

Audio Script:

Bargaining 240 - Unfair Labor Practices

This is the actual audio that was recorded for Bargaining 240. Use it for a reference or study guide.

Welcome to Bargaining 240

This course should take about 30 minutes to complete.

It is an elective course in the Bargaining track.

The prerequisite for this course is Bargaining 100.

The sections in this course are

Unfair Labor Practices, or ULPs, and

The Public Employment Relations Board (PERB)

Section 1: Unfair Labor Practices (ULPs)

Overview

What is an Unfair Labor Practice?

An unfair labor practice is an action by either the state or the representing union that violates an existing law – either a state law or a federal law.

The primary California state law concerned with labor, unions and employee rights is the Dills Act. In Section 3519 of the Dills Act, it specifically describes unlawful actions by both the state and the union.

Illegal actions by the state

Under state law, as stated in the Dills Act Section 3519(a), the state cannot: impose or threaten reprisals against employees; they cannot discriminate against or interfere with employees, they cannot interfere with unions that represent employees or refuse to participate in mediation.

Any of these actions are considered to be Unfair Labor Practices and are subject to review and discipline by PERB, the Public Employment Relations Board, as further described in the Dills Act.

In the context of bargaining, illegal actions by the state may include:

- Surface bargaining: that is, not fully considering union proposals, or not counter-proposing, or
- Failure to meet and confer in good faith. Examples of failing to meet and confer in good faith include canceling bargaining sessions, or not bringing a team with the authority to negotiate.

Illegal actions by a union

Unfair Labor Practices can also be illegal actions by a union – for instance, actions that would cause the state to do something that is unlawful, any actions that would be reprisals or discrimination against an employee, refusal or failure to meet and confer in good faith with a state agency, or refusal to participate in good faith in the mediation process if negotiations should falter.

Employee's Rights

As set out in the Dills Act, employees have the right to negotiate their wages and their working conditions. They have rights to protection from employer interference or retaliation following union actions. They have rights to join a union, file a grievance, wear union buttons or t-shirts, and hand out union literature.

There are also legal protections for stewards to perform their duties in the workplace.

For more information, take the Leadership Academy course Representation 200: Legal Rights of Stewards and State Employees.

ULP vs Grievance

What is the difference between an Unfair Labor Practice and a grievance?

As we have discussed, an Unfair Labor Practice is a violation of established law – local law, state law (the Dills Act) or federal law. Local 1000 has a specific process for addressing and resolving ULPs called the Unfair Labor Practice process.

A grievance, on the other hand, is a violation of our contract, or MOU, with the state of California. Our grievance process resolves this kind of dispute.

Section 1 Review

What is a ULP?

- a) Unfair Labor Policy
- b) Unfair Local Practice
- c) *Unfair Labor Practice*

The answer is C – a ULP is an Unfair Labor Practice.

The state law that defines an Unfair Labor Practice is:

- a) Employment Disabilities Act
- b) Proposition 13
- c) The Local 1000 contract with the state of California
- d) *The Dills Act*

The answer is D – The primary California state law that deals with employee rights,

labor and unions is the Dills Act.

A ULP is an action that can be done by either the state or the union

- a) *True*
- b) *False*

The answer is True – an Unfair Labor Practice is an illegal practice that is done by either the state or the union.

Section 2: The Public Employment Relations Board

Public Employment Relations Board

The Public Employment Relations Board, or PERB, is a quasi-judicial state agency. It has the authority to oversee collective bargaining for over two million California state employees.

PERB was established by the Dills Act to oversee the rights that the Dills Act guarantees. The board has up to five members appointed by the governor, who are then confirmed by the state senate.

PERB Administers...

PERB has rights and authority over the bargaining process and the relationship between state agencies and the unions that represent those state employees. The board can hold hearings, make judgments and apply penalties against either the state or the union if they violate local, state or federal law.

The Public Employment Relations Board deals with laws and complaints that relate to the guarantees spelled out in the Dills Act.

PERB also evaluates and adjudicates Unfair Labor Practice charges (ULPs) that may be filed by any organization that represents state employees or by the state.

Local 1000's process for dealing with the filing of ULPs is aligned with PERB's guidelines.

PERB Does NOT Administer...

PERB does NOT enforce collective bargaining agreements.

If it's in our contract with the state, it is not overseen by PERB. It is, rather, a complaint or a grievance and should be handled by a steward using the established grievance process.

Seven Collective Bargaining Statutes

The seven statutes that are overseen by PERB are...

- The Dills Act – for state employees, originally called the State Employer-Employee Relations Act, or SEERA
- The Educational Employment Relations Act, or EERA, which covers state-

run public schools

- The Higher Education Employment Relations Act, or HEERA, which deals with California State University, the University of California and Hastings College of Law
- The Meyers-Milias-Brown Act. This statute includes city, county and local special district employers and employees, such as utility districts.
- The Los Angeles Metropolitan Transportation Authority covering supervisory employees
- The Trial Court Employment Protection and Governance Act, and
- The Trial Court Interpreter Employment and Labor Relations Act which reviews labor practice issues

Unit Determination

PERB is responsible for bargaining unit determination – that is, PERB decides which job classifications are part of each bargaining unit.

The Dills Act guarantees exclusive representation for state employees. So, one employee organization will represent each bargaining unit. The employees in each unit decide which employee organization will represent them.

Remember, PERB administers state collective bargaining laws, not employer contracts so if a complaint is connected to the contract you will file a grievance with the Department of Public Administration, or DPA.

If that grievance is appealed, the appeal will go to the State Personnel Board or SPB, to get resolved.

The Weingarten Decision

As of 1975 the Weingarten Decision from the federal Supreme Court established that employee rights to representation are also protected at the federal level.

Before this we, in California, had the state law, the Dills Act, that only applied within California. After the Weingarten decision the right to representation was recognized nation-wide.

Specifically, the right to request assistance from union representatives during investigatory interviews is the right of any employee in the United States.

Section 2 Review

PERB stands for

- a) Personnel Events Reporting Board
- b) *Public Employment Relations Board*
- c) Public Employers Representing Board

d) Personnel Employees Relation Board

The answer is B – PERB stands for Public Employment Relations Board

PERB administers:

- a) Contracts
- b) *State laws (Dills Act)*
- c) County regulations
- d) DMV Statutes

The answer is B – The Public Employment Relations Board administers state laws governing employees' rights. In California that is the Dills Act.

The Dills Act states that PERB is responsible for bargaining unit determination. This means that PERB:

- a) Is determined about bargaining units
- b) Decides which bargaining unit will testify
- c) *Decides which job classifications belong to which bargaining units*
- d) All of the above

The answer is C – PERB determines which job classifications belong in each bargaining unit.

End of Course

This completes Bargaining 240.

Your next step is to take and pass the Final Exam to finish this course.

If you would like to earn the Certificate of Completion in Bargaining, take the required courses in the Bargaining track: Bargaining 100, 110, 200, 210, and 250.