on the ballot. Such certification shall also be published at least once in a newspaper of general circulation in the territory of Guam and be posted on the bulletin boards of the department or agency involved.

a. If the certified election results indicate an employee organization received a majority of the votes cast, the Governor shall:

(1) Notify the employee organization in writing that it has been granted exclusive recognition and identify the unit for which it has been granted.

b. If the certified election results indicate no employee organization received a majority of the votes cast and at least two (2) employee organizations were seeking recognition as exclusive bargaining agent, then the Director shall conduct a run-off election after eliminating any ballot choice which received less than fifteen percent (15%) of the total vote cast.

c. If the certified election results indicate that in an election in which the ballot choices were

limited to only one employee organization or no organization, and the employee organization failed to obtain a majority, the results shall be conclusive, unless the employee organization shall have some valid matter for appeal, and the Director shall take no further action after certifying the election results as provided in (a)(2). [As Amended by Executive 79-28.]

(b) In the event an employee organization challenges the certified election results, it may file its objections in writing with the Governor. The Governor shall, within thirty (30) calendar days, issue a written opinion stating his decision on the appeal. In the event he sustains the appeal, he may order that the challenged election be held void and that a new election be held.

(c) If recognition of an employee organization as an exclusive bargaining agent is obtained by nonelective process, as provided for by 2 GAR §5107(c), the Governor shall notify the employee organization to be recognized in the same fashion as provided for in (a)(2).

§5110. Duration of Recognition. (a) Exclusive recognition granted to an employee organization shall continue for a minimum period of one (1) year without further proof of majority status, provided, however, the Director may request the Governor to withdraw recognition upon obtaining evidence that the employee organization has engaged in an unfair labor practice or violated the provisions of Public Law 9-240. The Governor shall have sole discretion to determine if exclusive recognition of an employee organization shall be withdrawn.

(b) After the first year of exclusive recognition if no collective bargaining agreement has been negotiated, an employee organization's status as exclusive representative may be reviewed by the Director or challenged by another employee organization upon a showing that at least twenty percent (20%) of the unit desires a new determination. In such case an election shall be held as provided for in 2 GAR §5108.

(c) If an agreement has been negotiated during the period of exclusive recognition, the employee organization's status as exclusive bargaining agent shall

not be subject to challenge more than ninety (90) days nor less than sixty (60) days before the expiration date of the agreement then in force.

(d) If reorganization or other changes in the organizational structure of the unit result in major changes in the composition of the unit for which exclusive recognition was granted, the Director or any employee organization may initiate action for reconsideration of the designation of majority representation or scope of the unit.

§5111. Unfair Labor Practices. (a) It shall be an unfair labor practice for the Director or any Government management official to:

(1) Restrain, coerce or interfere with the exercise of the rights assured to public employees by Public Law 9-240.

(2) Dominate, sponsor, control or otherwise assist employee organizations, except that routine services and facilities may be furnished impartially to such organizations consistent with other provisions of Public Law 9-240.

(3) Discriminate against public employees in regard to hiring, tenure or any term or condition of employment for the purpose of encouraging or discouraging membership in any employee organization.

(4) Discipline or otherwise discriminate against any public employee for legitimate activities in representing an employee organization or participating in procedures implementing the Public Employee-Management Relations Act.

(5) Refuse to grant exclusive recognition to a qualified employee organization for an appropriate public employee unit.

(6) Refuse to consult or negotiate with an employee organization granted exclusive recognition on matters within the scope of Public Law 9-240 and other applicable statutes.

(b) It shall be an unfair labor practice for any public employee or employee organization to:

(1) Restrain, coerce or interfere with the exercise of the rights assured to public employees by Public Law 9-240.

(2) Attempt to cause management officials to coerce any public employee in the exercise of his rights under Public Law 9-240.

(3) Discipline or otherwise discriminate against any public employee member of an employee organization as reprisal for, or for the purpose of obstructing, discharge of the employee's official duties in Government service.

(4) Engage in or induce public employees to engage in any strike, work stoppage, slowdown or picketing against the Government.

(5) Discriminate against any public employee as to terms and conditions of membership because of race, color, creed, religion or national origin.

(6) Deny membership to any public employee in the exclusive recognition unit, except for failure to meet reasonable standards of the employee organization uniformly applied to all other members.

(c) Any charge of an unfair labor practice shall be filed in writing with the Director and he shall take such action as he determines necessary to ascertain the truth of the allegation. Upon completion of his investigation, the Director shall forward his findings in writing to the Governor.

(d) The Governor, upon determining that an unfair labor practice has occurred, may take such disciplinary action as is authorized by Public Law 9-240 and other applicable statutes.

§5112. Miscellaneous Provisions. (a) It shall be the mutual responsibility of department heads or their designees and employee organization representatives to negotiate in good faith with the objective of reaching an

agreement by diligent and serious exchange of information and views, and by avoiding unnecessarily protracted negotiations.

(b) Should an impasse develop in negotiations, the dispute may be submitted to a third party, acceptable to both parties, for mediation.

(c) Notwithstanding anything included in these rules and regulations, the parties may submit a dispute to a non-binding arbitration. Such arbitration shall be conducted by a board of arbitration, which shall consist of one (1) member chosen by the employee organization, one (1) member chosen by the Director and the third to be chosen by the first two (2) arbitrators. Each party shall pay the expense of its arbitrator and share all reasonable expenses of third arbitrator. The decision of the board arbitration shall be subject to the approval of the Governor.

(d) Any member of an employee organization granted recognition as an exclusive bargaining agent may authorize the Director to make periodic payroll deductions for membership dues. The cost of making such deduction shall be a charge against such organization, provided, however, the same shall not exceed two and one-half percent (2 1/2%) of the amount deducted.

(e) The Government shall keep records of meetings held between its management officials and employee organizations. Such records shall indicate the date of a meeting, the persons in attendance and the subject and nature of the discussion held. Where formal minutes are prepared, a draft shall be made available to the employee organization for review prior to final preparation. The formal minutes shall be a public record and a copy shall be furnished to the employee organization involved in such meeting.

