



State of Delaware
Public Employment Relations Board
4th Floor, Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801

Telephone: (302) 577-5070
Facsimile: (302) 577-3297

UNFAIR LABOR PRACTICE CHARGES

Public Employment Relations Act, 19 Del.C. Chapter 13
(similar provisions found under the Police and Firefighters Act (19 Del.C. §1607)
and under the Public School Act (14 Del.C. §4007)

- Defined at 19 Del.C. §1307:
 - A. It is an unfair labor practice for a public **EMPLOYER** or its designated representative to do any of the following:
 - 1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this Chapter.
 - 2) Dominate, interfere with, or assist in the formation, existence or administration of any labor organization.
 - 3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure, or other terms and conditions of employment.
 - 4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint, or has given information or testimony under this Chapter.
 - 5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive bargaining representative of employees in an appropriate bargaining unit, *except with respect to a discretionary subject.*
*
 - 6) Refuse or fail to comply with any provision of this Chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this Chapter.

* §1302 (g): 'Discretionary subject' means, for the State as an employer only, any subject covered by Merit Rules which apply pursuant to 29 Del.C. §5938(c) and which Merit Rules have been waived by statute.

- 7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- 8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

B. It is an unfair labor practice for a public **EMPLOYEE or for an EMPLOYEE ORGANIZATION** or its designated representative to do any of the following:

- 1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this Chapter.
- 2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is the exclusive representative.
- 3) Refuse or fail to comply with any provision of this Chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this Chapter.
- 4) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- 5) Distribute organizational literature or otherwise solicit public employees during working hours in areas where the actual work of public employees is being performed in such a way as to hinder or interfere with the operation of the public employer. This paragraph shall not be construed to prohibit the distribution of literature during the employees' meal period or duty-free periods, or in such areas not specifically devoted to the performance of the employees' official duties.
- 6) Hinder or prevent, by threats, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, or interfere with the entrance to or egress from any place of employment.



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ULP Procedures and Timeframes:

- **Charges** must be filed within one hundred and eighty days (180) from the date of the conduct (or the Charging Party's knowledge of that conduct) which is alleged to violate the statute. This limitation does not prohibit the introduction of evidence of conduct or activity occurring outside of the 180 day period, provided that the PERB finds it relevant to the issue concerning the commission of an unfair labor practice within the 180 day limitations period.
- All Charges are filed with the PERB in our offices on the 4th Floor of the Carvel Office Building, 820 N. French Street, Wilmington, 19801 ((302) 577-5070)
- All paragraphs of a pleading must be individually numbered.
- The charge must include the following:
 - 1) Name, address, telephone number and affiliation, if any, of the Charging Party, and the title of the representative filing the charge.
 - 2) Name, address, telephone number and affiliation, if any, of the Respondent or Respondents, and any other party named in the charge.
 - 3) A clear and detailed statement of the facts constituting the alleged unfair labor practice, including
 - the names of the individuals involved in the alleged unfair practice
 - the time, place and nature of each particular act alleged
 - and reference to the specific provisions of the statute alleged to have been violated.
- Each fact must be alleged in a separate paragraph with supporting documentation provided, where applicable.
- All **Charges must be signed and their truthfulness sworn to** before any person authorized to administer oaths, and must contain the name, address and telephone number of the person signing it.

- All **pleadings** filed with the Board **must be served upon the other parties** to the matter and must include a affidavit of service naming all other parties and attorneys or representatives upon whom service was made. *
- Pleadings are **NOT ACCEPTED BY FACSIMILE TRANSMISSION.**
- All pleadings filed with the PERB must be filed with **1 original and 4 copies.**

Answer to Charge

- A Respondent has **seven (7) days** to file a written Answer to a Charge.
- An Answer must respond to each specific allegation in the Charge and should contain supporting documentation, where applicable.
- A party that fails to file an Answer or to specifically deny allegations in a complaint shall be deemed to have admitted those allegations which are not specifically denied.
- The Answer may also include any **New Matter**, including but not limited to affirmative defenses such as the jurisdiction of the PERB and the statute of limitations. New Matter must be plead in the Answer under a separate heading entitled “New Matter”.
- Answers must be **signed and their truthfulness sworn to** before any person authorized to administer oaths, and then filed with the PERB
 - the Respondent must file the original Answer with four (4) copies.
 - the Answer must be served on all other parties to the matter and must include a Certificate of Service.

