



What is an Unfair Labor Practice?

An unfair labor practice is a violation of 4117.11 of the Ohio Revised Code. While both the employer and the union can commit an unfair labor practice, this fact sheet will describe employer unfair labor practices and how OCSEA deals with them. Whether the employee should file an unfair labor practice or a grievance on a particular situation depends on the specifics of the situation. SERB will defer to the grievance procedure in those instances in which it determines the charge raises a contractual claim that can be resolved through the grievance procedure.

Types of unfair labor practices

There are eight types of unfair labor practices:

1. Interfering with employee rights. Specific rights granted by the law are the right to join (or not join) and participate in an employee organization of their choice; the right for employees to act in a collective fashion; the right of employees to be represented by an employee organization if a majority of employees have indicated this desire and the organization has been certified by SERB; the right to bargain; the right to present grievances; and the right to select representatives.
2. Refusal to bargain. Refusal to negotiate in good faith over wages, hours and terms and conditions of employment with the union. This can include the employer's unilateral change of terms and conditions of employment.
3. Grievance processing and fair representation. This provision requires collective bargaining agreements to have grievance procedures and that grievances must be adjusted according to the contract. An employer cannot repeatedly fail to process grievances timely and/or to process requests for grievance arbitration.
4. Lockout. A lockout occurs when the employer denies access to the workplace or in other ways acts to prevent employees from doing their duties in order to get employees or their union to capitulate or agree to a compromise to the employer's terms in a labor dispute.
5. Causing an unfair labor practice. Causing an employee representative to commit an unfair labor practice. For example, a supervisor directing a steward to answer a question about an employee he/she was representing. If the steward answered, it would be a breach of his/her duty to represent.
6. Forming a company union or interfering with the formation or administration of an independent union. But a public employer may allow a union to use the employer's facilities for membership or other meetings or allow a union to use the employer's internal mail system.
7. Discharging or discriminating against an employee because he/she has filed charges or given testimony under the Collective Bargaining Act.
8. Discriminating or retaliating against an employee who is exercising his/her rights.

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How does OCSEA file ULP's?

To preserve priorities of the organization, it is the OCSEA policy that ULP's are filed through OCSEA Central Office. Unfair labor practices can be quite technical and they are most effectively prepared by the legal staff. If you think your employer has committed a ULP, contact your staff representative. When a ULP charge is filed, SERB requires a detailed account of local union and grievance history. Please be prepared to provide this information to the staff drafting the complaint.

What are the time frames to file an unfair labor practice?

The charge must be filed with SERB within 90 days of the last occurrence of action which is alleged to be an unfair labor practice. There is a standard form, although it is not mandatory that it is used. All charges must be in writing and signed, and must include required information. All charges must be served upon the party against whom the charge is filed.

What is the process involved?

After an unfair labor practice has been filed, a questionnaire is submitted to each party to complete. The information required is much more detailed than that given in the initial charge. One of SERB's staff completes an investigation and makes a recommendation to the actual SERB Board. If the Board decides there is no basis for the charge, the unfair labor practice is dismissed. If the Board believes there is basis for the charge, they make a finding of probable cause and a hearing for the parties is set. At the hearing, parties present evidence. An administrative law judge/hearing officer makes a recommendation for a final Board decision. Only the State Employment Relations Board can uphold an unfair labor practice complaint.

If the employer is found to have committed a ULP and the employer is ordered to cease and desist those actions, SERB can take the affirmative action including reinstatement and back pay. Also, the employer could be required to bargain with a union over terms and conditions of employment that the employer has unilaterally changed and circumstances can be ordered returned to what existed prior to the unfair labor practice charge while the parties bargain.

REFERENCES:

ORC 4117.11



OCSEA

AFSCME Local 11 - AFL-CIO

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