(f) The governing board of an autonomous or semi-autonomous agency of the Government may delegate authority to its department head to carry out the objectives of these rules and regulations.

(g) If any of the above provisions shall at any time be held to be contrary to law by a court, or be repealed or be amended by law, such provisions shall be void and

inoperative. The remaining provisions shall continue in effect.

(h) All proceedings pending and all rights and liabilities existing, acquired or incurred at the time these rules and regulations take effect, are hereby saved and may be consummated according to the law in force when they were commenced. These rules and regulations shall not be construed to affect any action pending or begun before the effective date of this act. These rules and regulations do fully supersede and replace rules and regulations which were signed June 30, 1969, and rescinded before publication by memorandum of July 16, 1969.

Part B. Rules of Procedure

- §5201. Scope.
- §5202. Construction of Rules.
- §5203. Definitions.
- §5204. Appearance and Practice Before the Director.
- §5205. Proceedings Before the Board: Filing of Documents.
- §5206. Same: Computation Of Time.
- §5207. Same: Investigation by Director.
- §5208. Same: Referral to Other Agencies.
- §5209. Same: Record of Proceedings.
- §5210. Same: Hearings.
- §5211. Same: Motions.
- §5212. Same: Waiver of Objection.
- §5213. Same: Appearance at Hearings.
- §5214. Same: Depositions.
- §5215. Same: Rules of Evidence.
- §5216. Same: Contemptuous Conduct.
- §5217. Same: Documents.
- §5218. Same: Substitution of Parties.
- §5219. Same: Consolidation of Proceedings.
- §5220. Same: Intervention in Proceeding.
- §5221. Same: Stipulation of Fact.
- §5222. Same: Burden of Proof.
- §5223. Same: Argument; Briefs; Proposed Findings.
- §5224. Same: Hearings Officer's Report and Recommendations.
- §5225. Same: Request for Extension of Time.
- §5226. Same: Oral Argument Before the Director.
- §5227. Same: Director's Action.
- §5228. Same: Unauthorized Ex Parte Communication.
- §5229. Same: Adoption, Amendment or Repeal of Rules.

§5201. Scope. These rules govern procedure before the Director of Administration under the Public Employee-Management Relations Act of Guam as now or hereafter amended, and such other related acts as may now or hereafter be administered by the Director.

§5202. Construction of Rules. The rules shall be liberally construed to effectuate the purposes of the Act and to secure the just and speedy determination of every proceeding.

§5203. Definitions. As used in these rules, except otherwise required by the context:

- (a) *Act.* The term Act shall mean the Public Employee-Management Relations Act of Guam.

(b) *Director*. The term Director shall mean the Director of Administration.

(c) *Party*. The term Party shall mean any public employee, employee organization or public employer filing a complaint, petition, request or application under the Act or the rules and any person, employee organization or public employer named as a party in complaint, request or petition filed under the Act or the rules.

(d) *Hearings Officers*. The term Hearings Officer means any person designated and authorized by the Director pursuant to the Act to hold a hearing for the purpose of taking evidence and to make findings of facts, conclusions of law and recommendations to the Director upon matters involved in a proceeding before the Director.

§5204. Appearance and Practice Before the Director.

(a) **Appearance Before The Director**. A public employee may appear in his own behalf; an employee organization may be represented by a person or persons duly designated and authorized by the employee organization; and a public employer may appear on its own behalf or through a person or persons duly designated and authorized by such employer.

(b) **Representation**. In any proceeding under these rules, any public employee, employee organization or public employer may be represented by counsel or any other authorized person.

(c) **Personal Appearance Constitutes Representation**. When a person acting in a representative capacity appears in person or signs a paper in practice before the Director, his personal appearance or signature shall constitute a representation to the Director that under the provisions of these rules and the law he is authorized and qualified to represent the particular person on whose behalf he acts. The Director may at any time require any person transacting business before the Director in representative capacity to show his authority and qualifications to act in such a capacity.

§5205. Proceedings Before the Board: Filing of

Documents. (a) Place Of Filing Documents. All complaints, pleadings, submittals, petitions, reports, exceptions, briefs, memoranda and other papers required to be filed with the Director in any proceeding shall be filed with the Director.

(b) **Service Of Documents.** Such papers may be sent by mail or hand carried to the Director's Office in Agana, Guam, within the time limit, if any, for such filing.

(c) **Date Of Filing Documents.** The date on which the papers are actually received by the Director shall be deemed to be the date of filing.

(d) **Form Of Documents.** All papers filed with the Director shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper not larger than 8 1/2 in. x 14 in. in size except that tables, charts and other documents may be larger, folded to the size of the documents to which they are attached.

(e) **Signing Of Documents.** All papers must be signed in ink by the party signing the same or his duly authorized agent. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief every statement contained in the instrument is true and correct and no such statements are misleading; and that it is not interposed for delay.

(f) **Number Of Documents.** Unless otherwise specifically provided by a particular rule, regulation or order of the Director, the original and five (5) copies of the papers shall be filed.

(g) **Name, Address On Documents.** The initial documents filed in any proceeding shall state on the first page thereof the name and mailing address of the person or persons who may be serve with any documents filed in the proceeding.

§5206. Same: Computation Of Time. (a) Day Of Act, Event, Default. In computing any period of time prescribed or allowed by these rules or order of the Director, the day of the act, event or default, after which

the designated period of time is to run, is not to be included.

(b) **Last Day Of Act, Event, Default.** The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the territory of Guam, in which event the period runs until the next day which is neither a Saturday, Sunday nor a holiday.

(c) **Intermediate Saturdays, Sundays, Holidays.** Intermediate Saturdays, Sundays, holidays shall not be included in a computation when the period the time prescribed or allowed is ten (10) days or less.

(d) **Half Holiday.** A half holiday shall be considered as other days and not as a holiday.

§5207. Same: Investigation by Director. (a) **Initiation Of Investigation.** The Director may at any time institute investigations on its own motion.

(b) **Notice Of Investigation.** The Director shall serve its notice of investigation upon the public employee, employee organization or public employer being investigated or having a direct interest or concern in the matter under investigation shall designate the time and place for the investigation.

