

**A PRACTICAL HANDBOOK
ON FLORIDA'S PUBLIC EMPLOYMENT
COLLECTIVE BARGAINING LAW**



PUBLIC EMPLOYEES RELATIONS COMMISSION

FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION

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Fourth Edition
December, 2020

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INTRODUCTION

The purpose of this handbook is to inform the public of important facts about collective bargaining for public employees in Florida. It is designed to provide the reader with a general understanding of this subject. It is not intended as a substitute for advice from an attorney or other qualified person on specific problems, and it does not represent the official policy of the Florida Public Employees Relations Commission (PERC). The law discussed is always subject to change. If you have questions not answered in this handbook, please write or call for further information:

Public Employees Relations Commission
4708 Capital Circle, Northwest, Suite 300
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Office hours: 8:00 a.m. to 5:00 p.m., Monday through Friday (except legal holidays)

There are federal laws covering employers and employees that are not discussed in this handbook. For example, the National Labor Relations Act, which defines the rights of employees of private, nongovernmental employers to organize and bargain collectively, is not discussed. Also not considered are employment laws, such as Title VII of the Civil Rights Act of 1964, which prohibit employment discrimination.

There are some state laws regulating employers and employees that are not discussed in this handbook. PERC has no authority in the areas of workers' compensation, unemployment compensation, child labor, migrant labor, or farm labor. Laws on these subjects and the subject of employment discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status are not administered by PERC. Questions in these areas should be addressed to the particular government agency involved.

HISTORY OF PUBLIC EMPLOYMENT COLLECTIVE BARGAINING IN FLORIDA

Prior to 1943, Florida had no general legislation regulating collective bargaining for public employees. In 1943, the Florida Legislature passed legislation to regulate the activities of union officials and certain aspects of labor-management relations. Among the rights created was the right of employees to organize themselves. The Declaration of Rights of the Florida Constitution was amended to protect workers from employment discrimination resulting from membership or non-membership in an employee organization.

In 1946, the Florida Supreme Court interpreted Florida laws as prohibiting public employees and their employee organizations from the right to bargain collectively, to picket, or to strike against the government, whether the government involved was the state, a county, or a city.

In 1959, the legislature passed a law prohibiting government employment of any person who participated in a strike or advocated the right to strike against the government at any level or who was a member of an organization of government employees knowing that the organization advocated the right to strike against the government.

In 1962, the Florida Supreme Court decided that the “right to work” section of the Florida Constitution (Article I, Section VI) gave employees the right to join or refrain from joining an employee organization without fear of losing their jobs. The court reasoned that an “agency shop” provision in a collective bargaining agreement, which required non-union employees to pay union initiation fees and monthly dues as a condition of employment, violated the “right to work” section of the Florida Constitution.

In 1968, Article I, Section VI of the Florida Constitution was rewritten. The new section, which is still in effect, states:

Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

In 1969, the Florida Supreme Court upheld the new constitutional provision guaranteeing the right of public employees to bargain collectively. All employees in Florida, including those employed by the State of Florida or local governments, now have the right to bargain collectively.

In 1974, the Florida legislature created the Public Employees Relations Act (PERA), which regulates collective bargaining for public employees throughout the state. The law can be found in the Florida Statutes as Part II of Chapter 447. This law has two basic purposes: to encourage cooperation between government and its employees and to protect the public from the interruption of government services resulting from strikes by government employees.

ADMINISTRATION AND ENFORCEMENT

Public Employees Relations Commission

The Florida Legislature created PERC to serve as an independent, neutral quasi-judicial agency. PERC has a full-time Chair and two part-time Commissioners, each appointed for four years by the Governor and confirmed by the Florida Senate. A staff of approximately twenty-four individuals, including eight hearing officers, a Clerk, and a General Counsel, enables PERC to carry out its duties. PERC's rules are published in Chapter 60CC of the Florida Administrative Code. All PERC dispositive decisions are published on the Division of Administrative Hearings' (DOAH) website on the "Florida Agency Indexed Orders" page. PERC labor law decisions are also published in the Florida Public Employee Reporter. Samples of forms mentioned in this handbook are included in the appendix. Additional copies of these forms are available from the Clerk of the Commission and on PERC's website, <http://perc.myflorida.com>.

