

Filing Unfair Labor Practices

SkillBrief

You file ULP charges with the nearest regional office of the NLRB either in person or by mail. Charges must be filed within 6 months after you knew or should have known of the violation, but normally you should file as soon as possible.

Once a charge is filed, the NLRB regional director will assign an agent to investigate. You should give the agent all the evidence you can develop, including notarized written statements from witnesses, notes from negotiating sessions, and other records and documents.

Provide witnesses for the NLRB agent to interview. A union representative can sit in on those interviews unless the witness objects or the NLRB agent has a good reason to insist that the interview be done privately. With the witness's permission, the union has a right to a copy of any affidavit the witness signs.

The NLRB regional director will decide whether to issue a formal complaint (like an indictment) against the employer. If the NLRB is not going to issue a complaint, it will ask you to withdraw the charge "without prejudice," meaning you could file it again if you changed your mind or found new evidence. For public relations purposes, it is generally better to withdraw the charge than to have the NLRB reject it. However, if you plan to appeal the decision you must not withdraw the charge.

You can appeal to the NLRB general counsel to reverse the region's decision, but few decisions are reversed.

If a complaint is issued, the regional director will schedule a hearing (usually 3 to 6 months later) before an NLRB administrative law judge. In the meantime, the NLRB probably will try to arrange a compromise settlement between the union and management to avoid going through the hearing process.

If a hearing is conducted, the Board agent will argue the case, but the union has the right to present evidence, call witnesses, and cross-examine management witnesses.

After the hearing, the judge makes a decision and recommends an order for the NLRB to issue. Either party can appeal this decision. If appealed, the case comes before the members of the NLRB to decide. Their decision can be appealed to the U.S. Court of Appeals or all the way to the Supreme Court, although this is rare.