

Developments with PERB: What Employers Need to Know

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Today's Presentation

Introduction to PERB

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Effects of upcoming PERB Legislation

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What Employers Need to Know About
Preparing for Charges

Introduction to PERB

MPELRA Legislative History

MN Public Employees Labor Relations Act (MPELRA)

Chapter 179A. Public Employers Labor Relations.

First enacted in 1971 after illegal teachers strike

Establishes special rights, responsibilities, procedures, and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer, and the public at large

Mutual Obligations Under MPELRA

Meet and negotiate in good faith

Comply with arbitration awards

No discrimination against employees
because of union membership or activity

No coercion of employees or interference
with employees who exercise their rights
under PELRA

No unfair labor practices (ULP's)

The Public Employment Relations Board – PERB

Tasked to investigate, hear and resolve unfair labor practice charges

Created by the 2014 Minnesota Legislature

\$125,000 provided for start up funding

- Lack of funding resulted in a law being passed to temporarily shift jurisdiction of ULP charges to the district court

PERB Consists of 3 Members

An officer or employee of an exclusive representative of public employees appointed by the governor.

A public employer's representative appointed by the governor.

A representative of the public at large and is appointed by the other two members.

PERB Current Members

Representative
Of Public
Employees:

- **Margaret Luger-Nikolai**
- Term ends 1/5/26

Public
Employers
Representative:

- **Martin Munic**
- Term ends 1/5/26

Public / Neutral
Member:

- **Laura Cooper**
- Term ends 12/31/26

Alternate Board
Members

- Richard Kaspari
- Scott Lepak
- Marlin Osthus

Current Status of PERB

Pursuant to 2021 Minn. Laws 1st Spec. Sess. Ch 10, Article 3, § 19 (S.F. 9), the PERB does not have jurisdiction over unfair labor practice (ULP) charges during the period beginning July 1, 2021, and ending on June 30, 2023.

Accordingly, beginning on July 1, 2021, the PERB is no longer accepting any new ULP charges. Such charges must now be filed in district court.

Upcoming PERB Legislation

Current Pending Bills

Bill fully
funds
PERB with
ongoing
funding

\$750,000 in
2024
And
\$750,000 in
2025
for PERB

Bill would
also clarify
applicable
Data
Practices
and Open
Meeting
Law
provisions

Bill titled
HF62 and
is included
in MN
House
Jobs/Labor
Omnibus
Bill



Data Practices for Hearings Conducted Pursuant to Section 179A.13 Under HF62

All data maintained by the PERB about a ULP charge and appeals of Commissioner's determinations are classified as protected nonpublic data or confidential data prior to being admitted into evidence

Data that are admitted into evidence at a hearing are public unless subject to a protective order as determined by the PERB or a hearing officer.

Statements by individuals provided to the PERB are private data on individuals, as defined by Minn. Stat.13.02, subd. 12, prior to being admitted into evidence, and become public once admitted into evidence.

Under HF62, the Following Data Would Be Public At All Times:



the filing date of unfair labor practice charges;



the status of unfair labor practice charges as an original or amended charge;



the names and job classifications of charging parties and charged parties;



the provisions of law alleged to have been violated in unfair labor practice charges;



the complaint issued by the board

Under HF62, the Following Data Would Be Public Unless Subject to a Protective Order

The full and complete record of an evidentiary hearing before a hearing officer, including the hearing transcript, exhibits admitted into evidence, and post-hearing briefs;

Recommended decisions and orders of hearing officers

Exceptions to the hearing officer's recommended decision and order filed with the board

Party and nonparty briefs filed with the board; and

Decisions and orders issued by the board.

PERB's Discretion re: Data Practices Under HF62

The board may make any data classified as private, protected nonpublic, or confidential pursuant to this subdivision accessible to any person or party if the access will aid the implementation of chapters 179 and 179A or ensure due process protection of the parties.

HF62 Section 2



Proposed Changes Under HF62 Regarding Open Meeting Law.

Law Will Not Apply When PERB is:

Deliberating

- on the merits of unfair labor practice charges under sections 179.11, 179.12, and 179A.13;

Reviewing

- a recommended decision and order of a hearing officer under section 179A.13; or

Reviewing

- decisions of the BMS Commissioner relating to ULPs under Minn. Stat. 179A.12, subd. 11.



Effects Of Upcoming PERB Legislation



Once PERB receives funding again, employers and unions can file ULP charges with PERB and will not longer need to file ULPs in District Court



Process will be more accelerated and likely more widely utilized

ULP Charges: Procedures Covered by Chapter 7325 of Minnesota Administrative Rules.

The charging party must file a charge in writing using the form provided by the board and must submit evidence in support of each alleged ULP + supporting documentation.

Rule 7325.0110



The charging party may amend or withdraw a charge at any time prior to the issuance of a complaint or notice of dismissal.

Rule 7325.0140.



The charged party must submit a response to each alleged ULP + supporting documentation within 14 days of the date the charge or amended charge is served by the board, unless an extension is granted by the assigned investigator for good cause shown.