Public Employees and Employers

PERC was created to assist in resolving disputes between public employees and public employers. There are well over 600,000 persons who work for the State of Florida and for the counties, municipalities, school boards, special taxing districts, and other units of government in Florida. The following are public employers in Florida:

- The Governor
- The Board of Trustees of each state university or college, community college, and the Florida School for the Deaf and Blind
- Municipalities (cities, towns, and villages).
- School boards
- Boards of county commissioners
- Sheriffs
- Other county constitutional officers (tax collectors, property appraisers, supervisors of elections, and clerks of circuit courts)
- Special districts

Any person employed by a public employer is a public employee, including all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, clerical employees, etc. However, the following persons are not considered to be public employees:

- Persons appointed by the Governor, elected officials, heads of agencies, and members of state boards and commissions
- Employees of the militia
- Negotiating representatives for public employers
- Managerial or confidential employees
- Employees of the Florida Legislature
- Inmates of state institutions
- Federal/State fruit and vegetable inspectors
- PERC employees
- Undergraduate students who work part-time for a state university

Declaratory Statements

Any person can ask PERC for a declaratory statement on a question of rights and duties under a statute, rule, or order over which PERC has authority. Questions should be asked about any action a person proposes to take in the future, not about past or present disputes. A declaratory statement is not a means for determining whether the conduct of another is lawful. A person petitioning for a declaratory statement should explain his or her interest in the matter and give all details necessary for PERC to understand why an answer to the question presented would be helpful.

Court Proceedings

Special court proceedings are sometimes used by PERC. PERC or a public employer whose employees may be affected by a strike may seek an injunction in circuit court. PERC can also seek a circuit court injunction when a person who brings an unfair labor practice charge needs temporary relief while the charge is pending. Circuit courts may issue injunctions against the solicitation of employees by employee organizations during working hours. Injunctions may also be issued against the distribution of an employee organization's literature during working hours where work is actually performed and against advocating support from students during classroom time for the activities of an employee organization.

If a person fails to obey a PERC order, PERC or any Florida resident who is substantially interested may seek an enforcement order from circuit court. PERC participates in appellate court cases only when there is, either a need to explain the policy reasons and legal principles involved in a PERC order, or when it can be of aid and assistance to the reviewing court.

RIGHTS OF PUBLIC EMPLOYEES AND EMPLOYERS

Rights of Public Employees

Public employees have the right to choose to participate in employee organizations for the purposes of collective bargaining or other activities which mutually benefit two or more employees. The following rights are some of those enjoyed by public employees:

- To form, join, and participate in employee organizations.
- To negotiate collectively about wages, hours, and terms and conditions of employment.
- To be represented in grievances.
- To act together to help or protect each other by legal means other than a strike.
- To refuse to take any action in support of an employee organization.

Following are some examples of protected activities. Employees may draft a petition complaining about their safety or working conditions and ask other employees to sign it. Employees may not be discharged for trying to organize a new employee organization. They may also file grievances under a collective bargaining agreement without being treated adversely for doing so. An employee may request union representation in an investigatory interview with the employer if he reasonably believes disciplinary action may result. Employees may speak freely in trying to convince fellow employees to stop supporting one employee organization and to support another instead.

Not all employee actions are protected. If an employee takes personal leave after the employer denies a request for leave, the employee may be suspended for insubordination even though the employee actively supports an employee organization. An employee must suffer the consequences of personal disputes with superiors if the disputes concern him alone and do not affect other employees. Mere griping is not protected when it is not an effort to seek a change for the better and when the person receiving the gripes has no power to change the problem situation. In general, an employee who takes action for his benefit alone, rather than for the benefit of fellow employees, is not protected. Activity on matters of concern to other employees is protected, however, even when the employee has not first cleared his action with his fellow employees. Finally, concerted activity loses its protection if it is unlawful or creates a threat of workplace disruption.

Rights of Public Employers

Public employers are vested with rights necessary for the management of government, specifically including the following rights:

- To decide the purposes of government agencies.
- To set standards of services offered to the public.
- To exercise control over government operations.
- To direct employees.
- To discipline employees for proper cause.
- To relieve employees from duty for lack of work or other legitimate reasons.

The Commission has considered many cases involving management rights. For example, a public employer may change the two-semester school year to increase the number of grading periods and need not negotiate whether to make the change. An employer may also change the number of class periods in the school day unilaterally, without negotiations. The employer has the right to set minimum staffing levels as part of the right to set standards of services. However, in all these examples, an employer must negotiate over the effects or impact of these management decisions on the wages, hours, and terms and conditions of employment of affected employees, provided the union identifies such effects in its bargaining request. Additionally, an employer may terminate or otherwise discipline an employee for nondiscriminatory reasons.

