

Summary of Appeal Process before the Delaware Public Employment Relations Board

PERB Administrative Memorandum #00-02 (1/24/00)

Pursuant to the requirements of the statutes, the PERB has provided a process for appeal of decisions issued by the Executive Director and/or Hearing Officer to the full Public Employment Relations Board. 14 Del.C. §4006; 19 Del.C. §1306; 19 Del.C. §1606. Regulation 7.4 of the Board's Rules and Regulations provides:

The Executive Director shall be subject to review by the Board at the request of any party, or upon the Board's own motion. Such request for review by a party must be filed with the Board within five (5) days of the date upon which the party is served with the decision. If the Board, in its discretion, decides to hold a hearing in connection with its review of the Executive Director's decision, such hearing shall be conducted in accordance with Regulation 7 herein. The Board shall render a decision within thirty (30) days from the date of the official close of the appeal record, or the receipt of briefs, or the receipt of the official transcript, or from the date of its receipt of the appeal, whichever is appropriate.

I. Requesting PERB Review of a Decision of the Executive Director/Hearing Officer

- Any decision issued by the Executive Director and/or Hearing Officer is subject to review by the full PERB upon motion of either one of the parties or the Board itself. Copies of all decisions are provided to each of the PERB members at the time of issuance.
- A request for review of a decision must be filed within five (5) days of a party's receipt of the decision.
- A request for review must be filed in writing and must set forth the basis for the request, including specific objections to the decision, and the relief sought. The motion must also include the filing party's request to argue the matter, either orally or in writing, before the full PERB, if applicable.
- A request for review shall not automatically act as a stay of any action ordered by the decision.
- The motion must be served on the PERB at this offices, located on the 4th Floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE., 19801; (302) 577-5070. It must also be simultaneously served on all other parties to the matter and must include a certificate of service indicating

the method by which such service was made, in accordance with PERB Regulation 1.3.

- The non-petitioning party or parties may file, in writing, a response to the Request for Review and/or request the opportunity to argue the matter before the full PERB.

II. **PERB Disposition of Request for Review**

- Upon receipt, the Office of the Executive Director of the PERB shall immediately forward a copy of the full record in the matter to each of the Board members, along with the request for review. All parties to the matter will receive a copy of this letter to the Board.
- Upon individual review of the record, the Board Chair shall respond to a request to provide legal argument either by granting the request and setting forth the parameters for its receipt of argument or by denying the request. The Board shall deny a request for further argument where it deems such subsequent argument to be redundant, unnecessary or irrelevant.
- The Board will forthwith schedule a public meeting during which it shall consider the merits of the appeal. Such meeting will be noticed in accordance with the requirements of the Delaware Freedom of Information Act, 29 Del.C. Ch. 100. This meeting will include the Board's discussion of the record and the Executive Director/Hearing Officer's decision. The scope of the Board's review will be limited to the record created by the parties and will address whether the decision is arbitrary, capricious, contrary to law, or otherwise unsupported by the record. The Board will formally vote to either uphold or overturn the decision, or it may remand the decision for further action by the Executive Director.
- A written order shall be issued by the full PERB within thirty days following the Board's hearing.

III. **Appeal of PERB Decision to Court of Chancery**

- Any person adversely affected by a decision of the Board in an unfair labor practice proceeding may appeal that decision to the Delaware Court of Chancery. Such appeal must be filed within fifteen (15) days of the date upon which the decision was rendered and shall not automatically act as a stay. 19 Del.C. §1309(a); 19 Del.C. §1609(a); 14 Del.C. §4009(a).
- The Public Employment Relations Board may petition the Delaware Court of Chancery for enforcement of any order under the unfair labor practice provisions of the statute. 19 Del.C. §1309(b); 19 Del.C. §1609(b); 14 Del.C. §4009(b).

