

12 DEPARTMENT OF LABOR

180 MAINE LABOR RELATIONS BOARD

Chapter 12: PROHIBITED PRACTICE COMPLAINTS; INTERPRETIVE RULINGS

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SUMMARY: This chapter contains rules on filing prohibited practice complaints, responding to a complaint, the prehearing conference, the adjudicatory hearing and the issuance of decisions and orders by the Board. This chapter also contains rules on requests for interpretive rulings from the Board.

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## PROHIBITED PRACTICE COMPLAINTS

### § 1. Nature of a Prohibited Practice Complaint.

The filing of a prohibited practice complaint with the Board is a request that the Board adjudicate whether the named party has violated the applicable collective bargaining law as charged in the complaint, and, if so, that the Board provide an appropriate remedy.

### § 2. Who May File a Complaint.

Any employer, employee, employee organization or bargaining agent that believes that any employer, employee, employee organization or bargaining agent has engaged in or is engaging in a prohibited act or practice as defined in 26 M.R.S.A. §§ 964, 979-C, 1027, or 1284, or 1324 may file a complaint with the Board.

### § 3. Time Limit for Filing a Complaint.

No complaint may be filed that is based upon any alleged prohibited practice occurring more than ~~six~~ 6 months prior to the filing of the complaint with the Board. The complaint must be served on the party charged prior to being filed with the Board.

### § 4. Complaint is a Formal Request.

The complaint is a formal request for relief and, as such, the complaining party must have grounds to support its complaint. The complaint must be submitted in writing ~~in the original and one copy~~ in accordance with the filing requirements of Chapter 10, section 7; ~~must be signed before a notary public,~~ and must contain a declaration by the person

signing, under penalty of ~~perjury law~~, that its contents are true and correct to the best of the declarant's information and belief.

§ 5. Contents of Complaint.

The complaint must contain, insofar as is known, the information specified in this ~~rule section~~. This information may be furnished on a form provided by the Board. ~~The complainant is required to file the original and one copy of the complaint. The complainant will be required to supply an additional 3 copies of the complaint and the collective bargaining agreement after the prehearing conference. The required complaint must contain the following information is:~~

1. Name of Complainant. The full name, address, and affiliation, if any, of the complaining party, and the title of any representative filing a complaint.
2. Name of Respondent. The full name and address of the employer, ~~employee(s)~~ employees or employee organization(s) organizations against whom the complaint is made.
3. Copy of Collective Bargaining Agreement. A copy of any existing bargaining contract or agreement relating to the unit involved in the prohibited practice complaint. A copy of the contract must accompany the original and each copy of the complaint.
4. Concise Statement of Facts. A clear and concise statement of the facts constituting the complaint, including the date and place of occurrence of each particular act alleged, names of persons who allegedly participated in or witnessed the act, and the sections, including ~~subsection(s)~~ subsections, of the labor relations statutes alleged to have been violated. The complaint must consist of separate numbered paragraphs with each paragraph setting out a separate factual allegation.
5. Relief Sought. A statement of the relief the complaining party seeks. This claim for relief does not limit the powers of the Board.
6. Other Relevant Information. A brief statement of any other information relative to the charge.

The complaint may also include, but is not required to include, attached documentary evidence in support of the factual allegations made in the complaint. Such attachments will generally be considered if they aid in understanding the allegations in the complaint, but they may not be used as a substitute for the specific allegations of fact required in the complaint. In the event that the complainant wishes to include such attachments in the

record as documentary evidence, they must be introduced in the same manner as any other documentary evidence at the prehearing conference or hearing, subject to objection by an opposing party and an admissibility ruling by the prehearing officer or Chair.

§ 6. Delivery of Complaint to Other Party; Proof of Service.