SELECTION OF A BARGAINING AGENT

Registration

The first step in being selected as a bargaining agent for public employees is for an employee organization to register with PERC. The organization must fill out PERC Forms 1 and 2, which ask for the organization's name, address, affiliations, officers, dues, annual financial report, and other information. The form must be notarized and sent to PERC with a copy of the constitution and bylaws of the organization and any affiliated organizations, along with a fee. A registration license is valid for one year only. A renewal application must contain a detailed current annual financial report and should be filed fifteen days before expiration of the license. The Commission will review the registration license application and may refuse to grant or seek to revoke a registration license because of an important omission or a false statement. The registration materials are kept on file at PERC and are available to the public.

Voluntary Recognition by Public Employer

A registered employee organization which has the support of a majority of a group of employees may ask the public employer to officially recognize the organization by executing Part I of PERC Form 3. If the public employer is satisfied that the unit of employees is appropriate for the purpose of collective bargaining, and that a majority of employees in the unit support the employee organization, it may voluntarily recognize the organization as the exclusive collective bargaining representative for all employees in the unit by executing Part II of PERC Form 3. The employee organization will then complete Part III of the form and submit it to PERC. PERC will certify the organization if it agrees that the proposed unit of employees is appropriate.

Petition for Election

If the employer refuses to recognize the employee organization voluntarily, or if the organization does not request voluntary recognition, the organization may ask PERC to hold an election within the unit of employees by filing a representation-certification petition (PERC Form 4). Such a petition cannot be filed within one year of an election or of the effective date of the union's certification. If a collective bargaining agreement is in effect, a representation-certification petition can only be filed during the window period between 150 and 90 days prior to the expiration of the contract.

The organization must file PERC Form 4 with signed and dated original statements from thirty percent of the employees in the proposed unit showing that they want the organization to represent them in collective bargaining. "Signed" includes a signature using the symbol "X," provided the statement signed with an "X" is witnessed. The signatures may be challenged if they are believed to be invalid. They are not, however, available for inspection by the parties. PERC Form 4 also requires information about the petitioning employee organization and the bargaining unit the organization proposes to represent. The organization must send a copy of the petition, but not the signed statements of employees, to the employer. Any other employee organization may ask to take part in the election by sending PERC statements signed by ten percent of the employees showing they wish for the other organization to represent them.

If the employer, the employee organization, and PERC agree that the proposed unit of employees is appropriate for purposes of collective bargaining, PERC staff will assist the employer and the employee organization in working out the details so that an election can be held quickly to determine if a majority of employees desire to be represented by the employee organization. However, if the employer objects to the proposed grouping of employees, it may be necessary to hold a hearing to take evidence on which job positions should be included within the bargaining unit. The hearing is public and is scheduled by an appointed hearing officer. PERC will ensure that a court reporter is present at the hearing; however, the parties are responsible for ordering and paying for a copy of the transcript, should they desire one.

Bargaining Unit

At the hearing, the hearing officer will take evidence on whether employees in the proposed unit share a community of interest, and whether any other employees have the same interests and also should be included in the unit. In making a recommendation to PERC on these questions, the hearing officer considers:

- How wages and other terms of employment are decided
- How salary and job classifications are decided
- The interdependence of jobs and the interchange of employees
- The desires of employees
- The history of collective bargaining with the employer

After the hearing, the hearing officer issues a recommended order to the Commission for a final decision. The public employer, employee organization, and all employees affected by the decision can file proposed orders or briefs with the hearing officer before the recommended order issues. After the recommended order is issued, exceptions or objections to the recommended order can be filed with a supporting brief. PERC reviews the recommended order in light of the exceptions and objections and

decides which job classifications are to be included in the bargaining unit. PERC cannot, however, consider exceptions to the hearing officer's findings of fact or evidentiary and procedural rulings without first reviewing a complete transcript of the evidentiary hearing. It is the responsibility of a party filing such exceptions to provide the Commission with a copy of the transcript.

In deciding which employees will be included in the bargaining unit, PERC considers not only the interests of the employees, but also the following:

- The efficiency of government
- The employer's interest in not having to negotiate with an unreasonable number of employee organizations
- The authority of the employer over matters of employment
- The organizational structure of the employer
- The possible conflict of interest between employees
- The likelihood that employees will continue in employment

Managerial, Confidential, Supervisory, and Professional Employees

Employees who have substantial independent authority for policy formation, personnel administration, budget preparation, or who assist in collective bargaining negotiations are excluded from a bargaining unit as managerial employees. Employees who aid or assist a managerial employee by working with confidential information concerning the employer's labor relations functions are excluded from a bargaining unit as confidential employees. Anyone that a party seeks to have designated as managerial or confidential must be given notice prior to the final determination as to their status. Employees with significant supervisory duties will be excluded from bargaining units containing employees they supervise, but still may be represented in a supervisory unit. Professional and nonprofessional employees may be included in the same unit only if each group votes for inclusion.