§5208. Same: Referral to Other Agencies. In any proceeding before the Director, the Director may obtain the assistance or solicit the views of other governmental agencies, employee organizations or public employers or private organizations where necessary or desirable to effectuate the purposes of the Act.

§5209. Same: Record of Proceedings. (a) **Official Record.** An official reporter shall make the only official recording of such proceeding.

(b) **Copies Shall Be Provided.** Copies of the official recording shall be provided by the Director upon request.

§5210. Same: Hearings. (a) **Who Shall Conduct.** The hearing for the purpose of taking evidence may be conducted by the Director or hearings officer.

(b) **Nature Of Hearing.** The hearing shall be open to the public, unless otherwise provided by the rules, or ordered, for good cause, by the Director or hearings officer.

(c) **Duty Of Hearings Officer.** It shall be the duty of the hearings officer to inquire fully into all matters at issue to obtain a full and complete record.

(d) **Powers Of Hearings Officer.** The hearings officer shall have the authority, subject to the Act and the rules, to:

- (1) Give notice concerning the hearing.
- (2) Administer oaths and affirmations.
- (3) Take or cause depositions to be taken whenever the ends of justice would be served thereby.
- (4) Rule upon offers of proof and receive relevant evidence.
- (5) Call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence.
- (6) Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant.
- (7) Hold conferences for the settlement or simplification of the issues.
- (8) Dispose of procedural requests, motions or similar matters which shall be made part of the record of the proceedings, recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the hearings officer's report and recommendations.
- (9) Request the parties at any time during the hearing to state their respective positions concerning any issue in the proceedings or theory in support thereof.
- (10) Dispose of any other matter that normally and properly arises in the course of any proceedings, and to take any other action authorized by the Act, rules or by any other statute.

(e) **Termination Of Hearings Officer's Authority.** The hearings officer's authority in each case will terminate either upon the submission of his findings, conclusions and recommendations to the Director, or upon the certification of the record in the proceeding to the Director, or when he shall have withdrawn from the proceeding upon considering himself disqualified, or when he has been withdrawn by the Director for good cause shown.

(f) **Disqualification Of Hearings Officer.** Upon approval of the Director, a hearings officer assigned by the Director to hold a hearing and to make recommendations shall withdraw from the Director, for good cause found, after timely affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the Director.

(g) **Substitution.** A hearings officer may be substituted at any time for the hearings officer previously presiding.

(h) **Unavailability Of Hearings Officer.** In the event the hearings officer designated to conduct the hearing becomes unavailable, the Director may designate another hearings officer for the purpose of further hearing or issuance of a report and a recommendation on the record as made, or both.

§5211. Same: Motions. (a) **During Hearing.** All motions made during a hearing shall be made part of the record of the proceedings.

(b) Before or After Hearing.

(1) **Form; Contents.** All motions other than those made during a hearing shall be made in writing to the Director or hearings officer, and shall briefly state the relief sought and shall be accompanied by affidavits setting forth the grounds upon which they are based.

(2) **Service Of Motions.** The moving party shall serve a copy of all motion papers on all other parties and shall, within three (3) working days thereafter, file with the Director the original and five (5) copies with proof of service.

(3) **Answering Affidavits.** Answering affidavits, if any, shall be served on all parties and the original thereof, together with five (5) copies and proof of service, shall be filed with the Director within five (5) working days after service of the motion papers, unless the Director directs otherwise.

(4) **Ruling.** The Director may rule upon motions filed with the Director or it may refer the ruling of the motions to the hearings officer.

(5) **Argument; Testimony.** The Director may decide to hear oral argument or testimony thereon, in which case the Director shall notify the parties of such fact and of the time and place of such argument or for the taking of such testimony.

(6) **Review.** Unless expressly authorized by the Director, rulings of a hearings officer shall not be appealed directly to the Director, but shall be considered by the Director when it considers such exceptions to the Report and recommendations of the hearings officer as may be filed.

§5212. Same: Waiver of Objection. An objection not duly urged before the hearings officer shall be deemed waived unless the failure to urge such objection shall be excused by the Director because of extraordinary circumstances.

§5213. Same: Appearance at Hearings. (a) **Appearance.** The provisions of 2 GAR §5204 shall govern appearances at the hearing.

(b) **Witness.** All witnesses shall appear in person and shall be examined under oath or affirmation.

§5214. Same: Depositions. (a) **Written Application.** Upon application and for good cause shown, the Director or hearings officer may permit the parties to take deposition upon oral examination or written interrogatories in the manner prescribed under the Guam Rules of Civil Procedure.

(b) **Filing of Copy.** A copy of the deposition or interrogatories shall be filed with the Director or hearings officer.

§5215. Same: Rules of Evidence. (a) **Technical Rules.** In any proceeding, the Director or hearings officer shall not be bound by technical rules of evidence.

(b) **Irrelevant, Immaterial, Repetitious Evidence.** All irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) **Rules of Privileges.** The Director shall give effect to

rules of privileges recognized by law.

(d) **Documentary Evidence.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.

(e) **Cross-Examination.** Each party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence.

(f) **Judicially Recognizable Facts.** The Director or hearings officer shall take notice of judicially recognizable facts.

(g) **Generally Recognizable Technical or Scientific Facts.** The Director or hearings officer may take notice of generally recognizable technical or scientific facts within its specialized knowledge; but parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

§5216. Same: Contemptuous Conduct. (a) **Grounds for Exclusion.** Contemptuous conduct at any hearing shall be grounds for exclusion from the hearing.

(b) **Refusal of Witness to Answer.** The refusal of a witness at any such hearing to answer any question which has been ruled to be proper may, in the discretion of the Director or hearings officer, be grounds for striking all testimony previously given by such witness on related matters.

§5217. Same: Documents. (a) **Amendment of Documents.**

(1) **Time to Amend.** Any document filed in a proceeding may be amended, in the discretion of the Director, at any time prior to the issuance of a final order thereon.

(2) **Amendment or Dismissal of Documents.** If such document is not in substantial conformity with

the applicable rules of the Director as the content thereof, or is otherwise insufficient, the Director, on its own motion, or on motion of any party, may strike or dismiss such document, or require its amendment.

