

# NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

##### PREAMBLE

#### **1. Sections Affected**

#### **Rulemaking Action**

R4-2-101	Amend
R4-2-102	Amend
R4-2-103	Amend
R4-2-104	Amend
R4-2-105	Amend
R4-2-201	Amend
R4-2-202	Amend
R4-2-203	Amend
R4-2-204	Amend
R4-2-205	Amend
R4-2-206	Amend
R4-2-207	Amend
R4-2-208	Amend
R4-2-209	Amend
R4-2-210	Amend
R4-2-211	Amend
R4-2-212	Amend
R4-2-213	Amend
R4-2-214	Amend
R4-2-215	Amend
R4-2-216	Amend
R4-2-217	Amend
R4-2-218	Amend
R4-2-219	Repeal
R4-2-301	Amend
R4-2-302	Amend
R4-2-303	Amend
R4-2-304	Amend
R4-2-305	Amend
R4-2-306	Repeal
R4-2-307	Repeal
R4-2-308	Repeal
R4-2-309	Repeal
R4-2-310	Repeal
R4-2-311	Repeal
R4-2-401	Amend
R4-2-402	Repeal
R4-2-403	Repeal
R4-2-404	Repeal
R4-2-405	Repeal
R4-2-406	Repeal
R4-2-407	Amend

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 23-1387(B) and 23-1389

Implementing statutes: A.R.S. §§ 23-1385, 23-1387(B), 23-1390, 23-1391, and 41-1092.02

**3. The effective date of the rules:**

January 21, 2003. When approved by the Council and filed with the Office of the Secretary of State. An immediate effective date is requested pursuant to A.R.S. § 41-1032(A)(4). The rules conform the Board's hearing process, addressed fully in Article 4 and also in Articles 2 and 3, to that of the Office of Administrative Hearings. The changes will be a valuable aid to any party, labor or management, seeking to preserve their legal rights within an area of jurisdiction of the Agricultural Employment Relations Board because they simplify the hearing rules and a penalty is not associated with violation of the rules.

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 1191, March 22, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 3980, September 20, 2002

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Sherry D. Blatner, Rules Specialist

Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: sherry.blatner@agric.state.az.us

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking was initiated to meet commitments made by the Agricultural Employment Relations Board in the five-year review of its rules approved by the Governor's Regulatory Review Council on November 6, 2001. Language usage is conformed to the current publication standards of the Office of the Secretary of State. The procedures established for hearings are standardized to those available in A.R.S. Title 41, Chapter 6, Article 10. Conflicts between authority provided in statute and the current rules are eliminated. Definitions are added or deleted to provide greater clarity.

**7. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

A. *The Agricultural Employment Relations Board.*

The Board will incur modest expenses related to educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Board, implementation of this rulemaking will directly affect the caseload of the Office of Administrative Hearings.

C. *Businesses Directly Affected By the Rulemaking.*

The regulated community the Board serves, and their attorneys, will be beneficially affected by the use of the uniform administrative procedures of the Office of Administrative Hearings.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Based on comments from Board and Council staff, minor clarifying and technical changes were made to the final rule.

**11. A summary of the comments made regarding the rule and the agency response to them:**

No comments were received.

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD**

**ARTICLE 1. GENERAL PROVISIONS**

Section

R4-2-101.	<del>Terms, Definitions</del>
R4-2-102.	Strikes
R4-2-103.	Notice of Appearance; Signing of Pleadings and Documents; Filing of Documents
R4-2-104.	Service of Process and Legal Documents
R4-2-105.	Computation of Time

**ARTICLE 2. ELECTIONS**

Section

R4-2-201.	Contents of Petition for Election
R4-2-202.	Withdrawal of Petition
R4-2-203.	Challenge to Petition; Waiver
R4-2-204.	Investigation of Petition
R4-2-205.	Time for Submission of Authorizations
R4-2-206.	Form and Content of Authorizations
R4-2-207.	Validity of Authorizations
R4-2-208.	Confidentiality of Authorizations
R4-2-209.	Showing of Interest Computation
R4-2-210.	Existence of a Question of Representation
R4-2-211.	Notice of Hearing
R4-2-212.	Intervention by a Subsequent Labor Organization
R4-2-213.	Peak Employment During Eligibility Period and Election
R4-2-214.	Election Procedures
R4-2-215.	Objections to Election
R4-2-216.	Investigation of Objections to Election
R4-2-217.	Run-off Elections
R4-2-218.	Consent-election Agreements
R4-2-219.	<del>Duties and Powers of Hearing Officer</del> <u>Repealed</u>

**ARTICLE 3. UNFAIR LABOR PRACTICES**

Section

R4-2-301.	Unfair Labor Practice Charges
R4-2-302.	Form and Contents of Charge
R4-2-303.	Investigation of Charge
R4-2-304.	Complaint
R4-2-305.	Refusal to Issue Complaint
R4-2-306.	<del>Answer</del> <u>Repealed</u>
R4-2-307.	<del>Filing of Answer; Service</del> <u>Repealed</u>
R4-2-308.	<del>Notice of Hearing; Continuance</del> <u>Repealed</u>
R4-2-309.	<del>Consolidation and Severance of Proceedings</del> <u>Repealed</u>
R4-2-310.	<del>Discovery and Disclosure</del> <u>Repealed</u>
R4-2-311.	<del>Duties and Powers of Trial Examiner</del> <u>Repealed</u>

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

**ARTICLE 4. HEARINGS**

Section

- R4-2-401. Hearings
- R4-2-402. ~~Conduct of Hearings Repealed~~
- R4-2-403. ~~Intervention Repealed~~
- R4-2-404. ~~Subpoenas and Depositions Repealed~~
- R4-2-405. ~~Motions Repealed~~
- R4-2-406. ~~Board Review of Decisions and Orders Repealed~~
- R4-2-407. Rehearing or Review of Decision; Basis

**ARTICLE 1. GENERAL PROVISIONS**

**R4-2-101. Terms, Definitions**

~~For purposes of this Chapter, the terms listed below are defined as follows:~~ In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

