

# REQUESTING INJUNCTIVE RELIEF

How to File a Request for  
Injunctive Relief from the  
Public Employment Relations Board

Arnold Schwarzenegger, Governor

*State of California*



STATE OF CALIFORNIA

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**P E R B**

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PUBLIC EMPLOYMENT RELATIONS BOARD

## **REQUESTING INJUNCTIVE RELIEF FROM PERB**

Occasionally, an employer, an employee, or an employee organization believes that immediate action is necessary to stop an unfair practice. For instance, a strike by employees or a unilateral change in employment conditions may result in irreparable harm. Under the statutes that the Public Employment Relations Board (PERB) administers, a party may request that PERB seek an injunction in superior court regarding the alleged unfair practice. Since such an action, to be effective, must take place immediately, it is imperative that any request for injunctive relief received by PERB be complete and contain sufficient facts to justify seeking an injunction.

An original and six copies of a request for injunctive relief must be filed with the General Counsel at PERB's headquarters office, which is located at 1031 18<sup>th</sup> Street, Sacramento, California, with a copy to the appropriate regional office as designated in section 32075 of PERB's regulations.

Notice must be given, no less than 24 hours prior to the filing, to the General Counsel and the party against whom relief is sought. Under sections 32450 to 32470 of PERB's regulations (codified at California Code of Regulations, Title 8, sections 31001 et seq.), the request must contain all of the following:

- (1) a copy of the unfair practice charge (see below);
- (2) the request for injunctive relief stating the reasons why it is appropriate;
- (3) supporting declarations stating the facts, within the declarant's personal knowledge, substantiating the arguments made in the request;
- (4) notice and proof of service on the respondent of all documents filed with the General Counsel (service and proof of service must be conducted pursuant to section 32140 except that service by mail must be done by express mail; if the request is made during a work stoppage or lockout, personal service on the respondent of all documents filed with the General Counsel is required); and
- (5) an Affidavit of Notice stating to whom, at what time, and in what manner notice was given to the General Counsel and the opposing party.

## THE UNFAIR PRACTICE CHARGE

The unfair practice charge itself must be filed with the appropriate regional office of PERB. If the request relies on a charge that is already on file, the charging party should review the original charge. If an amended charge is necessary to bring in all the facts relied upon in the request, the amended charge should be filed by the time the request is filed.

For more information on filing unfair practice charges, see PERB's "How to File and Process an Unfair Practice Charge" pamphlet. The pamphlet may be obtained via any PERB office or the PERB website: [www.perb.ca.gov](http://www.perb.ca.gov).

## THE INJUNCTIVE RELIEF REQUEST

The request for injunctive relief must include an argument stating why the alleged action constitutes an unfair practice and why injunctive relief is necessary.

The Court of Appeal decision in *Public Employment Relations Board v. Modesto City Schools District* (1982) 136 Cal.App.3d 881, 896, sets out a two-prong test used by courts and PERB to determine whether injunctive relief is appropriate:

- (1) "reasonable cause" must exist to believe an unfair practice charge has been committed, and
- (2) the relief sought must be "just and proper."

When PERB seeks an injunction, it does not have to prove that an unfair practice has *actually* occurred. Instead, it need only establish that the theory underlying the charge is neither insubstantial nor frivolous. (*Boire v. Pilot Freight Carriers, Inc.* (5th Cir. 1975) 515 F.2d 1185, 1189.) Nevertheless, PERB pays very careful attention to the legal theory underlying every injunction request. Cases involving weak theories unsupported by precedent may present a strong obstacle to the charging party. Hence, it is always important for charging parties to cite to cases that support their theory, to apply those cases to the facts of their situation, and to anticipate the arguments that the respondent will be making.

The "just and proper" prong of the test refers to the court's discretion to issue an order that is proper under the circumstances. Since traditional equitable considerations come into play applying this part of the test, they should be adequately addressed in the request. (See *Agricultural Labor Relations Board v. California Coastal Farms, Inc.* (1982) 31 Cal.3d 469, 479.)

The “just and proper” standard is met where “there exists a probability that the purposes of the Act will be frustrated unless temporary relief is granted . . . [or] the circumstances of a case create a reasonable apprehension that the efficacy of the Board’s final order may be nullified, or the administrative procedures will be rendered meaningless. . . . Preservation and restoration of the status quo are then appropriate considerations in granting temporary relief pending determination of the issues by the Board.” (*Angle v. Sacks* (10th Cir. 1967) 382 F.2d 655, 660; see also *Boire v. Pilot Freight Carriers, Inc.*, *supra*, 515 F.2d 1185.)

