Michigan Civil Service Commission

Regulation 6.02

Subject: Unfair Labor Practice Charges		
SPDOC No.:	**Effective Date:**	**Replaces:**
22-06	July 25, 2022	Reg. 6.02 (SPDOC 16-06, January 1, 2017)

1. Purpose

This regulation provides procedures for filing unfair labor practice (ULP) charges.

2. CSC Rule References

6-8 Recognition Rights for Labor Organizations

6-8.1 Rights of Exclusive Representatives

An exclusive representative (1) has the duty of fair representation of all employees in the unit, (2) may engage in collective bargaining with the employer, and (3), when mutual agreement is reached, may submit to the civil service commission for approval a written collective bargaining agreement regarding proper subjects of bargaining.

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6-11 Unfair Labor Practices for the Employer

6-11.1 Coercion

It is an unfair labor practice for the employer to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of rights granted by these rules.

6-11.2 Interference

It is an unfair labor practice for the employer to dominate, interfere with, or assist in the formation, existence, or administration of a labor organization.

6-11.3 Discrimination

It is an unfair labor practice for the employer to discriminate or retaliate against an employee because that employee has (1) filed an affidavit, petition, or complaint; (2) given information or testimony; (3) formed, joined, or chosen to be represented by a labor organization; or (4) participated in a campaign or election to certify, change, or decertify an exclusive representative.

6-11.4 Refusal to Bargain in Good Faith

It is an unfair labor practice for the employer to refuse to bargain in good faith over mandatory subjects of bargaining as required by these rules.

6-12 Unfair Labor Practices for Employees or Labor Organizations

6-12.1 Coercion

It is an unfair labor practice for employees or labor organizations to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of their rights as granted in these rules.

6-12.2 Interference

It is an unfair labor practice for employees or labor organizations to interfere with, restrain, or coerce the employer with respect to rights protected in this policy or with respect to the orderly selection of a representative to carry out its obligations under these rules.

6-12.3 Refusal to Bargain in Good Faith

It is an unfair labor practice for employees or labor organizations to refuse to bargain in good faith with the employer over mandatory subjects of bargaining as required by these rules.

6-12.4 Striking

It is an unfair labor practice for employees or labor organizations to call, institute, manage, or conduct, or participate in a strike for any purpose.

6-13 Unfair Labor Practice Procedures

An employer, employee, or labor organization may file an unfair labor practice complaint with the state personnel director. The director has the authority to investigate, obtain facts, statements, or affidavits, make determinations of violations, and assess appropriate penalties.

3. Standards

A. Filing.

1. **Delegation.** The State Personnel Director delegates administration of unfair labor practice (ULP) charges to the Civil Service Hearings Office (CSHO).
2. **Filing and Service.** Any charge must be filed with the CSHO by email to MCSC-Hearings@mi.gov.
3. **Time Limits.** An employee, employee organization, or employer normally must file any written ULP charge within six weeks of becoming aware of the cause of the charge. A ULP charge can be filed up to six months after the ULP occurred, if good cause for the untimely filing is demonstrated. No charge can be filed for a ULP that occurred more than six months before the filing date. If an administrative officer finds good cause and accepts a late appeal, any party may request the assigned hearing officer to review the finding *de novo*.
4. **Charges.** A ULP charge filing must include the following:

a. The name, email address, and signature of the charging party and the name and email address of any representative filing the charge. A signature can be a scanned document of an actual signature or the charging party's typed name followed by "/s/" (e.g., "John Doe /s/").

b. The name of the charged party.

c. A citation of the specific ULPs, as defined in rules 6-8, 6-11 and 6-12, that are alleged to have occurred.

d. A clear, concise, and complete statement of facts supporting each alleged ULP, including dates and locations of each alleged act.

5. **Administrative Review.** If a charging party does not meet the filing requirements in this regulation, the CSHO shall issue a notice of deficiency and allow 14 calendar days to correct the deficiency.

6. **Administrative Dismissal.** An adjudicating officer may administratively dismiss a ULP charge for any of the following reasons:

a. **Not authorized.** The charging party is not authorized to file the charge against the respondent. This includes attempts to file ULP charges based on the rights of other parties, such as ULP claims filed by an employee based on Rules 6-11.2, 6-11.4, and 6-12.3 or claims filed by the employer based on Rules 6-8.1 and 6-12.1.

b. **Failure to state a claim.** The charging party has not alleged a violation of a right specifically enumerated in rules 6-8, 6-11, or 6-12.

c. **Lack of jurisdiction.** Civil Service lacks jurisdiction over a necessary party or the subject matter of the charge.

d. **Untimeliness.** The charging party has not timely filed.

e. **Barred by prior claim.** Substantially the same charge was adjudicated to finality in another action between the same parties.

f. **Noncompliance.** The charging party has failed to timely correct a deficient filing.

B. Answers. If a charge is not administratively denied, the CSHO shall ensure service of a copy to each charged party and allow 28 calendar days to file a signed, written answer by email to MCSC-Hearings@mi.gov. The CSHO shall ensure service of the answers on the charging party. The Office of the State Employer or an exclusive representative may file a motion to intervene in a ULP charge with the CSHO. If assigned for hearing, the hearing officer shall rule on the motion to intervene. Failure to intervene will preclude involvement in any further appeals.

C. Hearings.

1. **Scheduling.** If the ULP charge meets the requirements of this procedure, the CSHO shall designate an impartial hearing officer and schedule a hearing to take evidence on the charge. The administrative officer may offer voluntary mediation to the parties.
2. **Testimony.** At the hearing, the parties may call, examine, and cross-examine witnesses and may introduce into the record documentary and other evidence.
3. **Applicability of Regulation 8.01.** The following procedural sections of Regulation 8.01, Grievance and Grievance Appeal Procedures, apply to hearings under this regulation, except that references to "grievance," "grievances," and "grievance appeal" therein are replaced with "ULP charge," and "grievant" therein is replaced with "charging party":
   a. § 4.E, Prehearing Procedures.
   b. § 4.F, Discovery.
   c. § 4.G, Hearing Procedures.
4. **Burden of proof.** The charging party must prove each element of its charge by a preponderance of the evidence.
5. **Decision.** The hearing officer shall issue a written decision. The hearing officer shall dismiss or sustain each charge in whole or part. If a charge is sustained, the hearing officer shall order that the charged party (1) cease and desist any ULPs found and (2) take action to remedy their effects. The hearing officer cannot award attorney fees, witness fees, costs, or other expenses.

D. Appeals. A hearing officer's final decision in a ULP charge must contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission within 28 calendar days, as provided in rule 6-14.3. A ULP decision becomes final and binding on the parties 29 calendar days after issuance, unless the decision provides a later effective date or a timely appeal is filed. A decision is automatically stayed pending resolution of a timely appeal.

E. Authorized Representation. The provisions of Regulation 8.01, § 4.K apply to representation and administrative leave under this regulation, except that references to "grievance," "grievance appeal," and "grievance regarding a prohibited subject of bargaining under an exclusive Civil Service procedure" therein are replaced with "ULP charge," and "grievant" therein is replaced with "charging party." If a charge is against a labor organization, the employee cannot designate an employee or agent of the labor organization as an authorized representative without the labor organization's written consent.

CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-284-0093; or to MCSC-OGC@mi.gov.