1. "Act" means the Agricultural Employment Relations Act, A.R.S. Title 23, Chapter 8, Article 5, § 23-1381 et seq.  
"Administrative Law Judge" or "ALJ" means an individual, or the Board, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency decision.
2. "Authorization ~~Period~~ period" means the ~~4~~ four pay periods immediately preceding the filing of a petition for election ~~pursuant to under~~ A.R.S. § 23-1389(C).
3. "Bargaining ~~Unit~~ unit" means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).
4. "Board ~~Agent~~ agent" means any individual acting ~~for and~~ on behalf of the Board, including the Executive Secretary, the General Counsel, ~~Hearing Officers, Trial Examiners,~~ and investigators.
5. "Calendar ~~Year~~ year" means the period beginning January 1 and ending December 31.  
"Consent election" means an election held following the Board's approval of a voluntary and complete consent election agreement submitted to the Board.
6. "Eligibility ~~Period~~ period" means the ~~3~~ three pay periods immediately preceding the filing of a petition for election ~~pursuant to under~~ A.R.S. § 23-1389(C).
7. "Executive Secretary" means the Executive Secretary appointed by the Board ~~pursuant to under~~ A.R.S. § 23-1388.  
"General Counsel" means the attorney representing the Board.
8. "Hearing Officer" means ~~any person appointed by the Board to conduct a hearing in an election proceeding under the Act.~~  
"Independent contractor" means an employer engaged in the business of supplying labor to a farm or ranch.
9. "Investigator" means ~~any a person employed by with whom~~ the Board ~~for the purpose of investigating contracts to investigate~~ issues relating to unfair labor practice charges and petitions for election.
10. "Leave of ~~Absence~~ absence" means an employment status determined by the employer and the employee ~~wherein permitting the employee is permitted~~ to cease work for that employer for a specified period of time.
11. "Pay ~~Period~~ period" means the ~~7-day~~ seven-day period ~~utilized~~ used by ~~the an~~ agricultural employer for payroll purposes. If the agricultural employer does not use a ~~7-day~~ seven-day pay period, pay period means a ~~7-day~~ seven-day period, Sunday through Saturday.  
"Signature" means the name or mark of an individual, written by that individual to authenticate a writing.
12. "Trial Examiner" means ~~any person appointed by the Board to conduct a hearing in an unfair labor practice proceeding under the Act.~~

**R4-2-102. Strikes**

- A. ~~Where the employer is an independent contractor engaged in the business of supplying labor to 1 or more farms or ranches, a~~ A dispute between ~~the employer an independent contractor and the~~ agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of ~~that the~~ farm or ranch, ~~and picket signs shall~~ A person shall not use a picket sign unless the sign clearly ~~state states~~ the persons person against whom the employees ~~of or~~ their representative are conducting the strike.
- B. ~~Nothing herein shall be deemed to interfere with the right of the employees~~ Employees or their representative ~~to may~~ advertise their dispute with the agricultural employer ~~or otherwise impair their right to and engage in picketing of picket~~ the employer, ~~provided also that the picketing of the employer shall not~~ Employees or their representative shall not picket so as to interfere with the work of a neutral employers employer or suppliers supplier who are is not involved in the dispute.

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

- A. ~~Any The~~ attorney of a party to ~~any a~~ proceeding ~~or matter~~ under investigation by ~~or before~~ the Board shall promptly file a Notice of Appearance with the Board. Once filed, the notice shall remain in effect for the duration of the ~~named~~ proceed-

Notices of Final Rulemaking

ing ~~or matter~~, or until the Board is notified, in writing, that ~~authority has been revoked~~ the attorney is not representing the party. The Notice of Appearance shall contain the following information:

1. The name of the party to the proceeding;
2. The name of the case, and case number if known;
3. The name address, and telephone number of the representative; and
4. The signature of either the party or the attorney, and the date.

B. ~~Whenever any pleading or document is filed by any person in any proceeding before the Board, the signature of the person appearing on that pleading or document constitutes a certification that that person has read the pleading or document, that to the best of that person's knowledge, information, and belief, there is good cause to support it, and that it is not interposed for delay. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.~~

C. ~~Documents to be filed by any A person, entity, or organization shall file a document with the Board shall be filed at the its principal office, of the Board between the hours of 8:00 a.m. and 5:00 p.m., any Monday through Friday, with the exception of Arizona state legal holidays or by mail. A document shall not be considered is considered filed unless it has actually been on the date it is received by the Board.~~

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

A. ~~Service of petitions A person serving a petition for election, or petitions petition for decertification, and subpoenas or subpoena shall be made in accordance with serve according to A.R.S. § 23-1391(C).~~

B. ~~If an attorney of a party has entered enters an appearance in the a proceeding, then service of motions and papers upon the attorney or representative shall constitute according to A.R.S. § 23-1391(C) constitutes service upon the party.~~

**R4-2-105. Computation of Time**

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

**ARTICLE 2. ELECTIONS**

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

A. A petition for certification election, ~~when filed pursuant to under~~ A.R.S. § 23-1389(C); by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting ~~in their on the employees' behalf~~ shall be signed under oath and shall contain the following information:

1. The name of the agricultural employer;
2. The address of the agricultural employer;
3. A description of the bargaining unit ~~which that~~ the petitioner claims to be appropriate;
4. The approximate number of employees in the alleged appropriate unit;
5. A brief statement that the employer declines to recognize the petitioner as a bargaining representative within the meaning of A.R.S. § 23-1382(10) or that the petitioner is currently recognized but desires certification under the Act;
6. The name, affiliation, if any, and address of petitioner;
7. The ~~names name and addresses address~~ of any other ~~persons or labor organizations person~~ who ~~claim claims~~ to represent ~~any employees an employee~~ in the alleged appropriate bargaining unit;
8. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date ~~such the~~ strike or picketing commenced;
9. A statement that the petition for election is supported by 30% percent or more of the agricultural employees in the bargaining unit; and
10. Any other relevant ~~facts fact~~.

