



# SLS HANDBOOK

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Memo 2

June 2022

## PROCEDURES FOR HANDLING PERB UNFAIR PRACTICE CHARGES OR LABOR CONTRACT GRIEVANCES

In the public education context, an unfair practice charge is an alleged violation of rights guaranteed under the Educational Employment Relations Act (EERA). Unfair practice charges are adjudicated by the Public Employment Relations Board (PERB) in the first instance.

### PHASE ONE: FILING AND ASSIGNING INITIAL CHARGE

The first phase of an unfair practice charge (UPC) is filing a written charge with PERB and serving a copy on the charged party (usually the district, college, or county superintendent). At this phase, a formal answer to the charge is not required. However, copies of all documents you receive from PERB should be mailed or delivered to Schools Legal Service on the same day you receive them. PERB has implemented new requirements for e-filing that apply to all communications and filings with PERB.

When PERB receives the UPC, it assigns a case number and title (for example: LA-CE-0015, ABC Federation, Chapter No. 2, v. ABC School District). PERB then sends both parties a letter stating that a UPC has been filed, naming the regional or staff attorney in charge of the initial investigation, and describing the case handling procedures to be used. Additionally, the charged party is informed of its right to present information, in oral or written form, to the regional or staff attorney. A Notice of Representation form will be included with the PERB information. You should sign the representation form and send it to Schools Legal Service along with all other material received from PERB so we can represent the district. We will send the representation form to PERB to ensure that we are contacted at all further phases of the case. Correspondence and filings (e-file) with PERB are electronic. In the COVID era, hearings were

handled via ZOOM and the use of ZOOM continues unless a party objects and demands an in-person hearing.

After PERB has assigned a case number and title, the General Counsel of Schools Legal Service will designate an attorney/negotiator to handle the case. You will be contacted by the assigned attorney/negotiator to discuss the matter and to obtain pertinent information.

After receiving the initial charge, PERB will investigate the matters alleged to have given rise to the UPC. In most instances, the district responds through a Position Statement and supporting documents prepared by counsel and verified by an authorized district representative. The lofty goal is to convince the regional or staff attorney that the charge should be dismissed as it does not give rise to an EERA violation. Where the complaint does not support a viable claim against an employer, it should be dismissed. Unfortunately for employers PERB very rarely refuses to issue a complaint, as the threshold for establishing a prima facie violation of EERA is extremely low.

Where the UPC charge states a prima facie case (in other words, where there is a sufficient factual showing concerning each element of the alleged violation or where there are substantial questions of fact that can only be resolved during a hearing), the PERB regional attorney will issue a complaint. While this triggers formal hearing procedures, it does not mean that PERB finds any merit to the charge. You should be prepared to explain both to employees and to the public that PERB has made no decision by issuing a complaint, other than that a hearing must be held.

## **PHASE TWO: FORMAL COMPLAINT**

The second phase of a UPC follows issuance of the formal complaint. Once a complaint has been issued, the charged party will be served and informed of its obligation to respond. Usually there are only 20 calendar days from the date of issuance (not receipt) of the complaint within which to file a formal written response. Extensions can be requested and are liberally granted.

After a complaint is issued, the district is typically contacted by Schools Legal Service to discuss the complaint, which may vary from the original charge, and to obtain information necessary to prepare the formal written Answer that specifically addresses each factual allegation of the complaint and raises affirmative defenses that may be available. Failure to raise an affirmative defense could constitute a waiver of that defense. Like the position statement, the Answer must be verified by an authorized district representative. If we have filed the representation form, the complaint and all related materials are sent directly to our office by PERB. However, if you have not yet determined to utilize our services, those materials will be sent to the district directly as the charged party. Time is of the essence and we suggest an immediate appointment, personal visit (or

via ZOOM), either at our office or yours, if you determine to seek our assistance at this point. It is imperative that full, legible copies of all documents be available at that meeting.

