

456 CMR 15.00: INVESTIGATIONS

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15.01: Charges

- (1) A charge filed under 456 CMR 15.00 shall be in the form prescribed by the Department.
- (2) A charge of prohibited practice as defined in M.G.L. c. 150E, §§ 10(a) and (b) may be made by any individual, employer, employee or employee organization.
- (3) A charge made under 456 CMR 15.00 shall be in writing and signed by the charging party and shall contain a declaration by the signatory, under the penalties of perjury, that its contents are true and correct to the best of his or her knowledge and belief.

15.02: Contents of Charge

A charge made under 456 CMR 15.00 shall contain the following:

- (1) The full name and address of the individual, employer, employee or employee organization making the charge and his or her official position, if any.
- (2) The full name and principal place of business of the respondent.
- (3) An enumeration of the subdivision of M.G.L. c. 150E alleged to have been violated and a clear and concise statement of all relevant facts that form the basis of the charge.

15.03: Response to Charge

The respondent may file a response within 14 days after the service of such charge or within such other time as the Department may require.

15.04: Six-month Limitation

Except for good cause shown, no charge shall be entertained by the Department based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Department.

15.05: Investigation

- (1) When a charge has been filed, the Director may assign the matter to an investigator. The investigator may issue an order dismissing the charge, deferring the charge to the pending grievance arbitration provisions of the collective bargaining agreement, referring any charge to one of the Department's mediators, or directing that a hearing take place.
- (2) The investigator may refer charges involving police or fire fighters to the Joint Labor Management Committee, for such period of time as the Department shall determine in order to promote resolution of the issue.

15.05: continued

- (3) Unless the charge is dismissed, deferred, or referred, the investigator shall promptly meet with the parties, investigate whether settlement of the charge is possible, and clarify and narrow the issues before determining whether the charge will be forwarded to a hearing.
- (4) The parties shall, at the discretion and direction of the investigator, electronically submit documentary exhibits to an investigation.
- (5) The investigator may dismiss the charge without a hearing if the investigator finds no probable cause to believe that a prohibited practice has occurred or if the investigator otherwise determines that further proceedings would not effectuate the purposes of M.G.L. c. 150E.
- (6) After such investigation, if the investigator determines that there is probable cause to believe that the charging party has committed a prohibited practice, the Department shall serve upon the parties a complaint and a notice of hearing.
- (7) The Department may decline to issue a complaint or may withdraw any complaint issued unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.
- (8) No complaint shall be issued until the charging party has complied with the applicable provisions of M.G.L. c. 150E, §§ 13 and 14.
- (9) If, after a charge has been filed, the investigator declines to issue a complaint, it shall so notify the parties in writing by a brief statement of the procedural or other ground for the dismissal. The charging party may obtain a review of the dismissal by filing a request therefor with the Board within ten days from the date of receipt of the dismissal. Within seven days of service of the request for review, any other party to the proceeding may file a response with the Board. The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. Upon its own motion or upon good cause shown by any of the parties to the proceeding, the Department may extend the time for the filing of such request for review.

15.06: Amendments

- (1) Before the receipt of any response to the charge by the respondent, any charge may be amended as of right. After the receipt of any response, the charge may only be amended with the permission of the Department.
- (2) Within ten days after the Department issues a complaint, if the charging party believes that the complaint should be amended to correct an error or omission, the charging party shall file a motion to amend the complaint with the investigator who issued the complaint. After the hearing opens, the hearing officer may allow amendment of any complaint provided that such amendment is within the scope of the original complaint.
- (3) Any complaint or amended complaint or any part thereof may be withdrawn by the Department any time prior to the issuance of an order based thereon and upon good cause shown.
- (4) Any charge or amended charge or any part thereof may be withdrawn by the charging party prior to the issuance of a complaint. After a complaint has been issued the charge or amended charge may be withdrawn only with the permission of the Department.

15.07: Answers

- (1) The respondent shall file an answer to a complaint or amended complaint within ten days from the date of service, unless otherwise notified by the Department. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement shall operate as a denial. All allegations in the complaint not specifically denied or explained in the answer, unless the respondent has stated in the answer that it is without knowledge, shall be deemed by the Department to be admitted, unless good cause to the contrary is shown.

15.08: Record

The record of the investigation shall consist of the charge, the respondent's answer, evidence presented at the investigation, and any written submissions presented before, during, or after the investigation when allowed by the investigator.

15.09: Expeditious Scheduling of Investigation

(1) When temporary relief or a restraining order has been procured by the Department or a party in connection with a charge under 456 CMR 15.00, the charge that is the basis for such temporary relief or restraining order may be investigated expeditiously.

(2) For other good cause shown by a party in writing, the Department also may determine that a charge will be investigated expeditiously.

15.10: Interim Bargaining Order

(1) When it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative in violation of M.G.L. c. 150E, § 10, and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the Department shall, upon request, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute.

(2) When such interim order is issued, the Department shall hold a hearing on the complaint in a summary manner and shall speedily determine the issues.

15.11: Blocking Charges

(1) During the pendency of a petition filed pursuant to M.G.L. c. 150E, § 4 any party to the petition may file a motion with the Department requesting that a pending prohibited practice charge "block" the conduct of an election. Such motion shall include a complete statement of the reasons supporting such motion and evidence sufficient to establish probable cause to believe that:

- (a) The conduct alleged in the prohibited practice charge has occurred;
- (b) The alleged conduct violates M.G.L. c. 150E; and
- (c) The alleged unlawful conduct may interfere with the conduct of a valid election.

(2) Upon receipt of such a motion the Department may investigate the matter, issue a notice to the other parties to the election to show cause why the motion should not be granted, or conduct further proceedings to dispose of the matter.

REGULATORY AUTHORITY

456 CMR 15.00: M.G.L. c. 23, §§ 9O, 9T(c), 9T(d); c. 150E, §§ 11, 10, 13, 14; c. 150A, §§ 6, 6B, 7 and 8.