B. A petition for decertification election, ~~when filed pursuant to under~~ A.R.S. § 23-1389(J); by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting ~~in their on the employees' behalf~~ shall be signed under oath and contain the following information:

1. The name and address of the petitioner;
2. A statement that:
  - a. ~~a A~~ representative other than petitioner has been certified, or is currently recognized by the employer, ~~and;~~
  - b. ~~petitioner Petitioner~~ desires to rescind the certification; and
  - c. ~~the The~~ unit claimed to be appropriate, a description of ~~such the~~ unit, and the number of employees in the unit;
3. The name ~~or names, the~~ affiliation, if any, and ~~the addresses address~~ of the ~~individuals or labor organizations person~~ whose recognition or certification the petitioner ~~desires seeks~~ to rescind;

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
  5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date ~~such~~ the strike or picketing commenced;
  6. A statement that the petition for decertification election is supported by 30% percent or more of the agricultural employees in the bargaining unit; and
  7. Any other relevant ~~facts~~ fact.
- C. ~~Any~~ The Board shall not accept for filing a petition for election which ~~that~~ does not contain all the information required by subsections (A) or (B) shall not be accepted for filing by the Board.
- D. ~~Within~~ The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, ~~the Executive Secretary shall~~ send a copy of the petition to the respondent named in the petition. ~~If~~ the Board certified a representative other than the petitioner ~~has been certified by the Board,~~ a copy of the petition shall also be sent to the certified ~~labor organization~~ representative.

**R4-2-202. Withdrawal of Petition**

If a petition for election is filed with the Board, that petition may be withdrawn by stipulation between petitioner and respondent. ~~Withdrawn petitions may not be refiled for a period of 6 months after withdrawal.~~ The petitioner and respondent may stipulate to withdraw a petition for election that is filed with the Board.

**R4-2-203. Challenge to Petition; Waiver**

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

**R4-2-204. Investigation of Petition**

- A. ~~Upon the filing of a petition for election with the~~ The Board, a Board or its agent shall, within 10 days, notify the agricultural employer by telephone ~~of the filing of the~~ within 10 days after a petition for election is filed. ~~Within 7 days of the telephonic notification,~~ Within seven days of notification, the agricultural employer shall furnish ~~at~~ each employment records record, payroll signature lists list, and any other pertinent data ~~deemed necessary~~ requested by the Board; or any its agent thereof, to investigate the petition. ~~Upon submission of the requested data to the Board,~~ The agricultural employer shall certify in writing and under oath that the ~~requested~~ information provided to the Board is true, complete, and accurate.
- B. ~~In order~~ The Board shall review each authorization submitted under R4-2-205, as soon as practicable, to determine if whether there is reasonable cause to believe a question of representation exists ~~pursuant to~~ under A.R.S. § 23-1389 and A.A.C. R4-2-210, ~~the Board shall review all authorizations as part of the Board's investigation.~~
- C. Upon review of the authorization cards and pertinent employment data, ~~the~~ The Board may, in its own discretion, conduct any investigation it deems necessary, following a review of the authorizations and pertinent employment data, to determine if whether a question of representation exists including, but not limited to, a field investigation.
- D. ~~All investigations shall be conducted in such~~ The Board shall conduct an investigation in a manner as to preserve that pre- serves the confidentiality of the identity of ~~the an~~ agricultural employees employee who ~~may does or may does not have signed~~ sign an authorization cards. ~~Investigative reports and~~ The Board shall not disclose an investigative report or the identity of ~~persons~~ a person interviewed in conjunction with the investigation ~~shall not be disclosed to any party at any time~~ except as required by law.
- E. ~~Except as provided by law or R4-2-205(B), neither the~~ The Board nor any or its agent thereof shall not disclose to any person or party the number of authorizations filed ~~nor~~ or any other information concerning the investigation, except as required by law.

**R4-2-205. Time for Submission of Authorizations**

- A. ~~All authorizations shall be submitted~~ A petitioner shall submit every authorization with ~~petitions~~ the petition for a certification election or decertification election. Except as provided in subsection (B), ~~authorizations shall not be accepted~~ the Board shall not accept an authorization after the petition for certification election or decertification election ~~has been~~ is filed.
- B. If it is the Board or its agent initially ~~determined~~ determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board, ~~or any agent thereof,~~ shall notify the petitioner that ~~petitioner shall have until the close of business on the 2nd day thereafter to file additional authorizations may be filed with the Board within the next two business days.~~ To be An additional authorization is not valid, any additional authorization must have been unless it is signed at any time starting with the day after the day the petition was is filed. ~~The person and the individual signing the authorization must have been~~ is an agricultural employee, at the time ~~of signing~~ the authorization is signed and at any time during the eligibility period, ~~and shall conform to the requirements of R4-2-206.~~

~~C.~~ Authorizations signed by agricultural employees hired after the date the petition has been filed shall not be valid for purposes of computing the showing of interest.

**R4-2-206. Form and Content of Authorizations**

A. An individual can show interest by completing an authorization card or signing a petition.

~~A.B.~~ B. If an individual authorization card is submitted to the Board as evidence of a showing of interest, each is not valid unless the card ~~shall contain~~ contains only ~~1~~ one name, and ~~1~~ one signature, and only the following information, which shall be ~~is~~ printed unless otherwise specified by the Board:

1. The employee's name, name of employer, and social security or employee ~~I.D.~~ identification number;
2. The signature of the employee and date in the employee's own handwriting; and
3. A statement that the employee is authorizing the petitioner to represent that employee for ~~purposes~~ the purpose of collective bargaining in ~~the this state of Arizona~~ only, and further authorizing the petitioner to file a petition for election pursuant to ~~under~~ A.R.S. § 23-1389.

~~B.C.~~ C. If a signature ~~petitions are~~ petition submitted as ~~authorizations~~ authorization to demonstrate evidence a showing of interest, each ~~petition must contain~~ is not valid unless it contains:

1. The signature of the employee, social security or employee ~~I.D.~~ identification number, and date in the employee's own handwriting; and
2. The name of the employer and a statement that the employee is authorizing the petitioner to represent that employee for ~~purposes~~ the purpose of collective bargaining in the state of Arizona only, and further authorizing the petitioner to file a petition for election pursuant to ~~under~~ A.R.S. § 23-1389.

~~C.~~ Any authorization which does not contain the mandatory information shall be invalid.