A prohibited practice complaint ~~is not considered~~ may not be filed with the Board until the complaining party has delivered a copy of the complaint upon the party against whom the charge is made. The executive director may at any time require the complainant to file proof of the date that the complaint was delivered on the respondent if proof of service is not filed with the complaint. Failure to provide the proof of service as required by the executive director is grounds for dismissal of the complaint. Proof of service may be in the form of either a certified mail receipt signed by the recipient addressee or an agent of the addressee, a signed and dated acknowledgment of receipt by hand delivery, a dated confirmation of delivery from the Post Office or other delivery service, ~~or~~ a dated statement of refusal of service or a copy of the sent email that includes the date and the email address to which it was sent. These requirements also apply to amended complaints.

§ 7. Docket Number.

The Board shall notify the parties of the receipt of the complaint and the docket number assigned. The parties must include the docket number on all documents and subsequent correspondence concerning the complaint.

§ 8. Review, Amendment and Action on Complaint.

After ~~giving the respondent the opportunity to be heard on the sufficiency of the complaint~~ the 20-day period in which the respondent's answer is due pursuant to section 9, the executive director shall review the complaint for sufficiency and proceed in accordance with this rule.

1. Action Following Review for Sufficiency. Upon reviewing the complaint for sufficiency, the executive director shall take appropriate action, which may include the issuance of a notice of a prehearing conference or an evidentiary hearing, summary dismissal of the complaint in whole or in part, entry of an uncontested order, ~~or~~ issuance of a recommended order by the executive director. The executive director may also issue a notice of errors and insufficiencies to the complainant and allow amendment of the complaint.
2. Permitted Amendments. A party may amend its complaint once as a matter of course at any time before a responsive pleading is served and once after receiving

a notice of errors and insufficiencies from the executive director. Amendments made in response to a notice ~~from the executive director~~ of errors and insufficiencies from the executive director must be filed within ~~fifteen~~ 15 calendar days of service of the notice. Amendments must be delivered to all other parties in accordance with Rule section 6 of this Chapter. When the claim asserted in an amended complaint arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the permitted amendment relates back to the date of the original pleading.

3. Dismissal; Appeal. If, after the opportunity for amendment has expired, the allegations in the complaint do not constitute a prima facie violation of the applicable prohibited act ~~provision(s)~~ or practice, the complaint may be summarily dismissed in whole or in part by the executive director, who shall notify the parties of the determination. A party whose complaint is summarily dismissed in whole or in part may appeal to the Board, by filing a motion requesting review of the dismissal within ~~fifteen~~ 15 calendar days after the issuance of the dismissal, ~~by filing a motion requesting review of the dismissal~~. The motion must clearly and concisely set forth the points of fact and law claimed to be sufficient to establish a prima facie violation of the applicable prohibited act or practice ~~provision(s)~~. Upon the filing of a timely motion for review, the Board shall examine the complaint as it existed when summarily dismissed in light of the assertions contained in the motion. If upon such examination the Board finds the complaint insufficient, it shall affirm the summary dismissal of the charge and shall notify the parties in writing of the determination. If the Board finds the complaint to be sufficient, it shall reinstate the complaint and shall so notify the parties.

## § 9. Response to Complaint.

The party against whom a complaint has been filed shall file ~~the original and one copy of~~ its response answer to a complaint and any motion to dismiss within 20 calendar days after the filing of the original complaint, or 10 calendar days after the filing of the amended complaint, whichever is later. The respondent shall simultaneously serve a copy of the response answer upon the complaining party and certify that service was made in accordance with Chapter 10, § section 8 of these Rules. ~~The respondent will be required to supply an additional 3 copies of the response after the pre-hearing conference.~~

1. Contents of ~~Response~~ Answer. The response answer must include a specific admission, denial, or explanation of each allegation in the complaint and must fairly meet the substance of the allegations denied. The response answer must be signed by the respondent. Any material allegation not denied in the response answer is deemed admitted. Any request for deferral of issues raised to the parties' grievance/arbitration grievance process, including arbitration, ~~procedure~~ must be

made in the ~~response~~ answer. A joint statement of any matters of agreement reached by the parties must be attached to the ~~response~~ answer.

