

**CHAPTER 213. PREVAILING WAGE APPEALS BOARD**

Sec.	
213.1.	Applicability of general rules.
213.2.	Definitions.
213.3.	Appeals from determinations of the Secretary.
213.4.	Content of appeals.
213.5.	Briefs.
213.6.	Hearing transcripts.
213.7.	Appeal proceedings before the Board.
213.8.	Grievances arising from administration of the act.
213.9.	Notices and hearings.
213.10.	Decisions.

**§ 213.1. Applicability of general rules.**

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the activities of, and proceedings before, the Board, of the Department, except as otherwise provided in this chapter.

**Source**

The provisions of this § 213.1 amended February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

**§ 213.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Pennsylvania Prevailing Wage Act (43 P. S. §§ 165-1—165-17).

*Agency*—The bureau or division of the Department charged with administration and enforcement of the act.

*Appellant*—A party filing an appeal with the Board under this chapter.

*Appellee*—A party whose interests are contrary to those of the Appellant.

*Board*—The Pennsylvania Prevailing Wage Appeals Board.

*Department*—The Department of Labor and Industry of the Commonwealth.

*General Rules*—The General Rules of Administrative Practice and Procedure at 1 Pa. Code Part II.

*Grievance*—A complaint pertaining to the agency's administration of the act made under section 2.2(e)(1) of the act (43 P. S. § 165-2.2(e)(1)).

*Grievant*—A party filing a grievance under section 2.2(e)(1) of the act, with the Board.

*Party*—In appeals under § 213.3 (relating to appeals from determinations of the Secretary), a party to the proceedings before the Secretary. In grievance proceedings under § 213.8 (relating to grievances arising from administration of the act) the grievant, the agency and intervenors.

*Secretary*—The Secretary of the Department.

**Source**

The provisions of this § 213.2 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

**§ 213.3. Appeals from determinations of the Secretary.**

(a) A party, other than the Department, may file an appeal with the Board from the final determination of the Secretary in proceedings conducted under section 8 or 11 of the act (43 P. S. §§ 165-8 and 165-11). Grievances filed under section 2.2(e) of the act (43 P. S. § 165-2.2(e)) are governed by § 213.8 (relating to grievances arising from administration of the act).

(b) Appeals under this chapter shall be filed within 10 days of the date of mailing of the Secretary's determination. If appeals are filed by mail, first-class mail shall be utilized and the date of the postmark shall be the date of filing.

(c) The appeal, original and eight copies, shall be filed with the Chairperson of the Board, c/o Office of Chief Counsel, Department of Labor and Industry, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17120.

(d) Copies shall be served on all other parties, in accordance with the General Rules, and proof of service shall accompany the appeal.

(e) Cross appeals shall be filed with the Board within 10 days after filing and service of the original appeal, and shall conform to the requirements applicable to appeals.

(f) Upon receipt of a notice of appeal under this section, the Secretary will promptly transmit the record of the proceedings to the Board.

(g) Subsection (b) supersedes 1 Pa. Code § 31.11 (relating to timely filing required). Subsection (c) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

**Source**

The provisions of this § 213.3 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

**Cross References**

This section cited in 34 Pa. Code § 213.2 (relating to definitions); and 34 Pa. Code § 213.5 (relating to briefs).

**§ 213.4. Content of appeals.**

(a) This subsection governs appeals from final determinations of the Board in a proceeding under section 8 or 11 of the act (43 P. S. §§ 165-8 and 165-11).

(b) Appeals to the Board shall:

- (1) Contain the full caption of the proceeding before the Secretary.
- (2) State that the party is appealing the Secretary's determination to the Board.
- (3) List the date of the Secretary's determination.

- (4) Briefly list the grounds for appeal or objections to the Secretary's determination.
  - (5) Contain a prayer for relief.
  - (6) Be signed by a party or the party's attorney.
  - (7) Contain a certificate of service.
- (c) The following format is suggested for appeals:  
(Caption)

NOTICE OF APPEAL

(Name of Appellant) hereby appeals the Secretary's determination, dated \_\_\_\_\_, 19 \_\_, to the Prevailing Wage Appeals Board (Board).

The reasons for this appeal are as follows:

- 1. \_\_\_\_\_
  - 2. \_\_\_\_\_
  - 3. \_\_\_\_\_
- (etc.)

WHEREFORE, Appellant requests that the Board (specify requested relief).

Respectfully submitted,

/s/

(Appellant or Appellant's Attorney)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPENDIX: CERTIFICATE OF SERVICE

Source

The provisions of this § 213.4 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

§ 213.5. Briefs.