**R4-2-207. Validity of Authorizations**

A. ~~Except as provided in R4-2-205(B), a~~ A valid authorization is ~~1~~ one that is signed at any time during the authorization period by ~~a person~~ an individual who is an agricultural employee at the time of signing the authorization card, or is signed as prescribed in R4-2-205(B).

B. An authorization shall not be rendered invalid because ~~is valid even if~~ the agricultural employee who signed that authorization also signed ~~an~~ authorization for ~~other~~ another labor organizations organization.

C. An authorization signed by an agricultural employee hired after the date the petition is filed is not valid for the purpose of computing the showing of interest.

**R4-2-208. Confidentiality of Authorizations**

All ~~authorizations~~ An authorization and the ~~its~~ contents thereof shall remain strictly ~~are~~ confidential and shall not be ~~except if~~ subject to any ~~a lawful~~ subpoena powers under the Act.

**R4-2-209. Showing of Interest Computation**

A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period ~~shall be computed~~ by taking the total number of agricultural employees employed in the bargaining unit during that pay period and determining how many of those employees signed a valid authorization cards in accordance with R4-2-205 and R4-2-207 as prescribed in this Article.

B. ~~For purposes of determining~~ To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. § 23-1381(1) § 23-1382(1), ~~6 six~~ months shall ~~mean~~ means 132 work days.

C. ~~Agricultural employees~~ The Board shall not include as an employee in the bargaining unit for a pay period an agricultural employee who ~~were laid off or otherwise~~ is eligible for unemployment benefits for ~~an~~ the entire pay period ~~shall not be included as employees in the bargaining unit for that pay period.~~

D. ~~No~~ The Board shall not include in the bargaining unit for a pay period an agricultural employee who ~~was~~ is on a leave of absence for ~~an~~ the entire pay period ~~shall be included in the bargaining unit for that pay period~~ unless the following conditions ~~have been~~ are met:

1. The employer produces a document, signed by the employee and notarized, in which stating that the employee has been placed on leave of absence for a specified period of time, signed by the employee and duly acknowledged by a notary public; and
2. The date of the employee's projected return does not exceed ~~6 six~~ months from the date of the filing of the petition for election ~~is filed~~; and
3. Substantial evidence does not exist ~~which would establish~~ establishing that the employee is not on a bona fide leave of absence or will not return from the leave of absence as scheduled.

E. ~~If~~ The Board shall not include in the bargaining unit an agricultural employee ~~has been~~ who is placed on workers' compensation leave, ~~that employee shall not be included in the bargaining unit~~ unless the following conditions ~~have been~~ are met:

1. The employer produces a document signed by a ~~duly~~ licensed physician ~~which indicates~~ stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return, and
2. The date of the employee's projected return does not exceed ~~6 six~~ months from the date of the filing of the petition for

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

election is filed, and

3. Substantial evidence does not exist ~~which would establish~~ establishing that the employee is not on a bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled.

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

A question of representation exists in the bargaining unit if a showing of interest of at least 30% percent is made in the final pay period of the eligibility period and in either of the other ~~2~~ two preceding pay periods of the eligibility period.

**R4-2-211. Notice of Hearing**

- A. ~~After a petition for election has been filed and served by the Board upon the employer or labor organization, if it appears to the Board that there is reasonable cause to believe that a question of representation exists, the Board shall prepare and serve upon all employers and labor organizations named in the petition a notice of hearing before a Hearing Officer at a fixed time and place. The Board shall issue a Notice of Hearing as prescribed in Article 4 if a question of representation exists.~~
- B. ~~Any agricultural employer, labor organization, or any A person may, by written request to the Board, receive notice of the filing of any a petition for election and any a related notice of hearing.~~

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

- A. ~~A An ALJ may allow a subsequent labor organization may be allowed to intervene only at the initial session of the pre-election hearing on a petition filed by the first labor organization and may be placed place the subsequent labor organization on an election ballot only if the Hearing Officer ALJ finds:~~
  1. The subsequent labor organization ~~has~~ filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the 30% percent showing of interest required to establish a question of representation ~~in accordance with~~ under R4-2-210, and
  2. The subsequent labor organization filed its petition and authorizations not later than 7 seven days ~~prior to~~ before the scheduled start of the initial session of the pre-election hearing.
- B. In determining the validity of ~~authorizations~~ an authorization filed by a subsequent labor organization, the Board shall use the same authorization period ~~used shall be the same~~ as that of the original petitioner.
- C. In determining the showing of interest for a subsequent labor organization, the Board shall use the same eligibility period ~~shall be the same~~ as that of the original petitioner.

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

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

**R4-2-214. Election Procedures**

- A. Only ~~those persons~~ an individual who ~~are~~ is an agricultural ~~employees~~ employee in the appropriate bargaining unit on the date of the an election ~~shall be is~~ eligible to vote in ~~that~~ the election.
- B. ~~Any A~~ party may be represented by ~~2~~ two observers of ~~its own~~ the party's selection, subject to the following limitations:
  1. ~~Union observers shall not be officials~~ A union shall not select as an observer an official of any labor organization, and
  2. ~~Company observers shall not be supervisors or company officials.~~ An agricultural employer shall not select as an observer a supervisor or company official.
- C. ~~Any A~~ party or the ~~Board agents~~ Board's agent may challenge, for good cause, the eligibility of ~~any person~~ an individual to participate in the an election. ~~The ballots of such challenged persons shall be impounded. The Board shall impound the ballot of a challenged individual.~~
- D. ~~Upon conclusion of the election, the~~ The Board shall ~~render~~ issue a tally of the ballots upon the conclusion of the election.
- ~~D.E.~~ If the there are enough challenged ballots ~~are sufficient in number~~ to affect the results of the election, the Board shall, as soon as practicable, investigate ~~such~~ the challenges, ~~and shall issue a revised tally, which shall be served and serve the~~



*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

revised tally upon all parties.

