



State Employment Relations Board

Public Employee
Collective
Bargaining in Ohio

Unfair Labor Practices

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PUBLIC EMPLOYEE COLLECTIVE BARGAINING IN OHIO

This booklet is intended for public employers, public employees, public employee organizations, and anyone with an interest in public employee collective bargaining within the jurisdiction of the Ohio State Employment Relations Board (SERB).

It provides basic information concerning Chapter 4117 of the Ohio Revised Code and the related rules contained in Chapters 4117-1 through 4117-25 of the Ohio Administrative Code.

This information is provided solely as an aid in understanding the concepts and procedures related to the subject matter. It is not an exhaustive treatment of the topic, nor can it be used as the basis for any action or legal position.

For more complete information, refer to the statute and the administrative rules cited above. A booklet containing the text of both, *ORC/OAC 4117*, is available at a nominal cost from the Clerk's Office of the State Employment Relations Board. An annotated edition of the statute and rules as well as other related publications and a reporting service are published by the West Group, Cleveland, Ohio, (800) 362-4500.

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OHIO'S SYSTEM OF PUBLIC EMPLOYEE COLLECTIVE BARGAINING

The unfair labor practice provisions of the Ohio Public Employees' Collective Bargaining Act are part of a system created by the law to promote order and stability in public sector labor relations.

Under that system, each public employee is guaranteed the *individual* right to join and participate in a labor organization, or to refrain from joining and participating. The employees in a unit have the *collective* right to determine by majority rule whether to be represented by an employee organization for collective bargaining purposes.

If a majority of the employees in a unit choose to be represented by an employee organization, that organization becomes the exclusive representative of all the employees in the unit, whether they are members of the representing organization or not.

The public employer and the exclusive bargaining representative are required to bargain in good faith with the objective of negotiating a written agreement. If they are able to conclude such an agreement, it will govern the wages, hours, and terms and conditions of employment of the unit of employees it covers for the length of time the agreement is in effect.

THE ROLE OF THE STATE EMPLOYMENT RELATIONS BOARD

The Public Employees' Collective Bargaining Act established the State Employment Relations Board (SERB) to administer and enforce its provisions governing the conduct of collective bargaining in Ohio public employment. The three-member board acts by majority vote in its public meetings to decide matters brought before it by public employers, public employees, and public employee organizations. The board employs a staff to assist it in carrying out its administrative and quasi-judicial functions.

In representation matters, SERB has the authority to determine the composition of bargaining units, to conduct elections if necessary to determine the will of the majority of unit employees, and, if an employee organization is chosen, to certify it as the exclusive representative of employees in the unit.

When negotiations have begun between employers and employee representatives, SERB monitors their progress according to an established timeline, and appoints neutral, third-party mediators, fact-finders, and conciliators.

If a charge is made that an employer, an employee organization, or an employee has violated provisions of the collective bargaining law, SERB must determine whether a violation has occurred and, if so, may impose an appropriate remedy. Such violations, called unfair labor practices, are the subject of this brochure.

THE LAW SPECIFIES WHAT UNFAIR LABOR PRACTICES ARE

Section 4117.11 of the Ohio Revised Code spells out those acts that are unfair labor practices. Employer unfair labor practices are listed in Section 4117.11(A); employee/employee organization unfair labor practices are listed in Section 4117.11(B). *See Appendix on page 12.*

The following discussion of Ohio public sector unfair labor practices organizes the material into five categories:

- Interfering With Employee Rights guaranteed in Chapter 4117 of the Ohio Revised Code
- Refusal to Bargain
- Grievance Processing and Fair Representation
- Unlawful Lockouts, Strikes, Picketing
- Causing an Unfair Labor Practice

INTERFERING WITH EMPLOYEE RIGHTS GUARANTEED IN CHAPTER 4117 OF THE OHIO REVISED CODE

Neither the public employer nor an employee organization representing public employees may restrain or coerce employees in their exercise of the rights guaranteed in the Ohio Public Employees' Collective Bargaining Act. Employee rights are spelled out in Section 4117.03(A) of the Ohio Revised Code.

