



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

**PROCEDURES MANUAL FOR PROCESSING
PETITIONS FOR IMPASSE RESOLUTION UNDER
THE MASHANTUCKET PEQUOT LABOR RELATIONS LAW**

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1.0 Introduction

This Procedures Manual for Processing Petitions for Impasse Resolution (“Manual”) sets forth the procedures of the Mashantucket Employment Rights Office (MERO) for processing impasse resolution cases brought pursuant to the Mashantucket Pequot Labor Relations Law (MPLRL), 32 M.P.T.L., Ch. 1, Section 10.

2.0 Filing an Impasse Resolution Case

2.1 Who May File

A Labor Organization or Tribal Employer that has engaged in negotiations for an initial or successor collective bargaining agreement for at least 150 days and has reached impasse with the other party in negotiations may file a petition for impasse and issue resolution after compliance with the prerequisites to filing set forth in Section 2.2 of this Manual.

2.2 Prerequisites to Filing

Prior to either party filing a Petition for Impasse Resolution, a party to the negotiations must have provided to the other party with which it is in negotiations for an initial or successor collective bargaining agreement written notification of impasse. In addition, a party must have provided to the other party written notification of its intent to file a Petition for Impasse Resolution with the MERO. Each notification is required to be provided at least ten (10) days prior to a party filing a Petition for Impasse Resolution.

2.3 What Must be Filed

A Labor Organization or Tribal Employer requesting impasse resolution must file with the MERO a completed form Petition for Impasse Resolution, MERO Form 32-3010, and supporting documentation specified on the Form 32-3010.

2.4 Notifying Other Parties in Interest

A copy of the Petition for Impasse Resolution must be delivered by the petitioner to the other party or parties in interest to the proceedings for receipt on the same day as the petition is filed with the MERO.

3.0 Initial Processing of Petition for Impasse Resolution

3.1 Docketing

Upon receipt of a properly completed Form 32-3010 and supporting documentation, as required, the MERO Director shall note the date of filing the Petition for Impasse Resolution and assign a MERO docket number. If Form 32-3010 is not properly completed or supporting documentation is not provided, the MERO may decline to docket the case until such time as the deficiencies in filing documentation are corrected.

3.2 Creating the Case File

The MERO Director shall create a case file for each impasse resolution case. The case file shall include copies of all documents sent and received in the case, including correspondence, applicable Tribal Court and MERO forms, notes of oral communications, printed copies of emails, faxes and other documents.

Each case file should contain a contact information sheet containing the names, addresses, telephone numbers, and other contact information for the parties and their representatives.

3.3 Initial Processing of Petition

The MERO Director, or his/her designee, may communicate with interested parties for the purpose of ascertaining the facts and the parties' positions on the petition, to narrow the issues to be decided by the MERO Board or Special Master, assist the parties in reaching agreement on a collective bargaining agreement, or otherwise effectuate the purposes of the MPLRL. Relevant information will be provided to the MERO Board or Special Master, as applicable.

3.4 Appointment of a MERO Board

Step 1: Any party may request a three-member MERO Board by submitting a completed Form 32-0300 (Request for Three-Member MERO Board), which must be received by the MERO Director within five (5) days of the filing of the Petition for Impasse Resolution and served by the requesting party upon the other party or parties, via hand delivery, electronic mail or facsimile transmission, on the same date.

Step 2: Within five (5) days of a party's submission of a completed Form 32-0300 to the MERO Director, the parties must submit to the MERO Director a completed Form 32-0310 (Appointment by Party of MERO Board Member) and a Form 32-3115 (Certification for Appointment to MERO Board) completed by the party's appointee.

Step 3: Upon receipt of the parties' Forms 32-0310 and 32-3115, the MERO Director shall issue Form 32-0315 (Notification of Party-Appointments to MERO Board) advising the selected Board Members of their appointments.

Step 4: Within five (5) days of both party appointees' receipt of notice of appointment, the MERO Board Member appointees must complete and return to the MERO Director Form 32-0320 (Designation of MERO Board Presiding Officer) advising of the status of selection of the third MERO Board member, who would serve as the presiding officer of the MERO Board. If so indicated on the Form 32-0320, the MERO Director shall request from the American Arbitration Association (AAA) a random panel of seven (7) labor arbitrators who are members of the National Academy of Arbitrators. Within five (5) days of receipt of the list, the MERO Board Member appointees shall select the Board's presiding officer from among the seven (7) names received and submit a completed Form 32-0320 to the MERO Director.