**R4-2-215. Objections to Election**

- A. Within 7 seven days after the tally of the ballots ~~has been rendered~~ by the Board, any a party may file with the Board ~~objections~~ an objection to the conduct of the election or conduct affecting the results of the election, ~~which~~ The party filing the objection shall specifically set forth ~~all facts and allegations~~ each fact and allegation in support of the ~~objections~~ objection. Such filing ~~must be timely~~ whether or not the challenged ballots are sufficient in number to affect the results of the election. The party filing ~~objections~~ the objection shall simultaneously serve ~~copies~~ a copy of the ~~objections~~ objection on all other parties and file a statement of service with the Board. ~~Issues raised in the objections to the conduct of the election or conduct affecting the results of the election shall exclude issues which were~~ The party filing the objection shall not raise in the objection an issue that was or could have been raised in either ~~the~~ a challenge to the petition or the pre-election hearing.
- B. ~~If The Board shall not take further action if an objection~~ objections to the conduct of the election or conduct affecting the results of the election ~~are is not timely filed timely,~~ or ~~do does~~ not comply ~~fully~~ with the provisions of subsection (A), ~~the Board shall take no further action.~~ The Board shall send a written notice to all parties that it will take no further action ~~will be taken by the Board.~~
- C. ~~If no objections are filed within the time set forth in subsection (A), or if the challenged ballots are insufficient in number to affect the results of the election, and if no run-off election is to be held, the Board shall forthwith issue to the parties a certification of the results of the election, including certification or decertification of the representative, where appropriate, and the proceedings shall be final. The Board shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate, if:~~
1. Objections are not filed within the time prescribed in subsection (A), or
  2. The number of challenged ballots is insufficient to affect the election results, and
  3. A run-off election is not required under R4-2-217.
- D. A party may appeal the Board's decision as prescribed in Title 41, Chapter 6, Article 10.

**R4-2-216. Investigation of Objections to Election**

- A. ~~If The Board shall investigate~~ objections to the conduct of ~~the~~ an election or conduct affecting the results of ~~the~~ an election ~~timely filed, the Board shall investigate the objections if the objections meet the requirements of R4-2-215(A).~~ The Board ~~may, if appropriate, shall~~ dismiss the objections and certify the results of the election on the basis of an administrative investigation if the Board determines that the objections are invalid.
- B. An aggrieved party may appeal ~~to the full Board~~ the Board's dismissal of the objections as prescribed in Article 4, no later than 5 within 30 days after receipt by ~~that~~ the party of receives the notice of dismissal of the ~~objections~~ objection. For good cause shown, ~~the~~ The Board may extend the time for filing an appeal for good cause of the dismissal of the objections.
- C. ~~If it appears to the Board~~ determines that substantial and material factual issues exist ~~which that~~ can be resolved only after a hearing, the Board shall issue ~~and cause to be served on the parties~~ a notice of hearing Notice of Hearing on those issues before a Hearing Officer. At the hearing, any party may present evidence in support of, or in opposition to, the objections. The party or parties making the objections shall have the burden of proving all facts and allegations set forth in its objections. The Hearing Officer shall issue a recommended decision and proposed form of order that disposes of the issues and directs appropriate action including, without limitation, ordering that a new election be held or that the Board certify the results of the election.
- D. Any hearing pursuant to under this Section and any objection to the ~~Hearing Officer's~~ ALJ's decision shall be initiated and conducted ~~in accordance with the provisions of R4-2-406 and~~ as prescribed in Article 4.

**R4-2-217. Run-off Elections**

- A. If an election ballot provides for ~~the~~ a choice among at least ~~2~~ two labor organizations and "no union", and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.
- B. In ~~any a~~ run-off election, only ~~those persons~~ an individual who ~~are~~ is an agricultural ~~employees~~ employee in the appropriate bargaining unit on the date of the run-off election ~~shall be is~~ eligible to vote ~~in that run-off election.~~
- C. The ballot in ~~the~~ a run-off election shall provide for a selection between the labor organization receiving the highest number of votes in the original election and "no union".
- D. ~~Upon conclusion of~~ The Board shall administer a run-off election; as prescribed in R4-2-214 through R4-2-216 ~~and Article 4, relating to election procedures and review of decisions and orders, shall govern, insofar as applicable.~~

**R4-2-218. Consent-election Agreements**

An agricultural employer may enter into a consent-election agreement with ~~+~~ one or more individuals or labor organizations ~~which have presented to that agricultural employer~~ that present to the employer a claim to be recognized as the representative of a designated bargaining unit. The parties shall submit to the Board an agreement ~~shall contain~~ containing a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricul-

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

tural employees within the appropriate bargaining unit ~~shall be~~ are eligible to vote. ~~A The Board shall conduct a consent election will be conducted~~ if the Board finds the consent-election agreement fair and noncollusive, ~~and the time, place, and conditions of the election are approved by the Board.~~ The method of conducting Board shall conduct a consent elections election shall be consistent with the methods followed by the Board in conducting elections.

**R4-2-219. Duties and Powers of Hearing Officer Repealed**

- ~~A. The Hearing Officer shall determine and issue a recommended decision and proposed form of order stating whether a question of representation exists and direct an election when appropriate and determine the bargaining unit and such issues as are raised at the hearing. In conducting election hearings, the Hearing Officer shall have all duties and powers as provided in A.R.S. § 41-1062 and Article 4 of this Chapter.~~
- ~~B. Following the conclusion of the election hearing, the Hearing Officer shall, within 30 days, unless good cause is shown, prepare and file with the Board a written recommended decision setting forth findings of fact, conclusions of law, and an order. The Board shall, within 10 days, serve a copy of the Hearing Officer's written recommended decision on all parties. The time for a party to object to the Hearing Officer's recommended decision shall commence upon receipt of the written recommended decision.~~

**ARTICLE 3. UNFAIR LABOR PRACTICES**

**R4-2-301. Unfair Labor Practice Charges**

- ~~A. Any person may make a charge that any a person has engaged in or is engaging in an unfair labor practice may be made by any person. Any The charge may be withdrawn by the charging party prior to before the hearing and thereafter with the consent of the Trial Examiner ALJ. Upon withdrawal of any charge, the complaint may be dismissed at the discretion of the General Counsel. If a complaint has issued under R4-2-304 and the charge is withdrawn, the Board may dismiss the complaint on the advice of the General Counsel.~~

