

CHAPTER 93. PRIVATE EMPLOYES

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Authority

The provisions of this Chapter 93 issued under section 4(f) of the Pennsylvania Labor Relations Act (43 P.S. § 211.4(f)), unless otherwise noted.

Source

The provisions of this Chapter 93 adopted April 26, 1966, unless otherwise noted.

Notes of Decisions

Capitol police are policemen and not private employees. *Commonwealth v. Labor Relations Board*, 441 A.2d 470 (Pa. Cmwlth. 1982); affirmed in part, reversed in part 463 A.2d 409 (Pa. Cmwlth. 1983).

GENERAL PROVISIONS

§ 93.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Pennsylvania Labor Relations Act (43 P. S. §§ 211.1—211.39) and other acts as are administered in part.

Board—The Labor Relations Board.

Charge—A charge of unfair labor practices filed under the act.

Party—The employer, person or organization filing a charge or petition, or otherwise named in a charge or petition; another person or organization designated in the notice of hearing and served therewith; and another person or organization whose intervention has been permitted by the Board or trial examiner, except as limited by the Board or trial examiner in granting the permission.

Person, employer, employe, representative, labor organization, unfair labor practice and labor dispute—These terms have the meanings set forth in the acts.

Petition—A petition for investigation and certification of a collective bargaining representative filed under the act.

Trial examiner—A person appointed or designated by the Board to conduct a hearing.

PREHEARING PROVISIONS

§ 93.11. Institution of proceedings.

(a) Charges and petitions instituting proceedings before the Board may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in Pittsburgh. Charge and petition forms are available at Board offices.

(b) Charges and petitions may be filed by a person entitled to do so under the act, shall be in writing, shall contain pertinent information required by the act and shall be verified by the person filing the charges and petitions.

(c) In actions before the Board, the first paper filed on behalf of each party shall contain an address at which service of complaints, orders and other processes and papers of the Board may be made. Thereafter, a party may file with the Board an entry of appearance under § 91.2(a) (relating to appearances), which shall form part of the record in the case, setting forth a new address at which the service may be made. If he does not do so, notice sent to him by registered mail at his last address of record shall be equivalent to service.

Authority

The provisions of this § 93.11 amended under section 4(f) of the Pennsylvania Labor Relations Act (43 P.S. § 211.4(f)); and section 502 of the Public Employe Relations Act (43 P.S. § 1101.502).

Source

The provisions of this § 93.11 amended February 7, 2020, effective February 8, 2020, 50 Pa.B. 792. Immediately preceding text appears at serial page (337174).

§ 93.12. Service and filing of papers.

(a) Service of papers on a party shall be made personally, or by certified mail, or by leaving a copy thereof with the person then in charge at the principal office or place of business of the person to be served. Where an attorney or representative has entered his appearance under § 91.2(a) (relating to appearances), complaints, orders and other processes and papers of the Board shall be served on the attorney or representative and need not be served on the party. Service by a party on an attorney or representative who has entered an appearance under § 91.2(a), may be made personally, by United States Postal Service first-class mail, or where the attorney or representative has approved service by e-mail in an entry of appearance, by e-mail to the e-mail address provided in the entry of appearance.

(b) *Methods of Filing with the Board.*

(1) In person at the principal office of the Board in Harrisburg, or with the regional office of the Board in Pittsburgh. If mailed to the Board through the United States Postal Service or third-party courier, the date of filing shall be the date of receipt by the Board in its Harrisburg or Pittsburgh office.

(2) Filings, other than a petition or other document with a showing of interest as defined by § 95.1 (relating to definitions), may be filed with the Board by electronic mail by e-mailing a portable document format (PDF) file of the scanned complete signed document, including attachments and exhibits thereto, to the Board at the Board's designated e-mail address. The date of filing of an e-mailed document shall be the date of receipt by the Board officer or agent in accordance with subsection (c).

(c) When the acts, or this chapter or an order of the Board requires the filing of a motion, brief, exception or other paper in a proceeding, the document shall be received by the Board or the officer or agent designated by the Board to receive the document before the close of business of the last day of the time limit, if any, for the filing. Exceptions to this requirement will be at the discretion of the Board.

(d) Papers, pleadings, briefs or other documents filed with the Board shall be legibly typed, printed or otherwise legibly duplicated.

