

Unfair Labor Practice Procedures

Charges of unfair labor practices under PERA may be filed (1) by a labor organization or public employee against a public employer or, (2) by a public employer, public employee, or labor organization against a labor organization. An original and four copies of the charge must be filed with the Commission on an official form furnished by the Commission (See page 32, Charge Form), and the person or party filing (“charging party”) must serve a copy on the charged party (“respondent”) at the same time. There is a strict six-month statute of limitations for the filing of charges, and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge will be dismissed.

The charge must contain a clear and concise statement of the alleged violation and the facts supporting the charge, such as the dates, times, places of occurrence, names of persons involved, and the sections of PERA allegedly violated. The charge may be transferred to the Michigan Administrative Hearing System (MAHS) to be assigned to an ALJ, who will forward a copy to all parties, along with a notice of the next step of the process. The Commission does not investigate charges. If the facts described in the charge do not allege a violation of PERA, the Commission may dismiss the charge without taking evidence but, if requested, must allow the charging party the opportunity to present oral argument against the dismissal. If the ALJ finds that adequate information to allege a PERA violation has been provided, the parties will be provided with a notice that a formal hearing has been scheduled.

The respondent may file an original and four copies of an answer to the charge and, if it does so, must serve a copy on the charging party or parties. If the charge is vague, the respondent may file a motion requesting an order that the charging party provide more specific information.

Charges may be withdrawn or amended with the approval of the Commission or the ALJ assigned to the case. The Commission encourages settlements by the parties and, at any point prior to the issuance of a final order, the parties may negotiate a settlement of the unfair labor practice charge. If the matter is not settled, however, a formal hearing before an ALJ may be held. These formal hearings are usually held in Detroit or Lansing and are open to the public, unless otherwise ordered by the ALJ. At the hearing, the parties have the right to appear in person and to be represented by counsel, to examine and cross-examine witnesses, and to introduce documentary evidence. The charging party ordinarily presents its case first. It has the right to call witnesses, who may be examined and cross-examined by an attorney or other representative of each party. The respondent has the same opportunity to present witnesses and submit documentary evidence in its own defense. The ALJ has the authority to issue subpoenas, administer oaths, take testimony, hold pretrial conferences, examine witnesses, and regulate the entire course of the hearing. Closing arguments may be presented at the conclusion of the hearing and post-hearing briefs are typically filed.

Based on the evidence and arguments presented at the hearing, the ALJ issues a “Decision and Recommended Order” containing findings of fact and conclusions of law, reasons for the conclusions, and a recommended order that the Commission may adopt. If the allegations are not supported by the evidence, the ALJ may recommend dismissal of the charges. If the ALJ finds a violation, he or she may issue a recommended order that a party cease and desist from the unlawful activity and take affirmative action, such as reinstatement of the discharged employee and/or the payment of back pay.

Within 20 days after a recommended order has been issued by the ALJ, either party may appeal that decision by filing with the Commission an original and four copies of exceptions to the

ALJ's decision and recommended order. The exceptions must be accompanied by two copies of all exhibits submitted at the hearing and a statement that the exceptions and brief have been served on the opposing party. The exceptions must identify and explain in detail the questions of procedure, fact, or law in the ALJ's decision and recommended order that are alleged to be erroneous. Briefs are usually filed with the exceptions, and the opposing party may file a brief in response and/or cross exceptions. When exceptions are filed, the Commission reviews the entire case and issues an appropriate order either adopting, modifying, or reversing the ALJ's decision and recommended order. If no exceptions are filed within 20 days, the ALJ's recommended order becomes the order of the Commission. Disputes over the application or interpretation of the remedy in the Commission's order may be resolved by a compliance hearing before an ALJ. If the respondent refuses to comply with a Commission order, the charging party may seek enforcement in the Court of Appeals. A party who disagrees with the Commission's final order may file an appeal with the Court of Appeals. Ultimately, review by the Michigan Supreme Court may also be available.