(3) **Effective Date of Amended Document.** If amended, the document shall be effective as of the date of the original filing, if it relates to the same proceeding. [1.05 (f)(16)]

(b) **Retention of Documents by Director.**

(1) **Retained In Files Of Director.** All documents filed with or presented to the Director shall be retained in the files of the Director.

(2) **Withdrawal Of Original Document.** The Director may permit the withdrawal of original documents upon submission or properly the authenticated copies to replace such documents. [1.05 (f)(17)]

§5218. Same: Substitution of Parties. Upon motion and for good cause shown, the Director may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.

§5219. Same: Consolidation of Proceedings. The Director, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider two (2) or more proceedings which involve substantially the same parties or issues if it finds that such consolidation of proceedings or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

§5220. Same: Intervention in Proceeding. (a) **Petition to Intervene.** In any proceeding other than representation proceedings, petition to intervene and become a party thereto shall submitted in writing to the Director or hearings officer.

(b) **Contents of Petition.** The petition shall make reference to following:

(1) Nature of petitioner's statutory or other right.

(2) Nature and extent of his interest.

(3) Effect of any decision in the proceeding on petitioner's interest.

(4) Other means available whereby petitioner's interest may be protected.

(5) Extent petitioner's interest may be represented by existing parties.

(6) Extent petitioner's participation can assist in development of a sound record.

(7) Extent petitioner's participation will broaden the issue or delay the proceeding.

(8) Extent petitioner's interest in the proceeding differs from that of the general public.

(9) How the petitioner's intervention would serve the public interest.

(c) **Filing of Petition.** The original and five (5) copies of the petition shall be filed, with proof of service on all interested parties, with the Director.

(d) Granting or Denying Intervention.

(1) Denial Of Intervention. Intervention shall not be granted except on averments which are reasonably pertinent to the issues already presented, but do not unduly broaden them.

(2) Granting Of Intervention. If intervention is granted, the petitioner thereby becomes an intervenor and a party to the proceeding to the degree indicated by the order allowing intervention.

§5221. Same: Stipulation of Fact. (a) **Agreed Statement Of Fact.** In any proceeding, an agreed statement of facts may be introduced into the record with respect to any issue.

(b) **Acceptance Of Agreed Statement Of Facts.** An agreed statement of facts may be accepted by the Director or hearings officer without a hearing.

(c) **Waiver Of Hearing.** The Parties to an agreed statement of facts may agree to a waiver of a hearing.

§5222. Same: Burden of Proof. The charging party, in asserting a violation of the Act or the rules, shall have the burden of proving the allegations by a preponderance of the evidence.

§5223. Same: Argument; Briefs; Proposed Findings.

(a) **Oral Argument.** Any party shall be entitled, upon request made before the close of the hearing, to present oral argument.

(b) **Briefs; Proposed Findings.** Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of facts and conclusions of law, or both, with the hearings officer within such time as may be fixed by the hearings officer, but not in excess of ten (10) working days from the close of the hearing.

(c) **Direction Of Argument; Briefs; Proposed Findings.** The hearings officer may direct oral argument or the filing of briefs or proposed finds of facts, conclusions of law, or both, when he deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein.

(d) **Request For Extension Of Time To File Briefs Or Proposed Findings.** A request for extension of time within which to file a brief or proposed findings shall be in writing, filed with the Director at least three (3) working days before the expiration of the required time for filing and indicate the position of the other parties with regard to such request.

§5224. Same: Hearings Officer's Report and Recommendations. (a) **Submission of Recommendations.** The hearings officer shall prepare a report setting forth findings of facts, conclusions of law and the reasons therefor, and a recommended order and submit the report of the case to the Director.

(b) **Contents of Record.** The record shall include the petition, notice of hearing, motions, rulings, orders, electronic recording of the hearing, stipulations, documentary evidence, proposed findings or other document submitted by the parties, objections to the conduct of the hearing and the report of the hearings officer.

(c) **Service of Hearings Officer's Report.** The hearings officer shall cause a copy of his report to be served upon all parties to the proceedings. [1.05(f)(24)]

(d) **Exceptions to Hearings Officer's Report And Recommendations.**

(1) **File; Form; Copies; Time; Service.** Within ten (10) working days, or as otherwise provided by the rules of the Director, after service of the report and recommendations of the hearings officer, a party may file with the director an original and five copies of a statement in writing, setting forth exceptions thereto, and an original and five (5) copies of a brief in support thereof shall be filed with the Director simultaneously, at which time copies of such exceptions and briefs shall be served upon each party to the proceeding.

(2) **Contents of Exceptions.** The exceptions shall:

a. Set forth specifically the questions of procedure, fact, law or policy to which exceptions are taken.

b. Identify that part of the hearing officer's report and recommended order to which objections are made.

c. Designate by page citation the portions of the record relied upon.

d. State the grounds for exceptions. An exception to a ruling, finding, conclusion or recommendation which is not specifically urged is waived. [1.05(f)(25)]

(e) **Support of Hearings Officer's Report and Recommendations.**

(1) **File; Form; Copies; Time; Service.** Within ten (10) working days, or as otherwise provided by the rules of the Director, after service of the report and recommendations of the hearings officer, a party may file with the Director an original and five (5) copies of a statement in writing in support thereof and an original and five (5) copies of a brief in support thereof shall be filed with the Director simultaneously, at which time copies of such support and brief shall be served upon each party to the proceeding.

(2) **Contents Of Support Brief.** The Support Brief shall:

a. Set forth specifically the questions of procedure, fact, law or policy to which support is given.

b. Identify that part of the hearing officer's report and recommendations to which support is.

c. Designate by page citation the portions of the record relied upon.

d. State the grounds for support. [1.05 (f)(26)]

§5225. Same: Request for Extension of Time. (a) **Form; Filing; Time.** A request for extension of time within which to file exceptions or support briefs shall be in writing, filed with the Director at least three (3) working days before the expiration of the required time for filing, and indicate the position of the other parties with regard to such request.