The Right to Join an Employee Organization

Each public employee has the right to form, join, assist, or participate in any employee organization he or she chooses. Each employee likewise has the right not to form, join, assist, or participate in any employee organization. Employee organizations have the right to set rules governing membership.

The Right to Act Together

In order to bargain with their employer, or to assist and protect each other, public employees have the right to act together in other ways besides forming or joining an employee organization. Employees *acting collectively* in good faith, even those not represented by an employee organization, may, for example, legitimately refuse to do work in abnormally dangerous working conditions, and are entitled to complain of unsafe practices of a superior without retaliation.

The Right to Be Represented

Each public employee also has the right to be represented by an employee organization, provided that a majority of the employees in the employee's bargaining unit have demonstrated their desire for representation by that employee organization and the organization has been certified by the State Employment Relations Board.

The Right to Bargain

Public employees have the right to bargain collectively, through their exclusive representative, with their employer, and to enter into collective bargaining agreements. Subjects on which the employer is required to bargain with its employees are: wages, hours, terms and conditions of employment, and the provisions of an existing agreement.

The Right to Present Grievances

Public employees within a bargaining unit have the right to present grievances and have them resolved. Employees may exercise this right through their representative, or they have the option of pursuing their grievances without intervention of the representative. If they choose not to involve the employee organization, the representative nevertheless must have the opportunity to be present at the adjustment meeting. In most cases the employee organization maintains the right to determine which grievances will be forwarded to arbitration. The resolution of the grievance must not be inconsistent with the terms of the collective bargaining agreement.

The Right to Select Representatives

The employer and the employee organization have the right to select the individuals who will act as their representatives in bargaining or in processing grievances. Neither party may interfere with this selection or restrain or coerce the other in its choice. Except in very limited circumstances, it would be an unfair labor practice for one party to refuse to bargain on the grounds that a particular individual takes part in negotiations for the other party.

The Right to an Independent Employee Organization

An employee organization that represents public employees must not be dependent upon the employer. The statute forbids the employer to initiate or create an employee organization, or to

interfere with or dominate the formation or the administration of an employee organization.

The employer, therefore, may not contribute financially to an employee organization, nor support the employee organization in any other way. Some common practices are specifically permitted, however, despite the fact that they may represent minimal employer support of the employee organization. Employees may confer with the employer during work hours without loss of time or pay, and employee organizations may be permitted to use the employer's meeting facilities and internal mail system.

The Right to Equal Treatment

Employees must be free to exercise all rights guaranteed under the collective bargaining law without fear of retaliation. Employers may not refuse to hire any individual or to retain in employment any employee on the basis of participation in protected activity. Likewise, no employee may be subjected to a change in terms or conditions of employment on this basis.

The statute specifies that an employer who agrees to a fair share fee provision in the collective bargaining agreement does not violate this prohibition by requiring that employees who are not members of the employee organization pay the established service fee.

Disciplinary action against an employee is unlawful when it is motivated by a desire to retaliate for protected activity. Whenever disciplinary action follows closely after the exercise of protected rights, the unfavorable action is suspect and may justify investigation.

The Right to File Charges or to Testify

Employees who file unfair labor practice charges or who testify in matters relating to Chapter 4117 of the Ohio Revised Code are protected from retaliation by the employer. The statute forbids firing or otherwise discriminating against an employee in retaliation for filing charges or giving testimony.

REFUSAL TO BARGAIN

Once an employee organization has been certified as the exclusive representative of employees in a bargaining unit, and for as long as the employee organization remains the certified exclusive representative, both the public employer and the employee organization have a legal obligation to engage in collective bargaining.

It is an unfair labor practice for either the employer or the employee organization to refuse to bargain when the other party makes a timely request for negotiations concerning an appropriate subject of bargaining.

What is Collective Bargaining?