Authority

The provisions of this § 93.12 amended under section 4(f) of the Pennsylvania Labor Relations Act (43 P.S. § 211.4(f)); and section 502 of the Public Employee Relations Act (43 P.S. § 1101.502).

Source

The provisions of this § 93.12 amended February 7, 2020, effective February 8, 2020, 50 Pa.B. 792. Immediately preceding text appears at serial pages (337174) and (296495).

Cross References

This section cited in § 95.98 (relating to decisions of the Board).

§ 93.13. Consent elections.

(a) Petitions for consent election may be filed by an employer, individual, group of employees or labor organization entitled so to do under the act.

(b) Petitions for consent election shall be signed and verified by parties thereto and shall include a description of the appropriate unit, a suggested time and place of holding the election and a list of employees with occupations or classifications. A list of employees agreed upon as eligible to vote shall be signed and dated by the parties. Forms are available at Board offices.

(c) During the conduct of a representation hearing the parties thereto may enter into a stipulation for consent election upon forms provided by the trial examiner or by stipulation entered into the record.

§ 93.14. Complaints.

(a) After a charge has been filed, if it appears to the Board that formal proceedings in respect thereto should be instituted, the Board will issue and cause to be served upon the parties a complaint in the name of the Board, stating the alleged unfair labor practices, and containing a notice of hearing before a trial examiner at a place therein fixed and at a time not less than 5 days after the service of the complaint.

(b) In the discretion of the Board, upon due notice to the parties, a complaint may be amended, in such manner as the Board may deem proper, at any time before the issuance of a final decision and order if no new cause of action is added after the statute of limitations has run.

(c) A complaint, or amended complaint, or any part thereof, may be dismissed by the Board on its own motion or a charge may be withdrawn upon the motion of an interested party, if deemed appropriate by the Board, at any time before the issuance of a final decision and order, upon due notice to the parties.

Notes of Decisions*New Cause of Action*

A proposed amendment would have added a new cause of action beyond the 6 week limitations period set forth in section 9(e) of the Pennsylvania Labor Relations Act; to allow the amendment would have been contrary to the PLRA and the Board's regulation at 34 Pa. Code § 93.14(b). *Fraternal Order of Police v. Pennsylvania Labor Relations Board*, 30 PPER (LRP) P 30.070, March 19, 1999.

The hearing examiner properly denied the petitioner's motion to amend its original charge of an unfair labor practice to also allege a refusal to bargain over the impact of the establishment of a police advisory commission, where the proposed amendment would add a new cause of action beyond the 6-week limitations period. *Fraternal Order of Police, Lodge No. 5 v. Pennsylvania Labor Relations Board*, 727 A.2d 1187 (Pa. Cmwlth. 1999).

The addition of clauses to a previously filed charge of unfair practices constitutes the adding of a new cause of action such that an amendment must be made prior to the expiration of the statutory limitations period. *New Kensington Police Department Bargaining Unit v. City of New Kensington*, 29 PPER (LRP) P29,024, 1997.

Where complainant filed timely exceptions to the dismissal of the charge of unfair labor practices, in which complainant sought to amend the charge of unfair labor practices to include a new cause of action under Section 6(1)(c) of the Pennsylvania Labor Relations Act (the Act), the new cause of action in the exceptions was not raised within the applicable limitations period, as required in paragraph (b) of this section, even though the original complaint, which failed to state a charge of unfair labor practices, was within the limitations period of the Act. *McAuliffe v. West Norriton Township*, 28 PPER (LRP) P28, 114, 1997.

§ 93.15. Answers.

(a) The Board recognizes that the primary purpose of pleadings is the formation of the issues. Consequently, rules pertaining to pleadings will be liberally construed toward effecting that end.

(b) An answer need not be filed in representation cases.

(c) In unfair labor practice cases the respondent shall have the right to file an answer to the original or amended complaint. Answers shall be in writing, shall be verified by the person filing the same, and shall be filed with the Board at Harrisburg within the time designated by the Board. Copies of answers shall be served upon the parties to the proceeding. Proof of service of the answer shall be filed with the Board. A party who fails to file an answer shall be deemed to admit only those averments relating to the identity of the parties; other averments shall be deemed to be denied.