Election Procedures

PERC orders that an election be conducted in a bargaining unit upon determining that the petitioned-for classifications of employees are appropriate for the purpose of collective bargaining. PERC elections staff consults with all concerned parties in order to settle the details of the election. PERC sends a notice of election, which contains a description of the bargaining unit; the date, time, and place of the election; the specific date used to decide voter eligibility, and a sample ballot (PERC Form 11). The employer provides a list of all employees eligible to vote. All bargaining unit members are eligible to vote. The election is conducted by secret ballot, either by mail or on location in the presence of observers who represent each party participating in the

election. The eligibility of any voter may be challenged by an observer or the PERC elections agent. The votes are counted in public by the PERC elections agent and observers may be present. In order to be certified as the exclusive collective bargaining representative, an employee organization must receive a majority of votes cast.

Challenges and Objections

After the election, a petition can be filed objecting to how the election was conducted or to actions which may have unfairly influenced the voting. For example, if the number of challenged ballots is enough to affect the results of the election, PERC will investigate the challenges to determine whether someone was an eligible voter. When one of the parties interfered in the conduct of a fair election, PERC can set aside the election and order a rerun election.

When an employee organization is voluntarily recognized by the employer or elected by a majority of employees in the bargaining unit, PERC certifies the organization as their exclusive bargaining agent. If the employee organization is not so selected, PERC dismisses the case, and there can be no election involving employees in that bargaining unit for at least one year.

Amendment to Certification

After certification, there sometimes arises a need to amend the certification because of a change in the employee organization's name, a merger with another organization, or similar changes that do not fundamentally alter the organization. An amendment to a certification reflecting only a name change will be allowed if the organization's constitution and bylaws were followed. If the change is more than a change in name, PERC must decide whether a question concerning representation is raised. If so, a representation election is necessary before the amendment can be made. If the proposed amendment is more than a name change, but does not raise a question concerning representation (such as a merger), then the amendment will be allowed so long as the procedures used to bring about the change ensure that the change reflects the desires of affected employees. A certification may also be amended to reflect a successor employer of bargaining unit employees.

Unit Clarification

It may also be necessary to resolve questions concerning the exact composition of an existing bargaining unit. PERC will clarify a unit by determining whether a particular job classification is in the unit when the job classification was created or changed after the original certification, if it was included in or omitted from the

bargaining unit inadvertently by PERC, or when the employer and employee organization agree that clarification is necessary. PERC Form 20 is used to initiate a unit clarification.

Revocation of Certification

In a bargaining unit represented by a certified union, employees may ask PERC to revoke the certification if they become dissatisfied with their representative. To do so, they must file a petition to PERC (PERC Form 6) with signed and dated statements from thirty percent of the bargaining unit members stating that unit employees no longer desire to be represented by the union. A petition to revoke certification cannot be filed until at least a year after the original certification date. The purpose of this requirement is to provide the parties with an insulated period within which to try to negotiate an agreement. If a collective bargaining contract is in effect, a petition to revoke certification or a petition for certification of a new bargaining agent may only be filed during the window period between 150 and 90 days prior to the expiration of the contract.

A certified bargaining representative may inform PERC that it is no longer interested in continued representation of its bargaining unit by filing a motion to disclaim interest. If no collective bargaining agreement is in effect and if the certified bargaining representative has no outstanding debts related to election costs, PERC will revoke the bargaining agent's certification.

COLLECTIVE BARGAINING

Exclusivity

The collective bargaining process is based upon the democratic principle of majority rule. When the majority speaks by selecting a collective bargaining agent, they give the certified agent the exclusive right and power to represent all employees in the bargaining unit. This statutory right to act as the exclusive bargaining representative includes the right to negotiate a collective bargaining agreement and process grievances involving disputes over the meaning of the agreement. The collective bargaining agreement determines the wages, hours, and terms and conditions of employment of all bargaining unit members, regardless of whether they are also members of the union. Individual employees must negotiate with their employer through the certified agent, rather than on an individual basis. No employee organization other than the certified agent can deal with the employer with respect to bargaining unit members.

Duty of Fair Representation in Negotiations

In collective bargaining negotiations, the certified employee organization has a duty to represent all members of the bargaining unit fairly. This duty of fair representation also extends to grievance processing. The certified union is required to give the same care and attention to all grievances filed by bargaining unit members, except that it does not have to process grievances for employees who are not union members.