Good faith bargaining requires that negotiation be with the intent to reach an agreement, or to resolve questions arising under the agreement. It specifically does not require that either party accept a proposal or make a concession.

The object of bargaining is to reach agreement in matters relating to wages, hours, terms and conditions of employment, and any proposed change in the provisions of an existing agreement. When agreement is reached, the agreement must be reduced to writing and signed by both parties.

When Does Bargaining Occur?

Bargaining is most commonly initiated when it is time to begin negotiations for a collective bargaining agreement, whether for the first time following certification of a new representative or for a successor agreement in anticipation of the expiration of an existing agreement.

A party will also initiate bargaining when a specified date is reached that, in the current collective bargaining agreement, has been mutually selected as the time to reopen an agreement to

bargain over certain issues only. For example, an agreement effective for a period of two years may contain a wage schedule for the first year only, with the stipulation that the parties will reopen the agreement at a specified date to bargain over only the wage rate to be effective during the second year.

Another common occasion for bargaining arises when an employer wishes to make a change in some aspect of work that affects wages, hours, and terms and conditions of employment, or is contrary to a provision of the current collective bargaining agreement.

The employer and the certified bargaining representative are the only parties who may bargain. The employee organization must bargain only with the public employer, and the employer must bargain only with the employee organization. Other governmental units, other employee organizations, and even the employees themselves, when approached directly by the employer without involvement of the certified representative, are not permissible bargaining agents.

GRIEVANCE PROCESSING AND FAIR REPRESENTATION

The law places great importance on the parties' use of a grievance mechanism of their own design to resolve disputes concerning compliance with the terms of the collective bargaining agreement. Although the employer and the employees are free to decide the way their grievance system will work, Section 4117.09(B) of the Ohio Revised Code requires that all public employee collective bargaining agreements contain a provision for some kind of grievance procedure.

Employers Must Process Grievances

Public employers are required to process properly filed grievances in the time frame specified for the steps in the grievance process. While an occasional lapsed deadline does not necessarily constitute a violation, it is an unfair labor practice for an employer to fail repeatedly to process grievances in a timely fashion.

Employee Organizations Must Represent All Employees Fairly

Organizations that are certified as the exclusive representative of the employees in a bargaining unit are obligated to make use of the grievance process on behalf of all employees in the bargaining unit, regardless of membership in the employee organization, in a fair and equal manner, without discrimination.

The employee organization has the right to pursue a grievance in light of its own interpretation of the collective bargaining agreement, and does not necessarily commit an unfair labor practice when it does not subscribe to the grievant's interpretation.

UNLAWFUL LOCKOUTS, STRIKES, PICKETING

Many tactics designed to bring pressure on a party to resolve a labor relations dispute may constitute unfair labor practices under Ohio's public employee collective bargaining law. Often the legal status of a strike, lockout, picketing, or other action depends on the circumstances under which it is carried out.

Strikes

Under Ohio law, some public employees —such as police, fire, guards, and certain other units described in Section 4117.15(A) of the Ohio Revised Code — are never permitted to strike. A strike by other public employees is lawful only when negotiations for a collective bargaining agreement have failed, the dispute resolution process has been exhausted, and the prior contract, if any, has expired. Even then, a strike is legal only after notice is given at least ten days in advance, specifying the date and time that the strike will begin. Any strike, picketing, or other concerted refusal to work by public employees that does not meet all of these standards is an

illegal strike, and constitutes an unfair labor practice. Inducing or encouraging any individual to engage in an unlawful strike also constitutes an unfair labor practice.

Picketing, even when picketers are not involved in a work stoppage, may require the ten-day notice. For example, non-strikers who conduct a picket in sympathy with striking teachers displaying signs encouraging students to stay home commit an unfair labor practice if they fail to give notice to the school board and the State Employment Relations Board. On the other hand, where picketing is determined to be informational only, and is in no way connected with a work stoppage, it does not require the filing of a notice.