Rule 7325.0110

Form Describing Charge Must Include, Among Other Requirements, The Following:

a clear and concise statement of each charge of an unfair labor practice including the dates, times, and places of the alleged unfair labor practice and the name of the person, entity, or both that allegedly committed the unfair labor practice. **Rule 7325.0110.**

a reference to the specific section or sections of law alleged to have been violated under Minnesota Statutes. **Rule 7325.0110.**

the specific remedy being sought for each unfair labor practice alleged. **Rule 7325.0110.**

Form can be found here <https://mn.gov/perb/filing/>

Upon receipt of a charge filed with the Board, the Board will review the charge for timeliness and completeness as to form and substance. If necessary, the party filing the charge may be asked to delete information from the charge that is confidential or privileged from disclosure.

Minnesota Administrative Rule 7325.0120: Mediation

- Whenever it would advance the possibility of a mutual resolution, the board or its designee shall:
 - work with the commissioner of mediation services to assign a mediator; and
 - undertake an effort to conciliate or recommend mediation with the assigned Bureau of Mediation Services mediator.



Minnesota Administrative Rule 7325.0130: Investigation



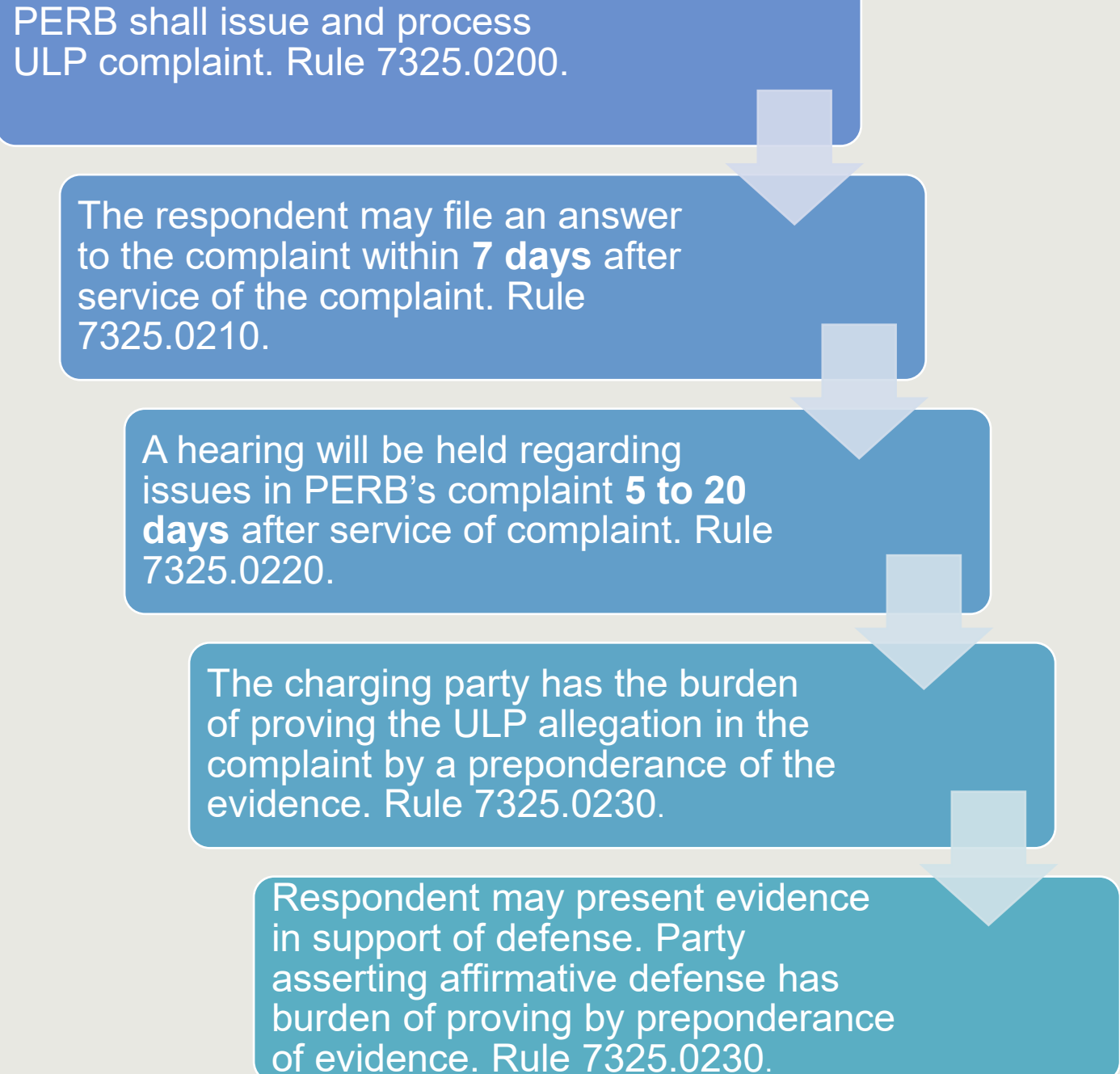
A designated board staff member may conduct an informal conference or conferences during the course of the investigation to clarify issues or to explore voluntary resolution.