Dues Checkoff

Upon certification, an employee organization has the immediate right to have its dues deducted by the employer from the paychecks of employees who authorize such deductions. An employee can stop dues checkoff at any time by giving notice to the organization and the employer. The cost to the employer of dues deduction may be negotiated with the union.

Collective Bargaining Negotiations

The purpose of collective bargaining is to provide a means for employees to participate, through their chosen representative, in the establishment of their own wages and employment conditions. This goal is reached primarily by means of a collective bargaining agreement. The employer and the organization must negotiate with each other to reach a contract. They must renegotiate the contract at least every three years.

The negotiating partners cannot be forced to compromise, but they must make a good faith attempt to agree.

Ratification of the Bargaining Agreement

When the negotiating representatives have reached a written agreement, they sign the agreement and submit it to the public employer and the employees in the bargaining unit for ratification. Both sides must ratify the agreement before it can take effect. The employee organization has to inform all bargaining unit employees of what is contained in the proposed agreement. All unit employees are permitted to cast a vote in a secret ballot, regardless of whether they are union members. The votes are counted in public and a majority vote is required for ratification. If either the employees or the employer votes against ratification, the parties must commence further negotiations.

CONTRACT NEGOTIATION DISPUTES

Impasse

Despite good faith attempts to negotiate a collective bargaining agreement, sometimes the public employer and the union cannot agree. If both parties have sincerely negotiated for a reasonable time, either one may advise PERC that they have reached an impasse in their negotiations. PERC then requests the Federal Mediation and Conciliation Service to appoint a mediator to assist the parties in resolving the impasse.

Mediation

A mediator has no authority to force the parties to reach an agreement. Rather, the mediator must use persuasion to help guide the parties toward agreement.

Special Magistrate Proceedings

If mediation fails to resolve the dispute, or if either party chooses not to use mediation, the parties can request that PERC appoint a special magistrate unless the Governor is the employer. PERC maintains a list of special magistrates chosen because of their expertise, training, and neutrality. The parties can agree upon a special magistrate, or they can choose one by striking names off a panel. Each party submits a list of issues at impasse to the special magistrate for consideration.

The special magistrate has the power to issue subpoenas, hold hearings, make findings of fact, and recommend a settlement on each contract issue in dispute. The recommended decision on all issues is issued fifteen days after the last hearing is concluded.

After Special Magistrate Proceedings

Upon issuance of the special magistrate's recommended decision, the parties are required to discuss the decision and accept or reject each recommended item within twenty days. Specific rejected items must be settled by vote of the public employer's legislative body (for example, a board of county commissioners or a school board) unless the parties reach agreement before the legislative body meets. Each negotiating party makes recommendations to the legislative body, a public hearing is held, and the legislative body then takes the action it thinks is in the best interest of all concerned on each issue before it.

After this legislative action, a proposed collective bargaining agreement is developed containing those issues agreed upon in negotiations and the disputed impasse items that were resolved by the public employer's legislative body. If this proposed agreement is ratified, the matter ends with a collective bargaining agreement. If not, the action taken on the disputed impasse issues is implemented and remains in effect for the rest of that fiscal year. On all other issues, the employer and employee organization are required to return to negotiations.

CONTRACT INTERPRETATION DISPUTES: GRIEVANCE PROCEDURES AND ARBITRATION

Every collective bargaining agreement must contain a grievance procedure for the settlement of disputes involving the interpretation or application of the agreement. Most grievance procedures end in final and binding arbitration by a neutral person selected by the employer and the bargaining agent. The grievance procedure remains in effect after the contract expires. This ensures that a method will continue to exist for resolving problems that might come up before a new contract is finalized.

As previously mentioned, the certified bargaining agent has the exclusive right to represent bargaining unit members in the administration and enforcement of the collective bargaining agreement. Generally, no other employee organization may represent employees in the processing of a grievance.

Duty of Fair Representation in the Grievance Procedure

Just as in negotiating the collective bargaining agreement, the certified bargaining agent must represent all bargaining unit members fairly in handling grievances. This duty of fair representation means that, when grievances are presented to the certified agent for processing, it must give the same degree of consideration to all grievances filed by bargaining unit members. The certified agent may not act arbitrarily, discriminatorily, or in bad faith in handling an employee's grievance.

This does not mean that a certified agent must take a grievance to arbitration if requested to do so by a bargaining unit employee. The certified agent may fairly represent an employee by declining to process a grievance if it determines that the grievance lacks merit. Also, the certified agent may settle a grievance before arbitration.