Lockouts

A lockout occurs when the employer denies employees access to the workplace or otherwise acts to prevent them from performing their duties. The statute prohibits the use of this tactic by a public employer when its purpose is to bring pressure to settle a labor dispute in favor of the employer's terms.

Jurisdictional Disputes

When two or more employee organizations claim jurisdiction over employees who perform certain work, the decision as to which bargaining unit is appropriate for the employees cannot always be made by the employer to the satisfaction of the employee organizations. In this situation, picketing or boycotting the employer in an attempt to compel a decision constitutes an unfair labor practice on the part of the employee organization or employees conducting the picketing or boycott. Instead, the proper avenue for resolution of the dispute is to notify the State Employment Relations Board of the jurisdictional work dispute. SERB is empowered by Section 4117.11(D) of the Ohio Revised Code to hear and determine the dispute.

"Hot Cargo" and Unlawful Recognition

Historically, in the private sector, an employee organization on strike might receive the support of other employee organizations whose members would refuse to handle the goods produced by the struck employer, called "hot cargo," or persuade other employers to cease doing business with the struck employer. Such activities are now prohibited in the private sector, and are also prohibited under Ohio's public employee collective bargaining law. It is an unfair labor practice for public employees or their employee organizations to induce or encourage any person to refuse to handle goods or perform services, or to use threats or force to compel any public employee to cease doing business with any other person.

It is also an unfair labor practice to use threats or force to compel a public employer to recognize as a bargaining representative any employee organization not certified by the State Employment Relations Board.

Places of Residence and Private Employment

During a labor dispute, it is an unfair labor practice for a public employee or employee organization to induce or encourage anyone to picket the residence of a public official or employer representative. If the official or employer representative has private employment in addition to the duties with the public employer, it is an unfair labor practice to picket the place of private employment.

CAUSING AN UNFAIR LABOR PRACTICE

It is an unfair labor practice for public employers, public employees, and representatives of either to cause, or to attempt to cause, the other party to commit an unfair labor practice. For example, a supervisor violates this provision by questioning a subordinate employee, a steward, concerning another employee represented by the steward. If the steward responds as he or she is

directed, it would be a breach of his or her duty to represent the employee about whom he or she was questioned.

FILING AN UNFAIR LABOR PRACTICE CHARGE

Any person having reason to believe that an unfair labor practice has been committed or is being committed may file a charge with the State Employment Relations Board. A charge may be filed against a public employer, an employee organization, a public employee, or any person representing one of these parties.

The organization or person who files the charge is referred to as the charging party. The organization or person against whom a charge is filed is referred to as the charged party.

A charge must be filed in writing and signed by the charging party or by the representative filing the charge on behalf of the charging party.

90-Day Limit

The charge must be filed within 90 days of the occurrence of the action alleged to be an unfair labor practice. Acquired or constructive knowledge by the charging party of the alleged unfair labor practice that is the subject of the charge must be present, along with the occurrence of actual damage to the charging party resulting from the unfair labor practice. Parties need to exercise proper diligence to find out about violations. The only exception to this deadline is in the event that service in the armed forces prevented the charging party from filing the charge within the 90-day limit. In this case, the new deadline becomes 90 days after the charging party's discharge from the armed services.

An unfair labor practice charge form may be obtained from the State Employment Relations Board's office in Columbus or downloaded from the Board's website at www.serb.state.oh.us.

One original and one copy of the charge must be filed by hardcopy with the State Employment Relations Board. If the charging party wishes to receive a return copy showing the time stamp of the State Employment Relations Board, an additional copy and a self-addressed, stamped envelope must be filed as well.

Charge Must be Given to Charged Party

The charging party must serve a copy of the charge to the charged party before filing the charge with the State Employment Relations Board. The State Employment Relations Board will not accept the charge for filing unless it is accompanied by a signed statement (proof of service) that the charge was served upon the charged party.

Unfair labor practice charges can be filed by mail or in person only with the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, during regular business hours, 8:30 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays observed by the State of Ohio.