2. Counter Complaint. If the ~~response~~ answer contains a counter complaint, that counter complaint will be reviewed in accordance with section 7, and, if it alleges a prima facie violation of the applicable prohibited act ~~provision(s) or practice~~, a ~~response~~ an answer to that counter complaint will be required. A counter complaint is treated like an initial complaint, in all respects.
3. Failure to ~~Respond~~ Answer. Failure to file a timely ~~response~~ answer constitutes an admission of the properly pleaded material facts alleged in the complaint. Failure to file a ~~response~~ an answer is grounds for the Board to render a default order against the respondent unless the Board finds that the respondent's failure to answer is the result of excusable neglect. The default is with prejudice, unless the order provides otherwise.

#### § 10. Prehearing Conference; Notice and Procedure.

The executive director may require attendance at a prehearing conference by the parties or their representatives. The purpose of a prehearing conference is to prepare for an orderly hearing, to narrow the issues to be resolved at hearing and to explore opportunities for settlement.

1. Notice. The executive director shall serve notice of the prehearing conference on the parties by registered or certified mail with return receipt requested. The notice must include the time, date, and place of the conference or hearing.
2. Required Information. The notice of prehearing conference may require the parties to provide either at the prehearing conference, or up to one week prior to the date of the prehearing conference, the following information:

~~A. a~~ A written statement of relevant issues of fact and law;

~~B. an~~ An estimate of the time required for hearing;

~~C. proposed~~ Proposed stipulations and admissions;

~~D. exhibits~~ Exhibits and a list of the names and addresses of witnesses intended to be offered at hearing;

~~E. a~~ A concise description of the settlement posture of the case without reference to the specific figures involved in prior discussions or negotiations;

~~F. oral~~ Oral argument on any request for deferral; or

G. any Any other information which in the opinion of the prehearing officer may aid in resolution or narrowing of the disputed issues remaining for hearing.

3. Documentary Evidence. The prehearing officer shall mark and admit all documentary evidence on which the parties agree. Disputed documentary evidence must be marked for identification and the basis of any objection noted by the prehearing officer. The Board shall rule on the admissibility of documentary evidence upon motion by the offering party at the evidentiary hearing. Documentary evidence offered under this rule must be submitted in ~~five~~ 5 copies. Only documentary evidence which was not available to the party offering it at the time of the prehearing conference or which was not known to exist at that time may be considered for admission by the Board at the time of hearing.
4. Witness List. The prehearing officer shall make a witness list. Any change in the list of prospective witnesses must be communicated by each party to the ~~other(s)~~ others and to the Board at least ~~forty-eight~~ 48 hours before the evidentiary hearing.
5. Collective Bargaining Agreement. In any case where the complaint refers to a collective bargaining agreement, that agreement must be treated as an exhibit admitted in evidence unless objection is seasonably noted.
6. Deferral to Arbitration. The prehearing officer shall cause a record to be made of argument concerning any request for deferral to arbitration and shall grant or deny the deferral request. If any party requests Board review of the prehearing officer's deferral decision the prehearing officer must refer the record to the Board. The Board may confer telephonically to determine whether to grant the motion to defer.
7. Dispositive Legal Issue. If it appears to the prehearing officer that the determination of a legal issue will resolve the dispute and render a fact hearing unnecessary, the prehearing officer may order a severance and fix a briefing schedule to enable the Board to first determine the legal issue. If the date for a fact hearing has already been set by the executive director, the prehearing officer may order that the hearing be rescheduled.
8. Settlement. The prehearing officer shall explore the settlement negotiations conducted by the parties and shall encourage a fair disposition of the case by settlement. The representatives of the parties shall make every reasonable effort to attend the prehearing conference with full authorization from their clients with respect to settlement.
9. Failure to Participate is Grounds for Dismissal or Default. Failure of a complainant to attend a prehearing conference, to satisfy the requirements of the

prehearing notice, or to file a brief required by the prehearing officer may be grounds for dismissal of the complaint. Failure of a respondent to attend a prehearing conference, to satisfy the requirements of the prehearing notice, or to file a brief required by the prehearing officer may be grounds for the entry of a default order against the respondent. The dismissal or default is with prejudice, unless otherwise stated in the order of dismissal or default, and is final unless the Board finds that the failure to participate in the conference or hearing or to satisfy the requirements of the prehearing notice was the result of excusable neglect.