(b) **Copies; Service.** Copies of such request for extension of time shall be served on each party to the proceeding and proof of service thereof shall be filed with the Director together with the request.

§5226. Same: Oral Argument Before the Director. (a) **Parties.** If a party desires to argue orally before the Director, a written request with reasons therefor shall accompany the exceptions or the support briefs filed and the Director may grant such request.

(b) **Director.** The Director may direct oral argument on

its own motion.

§5227. Same: Director's Action. (a) In the event no statement of exceptions is filed as herein provided, the Director may reverse, modify or adopt the recommendations of the hearings officer.

(b) Upon the filing of a statement of exceptions and briefs, the Director may render its decision forth with upon the record, or after oral argument, or may reopen the record and receive further evidence or may make other disposition of the case. [1.05(f)29]

(c) Decisions and Recommendations of the Director.

(1) **Service.** All opinions or recommendations entered by the Director in a proceeding shall be served upon the parties or persons participating in the proceeding by regular mail or personal delivery by the Director and may be released for general publication.

(2) **Inspection; Copies.** Copies of such published material shall be available for public inspection in the office of the Director. [1.05(f)30]

§5228. Same: Unauthorized Ex Parte Communication.

(a) **Ex Parte Communication.** Unauthorized ex parte communications are defined as private communications or arguments with the Director or its hearings officer as to the merits of a proceeding with a view towards influencing the outcome of the cause, except that the following classes of ex parte communications shall not be prohibited:

(1) Those which relate solely to matters which the Director or hearings officer is authorized to dispose of on ex parte basis.

(2) Requests for information with respect to the status of a proceeding.

(3) Those which all parties to the proceeding agree or which the Director has formally ruled may be made on an ex parte basis.

(4) Those with representatives of any news media on matters intended to inform the general public.

(b) **Unauthorized Communication.** No public employee, employee organization, public employer or any other person or organization, whether or not a party to a proceeding before the Director shall make an unauthorized ex parte communication either oral or written about the proceeding to the Director or hearings officer who will be a participant in the decision-making process.

§5229. Same: Adoption, Amendment or Repeal of Rules. (a) **Who May Initiate.** Any public employee, employee organization, public employer or interested person or organization may petition the Director for the adoption, amendment or repeal of any rule of the Director.

(b) **Petition.** The petition need not be in any special form but it shall contain the following:

(1) The name, address, zip code and telephone number of each petitioner.

(2) The signature of each petitioner.

(3) A statement of the nature of petitioner's interest.

(4) A draft or the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.

(5) A statement of the reasons in support of the proposed rule, amendment or repeal.

(6) Any other information pertinent to the petition.

(c) **Filing.** The petition shall be submitted in original and five (5) copies to the office of the Director.

(d) **Granting Or Denial Of Petition; Time Limitation.** The Director shall within thirty (30) days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with the procedures provided herein for the adoption, amendment of repeal or rules, as the case may be.

(e) **Petition Must Conform To Requirement.** Any petition which does not conform to the requirements specified herein may be rejected.

(f) **Initiation.** The Director may, at any time on its own motion, initiate proceedings in accordance with the procedures provided herein for the adoption, amendment or repeal of rules.

Part C. Procedural Guide for Conduct of Elections

- §5301. Introduction.
- §5302. Election Conference.
- §5303. Notice of Election.
- §5304. Same: Date.
- §5305. Same: Hours.
- §5306. Same: Place.
- §5307. Same: Payroll Period for Eligibility.
- §5308. Same: Ballot.
- §5309. Election Procedures.
- §5310. Same: Ballots and Ballot Box.
- §5311. Same: The Count.
- §5312. Conducting the Election.
- §5313. Electioneering.
- §5314. Observer-in-Charge.

§5301. Introduction. [1] Section 5108 of this Chapter provides that all elections shall be conducted under the supervision of the Director of Administration and shall be by secret ballot. In implementing this responsibility, the Director of Administration hereby issues those regulations covering election procedures. In order to insure a measure of uniformity, observance of generally accepted principles of election conduct, and to encourage compliance with the requirements of the Public Employee-Management Relations Act, this procedural guide has been prepared for use by the agencies and labor organizations.

The Public Employee-Management Relations Act places responsibility for the supervision of representation elections upon the Director of Administration. However, arrangements for the conduct of the election is the responsibility of the agency or activity and the petitioning agent(s). In this connection, the agency or activity and petitioning agent(s) will reproduce Notices of Election, ballots and other election materials, and also will provide adequate facilities for the orderly and expeditious conduct of the election.

Experience has demonstrated that agencies and labor organizations are generally able to agree on appropriate election details. Accordingly, subsequent to a notice of election from the Director of Administration, the parties are expected to meet as soon as possible for the purpose of attempting to agree upon and work out the details of the election to be conducted. An election agreement form (Appendix A) is to be used in all elections, and will be

made available at the Office of the Director of Administration.

In the event that the parties cannot agree on any of the election details or procedures, the Director of Administration shall decide such matters. In order to assure the availability of a member of the Director of Administration's staff, a representative of the parties should consult the Director of Administration before determining the date of the election and the counting of ballots.

Sections 4 GCA §§10103 and 10108 excludes certain employees from being included in a unit. Petitions and election agreements, therefore, should specifically exclude management officials, supervisors, guards and employees engaged in Personnel work within the meaning of The Public Employee-Management Relations Act .

§5302. Election Conference. (a) **Participants.** The agency or activity, the petitioner and all intervenors who have complied with 2 GAR §5207(b) and who wish to appear on the ballot, should meet and attempt to reach an agreement on all election details. Their agreement should be contained in a signed election agreement.

(b) **Secrecy of Ballot.** Election arrangements should allow all eligible voters an opportunity to cast a free and secret ballot during working hours. Not only should the employees have an opportunity to cast a secret ballot, but also the procedures followed should satisfy the individual voter that the SECRECY of his ballot is assured and that the ballots and ballot box are protected at all times. All employees and all parties should be satisfied that the true sentiments of the employees have been demonstrated by the election. It is not enough that the election was fair and honest. The arrangements, procedures and safeguards must convince the parties and the employees of this fact. The text of an election agreement is attached.