Under any of the following circumstances, the MERO Director may request from AAA a random panel of seven (7) labor arbitrators who are members of the National Academy of Arbitrators and appoint a MERO Board member from the list:

- If a party fails to submit Form 32-0310 or 32-3115 in accordance with Step 2.
- The MERO Board members do not submit Form 32-0320 timely or fail to select a presiding officer as set forth in Step 4.

The MERO Director may take any other actions in his/her discretion to advance the processing of the petition.

Step 5: The MERO Director will issue Form 32-0360 (Referral of Claim to MERO Board).

3.5 Appointment of Special Master

If neither party timely requests a MERO Board, the MERO Director shall refer the case to the Tribal Court for assignment to a Special Master pursuant to the MPLRL.

4.0 Standing Schedule for Impasse Resolution

The MERO Board or Special Master is required to adopt procedures for reaching a decision resolving all issues within sixty (60) days of the filing of a Petition for Impasse Resolution. The Standing Schedule for Impasse Resolution (Form 32-3220) is designed to produce a decision within sixty (60) days (excluding weekends and Tribal holidays) of the filing of the Petition for Impasse Resolution and will control the course of the Petition until such time as any aspect of it is modified by an order of the MERO Board or Special Master. Unless otherwise ordered by the MERO Board or Special Master, each Petition for Impasse Resolution case will proceed in accordance with the following schedule:

- A. The first day of an evidentiary hearing will be held within fifteen (15) calendar days of the appointment of the Presiding Officer of the MERO Board or the Special Master, with notice of the hearing issuing at least two (2) business days before the hearing.

- B. As soon as feasible, and no later than one (1) business day prior to the commencement of the evidentiary hearing, each party shall file with the MERO, a proposed collective bargaining agreement, in numbered paragraphs, which the submitting party is willing to execute. Upon receipt of submissions from both parties, the MERO Director will forward each submission to the MERO Board members and other party.
- C. At the commencement of the hearing, each party shall file with the MERO Board or Special Master, and serve on the other party, a reply setting forth the following with respect to the other party's proposed collective bargaining agreement:
 - a. those paragraphs it is willing to accept, and
 - b. those paragraphs it is not willing to accept, together with any alternative contract language it would be willing to accept in lieu of each identified unacceptable paragraph.
- D. The MERO Board or Special Master will complete taking evidence within twenty (20) calendar days of the commencement of the hearing.
- E. Within seven (7) calendar days of the completion of taking evidence, a status statement approved by a majority of the MERO Board or the Special Master ("Status Statement"), will be forwarded to the parties. The Status Statement shall include, without limitation, all collective bargaining agreement provisions agreed upon by the parties through their stipulations and respective submissions, as well as those issues, identified in numbered paragraphs, remaining unresolved.
- F. Within seven (7) calendar days of receipt of the Status Statement, each party shall submit to the MERO its statement of last best offer setting forth, in numbered paragraphs corresponding to the statement of unresolved issues contained in the Status Statement, the final agreement provisions proposed by the submitting party. Upon receipt of both statements of last best offer or upon the expiration of the time for filing the statements of last best offer, whichever is sooner, the MERO shall distribute a copy of each statement of last best offer to the other party and to the MERO Board or Special Master.
- G. Within seven (7) calendar days after the MERO's distribution of the statements of last best offer, the parties may file with the MERO briefs on the unresolved issues. Upon receipt of both briefs or upon the expiration of the time for filing briefs, whichever is sooner, the MERO shall distribute a copy of each brief to the other party and the MERO Board or Special Master.
- H. Within five (5) calendar days after distribution of the briefs on the unresolved issues, each party may file with the MERO a reply brief. Upon receipt of both reply briefs or upon the expiration of the time for filing reply briefs, whichever is sooner, the MERO shall distribute a copy of each reply brief to the other party and the MERO Board or Special Master.
- I. In accordance with 32 M.P.T.L., Ch. 1, § 10(c)(i), the hearing record is officially closed at the later of the close of the hearing or receipt of final briefs. At any time

prior to the official close of the record, the parties may jointly file with the MERO signed stipulations setting forth collective bargaining agreement provisions that both parties have agreed to accept.

- J. Within twenty (20) calendar days after expiration of the time for filing the reply briefs, the MERO Board upon majority vote, or Special Master, shall issue its decision on all unresolved issues set forth in the Status Statement. In deciding each unresolved issue before it, the MERO Board or Special Master shall accept the complete final provision relating to such unresolved issue as contained in the statement of last best offer of one party or the other, or the stipulated agreement of the parties, if applicable.