**R4-2-302. Form and Contents of Charge**

- ~~A. All charges shall contain the following A charging party shall include the following in the charge:~~
- ~~1. The full name, address, and telephone number of the person individual, agricultural employer, or labor organization making the charge;~~
  - ~~2. If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit;~~
  - ~~3. The full name and address of the person individual, agricultural employer, or labor organization against whom the charge is made (hereinafter referred to as the respondent); and~~
  - ~~4. A clear and concise statement of the facts constituting the alleged unfair labor practice.~~
- ~~B. Any charge which does not contain all the information required in subsection (A) shall not be accepted for filing by the Board.~~
- ~~C. B. All charges shall be A charging party shall make the charge in writing, signed sign the charge, and shall contain a declaration by the person signing it, declare under penalty of perjury, that its contents are true and correct to the best of that person's the charging party's knowledge, information, and belief.~~
- ~~C. The Board shall not accept a charge for filing unless it contains all the information required in subsections (A) and (B).~~

**R4-2-303. Investigation of Charge**

- ~~A. Upon the filing of a charge, the The Board shall serve a copy of the a filed charge upon the person individual, agricultural employer, or labor organization against whom the charge has been is made.~~
- ~~B. The General Counsel or designee shall conduct a preliminary investigation of the charge pursuant to under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may either:~~
- ~~1. Refuse to issue a complaint; or~~
  - ~~2. File a complaint against any person individual, agricultural employer, or labor organization named in the charge which that the General Counsel feels believes may have committed an unfair labor practice; and~~
  - ~~3. Seek appropriate injunctive relief, as provided for in A.R.S. § 23-1390.~~
- ~~C. No An investigative reports, notes, memoranda report, note, memorandum, oral or written statements statement, tape recordings recording, and any other information; or work product prepared or obtained by the General Counsel or designee during any an investigation shall be is not subject to any subpoena powers of the Act or disclosed and a person shall not disclose this information to any person without the consent of the General Counsel, unless otherwise provided by law.~~

**R4-2-304. Complaint**

- ~~A. After a charge has been filed, if it appears to If the General Counsel decides after investigating a charge that a formal proceedings proceeding should be instituted, the General Counsel shall issue and serve on all other parties each party a formal complaint in the name of the Board stating the alleged unfair labor practice or practices. The General Counsel shall include in the complaint shall contain a clear and concise statement of the facts upon which the assertion of the Board's jurisdiction is predicated, based and a clear and concise description of the acts which are act that is claimed to constitute~~

~~an unfair labor practices practice. The General Counsel shall include a notice of hearing issued under Article 4 with the complaint.~~

- ~~B. Any complaint may be amended by the General Counsel before a hearing date has been set by the Board. Copies of the amended complaint shall be served upon all parties. After the hearing date has been is set, the General Counsel shall not amend the complaint cannot be amended except upon proper motion by the General Counsel with the consent of the Trial Examiner unless the ALJ grants a motion to amend made by the General Counsel.~~
- ~~C. Any The General Counsel may withdraw a complaint may be withdrawn before the hearing by the General Counsel. After the opening of the hearing, the complaint may be withdrawn upon proper motion by the General Counsel with consent of the Trial Examiner ALJ.~~

**R4-2-305. Refusal to Issue Complaint**

- ~~A. If, after the a charge has been is filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to reissue it, the General Counsel shall advise the parties each party in writing, accompanied by a simple statement of the procedural or other grounds for the action. The charging party may file with the General Counsel a request to reconsider the refusal to issue or reissue the complaint. A request to reconsider shall be filed with the General Counsel within 10 days of receipt of notice of the refusal to issue or reissue the complaint, and copies and shall be served simultaneously serve a copy on all other parties. Any response to the request shall be filed by the The General Counsel shall file any response to the request within 7 seven days of receipt of the request for reconsideration receiving it. Thereafter, the The General Counsel shall advise all parties of the decision, in writing and within 7 seven days of a the date the decision is made.~~
- ~~B. If, after the General Counsel has refused to issue or reissue a complaint, the charging party discovers new evidence which has become available only after the refusal to issue or reissue a complaint, the The charging party may file with the General Counsel a request to reconsider with the General Counsel if, after the General Counsel refuses to issue or reissue a complaint, based upon newly discovered material evidence is found that could not with reasonable diligence have been discovered at the time the original charge was filed. The request for reconsideration based upon newly discovered evidence shall be filed immediately upon the discovery of the evidence and will not be entertained except where the requesting party can establish that new evidence could not have been discovered by diligent inquiry prior to the General Counsel's refusal to issue or reissue a complaint.~~
- ~~C. Nothing contained within this rule shall be construed to prohibit or limit the discretion of the Nothing in this Section prohibits or limits the General Counsel, with regard to issuing or reissuing from issuing or reissuing a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint.~~
- ~~D. If a complaint is withdrawn or dismissed on the General Counsel's own motion, no complaint the General Counsel shall be reissued not reissue the complaint more than 6 six months after the date of the withdrawal or dismissal of the original complaint.~~

**R4-2-306. Answer Repealed**

- ~~A. The respondent, within 10 days of receipt of the complaint, shall file an answer. The respondent shall admit or deny each of the facts alleged in the complaint. If respondent is without knowledge sufficient to permit a substantive answer, the respondent shall so state, and this statement operates as a denial. Unless for good cause shown, any allegation in the complaint not denied in the answer shall be deemed to be admitted by the Trial Examiner or the Board.~~
- ~~B. Upon good cause shown by any party, the Board may, by written order, extend the time within which the answer shall be filed.~~
- ~~C. If a respondent fails to file a timely answer, all allegations in the complaint shall be deemed to be admitted by respondent unless good cause is shown. The Board shall send notice of the untimely filing to all parties.~~
- ~~D. The respondent may amend the answer before a hearing date has been set by the Board. The respondent shall file copies of the amended answer with the Executive Secretary and shall simultaneously serve a copy of the amended answer on all parties. After the hearing date has been set, the answer cannot be amended except upon proper motion by the respondent with the consent of the Trial Examiner.~~

**R4-2-307. Filing of Answer; Service Repealed**

- ~~A. Respondent shall file the original and 1 copy of the answer with the Board and shall simultaneously serve copies on all parties. The answer need not be verified or accompanied by affidavit. The answer of a party represented by counsel shall be signed by the attorney of record. A party who is not represented by an attorney shall sign the answer and state a complete mailing address.~~
- ~~B. The signature of the respondent or responding attorney constitutes a certification that the respondent has read the answer; that to the best of that person's knowledge, information, and belief there are adequate grounds to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the answer had not been served.~~

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

**R4-2-308. ~~Notice of Hearing; Continuance~~ Repealed**

- A.** The Board shall, at least 20 days prior to the date of the hearing, serve a Notice of Hearing upon all parties setting forth the date, time, and place of the hearing and the name of the Trial Examiner who will be conducting the hearing.
- B.** Upon motion by any party and for good cause shown or upon the Hearing Officer's or Trial Examiner's own motion, a hearing may be continued.