(a) The appellant's brief shall be received within 15 days after the appeal is filed. The appellee's brief shall be due 15 days after service of the appellant's brief.

(b) Unless otherwise directed by the Board, separate briefs shall be required for cross appeals. The cross-appellant's brief will be due within 15 days after service of the cross appeal, and the cross appellee's brief is due 15 days after service of the cross appellant's brief.

(c) Briefs shall conform to the General Rules and shall be filed with the Chairperson of the Board, at the address listed in § 213.3(c) (relating to appeals from determinations of the Secretary). An original and eight copies of briefs shall be filed.

(d) Requests for extensions of time under this section shall be made in writing and shall be filed with, and acted upon by, the Chairperson of the Board. In appeals under section 8 of the act (43 P. S. § 165-8), the request shall indicate the concurrence or nonconcurrence of the contracting body and the other parties to the proposed extension.

(e) The Board will not consider briefs unless they are filed in accordance with the time standards listed in this section.

(f) Subsection (b) supersedes 1 Pa. Code §§ 35.193 and 35.212(d) (relating to filing and service of briefs; and content and form of briefs on exceptions).

**Source**

The provisions of this § 213.5 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

**§ 213.6. Hearing transcripts.**

(a) A party or person may inspect copies of the transcript of the proceedings before the Secretary at no charge, during the Department's regular business hours, in the Office of Chief Counsel.

(b) A person desiring to purchase a copy of a hearing transcript shall make arrangements with the court reporting service which transcribed the hearing. Information as to the name, address and telephone number of the court reporting service may be obtained from the Office of Chief Counsel for the Department.

**Source**

The provisions of this § 213.6 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

**§ 213.7. Appeal proceedings before the Board.**

(a) In appeals under this chapter, the Board's scope of review of the Secretary's determination is limited to a review for errors of law and whether the necessary findings of the Secretary are supported by substantial evidence in the record.

(b) Issues not raised in the notice of appeal or not argued in the appellant's brief will be deemed waived.

(c) In appeals, the Board will not hear testimony or receive evidence. Requests for evidentiary hearings shall be in the nature of a request for a remand to the Secretary and shall be set forth in the notice of appeal and addressed in the briefs.

(d) The Board may remand an appeal to the Secretary for further hearing, consideration and determination.

(e) Oral argument shall be heard by the Board in appeals, unless waived by the parties. Notice of oral argument shall be furnished by the Board to all parties or their representatives. Argument may be limited at the Board's discretion.

Source

The provisions of this § 213.7 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

§ 213.8. Grievances arising from administration of the act.

(a) Under section 2.2(e) of the act (43 P. S. § 165-2.2(e)), the Board will hear and determine grievances arising out of the administration of the act. Appeals from determinations of the Secretary are excluded from review under this section. The types of disputes heard under this section shall include the following:

- (1) Disputes as to the applicability of the act to a project.
- (2) Disputes involving classification or coverage, or both, of persons employed on public work.
- (3) Disputes concerning the proper interpretation or application of the act or regulations thereunder.

(b) Grievances submitted to the Board under this section shall include:

- (1) The identity and interest of the grievant.
- (2) If applicable, the name, address and predetermination serial number of the affected project, and the name and address of the public body responsible for the project.
- (3) A brief statement of the issue or dispute giving rise to the grievance.
- (4) A brief statement of the agency’s position, along with copies of documents setting forth that position.
- (5) A statement of requested relief.
- (6) A signature of the party or the party’s attorney.
- (7) A certificate of service showing service upon the agency, the public body and affected contractors or subcontractors.

(c) An original and eight copies of the grievance shall be filed with the Board.

(d) The following format is suggested for grievances:

**BEFORE THE PENNSYLVANIA PREVAILING  
WAGE APPEALS BOARD  
COMMONWEALTH OF PENNSYLVANIA**

IN RE: (Name and Address:  
of Grievant) : \_\_\_\_\_  
: (Project Serial # )  
: \_\_\_\_\_  
: (Project Name)  
: \_\_\_\_\_  
: (Contracting Public  
: Body)

**NOTICE OF GRIEVANCE**

(Grievant) hereby files a grievance under Section 2.2(e) of the Act.

1. (Identity and interest of Grievant.)
2. (Identity of project and contracting public body.)
3. (Statement of dispute.)
4. (Agency's position.)

WHEREFORE, (Grievant) requests (specify requested relief).

