Unfair Labor Practices
Statutes Governing the Relationship between Public Employers, Employees, and Employee Organizations

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These materials are not intended to be legal advice.
Review these issues with your legal counsel before taking action.
**COMMON ACRONYMS:**

<table>
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<tr>
<th>Acronym</th>
<th>Definition</th>
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<tr>
<td>CBA</td>
<td>Collective Bargaining Agreement – the written agreement between an employment group and the employer containing the terms and conditions of the relationship</td>
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<td>NLRA</td>
<td>National Labor Relations Act – federal law enacted in 1935 to protect the rights of employees and employers</td>
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<td>NLRB</td>
<td>National Labor Relations Board – the agency charged with enacting and enforcing the NLRA</td>
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<td>PELRA</td>
<td>Public Employment Labor Relations Act – the Minnesota version of the NLRA</td>
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<td>PERB</td>
<td>Public Employment Relations Board – an arm of the BMS that was brought into existence through legislation enacted on July 1, 2014. The PERB will begin hearing cases alleging unfair labor practices on July 1, 2015.</td>
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<tr>
<td>BMS</td>
<td>Bureau of Mediation Services – the agency charged with enforcing PELRA in Minnesota. The agency is headed by a commissioner who is nominated by the governor.</td>
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WHAT ARE UNFAIR LABOR PRACTICES?

Unfair Labor Practices are actions taken by employers, employees, or employee organizations that have been deemed to be unfair because they hinder negotiation processes and interfere with the rights of workers and employers. Unfair Labor Practices are defined by statute – Minnesota Statute § 179A.13. Subdivisions 2 and 3 list the unfair practices of employers and employees:

<table>
<thead>
<tr>
<th>Subd. 2: Unfair Practices of Employers</th>
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<td>(1) Interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;</td>
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<td>(2) Dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;</td>
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<td>(3) Discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization;</td>
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<td>(4) Discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition, or complaint or given information or testimony under sections 179A.01 to 179A.25;</td>
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<td>(5) Refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;</td>
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<td>(6) Refusing to comply with grievance procedures contained in an agreement;</td>
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<td>(7) Distributing or circulating a blacklist of individuals exercising a legal right or of members of a labor organization for the purpose of preventing blacklisted individuals from obtaining or retaining employment;</td>
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<td>(8) Violating rules established by the commissioner regulating the conduct of representation elections;</td>
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<td>(9) Refusing to comply with a valid decision of a binding arbitration panel or arbitrator;</td>
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<td>(10) Violating or refusing to comply with any lawful order or decision issued by the commissioner;</td>
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<td>(11) Refusing to provide, upon the request of the exclusive representative, all information pertaining to the public employer’s budget (both present and proposed), revenues, and other financing information, provided that in the executive branch of state government this clause may not be considered contrary to the budgetary requirements of sections 16A.10 and 16A.11; or</td>
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<tr>
<td>(12) Granting or offering to grant the status of permanent replacement employee to a person for performing bargaining unit work for the employer during a lockout of employees in an employee organization or during a strike authorized by an employee organization that is an exclusive representative.</td>
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**Subd. 3: Unfair Practices of Employees (and Employee Organizations)**

(1) Restraining or coercing employees in the exercise of rights provided in sections 179A.01 to 179A.25;

(2) Restraining or coercing a public employer in the election of representatives to be employed to meet and negotiate or to adjust grievances;

(3) Refusing to meet and negotiate in good faith with a public employer, if the employee organization is the exclusive representative of employees in an appropriate unit;

(4) Violating rules established by the commissioner regulating the conduct of representation elections;

(5) Refusing to comply with a valid decision of an arbitration panel or arbitrator;

(6) Calling, instituting, maintaining, or conducting a strike or boycott against any public employer on account of any jurisdictional controversy;

(7) Coercing or restraining any person with the effect to:
   (i) Force or require any public employer to cease dealing or doing business with any other person;
   (ii) Force or require a public employer to recognize for representation purposes an employee organization not certified by the commissioner;
   (iii) Refuse to handle goods or perform services; or
   (iv) Prevent an employee from providing services to the employer;

(8) Committing any act designed to damage or actually damaging physical property or endangering the safety of persons while engaging in a strike;

(9) Forcing or requiring any employer to assign particular work to employees in a particular employee organization or in a particular trade, craft, or class rather than to employees in another employee organization or in another trade, craft, or class;

(10) Causing or attempting to cause a public employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(11) Engaging in an unlawful strike

(12) Picketing which has an unlawful purpose such as a secondary boycott;

(13) Picketing which unreasonably interferes with the ingress and egress to facilities of the public employer;

(14) Seizing or occupying or destroying property of the employer;

(15) Violating or refusing to comply with any lawful order or decision issued by the commissioner.
HOW ARE CLAIMS OF UNFAIR LABOR PRACTICES MANAGED?

Until June 30, 2015:

- Arbitration as required by the CBA
- BMS maintains a list of 60 arbitrators
- Seven names of arbitrators are submitted to the parties
- Each takes turns removing a name until one arbitrator is left
- The arbitrator hears the case and makes a binding decision
- Appeals are taken to the district court

Beginning July 1, 2015:

- Governor appoints two PERB members; they, in turn, elect a third
  - One officer or employee of a public sector labor union
  - One representative of public employers
  - One public representative, appointed by the union and employer members
- Four year terms
- A claim is filed with the PERB
- The PERB assigns an investigator
  - If it is determined that the charge does not have a reasonable basis in law or fact, the charge will be dismissed
  - If the allegation has a reasonable basis, a complaint is issued
- The party may file an answer
- A hearing will be held within 20 days of filing the complaint
- Testimony and evidence will be received by a hearing officer designated by PERB; the hearing officer’s decision is appealable to the PERB
- Decisions of the board are subject to review by the Court of Appeals by writ of certiorari

Goals of the New System

- Reduce costs to parties
- Provide fast decisions
- Open the system to small businesses and small organizations
- Encourage quality and consistent decisions from professionals familiar with the area of law