What Must Be Included in the Charge

Each of the following must be contained in the unfair labor practice charge:

1. Charging party information

The name, address, county, and telephone number of the charging party.

The name, address, county, telephone number & email address of the person representing the charging party.

Neither the charging party nor the charged party is required to have a representative.

An indication identifying the charging party as a public employer, an employee organization, or a public employee. If the charging party is none of these, state the status of the charging party.

2. Charged party information

The name, address, county, telephone number and email address of the charged party. An indication identifying the charged party as a public employer, an employee organization, or a public employee. If the charged party is none of these, state the status of the charged party.

3. Employer information

If the public employer is neither the charging nor the charged party, include the name, address, county, and telephone number of the employer.

4. Information concerning the charge

The charge must allege that the charged party has violated one or more of the unfair labor practices listed in Section 4117.11 of the Ohio Revised Code. The charging party must refer to this section of the Ohio Revised Code to select the specific provisions alleged to be violated. *See Appendix, pages 12-13.*

Indicate which section of the statute the charge alleges to be violated: Section 4117.11(A)(1) (unfair labor practices by an employer) or Section 4117.11(B)(1) (unfair labor practices by an employee or by an employee organization).

Indicate further the subsection of 4117.11(A) or 4117.11(B) the charge alleges to be violated. For example:

Cite Section 4117.11(A)(3) in a charge alleging the employer has discriminated against an employee in retaliation for protected activity.

-Or-

Cite Section 4117.11(B)(3) in a charge alleging the employee organization has refused to bargain with the employer.

State clearly and briefly the facts that the charging party alleges as the basis of the charge. Include the names of any persons involved in the actions stated, and the date, time and place of the actions.

A failure to provide sufficient facts may result in the charge being dismissed for failure to provide a clear and concise statement of the facts.

5. Signature and Proof of Service

Sign the statement attesting to the belief of the charging party that all information and allegations in the charge are true and correct.

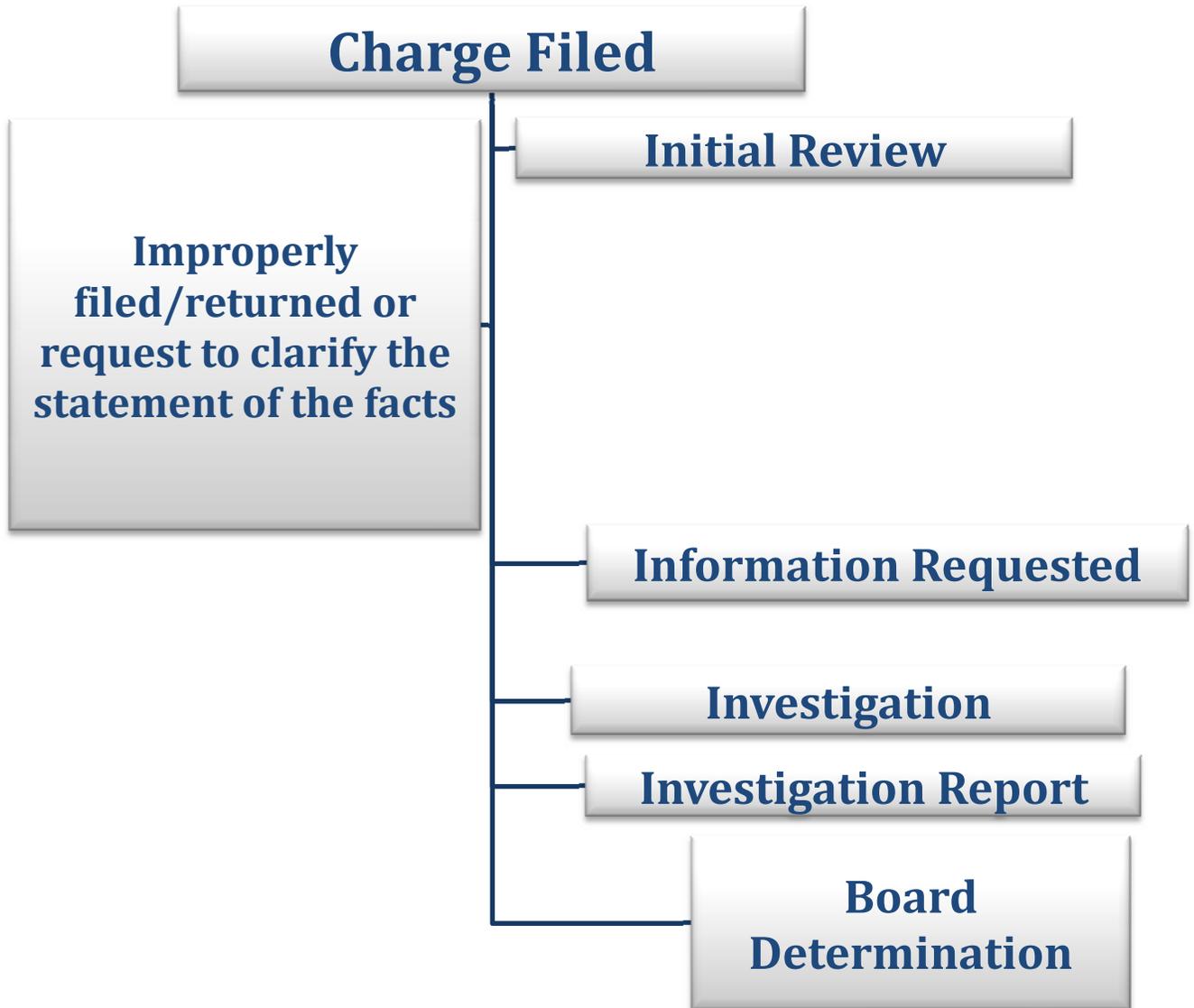
As proof that an exact copy of the charge has been served upon the charged party, complete the proof of service portion of the charge by writing the name and complete address of the party to whom the charge was delivered, the date of delivery, and the method of delivery (by regular U.S. mail or by hand delivery). This proof of service must be signed by the charging party.