A complaint will be accompanied by a notice setting the date for an Informal Conference. The purpose of the Informal Conference is to clarify the issues, if necessary, and explore the possibility of voluntary resolution and settlement. We will contact you to discuss such matters as parameters, if any, for settlement, whether your appearance at the Informal Conference is necessary, whether the Informal Conference date is appropriate, and whether and how many district participants from the charging party should be released, with or without pay, to attend the Informal Conference.

The Informal Conference is a process similar to mediation in which a PERB Board Agent, after first going through introductions and a description of the process, will meet separately with each side. The Board Agent's mission is to attempt to resolve the issue in dispute without the need for a formal hearing. This process can be successful and should be approached in a positive manner.

If the Informal Conference fails to result in a voluntary settlement or withdrawal/dismissal of the complaint, PERB will set the matter for formal hearing. The hearing is normally scheduled within two to four months from the date of the Informal Conference. The full evidentiary hearing is held before a second PERB ALJ.

Following the close of the hearing, the ALJ will issue a proposed decision. If either party is dissatisfied with the proposed decision, it may appeal to PERB itself. PERB decisions can only be reviewed by a state Court of Appeal or the state Supreme Court. Clients should also make us aware of all current and past matters which may have a bearing on the UPC (for example, contract negotiations - including the potential for a strike, pending disciplinary actions, pending or threatened lawsuits, pending administrative procedures in other forums including grievances, workers' compensation, or DFEH matters, etc., involvement of any affected employee as a member of the exclusive representative's bargaining team, grievance committee, or executive committee).

## **GRIEVANCES**

Grievances are formal matters of contract interpretation and administration and should be viewed as part of the ongoing process of employer-employee relations within your district. The wide variety of grievance provisions in collective bargaining agreements makes it impossible to develop a standard procedure for assisting in all grievance cases. A grievance is typically filed when the exclusive representative, or individual employee, believes that the district has violated a provision of an applicable collective bargaining agreement.

Ordinarily, handling a grievance becomes more formal at each successive level in the process. It is often unnecessary for this office to become involved in the informal or first level/supervisory phase of a grievance. However, if there are unique procedural, jurisdictional, or contract issues involved (for example, the original grievance is filed late, the bargaining agreement limits raising procedural defenses, or the grievance does not relate to a contract clause) it may be important to contact us.

Most grievance procedures contain two to three levels of grievance processing at the district level, use of a mediator, and finally, conclude with a formal hearing before an arbitrator or the Governing Board.

If our advice or assistance is required at an intermediate level, the request must be made by or with the knowledge of the superintendent or chancellor (or in larger districts, the appropriate assistant superintendent, vice chancellor, or personnel director).

Our assistance should be requested in writing as soon as possible so we can examine the collective bargaining agreement, the grievance form, and other pertinent documents and, if necessary, prepare or review a proposed response. Since grievance procedures often include rigid deadlines at various levels, you should promptly decide whether our assistance may be required.

In most cases, the initial request for grievance assistance will be referred to your attorney/negotiator. If your assigned attorney/negotiator is not available to give prompt attention to your request, another attorney will be assigned to assist in the matter.

Schools Legal Service is available to work with you in the preparation process, provide assistance or actual representation at all levels of the grievance and arbitration process. If our attendance is required, and if we are not handling the arrangements, formal sessions should not be scheduled until you have cleared the date with the assigned attorney's calendar.

Some members send us copies of grievances whenever they are filed, as well as copies of intermediate level responses for our files. This practice is useful because we then have documents to refer to if a request for advice or assistance is made at a later phase. However, you should be aware that we file these information copies without taking action unless specifically requested.

As in UPC cases, whenever you request our assistance in handling a grievance, you should also make us aware of all current and past matters which may have a bearing on the grievance (for example, contract negotiations, pending disciplinary actions, pending or threatened lawsuits, pending administrative proceedings in other forums (PERB, workers' compensation, DFEH, etc.), the grievant's involvement as a shop or faculty representative, a member of the exclusive representative's bargaining team, grievance committee, or executive committee).

We look forward to working with you should you need assistance when responding to a UPC or grievance. Feel free to contact us with questions at any time.

*Timothy L. Salazar*