

# Unfair Labor Practice Violations a Union Can Allege

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This list includes the elements within each violation.

You must include facts related to all the elements for each violation alleged in your complaint.

## **Against the Employer**

### ***Interference***

#### **Employer Interference (General)**

Independent:

- An employer official made a statement or took action which one or more employees reasonably perceived to be a threat of reprisal or force, or promise of benefit, associated with activity protected by an applicable collective bargaining law (protected activity).

Derivative:

- The employer committed a domination, discrimination, or refusal to bargain violation.

#### **Employer Interference ( *Weingarten* rights)**

- The employer compelled an employee to attend an interview, and
- A significant purpose of the interview was (or became) investigatory – to obtain facts which might support disciplinary action, and
- The employee reasonably believed that discipline might result from the interview, and
- The employee requested the presence of a union representative, and
- Employer rejected the employee's request and went ahead with the investigative interview without a union representative present OR Employer required union representative to remain a passive or silent observer, so as to prevent the representative from assisting the employee.

### ***Refusal to Bargain***

#### **Employer Failure to Meet**

- The union is the exclusive bargaining representative of the employees involved, and
- The union requested negotiations on a collective bargaining agreement or some issue that was a mandatory subject of bargaining under the applicable law, and
- The employer failed or refused to meet, or imposed unreasonable conditions/limitations which frustrated the collective bargaining process.

### **Employer Failure to Bargain in Good Faith**

- The union is the exclusive bargaining representative of the employees involved, and
- The union requested collective bargaining negotiations on a collective bargaining agreement or an issue that was a mandatory subject of bargaining under the applicable law, and
- The employer engaged in specific conduct and/or a course of conduct designed to frustrate the collective bargaining process, including tactics such as:
  - Failing or refusing to consider proposals made by the union, or
  - Failing or refusing to make proposals or to explain the proposals it made, or
  - Providing the union with misleading proposals or positions, or
  - Failing to follow through on a commitment to recommend proposals made in bargaining, or
  - Altering its position in a manner designed to avoid agreement (late hits), or
  - Other tactics that delay or avoid reaching agreement.

### **Employer Failure to Provide Information**

- The union is the exclusive bargaining representative of the employees involved, and
- The union requested existing information relevant to the performance of its functions in collective bargaining or contract administration, and
- The employer failed or refused to provide the requested information.

### **Employer Circumvention**

- The union is the exclusive bargaining representative of the employees involved, and
- The employer engaged in direct negotiations with one or more bargaining unit employees concerning one or more mandatory subjects of bargaining.

### **Unilateral Change**

#### Employer Unilateral Change (General)

- The union is the exclusive bargaining representative of the employees involved, and
- The employer had an established practice concerning a mandatory subject of bargaining, and
- The employer decided upon and actually implemented a change of that mandatory subject of bargaining:
  - Without any notice to the union, or
  - with notice that was insufficient to permit bargaining on the subject, or

- without engaging in bargaining as requested by the union, or
- without bargaining in good faith to agreement or impasse

#### Employer Unilateral Change – Transfers of work (Skimming/Contracting out)

- The union is the exclusive bargaining representative of the employees involved, and
- The employees in the existing bargaining unit have historically performed certain work or could logically be assigned to perform certain new work, and
- The employer decided upon and actually transferred/assigned claimed bargaining unit work outside the bargaining unit to other employees of another employer (contracting out) or to other employees of the employer (skimming):
  - Without any notice to the union (“fait accompli”), or
  - With notice that was insufficient to permit bargaining on the subject, or
  - Without engaging in bargaining as requested by the union, or
  - Without bargaining in good faith to agreement or impasse.

### ***Discrimination***

#### **Employer Discrimination for Protected Collective Bargaining/Union activity**

- One or more employees exercised rights protected by applicable collective bargaining statute (protected activity) or communicated to the respondent an intent to do so, and
- One or more employees were deprived of some ascertainable right, status, or benefit, and
- A causal connection exists between the protected union activity and the action claimed to be discriminatory.

#### **Employer Discrimination for Filing a Complaint/Testimony before PERC**

- The employee filed a ULP complaint with PERC (protected activity) or gave testimony before PERC (protected activity), or communicated to the respondent an intent to do so, and
- One or more employees were deprived of some ascertainable right, status, or benefit, and
- A causal connection exists between the protected union activity and the action claimed to be discriminatory.

### ***Domination***

#### **Employer Domination**

The Employer:

- Intended to control or interfere with the formation or administration of a union, or

- Intended to dominate the internal affairs of a union (potentially including selection of officers, policy decisions, or ratification of collective bargaining agreements), or
- Intended to contribute financial or other support to a union (potentially including cash, use of office space and/or facilities, paid release time for union officials), or
- Recognized or bargained with a union that had not established that it had the support of a majority of the employees involved, or
- Showed a preference between unions competing to represent particular employees.

### **Against Another Union**

#### ***Interference***

#### **Union Interference Involving Employees/Derivative Interference**

Involving Employees:

- Applicable collective bargaining statute covers the employee(s) involved, and
- Union or its agent(s) made some statement or took some action, and
- One or more employee reasonably perceived the union actions as a threat of reprisal or force, or a promise of benefit, associated with their exercise of rights protected by the applicable collective bargaining law.

Derivative:

- The union committed a discrimination or refusal to bargain violation.

#### ***Discrimination***

#### **Union Discrimination for Filing a Complaint/Testimony**

- The union/employee filed a ULP complaint with PERC (protected activity) or gave testimony before PERC (protected activity), or communicated to the respondent an intent to do so, and
- One or more employees were deprived of some ascertainable right, status, or benefit, and
- A causal connection exists between the protected activity and the action claimed to be discriminatory.

#### **Union Inducing Employer to Commit Violation/Union Discrimination**

- The employee(s) involved is/are covered by a collective bargaining statute administered by PERC, and
- The union requested that the employer take some action that is unlawful.