Non-members of the Union

There is an exception to the duty to represent all members of the bargaining unit. The certified employee organization may refuse to represent a bargaining unit employee who is not a member of the organization. When a bargaining agent determines that it will not pursue a non-member's grievance because of the employee's non-member status, it must inform the employee that his or her non-member status is the reason for rejecting the grievance and that the employee may proceed on his or her own. If a certified agent declines to represent an employee with a grievance for this reason, the employee may pursue the grievance independently under the terms of the existing collective bargaining agreement. However, if the certified agent offers to represent an

employee despite his or her non-member status, the employee cannot bypass the bargaining agent.

Other Procedures

When a union declines to pursue a grievance because the employee is not a member, then an employee can approach his or her employer personally or with a lawyer to present that grievance. The employer may adjust the grievance consistent with the terms of the existing collective bargaining agreement; however, the certified agent must be given an opportunity to attend any meeting called to resolve the grievance. A career service or civil service employee has the additional option of using the existing civil service appeal procedure instead of following the grievance procedure in the collective bargaining agreement. However, both procedures cannot be used; the employee must choose one or the other.

UNFAIR LABOR PRACTICES

An unfair labor practice occurs when the statutory rights of public employees, public employers, and employee organizations are violated. Certain actions may not be taken by a public employer or an employee organization or their representatives; however, expressing an opinion is not an unfair labor practice as long as there is no threat or promise of benefits.

An employer may not threaten to reduce wages and benefits if an employee organization is selected by employees as their bargaining agent. Nor can an employer prohibit the distribution of literature during an organizational campaign, except during actual work time and in actual work areas. If employees have selected a certified bargaining agent, an employer may not change wages or other conditions of employment unilaterally, without negotiations.

Unions are also prohibited from committing unfair labor practices. For example, members of an employee organization may not remove literature posted by members of a rival employee organization on an all-purpose employees' bulletin board. Nor can an employee organization fail to be available for negotiations at reasonable times and places. During contract ratification, an employee organization cannot fail to give notice of the ratification vote to bargaining unit members just because they are not members of the organization. An employee organization may not strike, prepare for a strike, or establish a strike fund.

Unfair Labor Practice Charges

Unfair labor practice charges may be filed by an employer, employee, or an employee organization on PERC Form 15 (charge against employer) or PERC Form 16 (charge against employee organization). The charge must state all the necessary facts in detail, and it must be filed with PERC and a copy served on the party charged with the violation. Sworn affidavits and documentary evidence supporting the charge must be filed with the charge, but it need not be provided to the party charged. Such supporting evidence will only be made available to the party charged if PERC finds the charge sufficient. In most cases, PERC cannot consider a violation that happened more than six months before the charge is filed or that does not sufficiently allege a prima facie violation of the appropriate unfair labor practice laws.

Unfair Labor Practice Procedures

PERC's General Counsel reviews each charge upon filing, taking the facts stated as true (unless controverted by documentary evidence), to determine whether the facts would be sufficient to establish a violation of law. If it does not, the General Counsel will issue a summary dismissal identifying the deficiencies. A party receiving a summary dismissal may file an amended charge or an appeal with the Commission within twenty days of the dismissal. If a charge is found to be sufficient, PERC notifies everyone concerned. The party charged may then obtain copies of the sworn affidavits and documentary evidence supporting the charge, and must answer the charge in detail within twenty days. Once a charge is found sufficient it is assigned to a hearing officer to conduct an evidentiary hearing and issue a recommended order. The recommended order must be issued to PERC for a final decision within forty-five days of the hearing. Proposed orders and briefs may be filed with the hearing officer before he or she issues the recommended order. After the recommended order is issued, exceptions or objections can be filed with PERC before the final decision is rendered. The Commission cannot alter any of the hearing officer's factual findings without reviewing the entire record, including a transcript.

PERC reviews the recommended order, the record of the hearing, and all objections and briefs received from the parties, and then issues an order deciding whether an unfair labor practice was committed. If an unfair labor practice was not committed, PERC dismisses the charge. If an unfair labor practice is found, PERC orders the offending party to cease the practice. PERC also may order that any positive action necessary to remedy the unfair labor practice be taken, including reinstatement and payment of back pay.

Unfair Labor Practice Remedies

PERC has the authority to order the party who violated the law to pay the attorney's fees of the party whose rights were violated. PERC will order that attorney's fees be paid when it dismisses a charge if there was no basis for making the charge in the first place or if the charging party continued to litigate the case after it became apparent that the charge lacked merit. If necessary, PERC can order a special proceeding to decide how much back pay is owed to an employee.