/s/ (GRIEVANT OR GRIEVANT'S ATTORNEY)

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Appendices:

- A. Copy of agency's position (if any).
- B. Certificate of Service.

(e) The Board will promptly provide notice of the grievance to interested persons designated in sections 7, 8 and 11(c) of the act (43 P. S. §§ 165-7, 165-8 and 165-11(c)).

(f) Petitions for intervention shall be filed and served within 15 days of the notice of the grievance issued under subsection (e), except upon good cause shown. Petitions for intervention shall be governed by the General Rules. Briefs for intervenors shall be filed and served within 15 days of the Board's order granting intervention or the day fixed under this section for the filing of a brief by the party on whose behalf intervention is made, whichever is later.

(g) Within 30 days of filing a grievance under this section, the grievant shall file and serve a brief. An original and eight copies shall be filed with the Board. The brief shall contain a statement of proposed facts and discussion of the legal issues. Copies of proposed exhibits shall be numbered and appended to the brief. Within 30 days of service of the grievant's brief, the agency shall file and serve a brief conforming to the requirements of this subsection.

(h) After the briefs have been filed, the parties shall confer to attempt to resolve disputed factual issues and shall promptly submit to the Board a stipulation of agreed-upon facts. The parties, jointly or separately, shall submit to the Board a statement of factual issues and advise whether an evidentiary hearing is requested. The Board will have the discretion to grant or deny the request.

(i) Upon receipt of the parties' stipulation and statement of disputed facts, the Board will schedule the matter for hearing or argument, or both. If an evidentiary hearing is requested, the Board may delegate the matter to a hearing officer to take evidence and testimony. The hearing officer will not issue a proposed decision.

(j) The General Rules govern evidentiary hearings. The burden of proof shall be on the grievant.

(k) Subsections (b) and (d) supersede 1 Pa. Code § 35.20 (relating to appeals from action of the staff). Subsection (c) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

**Source**

The provisions of this § 213.8 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

**Notes of Decisions***Burden of Proof*

In a grievance filed by a union from administration of the Prevailing Wage Act, the grievant bears the burden of proof. *Butler Balancing Co., Inc. v. Prevailing Wage Appeals Board*, 780 A.2d 840 (Pa. Cmwlth. 2001).

*Parties*

In a dispute over whether a particular building project was subject to the Prevailing Wage Act, unions representing employes in the building and construction industry throughout Pennsylvania have standing to file their grievances, where unions are meant to pay an integral role in the administration and enforcement of the act, and, in order to protect workers, it is essential that some workers and unions who are not working under the protections of the act have standing to challenge a determination that the act does not apply. *Pennsylvania National Mutual Casualty Insurance Co. v. Department of Labor and Industry*, 715 A.2d 1068 (Pa. 1998); appeal after remand 767 A.2d 605 (Pa. Cmwlth. 2001); appeal 773 A.2d 757 (Pa. 2001); affirmed 808 A.2d 881 (Pa. 2002).

The trade council had standing to challenge the prevailing minimum wage rates continued in a particular contract for public work. *Pennsylvania National Mutual Casualty Insurance Co. v. Department of Labor and Industry*, 667 A.2d 753, 2 Wage & Hour Cas.2d (BNA) 1713 (Pa. Cmwlth. 1995).

**Cross References**

This section cited in 34 Pa. Code § 213.2 (relating to definitions); and 34 Pa. Code § 213.3 (relating to appeals from determinations of the Secretary).

**§ 213.9. Notices and hearings.**

(a) Upon receipt of a grievance or an appeal and the scheduling of argument or hearing, the Board will notify the parties and other interested persons designated in sections 7, 8 and 11(c) of the act (43 P. S. §§ 165-7, 165-8 and 165-11(c)) or their representatives.

(b) Hearings or arguments before the Board will be open to the public.

(c) The parties participating in proceedings before the Board may be represented by counsel or as otherwise permitted by the General Rules.

**Source**

The provisions of this § 213.9 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

**§ 213.10. Decisions.**

(a) Copies of the Board's decisions will be mailed to the parties and other interested persons designated in sections 7, 8 and 11(c) of the act (43 P. S. §§ 165, 165-8 and 165-11(c)) or their representatives.

(b) The Board's decision will be the final decision of the Department. An application for reconsideration will not be entertained.

(c) Subsection (b) supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

**Source**

The provisions of this § 213.10 adopted February 11, 1994, effective February 12, 1994, 24 Pa.B. 871.

[Next page is 221-1.]