The Standing Schedule for Impasse Resolution may be modified pursuant to a stipulation signed by the parties and approved by the MERO Board or Special Master, or by motion of any party for good cause shown, or by the MERO Board or Special Master acting *sua sponte*. The good cause standard requires a particularized showing that the standing schedule cannot reasonably be met despite the diligence of the party seeking the extension. Unless specifically ordered, the extension of time to comply with any one of the deadlines in the standing schedule does not automatically extend the time to comply with subsequent time lines. In accordance with 32 M.P.T.L., Ch. 1, § 10(c)(iii), in no event shall an award issue later than sixty (60) days (excluding weekends and Tribal holidays) after the Petition for Impasse Resolution is filed absent extension by mutual agreement of the parties.

5.0 MERO Board or Special Master Case Processing

5.1 General Duties

The MERO Board or Special Master, as applicable, shall determine the parameters of processing the Petition for Impasse Resolution in accordance with Title 32, M.P.T.L. and Title 31, M.P.T.L., which may include, without limitation:

- Determining whether the MERO has jurisdiction;
- Determining whether impasse in negotiations has been reached;
- Determining whether issues are mandatory subjects of bargaining;
- Adopting procedures for resolving all issues within sixty (60) days of the filing of the petition;
- Convening a hearing to permit the parties to present evidence and argument;
- Receiving each party's proposal for resolution of unresolved issues;
- Selecting one party's complete proposal with respect to each issue;
- Rendering a decision or award addressing each unresolved issue based on the complete proposal selected for that issue;
- Issuing an award within sixty (60) days (excluding weekends and Tribal holidays) of the filing of the petition unless the time period is extended by mutual agreement of the parties.

Administrative, investigative or other duties may be delegated to the MERO Director.

5.2 Conduct of Hearings

Any hearings conducted by a MERO Board shall comply with the hearing requirements of Title 31, M.P.T.L. and include the following procedures:

- Advance written notice of hearing provided to the parties in interest;
- An opportunity for all parties in interest to appear, present evidence, and examine and cross-examine witnesses;
- A transcription of the proceedings;
- An opportunity for the parties to submit briefs.

Hearings shall be held on the Reservation of the Mashantucket Pequot Tribal Nation at a location determined by the MERO. Hearings shall be conducted in a manner to minimize delay while affording all parties an opportunity to be heard. The MERO Board is not required to follow the Mashantucket Rules of Civil Procedure or any special procedures adopted by the Tribal Court for Special Masters. The presiding officer of the MERO Board shall rule on all pre-hearing and hearing objections and motions. Appeal of an adverse ruling may be made before the close of the hearing to the full three (3) member MERO Board, whose decision by majority vote shall be rendered prior to the close of the hearing.

Any hearing conducted by the Special Master shall be conducted in accordance with any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure.

If an evidentiary hearing is held, the MERO Director shall receive notice and the MERO Director, or his/her designee, shall appear at the hearing to serve as a resource for the MERO Board, including with respect to interpretation of, and legal developments under, the MPLRL. Neither the MERO Director nor any other agent of the MERO may be required to testify at a hearing and is not permitted to testify at a hearing without the written consent of the MERO Director.

5.3 MERO Board or Special Master Decisions

Decisions by a MERO Board must be by a majority of the MERO Board. Written decisions must be signed by all members of the MERO Board.

Any party or the MERO Director may seek clarification of a decision of a MERO Board by submission of a written Request for Clarification within two (2) days of the issuance of the MERO Board's decision, with delivery to the other parties on the same date. The MERO Board will provide a written decision responding to any Request for Clarification within five (5) days of receipt of the request.

Any decision by the Special Master shall be issued in accordance with any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure.

The stipulations of the parties and decisions of a MERO Board or Special Master, including without limitation whether issues are considered resolved and the award of a particular party proposal on an issue, are final and binding on the parties.

5.4 Related Proceedings

The MERO Board or Special Master, as applicable, shall determine the effect of any claimed related prohibited practice charge or other proceeding on the processing of the Petition for Impasse Resolution. Any findings of fact or conclusions of law made in a prohibited practice case have no force or effect in the impasse resolution case unless and until adopted in a written decision of the impasse resolution case MERO Board or Special Master.