Unfair Labor Practice Settlement

Sometimes the opposing sides in an unfair labor practice case can work out a settlement. The charge may then be withdrawn, or both sides can ask PERC to issue a consent order which states the specific details of their settlement agreement.

STRIKES

The Florida Constitution states that public employees shall not have the right to strike. "Strike" is defined very broadly to include any concerted conduct that adversely affects the services of the public employer or overt preparation for such.

The ban against strikes is enforced in two ways. First, it is an unfair labor practice for an employee organization, or a member, officer, or representative to support a strike in any positive way. An employer, employee, or employee organization may use PERC Form 17 to file an unfair labor practice charge against a striking party. Second, PERC or a public employer whose employees may be affected by a strike may seek an injunction in circuit court. The court must issue the injunction if a strike is in progress or if there is a clear, real, and present danger that a strike is about to begin.

If an injunction is not promptly obeyed, violators can be held in contempt of court. Upon a finding of contempt, the court can fine an employee organization \$5,000 and can fine each officer or representative no less than \$50 and no more than \$100 for each day of the violation. An employee organization cannot directly or indirectly pay an individual employee's fine.

Both PERC and the circuit courts can award damages caused by a striking employee organization to a public employer. The court can order that dues deductions be used to pay the damages. PERC can take the following actions against a striking employee organization:

- Order the organization to stop the strike
- Suspend or revoke the organization's certification
- Revoke the organization's right to dues deduction
- Fine the organization \$20,000 per day of the strike, or an amount equal to the cost of the strike, even if it is more than \$20,000 per day

The fine is paid to the employer for replacement of services lost. In deciding the amount of damages, PERC and the court consider anything the employer may have done to provoke the strike.

PERC can order an employer to terminate any employee who violates the ban on strikes or impose lesser penalties. A terminated employee who knowingly violated the law against strikes can work again as a public employee in Florida only if he or she is placed on probation for eighteen months at a salary not to exceed that received prior to the violation and not to be increased for one year.

Some strike situations have resulted in the payment of large fines. For example, in an alleged strike in 1975 affecting approximately 6,000 Broward County teachers, PERC secured an injunction and eventually approved a settlement with the two employee organizations involved. One employee organization paid a fine of \$40,000, lost the right of dues deduction for two months, and had its certification suspended until the fine was paid. The other employee organization paid a fine of \$3,500 and was ordered not to seek certification for one year after paying the fine.

On another occasion, approximately 170 Hollywood police officers failed to report for duty when scheduled for three days in September 1980 shortly after collective bargaining negotiations reached impasse. PERC obtained an injunction against the alleged strike and filed a proceeding to enforce strike penalties. Eventually PERC approved a settlement that required the employee organization to pay a fine of \$25,000 and required the police officers to work sixteen hours without pay for each shift for which they failed to report for duty, as well as to suffer a five percent reduction in pay for one year. The economic value of the settlement was approximately \$180,000. Fourteen officers who did not join in the settlement were found to have participated in an unlawful strike and were suspended for three months without pay.

In another similar situation, approximately 100 Hollywood fire fighters failed to report for duty when scheduled. Again, PERC obtained an injunction and initiated a proceeding to enforce strike penalties. The case was settled by requiring the employee organization to pay the city a fine of \$12,500 and by requiring the fire fighters to work twenty-four hours without pay for each shift for which they failed to report for duty, as well as to suffer a five percent reduction in pay for one year. The economic value of this settlement was approximately \$85,000.

APPENDIX

PERC FORMS AND INSTRUCTIONS

| Form Number | Title or Description |
|-----------------------------|--|
| PERC Form 1 | <u>Application for Registration</u> . An employee organization seeking to register uses this form to apply for a registration license. |
| PERC Form 2 | <u>Employee Organization Annual Financial Statement</u> . This report is filed annually by an employee organization to disclose its financial condition and operations for the preceding fiscal year. In some cases, an employee organization filing fiscal disclosure forms with the federal government files copies of those forms instead of this form. |
| PERC Form 3 | <u>Recognition-Acknowledgment Petition</u> . In order to be voluntarily recognized by a public employer, a registered employee organization that has the support of a majority of unit employees submits this form to the public employer after executing Part I. If the public employer is satisfied that the petitioning union has majority support and that the requested unit is appropriate, it voluntarily recognizes the employee organization as the exclusive bargaining representative of employees in the unit by executing Part II of the form. The employee organization then executes Part III and files the petition. |
| PERC Form 4 | <u>Representation-Certification Petition</u> . A registered employee organization files this petition to request that a secret ballot election be conducted to determine if a majority of employees desire the organization to be certified as the exclusive bargaining agent of employees in an appropriate unit. |
| PERC Form 5 | <u>Notice to Employees (Representation-Certification Case)</u> . Upon the filing of a representation-certification petition, the Commission will furnish the employer with this notice. The notice advises employees of the filing of the representation-certification petition and generally describes the rights of employees. |
| PERC Form 6 | <u>Petition to Revoke Certification</u> . An employee or group of employees files this petition if they seek a secret ballot election to revoke the certification of an employee organization. |