THE CHARGE WILL NOT BE ACCEPTED BY THE STATE EMPLOYMENT RELATIONS BOARD WITHOUT THIS SIGNED PROOF OF SERVICE.

Notice of Appearance

A Notice of Appearance form (Form ERB 1004), which is available from SERB or its website, must be filed with the State Employment Relations Board by both the Charging Party and the Charged Party. A Notice of Appearance form indicates who is representing the party and also requires a proof of service.

Investigation Phase



**THE CHARGE:
INVESTIGATION PHASE**

When an unfair labor practice charge is filed, staff in SERB's Investigations Section will initially review it to determine that the charge alleged would, if true, constitute a violation of one or more of the unfair labor practice provisions contained in Sections 4117.11(A) and (B) of the Ohio Revised Code.

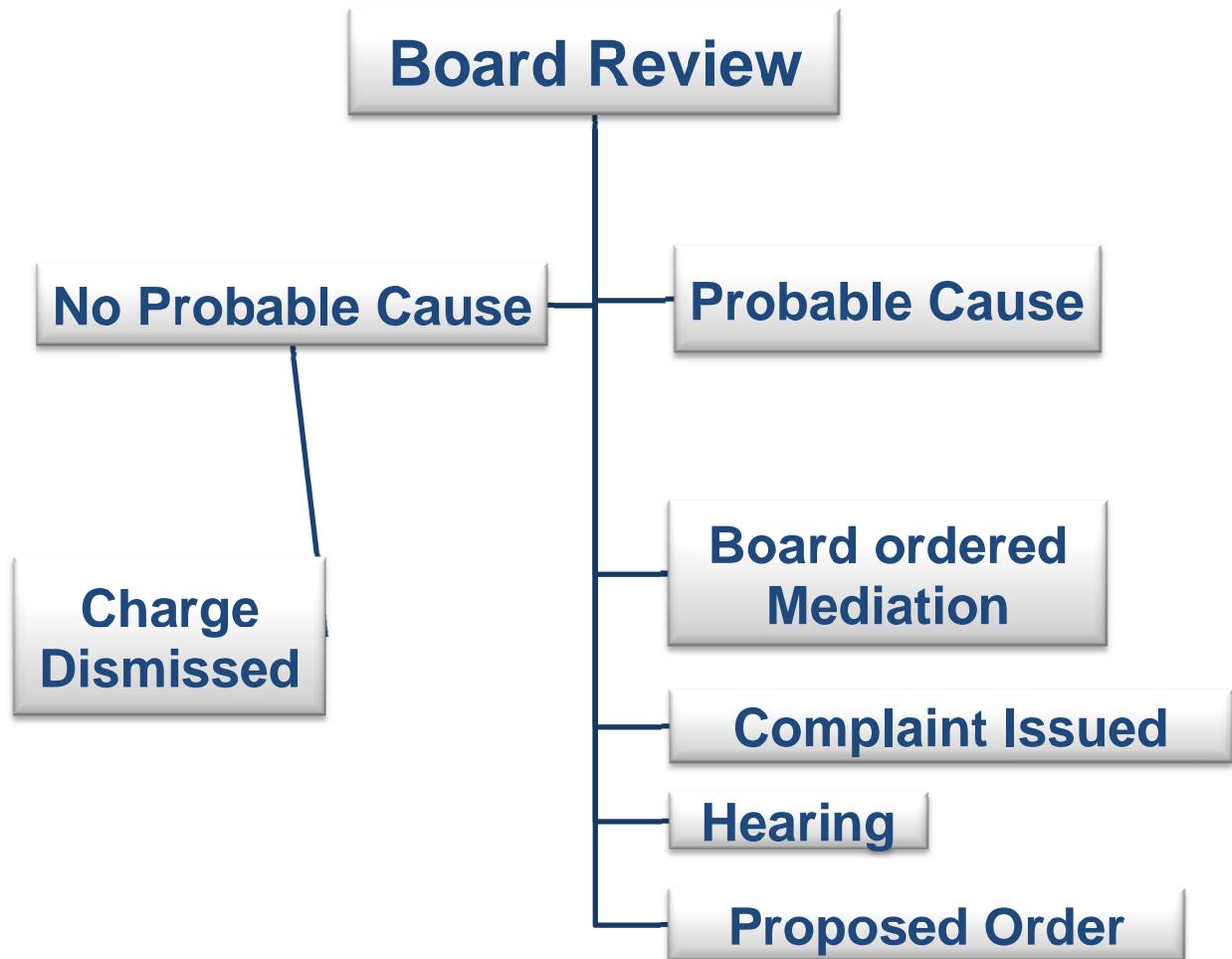
If the initial review indicates that the charge alleged may not be an unfair labor practice even if it were proven, the Investigations Section transmits the charge to the Board together with a report discussing the issues.

The Board reviews the charge and report. If the Board finds that no case has been made, it will dismiss the charge.

Once sufficient information has been received from each party, the investigator follows up as needed to obtain relevant documents and testimony.

At the conclusion of the investigation, a report is submitted to the Board for its review.

Determination Phase



**THE COMPLAINT:
DETERMINATION PHASE**

The Board reviews the investigation report and determines whether probable cause exists to believe that a violation has occurred. If the Board finds probable cause is not present, the charge is dismissed. A motion for reconsideration may be filed with the Board no later than thirty days after the issuance of the Board's final ruling. The motion must contain a clear and concise statement of the reasons why the Board should reconsider its previous decision.

If the Board finds probable cause, an unfair labor practice complaint is issued. The Board may direct the parties to mediation pending issuance of the complaint. The complaint describes the acts claimed to constitute unfair labor practices, and is accompanied by a procedural order setting a date for a hearing on the complaint. The charged party must respond in writing, stating admission, denial, or explanation of each allegation.