(d) Affirmative defenses, including but not limited to, the jurisdiction of the Board, statute of limitations and section 10.1 of the act (43 P. S. § 211.10) shall be pleaded under the heading of new matter in the answer.

(e) Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

(f) In the discretion of the trial examiner at hearing, or otherwise in the discretion of the Board, an answer may be amended upon motion of the party filing it, upon due notice to the parties, at any time before the issuance of the final decision and order. The motion shall be in writing unless made during the conduct of a hearing.

(g) When the respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Board may make, enter and serve upon respondent an order to cease and desist from the violations of the act alleged in the complaint. In either case, the answer shall have the same force and effect as if the allegations of the complaint were admitted to be true and shall be deemed to waive a hearing thereon and to authorize the Board, without a hearing, evidence, findings of facts or without any other intervening procedure, to make, enter, issue and serve upon respondent an order to cease and desist from the violations of the act charged in the complaint or such other order as shall be appropriate.

§ 93.16. Intervention.

(a) Motions to intervene shall be in writing, shall specify the grounds for intervention, shall be signed and verified, and a copy shall be served upon the parties to the proceeding and proof thereof filed with the Board.

(b) The trial examiner may permit employers, employes and labor organizations to participate as parties in representation hearings without formal intervention, upon a showing of good cause which reasonably prevented them from having filed a timely motion to intervene.

§ 93.17. Continuances.

(a) Motions for a continuance, made prior to hearing, shall be in writing, shall be filed with the Board at Harrisburg, and shall set forth the reasons for granting the continuance. No motion will be acted upon by the Board unless it is

filed at least 72 hours prior to the hearing, and the ruling of the Board thereon will be final. Upon good cause shown, the 72-hour provision or the necessity of a written motion may be waived at the discretion of the Board.

(b) Conflicting engagements of counsel, whether before a court of record or an administrative tribunal, may not constitute sufficient grounds for a continuance of a proceeding before the Board, unless the date for the appearance of counsel in the conflicting engagement was fixed before receipt of notice of the proceeding before the Board.

(c) Agreement of counsel is not of itself sufficient cause for the granting of a continuance.

(d) At a hearing, the trial examiner shall have the right, subject to the approval of the Board, to continue the hearing from day to day, or to adjourn it to a later date, or to a different place, by announcement thereof at the hearing or by other appropriate notice.

§ 93.18. Elections.

Elections shall be governed by §§ 95.51—95.59 (relating to elections).

Authority

The provisions of this § 93.18 amended under section 4(f) of the Pennsylvania Labor Relations Act (43 P.S. § 211.4(f)); and the act of June 24, 1968 (P.L. 237, No. 111) (43 P.S. §§ 271.1—271.12).

Source

The provisions of this § 93.18 amended June 2, 1995, effective June 3, 1995, 25 Pa.B. 2182. Immediately preceding text appears at serial pages (159629) to (159630) and (174921).

§ 93.19. Notices to employees.

(a) For the purpose of informing employees affected by representation cases, the posting of notices or orders of the Board at the place of business of the employer, where readily accessible to employees, shall constitute notice.

(b) The Board may, from time to time, require the employer to post notices and orders and to make a return of the posting.

(c) Orders of the Board dismissing charges of unfair labor practices may be posted by the employer, if he so desires, at his place of business, for the information of his employees.

§ 93.20. Authority of Secretary.

The authority of the Secretary of the Board will be governed by § 95.81 (relating to the authority of Secretary and Executive Director).

Authority

The provisions of this § 93.20 amended under section 4(b) the Pennsylvania Labor Relations Act (43 P.S. § 211.4(b)); and the Public Employee Relations Act (43 P.S. §§ 1101.101—1101.2301).

Source

The provisions of this § 93.20 adopted April 26, 1966; amended August 20, 1982, effective August 21, 1982, 12 Pa.B. 2788. Immediately preceding text appears at serial page (50243).

FORMAL PROCEEDINGS

§ 93.31. Hearings.

Hearings shall be governed by §§ 95.91—95.98 (relating to provisions for formal proceedings).

Source

The provisions of this § 93.31 adopted April 26, 1966; amended April 4, 1980, effective April 5, 1980, effective only for hearings conducted after April 5, 1980, 10 Pa.B. 1435. Immediately preceding text appears at serial pages (9378) and (48308).

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