- PERC Form 7 Notice to Employees (Revocation of Certification Case). Upon the filing of a petition to revoke certification, the Commission will furnish the employer with this notice. The notice advises employees of the filing of the petition to revoke certification and generally describes the rights of employees.
- PERC Form 10 Notice to Employees (Managerial/Confidential Request). Upon the filing of a managerial or confidential request, the Commission will furnish the employer with this notice. The notice advises employees of the filing of the managerial/confidential request and generally describes the rights of employees, the legal effect of being designated as a managerial or confidential employee, and the opportunity for employees to participate in the proceeding.
- PERC Form 11 Notice of Election. When the Commission orders an election to be conducted or approves a consent election agreement, it furnishes the employer with this notice. This notice contains the following: (1) a description of the bargaining unit(s) involved; (2) the manner in which the election will be conducted (date, times and places); (3) the specific date used to determine voter eligibility; and (4) a sample ballot.
- Note: In the interest of clarity, a completed sample of this form is provided.
- PERC Form 12 Proof of Conduct of Election. This form is signed by election observers to certify that the election was conducted in a fair manner.
- PERC Form 13 Tally of Ballots. This form is used to tabulate the results of a collective bargaining election. After the ballots have been counted a copy of the form is furnished to each of the parties by the Commission.
- [PERC Form 14](#) Notice of Negotiations. A Notice of Negotiations form is submitted by either a public employer or a certified bargaining agent any time after negotiations begin. Upon filing of the notice, the Commission advises the parties of the availability of a mediator in the area.
- [PERC Form 15](#) Charge Against Employer. This form is filed by a public employee or employee organization to charge that a public employer has committed an unfair labor practice.
- [PERC Form 16](#) Charge Against Union. This form is filed by a public employee, an employee organization, or a public employer to charge that an employee organization has committed an unfair labor practice.

- [PERC Form 17](#) Charge Alleging Unfair Labor Practice - Strike. This form is used to charge that an employee organization or public employees have engaged in a strike.
- PERC Form 18 Computation of Back Pay. After a Commission order directing the payment of back pay or after enforcement of such an order by a court, a petition to initiate back pay proceedings is filed if informal efforts to obtain satisfactory payment are unsuccessful.
- [PERC Form 19](#) Subpoena (Duces Tecum). This subpoena is a summons to appear and to bring certain documents to the hearing. It is a party's responsibility to complete and serve subpoenas. Once completed, the subpoena will be issued by the Clerk of the Commission or by a hearing officer.
- [PERC Form 19a](#) Subpoena (Ad Testificandum). This subpoena is a summons to appear and give oral testimony for use at a hearing. It is a party's responsibility to complete and serve subpoenas. Once completed, the subpoena will be issued by the Clerk of the Commission or by a hearing officer.
- [PERC Form 20](#) Unit Clarification or Modification Petition. This form is filed by a public employer or employee organization to determine whether positions that have been either created or substantially changed after a bargaining unit was certified are appropriate for inclusion or exclusion. It may also be used to correct a mistake in a position's unit placement.
- [PERC Form 24](#) Agency Prehearing Statement. This document is required to be filed at least twelve days before a career service hearing. The form asks the Agency to list any witnesses to be called at hearing, except rebuttal witnesses, and the relevant issues about which each witness is expected to testify.
- [PERC Form 25](#) Employee Prehearing Statement. This document is required to be filed at least twelve days before a career service hearing. The form asks the Employee to list any witnesses to be called at hearing, except rebuttal witnesses, and the relevant issues about which each witness is expected to testify. The Employee is also asked to provide a brief statement explaining why the Commission should sustain his/her appeal and what relief is sought.

Individuals may request a copy of any of the above-described forms by contacting the Commission at (850) 488-8641 or emailing prrequests@perc.myflorida.com. Most of the forms are readily available for download on PERC's website at <http://perc.myflorida.com/forms/forms.aspx>.