



## Investigating ULPs, How Many Ways Can an Employer Violate the NLRA?

National Labor Relations Board  
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# The National Labor Relations Board

The National Labor Relations Board (NLRB) is an independent federal agency, created by Congress in 1935 to administer the National Labor Relations Act (NLRA).

ULP VIOLATIONS



# The National Labor Relations Board

The NLRB has two primary functions:

1. To investigate and prosecute unfair labor practices (ulps).
2. To process representation cases and conduct secret ballot elections.

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# Unfair Labor Practices (ULPs)

Section 8 of the National Labor Relations Act sets forth certain enumerated unfair labor practices.

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# Unfair Labor Practices (ULPs)

Section 8(a)(1) of the Act makes it an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

Section 8(a)(1) ULPs may include:

- Threats and coercive statements
- Surveillance of employees' activities
- Interrogation or harassment of employees
- Certain No-solicitation/No-Distribution rules
- Disciplinary action because of an employee's protected, concerted activities.

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# Unfair Labor Practices (ULPs)

Section 8(a)(3) of the Act makes it an unfair labor practice to discriminate in regard to hire or tenure of employment to encourage or discourage membership in any labor organization.

Section 8(a)(3) ULPs may include:

- Discharge, suspension or other discipline
- Refusal to hire
- Lockout of employees
- Shutdown or relocation of a facility



# Unfair Labor Practices (ULPs)

Section 8(a)(4) of the Act makes it an unfair labor practice to discharge or otherwise discriminate against an employees because he/she has filed charge or given testimony under the NLRA.

Steward/HR Training



# Unfair Labor Practices (ULPs)

Section 8(a)(5) of the Act makes it an unfair labor practice to refuse to bargain collectively with the employees chosen representative.

Section 8(a)(5) ULP's may include:

- Bad-faith bargaining
- Refusal to furnish information
- Direct Dealing with employees
- Unilateral Changes in terms and conditions of employment.
- Repudiation or modification of a contract.
- Failure to sign a collective bargaining agreement.

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# ULP Investigations

ULP investigations begin with the filing of a charge. A charge may be filed by any person, or entity in person, by mail, by facsimile, or e-filed. A charge must be filed, however, within 6 months of the alleged violation.

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# ULP Investigations

ULP charge forms may be found on the NLRB website located at [www.nlr.gov](http://www.nlr.gov). The website also has a charge wizard that helps you to e-file charges. In addition you may contact an Information Officer (IO) located in the Regional Office to discuss your issues and seek assistance in filing a charge.

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# ULP Investigations

The Region's Information Officer is a valuable asset and will assist you:

- In determining whether your allegations fall within the parameters of the Act
- In making sure the proper sections of the Act are set forth on the charge form
- In phrasing the allegations such that the Charged Party is given adequate notice of the basis for the charge, without specifying evidence or divulging the identity of witnesses.

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# ULP Investigations

Upon the receipt of the charge, the Region will send a courtesy copy of the charge to the charged party by mail or sometimes fax.

Service of the charge, however, is the responsibility of the Charging party, not the Board. Charges may be served in person, by registered, certified, or regular mail, or by any other method agreed to by the Charged Party.

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# ULP Investigations

Once a charge has been filed it will be assigned to a Board agent. The Board agent is an impartial investigator, who will:

- Seek out all material evidence usually by taking affidavits or requesting documents
- Apply relevant case law
- Make an objective recommendation to the Regional Director concerning the merits of the charge

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# ULP Investigations

The length of investigations varies. The Board uses an “Impact Analysis” system in prioritizing cases. Under this system cases are categorized by priority.

- Category 3 – Cases involving exceptional impact. May include issues relating to the Union’s bargaining status or employee terminations.
- Category 2 – Cases involving significant impact. May include issues such as a refusal to provide information, unilateral changes or other types of discipline not involving a permanent loss of employment.
- Category 1 – Cases involving important impact, where there are alternative means of redress.

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# ULP Investigations

Under the “Impact Analysis” system. Board agents have the following number of days to complete an investigation:

- Category 3 – 35 days
- Category 2 – 63 days
- Category 1 – 84 days

Please note this is the total amount of time that a Board agent has to collect both the charged and charging parties’ evidence and make a recommendation to the Regional Director.