Response to New Matter

- The Charging Party has five (5) days within which to file a Response to any New Matter raised in the Answer.
- Response to New Matter must be specific as to each paragraph of new matter set forth in the Answer.
 - A party who fails to file a Response to New Matter or to specifically deny allegations of New Matter contained in the Answer shall be deemed to have admitted that New Matter.

Amendment of the Charge and/or Answer:

* Service means any method reasonably intended to provide timely notice to those required to be notified and includes, but is not limited to, mail and personal delivery. Service is complete when a document is personally delivered, deposited with a telegraph company (charges prepaid) or deposited in the U.S. mail, properly addressed and stamped.

- A charge can be amended, at the discretion of the PERB and upon due notice to all parties, at any time prior to the issuance of a final decision and order, as long as no new cause of action is added after the statute of limitations has run.
- Any charge, amended charge, or portion thereof, can be dismissed by the PERB on its own motion.
- A charge can be withdrawn by motion of the Charging Party, with PERB approval, at any time prior to the issuance of a final decision and order, upon due notice to all parties.
- An Answer can be amended with PERB approval. The Answer may be amended by written motion. The Respondent may request to amend an Answer orally at the hearing, if before the commencement of the testimony.
- A continuance shall be granted if the amendment of the Answer prejudices the Complaint.

Stipulation of Facts:

- After completion of the pleading stage, the parties may jointly submit to the PERB a signed Stipulation of Facts, without a hearing.
- The parties should also state at that time whether they desire to present oral argument and/or file briefs on the legal issues raised by the pleadings.

Informal Conferences:

- At any time during the processing of a charge, the PERB may arrange for an informal conference with the parties for purposes such as
 - clarifying issues
 - reviewing facts
 - or taking other steps deemed necessary for the fair and expeditious resolution of the issue.

Probable Cause Determination

- Upon review of the pleadings the PERB must determine whether there is probable cause to believe that an unfair labor practice charge has been committed.
 - If it is determined there is **No Probable Cause**, the Charge is **dismissed**. The Charging Party may request a review of this decision by the full PERB.
 - If it is determined that an unfair labor practice has, or may have occurred, a decision shall be issued, where possible, on the pleadings. A decision on the pleadings is subject to review by the full PERB.
 - Where a decision is not issued on the pleadings, a Probable Cause Determination is issued stating the specific unfair labor practice which may have occurred.

Hearings:

- Where it is determined that a hearing is necessary, based upon the pleadings, it will be scheduled, wherever possible, within thirty (30) days of the close of the pleadings.
- The purpose of a hearing is to develop a full and factual record upon which a decision can be made.
- The party filing the petition has the burden of proving the allegations by a preponderance of the evidence.
- The principles of relevancy and materiality are paramount, although the technical rules of evidence do not apply to proceedings before the PERB.
- All hearings are open to the public unless otherwise ordered by the PERB.
- All hearings are recorded by the PERB on a four track taping system, and transcribed as required.
 - a copy of the hearing transcript is available at the requesting party's expense
 - any objections to the transcript must be filed within five (5) days of its issuance and must specify the objection, its basis and the remedy requested.
 - the transcript is part of the official record for purposes of review upon appeal and is considered prima facie accurate whenever offered into evidence.
- Hearings are conducted by a PERB Hearing Officer (H.O.) who has full authority to control the conduct at the hearing
 - H.O. has authority to admit or exclude evidence, question witnesses, rule upon motions and objections, and determine the order in which evidence will be presented
 - H.O. not bound by common law or statutory rules of evidence or by technical or formal rules of procedure.
 - H.O. may exclude plainly irrelevant evidence and unduly repetitive evidence, rebuttal and cross-examination.
- All witnesses testify under oath and are sworn by the H.O.
- **SUBPOENAS**
 - Parties involved in a hearing may request that the Hearing Officer issue subpoenas not later than **seven (7) days prior to the hearing**.
 - The Hearing Officer may subpoena witnesses and issue subpoenas requiring the production and examination of books, papers or other documents he/she deems relevant to the issue before the PERB.
 - The Hearing Officer may decline to honor a request for a subpoena for any of the following reasons:

- The evidence sought does not relate to the matter to be heard
 - The subpoena request does not describe with sufficient particularity the documents whose production is requested
 - The subpoena seeks to compel the appearance of a witness who would offer testimony which would merely be repetitive of other witnesses who will be produced.
- **Depositions:**
 - Can be taken if a witness resides outside the State or through illness or other cause is unable to testify before the Board
 - Application to take a deposition must be in writing or made orally at a hearing. The application should include:
 - Why the deposition should be taken
 - The name and address of the witness
 - Time and place proposed for the taking of the deposition
 - The application must be served on all parties.
 - The deposition must be taken before any court reporter authorized to administer oaths by the laws of the State or the United States or the place where the examination is held.
 - The court reporter must note any objections during the deposition.
 - The witness must subscribe to his/her testimony in the presence of the court reporter, who shall attach the his/her certificate stating:
 - The witness was duly sworn or affirmed
 - The deposition is a true record of the testimony given and exhibits presented.
 - If the deposition is not signed by the witness because he/she is ill, dead, cannot be found, refuses to sign it, or waives the right to sign it, that fact must be included in the certificate of the court reporter. The deposition may then be used as if fully signed.
 - The court reporter must deliver an original and one copy of the transcript of the deposition to the PERB.
 - Cost of the deposition is the responsibility of the requesting party.
 - During the deposition, objections to the form of the questions or evidence are waived unless specifically made during the examination of the witness.
 - The Hearing Officer shall rule upon the admissibility of the deposition or any part of it if offered into evidence or otherwise used during the hearing.

- **Contemptuous Conduct:**

- Contemptuous conduct is grounds for exclusion from a hearing
- Refusal of a witness to answer any questions ruled proper is grounds for striking all testimony previously given by that witness on related matters.
- Aggravated misconduct by an attorney or representative of a party is grounds, after due notice and a hearing before the PERB, for suspension from further practice before the PERB.

BRIEFS/ORAL ARGUMENT

- Prior to issuance of a decision, the Hearing Officer may require the parties to submit briefs or oral argument as to questions of law and appropriate remedies. The parties may also request the right to submit briefs and/or orally argue at the close of the hearing.
- The Hearing Officer shall establish appropriate guidelines for briefs, including the schedule and length.

DECISION OF THE EXECUTIVE DIRECTOR/HEARING OFFICER

- The Hearing Officer shall issue a **decision within thirty (30) days** after the close of the record.
- The decision is in writing and contains a statement of the case, findings of fact, conclusions of law and the appropriate remedy.
- **Remedies:** A party found to have committed an unfair labor practice shall be ordered to cease and desist from the unfair practice and to take reasonable affirmative actions as set forth in the decision, such as the payment of damages and/or reinstatement of an employee; provided however, the PERB shall **not** issue:
 - An order providing for binding interest arbitration on any or all issues arising in collective bargaining, or
 - Any order, the effect of which is to compel concessions on any an item arising in collective bargaining
- **Injunctions and Temporary Orders:** The PERB has authority to issue orders providing for such temporary or preliminary relief as the Board deems just and proper in unfair labor practice proceedings.
- A copy of the decision is served on all parties.

REVIEW OF THE HEARING OFFICER'S DECISION

- The Hearing Officer's decision is subject to review by the full PERB at the request of any party or upon the Board's own motion. Any request for review must set forth the portions of the decision on which review is sought and the basis for the filing party's objection to the decision.
- A request for review must be filed within **five (5) days** of the date upon which the decision was served upon the party. Any party which does not request review of decision may file a response to the request for review within **five (5) days** after the request for review is filed with the PERB.
- The full Board may decide to hold a hearing, receive written or oral argument in connection with a Request for Review. If the PERB does conduct a hearing, it will be in accordance with the hearing procedures described above.
- The full PERB shall render a decision within thirty (30) days from the date of the close of the official appeal record, or the receipt of briefs, or the receipt of the official transcript of any hearing held, or from the date of its receipt of the appeal, whichever is appropriate.

Appeals of Decisions of the Full PERB

- Unfair labor practice decisions of the full PERB may be appealed into Chancery Court.
- An appeal to Chancery Court must be filed within **fifteen (15) days** of the date upon which the decision was rendered.
- An appeal to Chancery Court **does not** act as an automatic stay on an order of the PERB.

Enforcement of Unfair Labor Practice Orders

- The PERB may petition Chancery Court for enforcement of any of its unfair labor practice orders
- It is also an unfair labor practice "Refuse or fail to comply with any provision of this Chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this Chapter"