(c) Subject Matters to be Discussed at the Conference:

- (1) Purpose of Election
- (2) Description of the Unit
- (3) Date of Election
- (4) Hours of Election

- (5) Place of Election
- (6) Payroll Period for Eligibility
- (7) The Ballot
- (8) Challenge Ballot Procedure
- (9) Provision for Observers
- (10) Period for Posting
- (11) Checking of Eligibility List
- (12) Position on the Ballot
- (13) Custody of the Ballots and Ballot Box
- (14) Count of Ballots
- (15) Electioneering
- (16) Observer-in-Charge.

§5303. Notice of Election. (a) Purpose of the Election.

The Notice of Election should advise the employees in the unit that an election is to be conducted to determine whether they desire to be represented on an exclusive basis by a named labor organization under the provisions of Public Law 9-240. The agency or activity will prepare the Notice of Election in such a fashion as to insure the maximum publicity considering the number of employees in the unit. Where there are large numbers of employees, the notices should be made in a fashion that would allow easy identification of employees in the unit.

(b) **Description of the Unit.** The unit description should specify both included and excluded classifications.

§5304. Same: Date. The election should be conducted on a day or days when the maximum number of eligible employees will be at work. For example, days immediately before or after holidays should be avoided, because many employees take leave, whereas paydays customarily result in maximum attendance. Attendance patters for the unit should provide guidance in connection with this choice. Elections should never be held when a large number of employees are absent on official business. However, elections should normally be held within thirty (30) days after the election agreement is signed.

§5305. Same: Hours. Sufficient time should be provided to give all eligible employees a chance to vote. In single shift operations, early morning hours are desirable. In two-shift operations, the polls should be opened in the afternoon to vote both the shift going off and the shift reporting to work. A single afternoon voting session which overlaps shift changing times will make it unnecessary to

close a morning poll and reopen an afternoon poll for the second shift. In three-shifts operations, an early morning poll will serve the third and first shift, and an afternoon poll will serve the second shift.

The following factors should be considered when deciding on voting hours:

(1) The time and distance separating employees from the polling place. In large installations, several polling places may be operated simultaneously. Each polling place, however, must have a single list of eligible employees scheduled to vote at that particular poll. Such lists must be carefully compared in advance to eliminate the possibility of duplicate listings and, therefore, repeat voting.

(2) The number of employee in the unit. Approximately two hundred (200) employees can vote per hour at a poll with one (1) checking table and four (4) voting booths. Most time consumed at a polling place is spent in the voting booth. In large units, eligibility lists should be broken down to permit separate checking tables for groups, such as departments, buildings or names in alphabetical order. A-G, H-O and P-Z are groupings that should result in fairly even distribution.

(3) Release of employees. In large elections, groups of employees should be released to vote according to predetermined schedules. Controlled and measured release of voters allows an orderly vote and reduces long lines at the polls which frequently discourage voters and increase the possibility of horseplay, electioneering or other disorder.

Polls should be opened as scheduled, and they must remain open according to schedule.

§5306. Same: Place. The location of voting places should take into consideration the distances to be travelled by employee from their work stations. Easy and convenient access to the polls will produce full participation; long walks, long voting lines or delays will not only affect production, but also reduce the vote, particularly if voting hours extend past normal quitting

times. However, polling places should not be placed in production areas where working employees will be distracted. Polls should be placed in accessible places, but away from routine traffic. Ideally, polls should be in rooms with two (2) doors, an entrance and an exit, to facilitate movement of voters.

Where there will be multiple polling places, care should be exercised to reduce the possibility of voters attempting to vote at polls where their names are not listed. Pre-voting publicity is of extreme importance to make certain the voter goes to the right polling place.

§5307. Same: Payroll Period for Eligibility. The parties should agree on an eligibility date. Employees hired after the fixed eligibility date will be ineligible. An eligibility date should be chosen which will produce the greatest possible participation. The payroll period immediately preceding the execution of the election agreement is generally acceptable. Employees on sick leave, annual leave or on furlough should be considered eligible to vote, as should employees who have been advised of transfer, layoff or discharge but who are scheduled to work in the unit on election day. Temporary or casual employees should be ineligible. In runoff situations the original eligibility date will be controlling.

§5308. Same: Ballot. Three (3) kinds of ballots may be used.

Where a single labor organization seeks recognition a "Yes/No" type ballot should be used. Voters are asked "Do you wish to be represented for purposes of exclusive recognition under the provisions of Public Law 9-240 by the XYZ labor organization?" A "Yes" and a "No" square is provided and the voter must place his mark in one (1) box. Ballots must not be signed or otherwise marked for identification.

Where more than one (1) labor organization is involved, the labor organizations may be listed side by side, over separate squared, and there should be a "Neither" or "None" square.

A third type of ballot is used for a mutual-determination professional/nonprofessional employee

election. This ballot should provide choices (1) as to whether the professional and nonprofessional employees wish to be included in a single bargaining unit, or (2) constitute separate units, and (3) whether they wish to be represented by the named labor organization(s). Where the organization seeks to represent both professional and nonprofessional employees in a single unit, and all employees are voting at the same time, the ballots should first be counted to determine the mutual desire of both professional and nonprofessional employees for inclusion into one single unit. If both vote for inclusion, their ballots should be pooled into one, and the determination of majority status should be made on the basis of total votes cast.

One other type of self-determination election which can arise is one in which labor organization "A" files a petition for an appropriate unit which is a large comprehensive grouping (e.g. all blue collar employees) and labor organization "B" files a petition for a portion of that unit (department, craft) which is also appropriate. Under these circumstances, when all parties agree on the appropriateness of the units, two (2) elections should be held simultaneously. One voting unit should consist of all employees petitioned for by "A" but excluding that group of employees petitioned for by "B". The ballot should provide for a choice between labor organization "A" and no union. The ballot for the second election, i.e. the smaller unit petitioned for by labor organization "B", would provide for choices among labor organizations "A", "B" or "Neither". If a majority of the employees vote for "B" they will be taken to have indicated their desire to constitute a separate bargaining unit, and labor organization "B" would be certified and the votes in the remaining unit would then be tallied and an appropriate certification of results or representative would be issued. If a majority of employees in the smaller unit did not vote for labor organization "B" which is seeking to represent them separately, this group will be included in the more comprehensive unit petitioned for by labor organization "A" and the votes for and against labor organization "A" shall be pooled with those votes for and against "A" in the larger, more comprehensive voting group. If the votes are pooled, the votes for labor organization "B" shall be counted as valid votes but neither for nor against labor organization "A" which is seeking to represent the more comprehensive unit.

