



State of Delaware
Public Employment Relations Board
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PERB Hearing Procedures

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 employees; 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 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.
- A request for review must be filed within **five (5) days** of the date upon which the decision was served upon the party
- The full Board may decide to hold a hearing 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”