At the hearing, which may be conducted by a staff Administrative Law Judge (ALJ), by a Board member, or by the Board itself, evidence is taken and the testimony of witnesses heard. After the hearing is completed, the ALJ or Board member issues a proposed order with supporting findings of fact and conclusions of law. Within twenty days after receiving the proposed order, any party to the complaint may respond with a written brief in support of the proposed order or a written exception disagreeing with it.

If no exceptions are filed, the proposed order becomes the order of the Board. If exceptions are filed, the Board may adopt the proposed order in its entirety, making it a Board opinion, may issue its own opinion, or may adopt only the findings of fact and conclusions of law from the proposed order. If exceptions are filed and the Board disagrees with the recommendations in the proposed order, a Board opinion is usually issued.

If the Board concludes no violation has occurred, the complaint is dismissed. If a violation is found, the order of the Board imposes a remedy appropriate to the violation.

APPENDIX
Section 4117.11 of the Ohio Revised Code
Unfair Labor Practices

(A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Ohio Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances;

(2) Initiate, create, dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; except that a public employer may permit employees to confer with it during working hours without loss of time or pay, permit the exclusive representative to use the facilities of the public employer for membership or other meetings, or permit the exclusive representative to use the internal mail system or other internal communications system;

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment on the basis of the exercise of rights guaranteed by Chapter 4117. of the Revised Code. Nothing precludes any employer from making and enforcing an agreement pursuant to division (C) of section 4117.09 of the Revised Code.

(4) Discharge or otherwise discriminate against an employee because he has filed charges or given testimony under Chapter 4117. of the Revised Code;

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code.

(6) Establish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances;

(7) Lock out or otherwise prevent employees from performing their regularly assigned duties where an object thereof is to bring pressure on the employees or an employee organization to compromise or capitulate to the employer's terms regarding a labor relations dispute;

(8) Cause or attempt to cause an employee organization, its agents or representatives to violate division (B) of this section.

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Ohio Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances;

(2) Cause or attempt to cause an employer to violate division (A) of this section;

(3) Refuse to bargain collectively with a public employer if the employee organization is recognized as the exclusive representative or certified as the exclusive representative of public employees in a bargaining unit;

(4) Call, institute, maintain, or conduct a boycott against any public employer, or picket any place of business of a public employer, on account of any jurisdictional work dispute;

(5) Induce or encourage any individual employed by any person to engage in a strike in violation of Chapter 4117. of the Revised Code or refusal to handle goods or perform services; or threaten, coerce, or restrain any person where an object thereof is to force or require any public employee to cease dealing or doing business with any other person, or force or require a public employer to recognize for representation purposes an employee organization not certified by the state employment relations board;

(6) Fail to fairly represent all public employees in a bargaining unit;

(7) Induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer;

(8) Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.

(C) The determination by the board or any court that a public officer or employee has committed any of the acts prohibited by divisions (A) and (B) of this section shall not be made the basis of any charge for the removal from office or recall of the public officer or the suspension from or termination of employment of or disciplinary acts against an employee, nor shall the officer or employee be found subject to any suit for damages based on such a determination; however nothing in this division prevents any party to a collective bargaining agreement from seeking enforcement or damages for a violation thereof against the other party to the agreement.

(D) As to jurisdictional work disputes, the board shall hear and determine the dispute unless, within ten days after notice to the board by a party to the dispute that a dispute exists, the parties to the dispute submit to the board satisfactory evidence that they have adjusted, or agreed upon the method for the voluntary adjustment of, the dispute.

**FOR FURTHER INFORMATION OR ASSISTANCE
CONCERNING UNFAIR LABOR PRACTICE MATTERS, CONTACT:**

Labor Relations Administrator
State Employment Relations Board
65 East State Street, Suite 1200
Columbus, OH 43215-4213
(614) 644-8573

Office hours are 8:30 am. to 5:00 p.m., Monday through Friday.

Forms may be obtained through SERB's website at *www.serb.state.oh.us*.

State Employment Relations Board



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