The above two (2) illustrations are examples of situations which may arise in the course of resolving majority status problems. Other variations which under the same principle of self-determination may be severance elections and residual elections involving one or more voting groups and one or more labor organization.

The ballots should be printed on colored paper. The color used should not, however, be disclosed until the election starts. Labor organizations frequently post or distribute sample ballots, and voters who enter the booth with campaign literature may become confused and drop campaign literature into the ballot box.

If labor organizations' names are too long to fit available space, or if two (2) or more rivals have similar or confusing names, popular names or recognized initials may be used to help the voter.

§5309. Election Procedures. [4] The following procedures and provisions should be utilized the election process:

(a) **Challenge Ballot.** Observers may not challenge the eligibility of voters whose names appear on the eligibility list.

(b) **Provision for Observers.** Each party hereto will be allowed to station not more than two (2) authorized observers, selected from among the employees of the bargaining unit at the polling places during the election to assist in its conduct and to verify the tally.

Observers shall:

- (1) Identify voter.
- (2) Check off the name of the person applying to vote.
- (3) See that only one (1) voter occupies a booth at any one time.
- (4) See that each voter deposits a single ballot in the ballot box.
- (5) See that each voter leaves the voting room immediately after depositing his ballot in the ballot box.

(6) Periodically check the voting booth to make sure no campaign material has been left in the booth.

(7) Remain in the voting place until all ballots are counted in order to check on the fairness of the count.

(8) Assure that employees have the opportunity to vote by secret ballot without coercion or interference from any party.

(9) Safeguard the ballot box.

Observers shall NOT:

(1) Electioneer during the election.

(2) Argue with voters or one another, or discuss the desirability of voting one way or another.

(3) Leave the polling place.

(4) Use intoxicating liquors during duty hours, or appear for duty while under the influence of intoxicants.

(5) Keep any lists of those who have or have not voted.

(6) Wear any propaganda buttons, placards or advertising on their clothing or person.

Observers are official representatives of the parties, and should perform their duties with fair and open minds. Observers must conduct themselves so their actions during the election are above reproach. Observers' manner, so that each eligible voter has a fair and equal chance to cast a secret, uncoerced ballot.

(c) **Period for Posting.** Notices should be posted for at least seven (7) working days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps should be taken to insure that such notices are not altered, defaced or covered by any other material.

(d) **Provision for Checking the Eligibility List.** A pre-election conference should be held as soon as an eligibility list has been prepared by the agency, at least several days before the election. Labor organizations must be able to examine the eligibility list, and to raise any question concerning listings or omissions. Most eligibility problems can be resolved at the conference. Names may be added or deleted from the list. The Director of Administration shall decide on all

eligibility questions including those where asserts that a name should be added or deleted and the agency disagrees.

After the list has been checked, all parties should initial the list, and the initialed list will be the official eligibility list. Initialing will be construed as a waiver of the right to challenge.

§5310. Same: Ballots and Ballot Box. (a) **Position on the Ballot.** The place on the ballot should be agreed upon. If agreement cannot be reached, coin flipping, choice of straws or some other game of chance should be used to decide the issue. In the event the parties refuse to resort to chance selection, the Director of Administration will decide the matter. [4E]

(b) **Custody of the Ballots and Ballot Box.** The Director of Administration shall prepare the ballots. They must be kept in a secure place until used. The color of the ballot should not be disclosed to any party or any voter. The ballot box and ballots should be in the observers' custody from the start of the election until the count. The ballot box should be large enough to contain all the marked and folded ballots or several boxes should be used in large elections. Under no circumstances should a ballot box be opened during the course of balloting in order to transfer ballots from one ballot box to another. Boxes may be of any material, but they should be so constructed that it is possible to seal them if the box is to be stored or transported before ballots are counted. A corrugated paper box which may be sealed properly with observers' signatures across the seals usually is adequate. During breaks in the election, the slot in the box should be sealed and signed by the observers. The unused ballots should be placed in an envelope which should then be sealed and signed by the observers. Transparent tape should be placed over each signature. The ballots and ballot box should be kept in a pre-determined secure place. If the ballots are to be sent elsewhere for the count, they should be removed from the ballot box by the observers and mailed in their folded condition. The mailing envelope should be sealed and signed by all observers, and transparent tape should be placed over each signature. The envelope should be clearly marked "NOT TO BE OPENED" and also should be marked "BALLOTS" to prevent mailroom employees from opening it. Mailroom

employees should be warned that such an envelope is expected. The outside of the envelope should also identify the contents as to unit, installation and polling place. Furthermore, if more than one (1) envelope is sent from any one voting place, the envelopes should all be marked, in addition to the above, "Envelope #1 of 2", "Envelope #2 of 3", etc. [4F]

Neither ballots nor ballot box should be unattended once the election has started.

§5311. Same: The Count. Agency or activity and labor organization officials should be permitted to attend the count. However, ballots should be handled only by the "observer-in-charge". See 2 GAR §5314 below.

Where several voting places have been used, all the ballots should be commingled before the count. There should be no attempt to determine how a particular group of employees has voted.

After all the ballots have been mixed on a large table, the observers should open them, and should sort them into piles according to choice. Each pile should be counted and tallied by the observers. The "observer-in-charge" should show each ballot to the other observers as he counts. After fifty (50) ballots have been counted for a particular choice, they may be bundled together.

The observers shall interpret ballots not marked in a normal manner. If the observers do not agree on the voter's intent, the ballot should be placed in an envelope, and the circumstances should be noted on the outside. Ballots should be liberally construed in favor of validity. If intention is clear despite unorthodox markings, extra markings or erasures, the ballot should be counted unless the voter's name or other identification appears. Blank ballots are to be considered as void. Void ballots shall be counted as such, and should be packaged separately.