10. Prehearing Memorandum and Order. At the conclusion of the prehearing conference the prehearing officer shall issue a prehearing memorandum and order in which the fact issues for hearing are identified and amendments to pleadings agreed upon by the parties are recorded. The prehearing officer may order the parties to file legal memoranda or hearing briefs in advance of the hearing. Submission of such briefs is subject to the requirements of ~~Rule~~ section 18 of this Chapter. The prehearing memorandum and order must indicate if additional copies of the complaint and the applicable collective bargaining agreement must be submitted prior to the hearing.

§ 11. Right to Intervene.

In the discretion of the Board, any other person or organization may be allowed to present testimony at the hearing or, upon motion, to intervene and participate as a full or limited party to the proceeding.

§ 12. Notice of Hearing.

When an evidentiary hearing is scheduled, notice of the hearing must be served on the parties by registered or certified mail with return receipt requested. The Notice of Hearing and any amendments to it must be posted on the ~~Board's official bulletin board and on the~~ Board's internet site.

§ 13. Conduct of Hearing; Powers of Chair.

The Chair has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the Board for determination. Witnesses subpoenaed by the Board are entitled to the same fees as are paid to witnesses in the Superior Court. Any party may file a written application for subpoenas with the Board in accordance with Rule section 17 of this Chapter. A person served with a subpoena issued by the Board may not refuse or neglect to appear or to testify or to produce books and papers relevant to the investigation, inquiry or hearing as commanded in that subpoena with the Board.

Upon failure of any party to comply with a subpoena, the Board may, absent constitutional, statutory or other privilege, disregard all related evidence offered by that party.

§ 14. Nature of Hearing.

The purpose of the hearing is to develop a full and complete factual record. The burden of proof rests with the complaining party. All testimony offered must be taken under oath or affirmation. ~~Unless excused by the Board, the Board's Hearings Reporter shall record all hearings. The transcript prepared by the Board's Hearings Reporter is the official transcript of the hearing.~~ A hearing transcript will be prepared for the Board and made available to the parties pursuant to Chapter 10, section 9.

§ 15. Rules Regarding Evidence.

The strict rules of evidence observed by courts do not apply to Board hearings. The following principles regarding evidence apply:

1. Evidence. The Board shall admit evidence if it is the kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or unduly repetitive evidence may be excluded.
2. Rules of Privilege. The Board shall observe the rules of privilege recognized by law.
3. Written Evidence; ~~exception~~ Exception. No sworn written evidence may be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.
4. Evidence Not Offered at Prehearing Conference. If evidence is offered that was not offered at the prehearing conference, it is the responsibility of the offering party to establish why the proposed evidence was not available at the time of the prehearing conference. This limitation on the introduction of new evidence before the Board does not apply to evidence used for impeachment or rebuttal purposes. Other documentary evidence may be admitted by the Board, at its discretion, for the purpose of avoiding manifest injustice.

§ 16. Rights of Parties.

Any party to the hearing has the right to be represented by counsel or by other representative, to examine and cross-examine witnesses, and to offer documentary and other evidence. Stipulations may be offered with respect to any issue. Parties may request



the issuance of subpoenas. The Board shall allow oral argument upon request, and, after consultation with the parties, may require briefs to be submitted. Any brief permitted to be filed must be filed pursuant to the filing requirements of Chapter 10, section 7 ~~in the original and four copies~~. A copy of any brief filed with the Board must be simultaneously served on all parties to the matter. A party's representative may testify at the hearing but the Board may require the testimony to be in question and answer form.

§ 17. Witnesses and Subpoenas.