It is important to explain *why* the standard is met in your case, and to include specific facts demonstrating substantial and irreparable harm. A request should not be filed where the unfair practice can be remedied through PERB’s normal charge-processing procedure. The party should include in the explanation why its case is different from the routine case and therefore warrants equitable relief.

## DECLARATIONS

The importance of competent, comprehensive declarations cannot be overemphasized. The *only* facts on which the Board relies in deciding whether to seek an injunction are those contained in the declarations.

Declarations must state *clearly* and with *specificity* each element of the unfair practice. They must demonstrate the need for immediate action and the degree of harm that will result if the action is not enjoined. Also, declarations must reflect the declarant’s *personal* knowledge. (See sample declaration attached.) Ordinarily, to establish all of the key facts through percipient witnesses, more than one declaration is required. The declarations should contain not only all of the facts on which the charging party relies, but also, to the extent possible, anticipate the position of the respondent.

For example, declarations in support of the request to enjoin a strike should usually contain the following factual information from percipient witnesses: the status of bargaining between the parties; the status of impasse procedures; whether a strike is in progress or imminently threatened; the type of strike (e.g., in response to an unfair practice or an economic strike, which can be evidenced by messages on picket signs and leaflets, etc.); factors demonstrating agency (if the respondent is an employee organization); strike conduct such as obstructive picketing or threats of violence; the effect of the strike on the employer’s constitutional or statutory obligations, or public health and safety; administrative difficulties arising from the strike; any other factual information showing the need for quick action. (See *San Diego Teachers Association v. Superior Court* (1979) 24 Cal.3d 1.)

In a unilateral change case, the declarations in support of the request to enjoin the change should usually contain the following factual recitations from a percipient witness: the status of bargaining between the parties; the status of the impasse procedures; a description of the change and how it relates to a matter within the scope of representation; type and time of notice and the extent of the opportunity to bargain

about the change if any; the problems that will arise if the unilateral change is not immediately rescinded; any indicators of anti-union animus or the extent to which the change is part of a pattern of unlawful conduct.

## **24 HOUR NOTICE AND PROOF OF SERVICE**

Notice must be provided, whether by telephone, in person, or in writing, to the General Counsel and to the party against whom the injunction is sought (respondent). The respondent must be served with a copy of all documents. Proof of service on the respondent is also required. (See PERB Regulation 32140.)

Injunctive relief requests are treated as a matter of urgency, and it is imperative that the respondent receive timely notice of the request to enable it to provide an immediate response. Thus, the notice requirements for injunctive relief requests are to be strictly followed.

## **INVESTIGATION**

Once the request is filed, a Board agent will be assigned to investigate the request. In beginning the investigation, the agent will contact the respondent to obtain its position. Once the agent ascertains the position of the respondent, he or she will be able to evaluate all the papers filed. When the investigation is complete, the General Counsel reviews the Board agent's findings and conclusions. Thereafter, the General Counsel submits a recommendation to the Board within 120 hours after receipt of the request. If the request is made during a lockout or work stoppage, the General Counsel shall make a recommendation to the Board within 24 hours. (PERB Regulation 32460.)

## SAMPLE DECLARATION

(See also Code of Civil Procedure section 2015.5.)

[Name] declares:

1. I am [state declarant's status or identity, e.g., charging party in the above action/president of respondent school district/president of respondent employee organization]
2. I have personal knowledge of the following facts and am competent to and would testify as to the truth of these facts if called as a witness.
3. On [date and time], I was present at [location], and observed the following:
  - a. [Describe in detail the acts sought to be enjoined, as well as the persons committing them and their relationship to respondent; describe also the effect of acts.]
  - b. \_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in [city], California on [date].

\_\_\_\_\_  
Signature of declarant  
[Typed name]

## **ASSISTANCE FROM PERB**

If after reading this brochure you would like legal assistance, please contact your own attorney or the nearest County Bar Association's attorney referral service.

If you have a procedural question or require technical assistance, please contact the nearest PERB office.

The addresses and phone numbers of the PERB regional offices and headquarters:

### **Sacramento Regional Office – Headquarters**

1031 18<sup>th</sup> Street  
Sacramento, California 95811-4124  
(916) 322-3198

### **San Francisco Regional Office**

1330 Broadway, Suite 1532  
Oakland, California 94612-2519  
(510) 622-1016

### **Los Angeles Regional Office**

700 N. Central Ave., Suite 200  
Glendale, CA 91203  
(818) 551-2822

Internet: [www.perb.ca.gov](http://www.perb.ca.gov)