A Tally of Ballots Should be Signed by Observers.

In most elections a simple tally sheet will be sufficient to record the tally and the witnesses to the tally.

§5312. Conducting the Election. Voting places should

be well lighted, and should contain a table and chairs for the observers, a chair or stand on which to place the ballot box, and voting booths. Booths should be like those used in political elections. The front curtain of the booth, however, should not be so long that it is impossible to ascertain if a voter is in the booth without opening the curtain. In many areas voting booths can be borrowed from civic election authorities. A separate office, locker room or other enclosed space can serve as a voting booth if it provides absolute privacy.

The observers should sit at a checking table with an initialed eligibility list. When a voter appears, he should give his name, and the observers should check the name on the eligibility list with a definite, agreed mark. Each observer should make his mark by each name with a pencil of distinct and different color. After the name is marked, the voter should be given a ballot. He should then enter the booth, mark and fold his ballot, and drop it into the ballot box, which should be outside the booth in plain view of observers. Only the voter should handle the ballot he has received. After depositing the ballot in the box, the voter should leave the polling place.

In large elections, a second set of observers may sit near the ballot box, but they should NOT handle the ballots. These observers are to watch the voting booths to see that only one (1) voter at a time enters a booth and to see that each voter deposits his ballot before leaving the polling place. Relief observers may be designated when long voting periods are involved.

If a ballot is spoiled, the voter should return it to the observer from whom he received it and place it in an envelope marked "spoiled ballot" which he must seal before receiving a new ballot. Spoiled ballot envelopes should never be opened. All ballots should be retained until the case is closed, and they should then be destroyed.

Neither supervisors, managerial employees nor labor organization officials should be in or near the polling place while the election is being conducted. Only official observers and voters may be in voting places during an election.

After the polls are closed the observers should sign a certificate of conduct. Objections to signing may be

expressed in separate signed statements, containing reasons. The slot in the ballot box should be sealed over, and the seals should be signed by the observers. Observers should then take the sealed ballot box, unused ballots and all other election material to the place where counting will occur. Where there are several voting sessions, ballot boxes should be sealed and signed at the end of each session, a certificate of conduct should be signed, and the election material should either remain in the custody of the observers or should be placed in a secure place. During prolonged intervals between voting sessions the unused ballots should also be sealed with the seal signed by the observers.

§5313. Electioneering. No electioneering will be allowed in or near polling places on the day of election. The Director of Administration may remove from the ballot any party violating this rule.

§5314. Observer-in-Charge. An agreed upon "observer-in-charge" at a polling place should be the only observer handling ballots or assisting voters. If a voter does not understand the ballot, it should be read to him, and the "observer-in-charge" should point out the physical positions of all choices on the ballot in the presence of the other observers. No observer should enter a voting booth with a voter. The Director of Administration shall designate "observer-in-charge".

Where the voting hours are lengthy, the Director of Administration should consider rotating the "observer-in-charge" position. When there is more than one voting place, the "observer-in-charge" position should be equally distributed among the parties to the extent possible.

SOURCE: Rules filed with the Legislative Secretary; amended by Executive Order 79-17, filed August 30, 1979 and Executive Order 79-29, filed December 14, 1979.

APPENDIX A

AGREEMENT FOR CONSENT OR

DIRECTED ELECTION

Pursuant to a Petition duly filed under 4 GCA Chapter 10 and its implementing rules and regulations, the undersigned parties hereby AGREE AS FOLLOWS:

1. **SECRET BALLOT** - An election by secret ballot shall be conducted under the supervision of the Director of Administration among the employees of the undersigned Agency or Activity in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for purposes of exclusive recognition by (one of) the undersigned labor organization(s).

2. **ELIGIBLE VOTERS** - The eligible voters shall be those employees included in the eligibility list. Those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date are ineligible to vote.

3. **NOTICES OF ELECTION** - The Director of Administration shall prepare a Notice of Election and furnish copies to the parties setting forth the details and procedures for the election to be held and incorporating therein a sample ballot. The Agency or Activity shall post such Notices of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. **OBSERVERS** - Each party hereto will be allowed to station not more than two (2) authorized observers, selected from among the employees of the bargaining unit at each polling place during the election to assist in its conduct and to verify the tally.

5. **TALLY OF BALLOTS** - As soon after the election as feasible, the votes shall be counted and tabulated by the observers. Upon the conclusion of the counting, the Director of Administration shall cause to be furnished a Tally of Ballots to each of the parties.

The Director of Administration shall issue to the parties a certification of the results of the election.

6. OBJECTIONS, CHALLENGES, INVESTIGATIONS AND DETERMINATIONS THEREON - Objections to the conduct of the election or conduct affecting the results of the election shall be filed in accordance with §5109(b) of the rules and regulations.

7. RUNOFF PROCEDURE - In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election received a majority of the eligible votes in the bargaining unit, the Director of Administration shall proceed in the preparation for a runoff election. After eliminating those ballot choices which received less than fifteen percent (15%) of the total vote cast.

8. WORDING ON THE BALLOT - Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" and "No". In the event more than one labor organization is signatory to the agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom.

First.

Second.

Third.

9. ELIGIBILITY PERIOD FOR PARTICIPATING IN THE ELECTION -

10. DATE, HOURS AND PLACE OF ELECTION

-

11. THE APPROPRIATE UNIT -

12. CUSTODY OF THE BALLOTS AND BALLOT BOX -

The ballots and ballot box will be securely stored between voting sessions in room _____.

13. **THE COUNT** of ballots will take place on _____, at _____, in _____,
(Date) (Hour) (Place)

14. Check (A) or (B)

(A) The parties agreed to all the details of the election.

(B) The Director of Administration decided the following details:

(Agency or Activity) (Name of Labor
Organization) or Employee Petitioner)

By _____
(Name and Title) (Date)

(Name and Title) (Date)

Date Approved _____

(Director of Administration) (Name of Labor
Organization)

By _____
(Name and Title) (Date)

Case No. _____