A party to a proceeding before the Board or the executive director may request the attendance of witnesses voluntarily or by subpoena. If witnesses or documents are sought by subpoena, the requesting party must first make a written request of the Board or presiding official for the issuance of the subpoena. When the subpoena is issued, it is the responsibility of the requesting party to serve the subpoena or cause it to be served on the named individual. When a witness is subpoenaed, the witness fee and transportation allowance established by 16 M.R.S.A. §251 must be provided at the time the subpoena is served. If a party subpoenas a witness and then decides not to call that witness, the requesting party must give notice of its intent not to call that witness to the other parties to the proceeding, and to the Board or the executive director, at least ~~forty-eight~~ 48 hours prior to the time the witness was scheduled to appear. A subpoena for documents will ordinarily require the production of the documents at the prehearing conference.

§ 18. Submission of Briefs.

The Board may request any party to submit, at any time, a written statement of position, fact or law regarding any matter relevant to a pending prohibited practice complaint. Briefs requested or permitted by the presiding officer of an evidentiary hearing must be filed with the Board in accordance with the filing requirements of Chapter 10, section 7 ~~in the original and four copies~~ on or before the date specified, and a copy must be simultaneously served on the other party or parties. ~~A brief is considered to be filed with the Board on the date it is received by the Board.~~ Failure of a complainant to file a brief required by the presiding officer of an evidentiary hearing may be grounds for dismissal of the complaint. The failure of a respondent to file a brief required by the presiding officer of an evidentiary hearing may be grounds for entry of a default order against the respondent. An order dismissing a complaint or entering a default order resulting from a party's failure to file a brief must be with prejudice unless provided otherwise in the order.

§ 19. *Ex Parte* Communications Prohibited.

No party or other ~~person(s)~~ person legally interested in the outcome of a hearing may communicate *ex parte* either directly or indirectly with any Board member or assigned

Board attorney in connection with any issue of fact, law or procedure related to a pending prohibited practice complaint.

§ 20. Amendments to Conform.

If evidence is objected to at the hearing on the ground that it is not within the issues set out in the pleadings, the Board may allow the pleadings to be amended and shall do so freely when it will aid in the presentation of the merits of the action and the objecting party fails to satisfy the Board that the admission of that evidence would prejudice it in maintaining its action or defense upon the merits. The Board may grant a continuance to enable the objecting party to meet that evidence. Upon the request of a party at the conclusion of the hearing, the complaint or response may be specifically amended to conform to the evidence.

§ 21. Withdrawal.

~~The~~ A complaint may be withdrawn by the complaining party with the approval of the Board. If the withdrawal is without the approval of the other party, the withdrawal must be with prejudice. No proposed withdrawal, based upon the settlement of a complaint within the Board's jurisdiction which contains ~~allegation(s)~~ an allegation of unlawful discrimination against any individual, may be approved by the Board without notice to the discriminatee. Unlawful discrimination within the meaning of this rule includes discrimination in hire, ~~term of employment~~ or any term or condition of employment, on the basis of lawful organizational or collective bargaining activity or affiliation. Unlawful discrimination also includes discrimination based on the signing or filing of any affidavit, petition or complaint, or the giving of any information or testimony under the labor relations statutes. The notice by the Board must state the terms of the proposed settlement, apprise the discriminatee of the opportunity to refrain from joining in the settlement, extend the opportunity to assume party status concerning charges of discrimination addressed by the settlement in which the discriminatee does not join, and set a reasonable deadline for the filing of notice of intention regarding the proposed settlement. A comparable notice provided by the complainant and signed by the individual discriminatee may be approved by the Board when appropriate.

§ 22. Stay of Election.

The holding of an election ~~and/or~~ and the issuance of a certification based upon the results of a previously conducted election may be stayed or set aside by the Board, pending the decision of a prohibited practice complaint relating to the unit petitioned for or relating to alleged irregularities in the selection or decertification of a bargaining agent.

§ 23. Shortening Time Limits or Staying Further Processing.

The Board may order accelerated action on a claim without regard to the time limits otherwise provided in these rules, or may order a stay of further processing of a claim on such terms as are appropriate.

§ 24. Misconduct at a Hearing; Refusal of Witness to Answer Questions.

Misconduct at any hearing before the Board or the executive director is grounds for summary exclusion from the hearing by the presiding officer. If the misconduct is of an aggravated nature and is engaged in by a representative of a party, it may be cause for suspension by the Board, after due notice and hearing, from further practice before the Board. Absent constitutional, statutory or other privilege, the refusal of a witness to answer any question may be grounds for striking all testimony given by that witness on related matters.