**R4-2-309. ~~Consolidation and Severance of Proceedings~~ Repealed**

In order to avoid any unnecessary costs or delay, any party may, after a charge has been filed, move that the charge and any other related proceeding be either consolidated with or severed from any other proceeding pending before the Board. Motions to consolidate or sever proceedings after the issuance of a complaint shall be filed with the Executive Secretary.

**R4-2-310. ~~Discovery and Disclosure~~ Repealed**

- A.** No later than 10 days prior to the commencement of a hearing on a complaint alleging an unfair labor practice, the parties shall file with the Board and serve copies on the Trial Examiner and all other parties the following:
  - 1. A list of all witnesses to be called by each individual party at the hearing;
  - 2. A list of all exhibits to be offered into evidence by each party at the hearing;
  - 3. Copies of all written or tape-recorded prehearing statements made by any person intended to be called to testify as a witness at the hearing.
- B.** The time for filing the lists of witnesses, exhibits, or statements may be extended for good cause shown.
- C.** Witnesses or exhibits not listed may not be called or used at the hearing except for impeachment purposes.
- D.** No later than 5 days prior to the commencement of the hearing on a complaint alleging an unfair labor practice, all parties shall endeavor in good faith to stipulate so far as possible to all material facts.

**R4-2-311. ~~Duties and Powers of Trial Examiner~~ Repealed**

- A.** The Trial Examiner shall inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice as set forth in the complaint or amended complaint. In conducting the inquiry, the Trial Examiner shall have all duties and powers as provided in A.R.S. § 41-1062 and Article 4 of this Chapter.
- B.** Following the conclusion of the hearing, the Trial Examiner shall, within 30 days unless good cause is shown, prepare and file with the Board a proposed decision stating findings of fact and conclusions of law on all material issues and a recommended order. The Executive Secretary shall immediately serve the proposed decision and recommended order on the parties.

**ARTICLE 4. HEARINGS**

**R4-2-401. Hearings**

- A.** Any hearing for the purpose of taking evidence shall be conducted by a Trial Examiner or Hearing Officer. If necessary, the Board shall designate an alternate Trial Examiner or Hearing Officer to take the place of a Trial Examiner or Hearing Officer previously designated to conduct the hearing.
- B.** Hearings shall be open to the public. All hearings under this Chapter shall be conducted in accordance with A.R.S. § 41-1062 and this Article.

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

**R4-2-402. ~~Conduct of Hearings~~ Repealed**

- A.** Any proceeding before a Trial Examiner or Hearing Officer shall be held in accordance with A.R.S. § 41-1062(A) except the rules of evidence applicable in the Superior Courts of the state of Arizona shall apply to the proceeding.
- B.** Any party shall have the right to appear at any hearing in person or by counsel. Any party, the Hearing Officer, or Trial Examiner shall have the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence in order to obtain a full and complete record. Witnesses shall be examined orally under oath or affirmation. Stipulations of fact may be introduced in evidence with respect to any issue.
- C.** The right to object to rulings on motions shall not be waived by the filing of an answer or by other participation in any proceedings before the Trial Examiner, the Hearing Officer, or the Board.
- D.** In all hearings before a Trial Examiner or Hearing Officer, parties shall timely present all relevant evidence which, with due diligence, could have been obtained prior to the hearing or such evidence shall be waived and shall not be raised at a later time or in a subsequent hearing.
- E.** Parties or their counsel shall appear at the time and place designated in the notice of hearing and shall be prepared to proceed with the hearing at the time. Necessary witnesses shall be available in order to avoid delaying the hearing. The parties shall provide a sufficient number of copies of all exhibits intended to be introduced as evidence so as to provide 1 copy to each of the other parties, to the Trial Examiner or Hearing Officer, and 1 copy for the record. The Hearing Officer or Trial Examiner may impose appropriate sanctions for any violations of this subsection.
- F.** Any objection to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, may be accompanied by a short statement of the grounds for such objection, and included in the record. No

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

such objection shall be deemed waived by further participation in the hearing.

- ~~G. Misconduct at any hearing before the Trial Examiner, the Hearing Officer, or the Board is grounds for summary exclusion from the hearing.~~
- ~~H. Upon request, before the close of the hearing, any party shall be entitled to a reasonable period of time for oral argument.~~

**R4-2-403. Intervention Repealed**

~~Persons desiring to intervene in Board proceedings shall file a written motion stating appropriate grounds for the intervention. The Board, the Hearing Officer, or Trial Examiner, with appropriate discretion, may permit intervention to such extent and upon a showing of good cause. The intervenor shall then be considered a party to the proceedings for all purposes.~~

**R4-2-404. Subpoenas and Depositions Repealed**

- ~~A. Any party to a hearing or the General Counsel may file a written application for subpoenas or subpoenas duces tecum with the Board. The application for subpoena shall be accompanied by the original and 1 copy of the actual form of subpoena. The subpoena shall specify the name and address of the person to be subpoenaed and, where applicable, shall state with reasonable specificity the documents or physical objects sought by the subpoena. Applications for subpoenas may be made ex parte. The Executive Secretary, the Trial Examiner, or the Hearing Officer appointed to conduct the hearing, as appropriate, shall issue the subpoenas requested. All subpoenas issued shall be returnable only at the hearing.~~
- ~~B. Any person served with a subpoena, whether ad testificandum or duces tecum, and who does not intend to comply with the subpoena, shall, within 5 days of the date of the service of the subpoena, file a motion in writing to quash the subpoena. The motion shall be filed with the Board and served simultaneously upon the parties and the Trial Examiner or Hearing Officer.~~
- ~~C. The Trial Examiner or the Hearing Officer shall quash the subpoena if, in that Trial Examiner's or Hearing Officer's discretion, the evidence sought does not relate to any matter in question in the hearing or if the subpoena does not describe with sufficient particularity the evidence sought to be produced or if for any other reason sufficient in law the subpoena is invalid. The Trial Examiner or Hearing Officer shall state the grounds for the ruling. The motion to quash and any ruling thereon shall become part of the record.~~
- ~~D. Witness fees and mileage shall be paid by the party at whose request the witness appears.~~