5.5 MERO Board Costs and Fees

The costs and fees associated with a MERO Board processing an impasse resolution case are borne equally between the parties. Each party is responsible for payment of the costs and fees associated with that party's appointee, as well as any costs and fees specific to that party. The parties are equally responsible for the costs and fees associated with the retention and service of the Presiding Officer, as well as any costs and fees associated with the overall proceedings, including without limitation any hearing transcripts and administrative support required by the Presiding Officer or the MERO Board as a whole for processing the Petition.

Invoices will issue through the MERO Director and payment must be made within ten (10) days after receipt. If timely payment is not received, the MERO Board may defer further processing of a case or take other appropriate action until payment is made, unless such deferral or other action would be deemed by the MERO Board to be prejudicial to one of the parties to the proceeding.

5.6 Impasse Resolution Case Records

Case documents and other records must be transmitted to the MERO Director prior to the close of a case or at such other times as requested by the MERO Director. Case records may be transmitted to the MERO Director at such other times as deemed appropriate by the MERO Board or Special Master.

6.0 General Provisions Applicable to All MERO Board Cases

6.1 Parties' Cooperation

A party's failure to cooperate with the MERO in the processing of a case may result in an adverse inference or adverse finding against the uncooperative party.

6.2 Time Calculations

Unless otherwise specified, when the MPLRL or this Manual provide for a time period of ten (10) days or less, weekends and Tribal holidays shall be excluded. Any time period in excess of ten (10) days shall include weekends and Tribal holidays. The date of filing or notice from which a time period begins to run is not counted. If a day for filing any document required

or permitted to be filed falls on a day that is not a business day for the MERO, the time for filing is extended to the next business day.

The sixty (60) day requirement of Section 10 of the MPLRL shall not include weekends or Tribal holidays.

Tribal holidays for Calendar Year 2009 are as follows: January 1, January 19, February 16, April 10, May 11, May 25, July 3, September 7, October 12, November 11, November 25-27, and December 24-25.

6.3 Filing of Documents

Unless otherwise specified in the MPLRL or this Manual or specifically directed by the MERO Director or a MERO Board, the originals of all documents permitted or required to be filed with the MERO, including a MERO Board, must be filed with the MERO Director.

In addition to any other means or manner of submission, any collective bargaining agreement language proposed by a party to the proceedings must be forwarded by that party to the MERO and, if requested, any member of the MERO Board or its designee, electronically in Word or Excel and must not be protected by security or, if protected by security, any password or security code must be provided.

6.4 Methods of Delivery

Unless otherwise specified, any reliable delivery method is acceptable for the delivery of documents to the MERO, including facsimile and e-mail. Unless otherwise specified, acceptable methods of delivery to and between parties include any reliable methods under the circumstances, which may include facsimile and e-mail. Parties are required to comply with any preferred method of delivery specified by MERO Board members.

6.5 Communicating with Parties

If an attorney or representative has entered a notice of appearance (Form 32-0001) on behalf of the party, all communications to/with the party will be to/with the attorney or representative of record.

6.6 Extensions of Time

Any request for extension of time in cases before a MERO Board must be submitted to the MERO Director. The party making the request must make reasonable efforts to secure the position of the other parties in interest and represent to the MERO Director when making the request either the positions of other parties or efforts to secure the positions to the extent said efforts were unsuccessful. Any request for an extension of time, including a multi-party request, will be denied if a determination is made that delay would not effectuate the purposes of the MPLRL.

6.7 Information and Witnesses

At the request of a party or MERO Board, the MERO Director may require the submission of documents or attendance of witnesses to obtain information relevant and necessary to the processing of a case through the issuance of subpoenas or in any other manner consistent with the MERO Director's authority.

6.8 Public Documents

Impasse resolution case documents available to the public through the MERO shall be limited to the petition, any amended petition, and any publicized order or decision. Documents submitted in support of a petition are not available to the public. Any decision of a MERO Board determining the terms of a collective bargaining agreement shall not be considered public unless mutually agreed in writing by the parties.

Nothing in this Manual or otherwise precludes the MERO from disclosing any information, including documents, as may be necessary or required by any case processing, including without limitation any appeals, or other legal process.

The MERO Director shall maintain a database of public impasse resolution case decisions and shall make the decisions reasonably available to the public.

7.0 Impasse Resolution Manual Amendments

This Procedures Manual for Processing Petitions for Impasse Resolution may be amended from time to time at the MERO Director's discretion.