§ 25. Stale Proceedings.

The Board, on its own motion and in the absence of a showing of good cause to the contrary, may dismiss a proceeding for want of prosecution at any time more than one year after the last docket entry showing any action taken by the ~~complainant/petitioner~~ complainant or petitioner other than a motion for continuance.

§ 26. Decision and Order of the Board.

The Board shall issue its decision and order, in writing, pursuant to and consistent with its powers under 26 M.R.S.A. §§ 968, 979-H, 1029, ~~or 1289, or 1329.~~

(§ 27 - § 40. Reserved.)

## INTERPRETIVE RULINGS

§ 41. Interpretive Rulings.

An interpretive ruling is a means for determining specific questions as to the prospective rights, obligations, or liabilities of a party when controversy or doubt has arisen regarding the applicability of a specific statute, Board order or rule. A petition for an interpretive ruling may not be used to resolve factual disputes between adversaries and

may not be used as a substitute for other remedies provided by the collective bargaining laws.

1. **Petition for Interpretive Ruling.** A petition for an interpretive ruling may be filed with the Board by any person, employee organization, or public employer. A petition for an interpretive ruling must be filed ~~in the original and four copies~~ in accordance with the filing requirements of Chapter 10, section 7. In order to show the existence of a controversy or doubt, the petitioning party must describe the potential effect upon that party's interests in its petition. The petition must contain the following:

A. ~~the~~ The name and address of the petitioner;

B. ~~the~~ The statute, Board order, or Board rule on which the interpretive ruling is sought;

C. ~~a~~ A clear and concise statement of the facts and circumstances and the contemplated action of the petitioner which arguably might elicit the filing of a prohibited act complaint or to which the specified statute, Board order, or Board rules and procedures might be applicable; and

D. ~~a~~ A supporting memorandum of law.

If negotiations are in progress and a controversy has arisen concerning the required scope of bargaining, the petition must include a brief description of the positions taken by the parties and copies of all proposals and counterproposals submitted by the parties relating to the dispute.

2. **Service of Petition on Other Party.** Where any other person, employee organization, or public employer is named in the petition, the petitioner shall simultaneously serve a copy of the petition on the named person, employee organization, or public employer and provide a certificate of service to the Board.
3. **Posting of Petition.** Upon receipt of a petition for an interpretive ruling, the Board shall post notice of the petition on its ~~official bulletin board and~~ internet site.
4. **Hearing Permitted.** The Board, at its discretion, may grant a hearing before the Board or a designated agent.
5. **Pending Actions Proceed.** The filing of a petition for an interpretive ruling does not stay the progress of any proceeding pending before the Board and does not relieve any party of any obligation set forth in the Maine Revised Statutes, any Board order, or these rules and procedures.

6. Written Memoranda. Any person, employee organization, or public employer may file with the Board a written memorandum addressed to the issues raised by the petition within ~~twenty~~ 20 calendar days after the date the notice of the petition is posted on the Board's ~~official bulletin board~~ internet site. The memorandum must be submitted ~~in the original and four copies~~ in accordance with the filing requirements of Chapter 10, section 7 and must include the caption of the case as posted by the Board. The memorandum must clearly and concisely set forth the position taken by that person, employee organization, or public employer, and the facts and arguments relied upon in support of that position.
  
  7. Ruling Not Binding on Board. An interpretive ruling is not binding upon the Board, provided that, in any subsequent Board proceeding, any person's justifiable reliance upon the ruling must be considered in mitigation of any penalty sought to be assessed.
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NOTE: Many of the provisions of this rule had been part of Chapter 4 of the MLRB Rules, which was repealed on the same day this rule became effective.

STATUTORY AUTHORITY: 26 M.R.S.A. §968, sub-§3

EFFECTIVE DATE:

January 1, 2001

NON-SUBSTANTIVE CORRECTION:

February 20, 2001 - adjusted title of § 8.