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# ULP Investigations

## ULP VIOLATIONS

Once a charge is filed the charging party is expected to:

- Understand the factual elements necessary to sustain their allegation.
- Be familiar with any applicable collective bargaining agreements.
- Be prepared with the names, contact information and availability of witnesses.
- Be prepared to promptly present witnesses and have all relevant documents available.





# ULP Investigations

The charging party should not delay the investigation. A charge can and will be dismissed for failure to cooperate. If you are not prepared to go forward with your evidence, withdraw the charge and re-file when prepared. (Be mindful of the Section 10(b) limitations.)

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# ULP Investigations

Upon conclusion of the investigation, the Regional Director, along with other Regional managers and agents will review the evidence presented, consider and controlling legal authority and decide whether further proceedings are warranted on some or all of the allegations.

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# ULP Investigations

## ULP VIOLATIONS

If the Regional Director concludes that further proceedings are not warranted on some or all of the allegations the charging party will:

- Be asked to withdrawal the nonmeritorious allegations.
- Absent withdrawal the case will be dismissed. There are two types of dismissal:
  - Short-form
  - Long-form

Once a dismissal issues the charging party will have the right to appeal the decision to the General Counsel in Washington DC.



# ULP Investigations

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If the Regional Director concludes that further proceedings are warranted on some or all of the allegations the Regional Director may issue:

- A settlement which includes a notice posting by the charged party.
- A complaint and notice of hearing, if settlement efforts are rejected.



# ULP Investigations - Deferral

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If the Regional Director concludes that further proceedings are warranted on some or all of the allegations and there is a collective bargaining agreement in effect between the parties, the Regional Director may defer the charge to the parties' grievance and arbitration procedure pursuant to the policies set forth in *Collyer Insulated Wire*, 192 NLRB837, *United Technologies Corp.* 268 NLRB 557 (1984), and *Babcock & Wilcox Construction*, 361 NLRB No. 132 (2014), which promotes the use of the parties' grievance and arbitration procedures to foster industrial peace.



# Deferral

Under the Board's deferral policy the parties are required to:

- Provide periodic status updates on the underlying grievances approximately every 90 days.
- Give priority to those grievances that are part of the Board deferral process, insuring their speedy resolution.
- Provide the Union with immediate notice if the underlying grievance is settled or a decision is rendered by an arbiter.
- Conclude gr processing in less than one year from the date the charge was filed.

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# A Closer Look – Information Requests

A collective-bargaining representative is entitled to information that is relevant and necessary to fulfill its statutory duties and responsibilities.

Defenses:

- Legitimately confidential or privileged
- Unduly burdensome
- Waiver
- Bad Faith
- Witness Statements – Now must be provided absent a showing of a need to protect.

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# A Closer Look – Unilateral Changes

Unilateral Change – The obligation to provide notice of intent to change and to bargain in good faith to impasse over the subject before instituting the proposed change

Mid-Term Modification – To modify a term of a current collective-bargaining agreement the party must obtain the consent of the other party before implementing the change.

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# A Closer Look – Direct Dealing

Section 8(a)(5) does not permit an employer to negotiate directly with individual employees when they have a bargaining representative.

But under Section 8(c), an employer is, under certain circumstances, entitled to communicate with its employees during collective-bargaining negotiations.

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# A Closer Look – Weingarten Rights

- Employees have Weingarten Rights only during investigatory interviews.
- If an employee reasonably believes that discipline may result from the questioning, the employee has the right to request union representation.
- Employees do not have the right to union representation if the meeting is only to tell them about discipline that has already been decided or to give other direction.

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# A Closer Look – Weingarten Rights

When an employee makes a request for a union representative, management has three options:

- They can stop questioning until the representative arrives;
- They can call off the interview; or
- They can tell the employee that the interview will stop unless the employee voluntarily gives up his right to a union representative.

The Union representative has the right to assist and counsel workers during the interview, including being allowed to speak privately with the employee before the interview.

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# Thank You

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