**R4-2-405. Motions Repealed**

- ~~A. Except as provided in subsection (F), all motions shall be in writing unless made at the hearing, in which case they shall be stated orally on the record. The movant shall briefly state the grounds for the motion and order or relief sought.~~
- ~~B. If a party files a motion before a case is transferred to the Board, the movant shall file the original motion with the Board and serve copies simultaneously on the Trial Examiner or Hearing Officer and all parties. When motions are made prior to the transfer of the case to the Board, the Hearing Officer, or Trial Examiner shall rule, either orally on the record or in writing, upon all motions filed or made at the hearing.~~
- ~~C. After the transfer of the case to the Board, the movant shall file an original and 9 nine copies of the motion with the Board and serve copies simultaneously on all parties. A written notice of the disposition of the motion shall be served upon the parties by the Executive Secretary.~~
- ~~D. All motions, rulings, and orders shall become part of the record. Unless expressly authorized by ruling of the Board, the recommended decision of the Hearing Officer or Trial Examiner shall not be appealed to any court but shall be considered or reconsidered by the Board on appropriate appeal and rehearing.~~
- ~~E. All written motions made prior to the hearing shall be filed with the Board. All motions to dismiss, motions for summary judgment, or motions for judgment on the pleadings prior to the hearing shall be ruled on by the Board. All other motions made prior to the hearing shall be ruled on by the Hearing Officer or Trial Examiner. Unless otherwise provided, motions and responses shall be filed promptly and within such time as not to delay the proceedings.~~
- ~~F. Any party desiring to make an oral motion to the Hearing Officer or Trial Examiner at any time other than during a hearing shall do so by telephonic conference call in which all other parties shall have the opportunity to participate and which shall be recorded by a court reporter. In the case of written motions, the Hearing Officer or Trial Examiner may order that oral argument on the motion be heard by telephonic conference call in which all parties shall have the opportunity to participate and which shall be recorded by a court reporter.~~

**R4-2-406. Board Review of Decisions and Orders Repealed**

- ~~A. Objections to a Hearing Officer's or Trial Examiner's proposed decision and recommended order shall be filed within 20 days of receipt or within such additional time as the Board may grant. An original and 9 copies shall be filed with the Board and copies shall be served simultaneously upon all other parties, pursuant to A.R.S. § 23-1391.~~
- ~~B. If no objections to the Hearing Officer's or Trial Examiner's proposed decision and recommended order are timely filed, or if the Board on its own motion declines review of the proposed decision and recommended order, the proposed decision will automatically become the final decision and order of the Board and all objections not previously made shall be deemed waived for all purposes.~~
- ~~C. Any party may, within 20 days of receipt of objections, file an original and 9 copies of a response and simultaneously serve copies to all other parties. A reply may be filed within 10 days of receipt of the response.~~

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

- ~~D. If any person files timely objections to the Hearing Officer's or Trial Examiner's proposed decision, the Board shall review the entire record including the Hearing Officer's or Trial Examiner's proposed decision, the objections thereto, the complete transcript of evidence, and the exhibits, briefs, and arguments. With convenient speed, the Board may conduct a hearing at which the parties may present oral argument.~~
- ~~E. Any objection or response to an objection must contain all contested issues and supporting documentation which would enable the Board to rule on the basis of its contents. The objection or response to an objection shall not raise any issue or allege any facts which could have been but were not timely presented to the Hearing Officer or Trial Examiner. The Board shall issue and serve upon the parties its order within 10 days after its decision has been made.~~

**R4-2-407. Rehearing or Review of Decision: Basis**

- ~~A. Any party aggrieved by a decision rendered by the Board may file with the Board, not later than 15 days after receipt of the Board's decision, a written motion for rehearing. Any motion not timely filed shall be waived and shall not be considered by the Board.~~
- ~~B. A motion for rehearing may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 days after receipt of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.~~
- ~~C. A rehearing of the Board's decision may be granted for any of the following causes materially affecting the moving party's rights:
  - 1. Irregularity in the proceedings before the Board or any order or abuse of discretion whereby the moving party was deprived of a fair hearing;
  - 2. Misconduct of the Board, its employees, or any party;
  - 3. Accident or surprise which could not have been prevented by reasonable diligence;
  - 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing before the Board;
  - 7. That the decision is not justified by the evidence or is contrary to law.~~
- ~~D. The Board may affirm or modify its prior decision or grant a rehearing as to all or any of the parties and on all or parts of the issues for any of the reasons set forth in subsection (C). The Board's order shall specify the grounds upon which the rehearing is granted and the rehearing shall cover only those matters.~~
- ~~E. Within the time for filing a motion for rehearing, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. If the motion for rehearing has been timely filed, the Board may grant the motion for any reason not stated in the motion. In either case, the order granting a rehearing shall specify the grounds therefor.~~
- ~~F. When a motion for rehearing is based upon affidavits, the affidavits shall be served with the motion. An opposing party may, within 10 days of receipt of the motion and affidavits, serve opposing affidavits. This response period may be extended for an additional period not exceeding 20 days, either by the Board for good cause shown or by written stipulation of the parties. The Board may permit reply affidavits.~~
- A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B. The Board shall grant a rehearing or review of a final administrative law decision for any of the following causes materially affecting the moving party's rights:
  - 1. The decision is not justified by the evidence or is contrary to law;
  - 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  - 3. One or more of the following has deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the Board, the ALJ, or the prevailing party; or
    - c. Accident or surprise that could not have been prevented by ordinary prudence; or
  - 4. Excessive or insufficient sanction.
- C. The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.