If, after the investigation, the charge is found to have no reasonable basis in law or fact, the board must advise the charging party of this fact and give the charging party the opportunity to withdraw the charge.

If Charge Not Dismissed or Withdrawn, Complaint Issued and Rapid Timelines Enue:

PERB shall issue and process ULP complaint. Rule 7325.0200.



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graph TD; A[PERB shall issue and process ULP complaint. Rule 7325.0200.] --> B[The respondent may file an answer to the complaint within 7 days after service of the complaint. Rule 7325.0210.]; B --> C[A hearing will be held regarding issues in PERB's complaint 5 to 20 days after service of complaint. Rule 7325.0220.]; C --> D[The charging party has the burden of proving the ULP allegation in the complaint by a preponderance of the evidence. Rule 7325.0230.]; D --> E[Respondent may present evidence in support of defense. Party asserting affirmative defense has burden of proving by preponderance of evidence. Rule 7325.0230.];
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The respondent may file an answer to the complaint within **7 days** after service of the complaint. Rule 7325.0210.

A hearing will be held regarding issues in PERB's complaint **5 to 20 days** after service of complaint. Rule 7325.0220.

The charging party has the burden of proving the ULP allegation in the complaint by a preponderance of the evidence. Rule 7325.0230.

Respondent may present evidence in support of defense. Party asserting affirmative defense has burden of proving by preponderance of evidence. Rule 7325.0230.

Minnesota Administrative Rule 7325.0240: Hearing Officer Duties

Regulate proceedings of case and conduct of parties during proceedings;

Receive testimony and evidence;

Rule on requests for continuances;

Rule on motions to sequester witnesses;

Issue subpoenas and rule upon motions to revoke subpoenas;

Rule on objections, motions, and questions of procedure;

Authorize submission of briefs and set time for filing;

Hear closing arguments; and

Minnesota Administrative Rule 7325.0400: Review

Exceptions may be filed by both parties to hearing officer's recommended decision and order with the PERB, no later than 30 days, together with briefs supporting exceptions, and request oral arguments before PERB



Decisions of the PERB may be reviewed on certiorari by the Court of Appeals



Appeals from decisions of the BMS Commissioner under unfair labor practices found to occur in the course of a representation election are subject to review by the PERB in the same manner as recommended decisions and orders of board hearing officers.

What Employers Need to Know About ULPs

Unfair Labor Practices

Subject to the purview of the PERB

Illegal activities committed by employer, employee or union

Employer

- Dominating or interfering with formation or administration of union.
- Discriminating in hiring because of participation/non-participation in the union

Union

- Engaging in illegal strikes
- Coercion/refusal to handle goods or perform services

Both

- Restraining employees in exercise of rights under PELRA.
- Refusing to meet and negotiate in good faith
- Refusing to follow arbitration decision

Unfair Labor Practice Based On Conduct During Bargaining

Surface Bargaining

Regressive Bargaining

Failure to provide information regarding bargaining

Circumvention of exclusive representation

First and final offer

Which Topics Are Bargained?

Mandatory subjects of bargaining:

Terms and conditions of employment

- Wages
- Benefits,
- Layoff/bumping rights
- Discipline
- Grievance procedures

Permissive subjects of bargaining:

Something typically to be considered a Management right

- Example: vacancy filling

Prohibited subjects of bargaining:

- Pensions
- Criteria for promotion to supervisory positions

Inherent Managerial Rights are Not Terms and Conditions of Employment and Should Not Be Negotiated

Budget

Classification/Job
Title/ Job
Descriptions/
Organizational
Structure

Assignment and
transfer of
employees

Determine
adequacy of
workforce / Filling
vacancies

Reasons or
criteria for layoff

Determine
methods, means,
standards of
service
(staffing ratios)

Use of
technology

Direct, supervise,
evaluate
employees

Improve
operations

Determine
mission of work
unit

Other Important Public Sector Labor Concepts That May Present Themselves in ULPs



Role of Exclusive Representative – exclusivity



Concerted activity - protected

Exclusivity

A bargaining unit is the “exclusive representative” of all employees it represents

Employers may not engage in “direct dealing” and “work out deals” with individual employees on matters covered by CBA

Employees may not bring a private attorney to Loudermill meeting or meeting to address a dispute covered by CBA

Concerted Activity is Protected

Prohibition of:

Taking action to
discourage

Taking action to punish



Examples

Discussing
pay,
benefits, or
supervisor
actions

Encouraging
employees to
join or
support a
union

Discussing
contract
negotiation

Encouraging
or discussing
grievances

Posting
work-
related
comments
on social
media

Preparing for ULP Charges



Provide other training on ULP's to your supervisors



Evaluate union and employee conduct to determine whether Employer is warranted in filing ULP charge.



Consult with an experienced labor relations professional before making or responding to ULP's



Be aware of charges, defenses, and timelines

Questions?