



NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
• Private Sector •

## *Guide for Parties Representing Themselves*

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If you anticipate representing yourself regarding a charge or petition under the New York State Employment Relations Act (“SERA”), including the Farm Laborers Fair Labor Practices Act (“FLFLPA”), before the Public Employment Relations Board (“PERB”), this guide provides information that may be useful to you.<sup>1</sup>

### **1) ARE YOU AN EMPLOYER / EMPLOYEE IN THE PRIVATE SECTOR?**

**This guide is for private sector employers/employees only; it does not concern the Public Sector.<sup>2</sup>**

Private sector employers include some private businesses and organizations, as well as all agricultural employers in New York State.

### **2) WHAT IS THE NATURE OF THE ISSUE?**

Under the SERA and FLFLPA, PERB has jurisdiction only over certain types of claims (generally pertaining to collective bargaining), and certain private sector employers and their employees. The National Labor Relations Act (NLRA) is a federal law that applies to most private sector employers. The SERA is a New York State law that applies only where the federal law, the NLRA, does not. PERB has jurisdiction only with respect to the SERA. Agricultural employers are explicitly under the jurisdiction of the SERA; if the situation does not involve an agricultural employer, PERB may have jurisdiction under the SERA only if the NLRA does not apply. If you are not sure whether the NLRA applies to your situation, you should check with the National Labor Relations Board to determine whether they have jurisdiction over the Employer before moving ahead with the process with PERB.<sup>3</sup> Reading the [SERA](#) will help you decide if you have a matter which falls within PERB’s jurisdiction.

**Please note:** PERB cannot hear the following types of claims:

- [Discrimination claims](#) based on race, creed, color, national origin, sexual orientation, military status, sex, age, marital status, disability, or familial status. You may have a claim that can be heard by the New York State Division of Human Rights or other municipal and federal agencies.
- Claims under the [Wage Theft Prevention Act](#) or [Wage Orders](#). You may have a claim that can be heard by the New York State Department of Labor or other municipal and federal agencies.

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<sup>1</sup> The SERA, as amended by FLFLPA, are available on PERB’s website at <https://perb.ny.gov/new-york-state-employment-relations-act/>. The rules governing SERA and FLFLPA are available at <https://perb.ny.gov/sera-rule/>.

<sup>2</sup> Public sector employers include the State of New York, counties, towns, villages, school districts, public authorities or commissions, and public benefit corporations. For more information about PERB’s public sector jurisdiction under the Public Employees’ Fair Employment Act, please consult PERB’s Office of Public Employment Practices and Representation, for more information at <https://perb.ny.gov/office-of-public-employment-practicesrepresentation/>, and (518) 457-6410.

<sup>3</sup> The National Labor Relations Board may be reached at <https://www.nlr.gov/contact-us>, and (844)762-NLRB.

### 3) HOW DO YOU FILE A CHARGE OR PETITION?<sup>4</sup>

Forms and SERA Rules of Procedure are available on our website. Please read and follow the instructions on the form carefully.

**Filing an Unfair Labor Practice Charge** An Unfair Labor Practice charge with PERB must allege a violation of the SERA, which includes FLFLPA, which applies exclusively to agricultural employment. For more information, we encourage you to read the [SERA](#).

- Unfair labor practices by an **employer** are defined in Section 704
- Additional unfair labor practices by an **agricultural employer** are defined in Section 704-b
- Unfair labor practices by a **farm laborer** or a **labor organization representing farm laborers** are defined in Section 704-b
- See the [SERA Rules of Procedure](#) for information about filing an Unfair Labor Practice charge.
  - Rules for **non-FLFLPA** Unfair Labor Practices are covered in Part 252
  - Rules for **FLFLPA** Unfair Labor Practices are covered in Part 263.34 -263.45

**Filing a Petition for a Certification Investigation** A Petition for a Certification Investigation with PERB requests an investigation into whether a specific, appropriate bargaining unit of employees should be represented, or cease to be represented, by a specified certified employee representative (union) in accordance with SERA Section 705

- See the [SERA Rules of Procedure](#) for information about filing a Petition for a Certification Investigation.
  - Rules for **non-FLFLPA** certifications are covered in Section 251
  - Rules for **FLFLPA** certifications are covered in Section 263.20

### 4) WHAT HAPPENS AFTER A CHARGE OR PETITION IS FILED?

All new cases will be assigned a case number. Always use this number when writing or calling PERB.

**Unfair Labor Practice Charge** The Director of Private Employment Practices and Representation (“Director”) will review a newly-filed charge and any documents submitted with it. The Director will make one of the following determinations:

- 1) the facts alleged may constitute an unfair labor practice as set forth in Section 704 and/or 704-b of the SERA and FLFLPA, respectively; or
- 2) the facts alleged do not, as a matter of law, constitute an unfair labor practice; or
- 3) the charge form is incomplete, or “deficient.”<sup>5</sup>

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<sup>4</sup> This Guide only discusses Unfair Labor Practice Charges and Petitions for a Certification Investigation. For questions regarding other types of matters, such as Petitions for Clarification and Petitions for Declaratory Ruling, please contact our office.

<sup>5</sup> If the Director determines that the facts alleged may constitute an unfair labor practice charge, she will assign the case to an administrative law judge for processing, and the parties to the case will receive a Notice that contains information about the next steps. This assignment does not mean that the Director has determined that an unfair labor practice has occurred; the other party/parties will have the opportunity to respond to the allegations.

**Petition for a Certification Investigation** The Director will review the petition and the documents you submit with it. The Director will make one of the following determinations:

- 1) the facts alleged and the attached showing of interest establish a question or controversy regarding whether a specific bargaining unit of employees should be represented, or cease to be represented, by a specified certified labor/employee representative; or
- 2) the facts alleged do not, as a matter of law, demonstrate that a question about representation exists (for example, the employees are not under jurisdiction of the SERA, or the showing of interest is not of a sufficient size of over 30% of the proposed bargaining unit); or
- 3) the charge form is incomplete, or not “sufficient.”<sup>6</sup>

#### **5) WHAT HAPPENS IF A CHARGE OR PETITION IS DEEMED DEFICIENT OR NOT SUFFICIENT?**

If the Director finds that there is a deficiency or insufficiency in the submitted documents, a notice will be sent to the filing party who will be permitted to amend the charge or petition to attempt to fix it. If the deficiency is not cured by the deadline provided in the Notice, the Director may dismiss the case or deem the case, or any part thereof, withdrawn. If you receive a Notice that your filing was deficient or insufficient, and you would like to amend a filing, please follow the instructions in the Notice carefully. Attachments included with the original filing do not need to be resubmitted.

If the Director determines that the facts you allege could not, as a matter of law, constitute an unfair labor practice charge or raise a question regarding representation, the Director may dismiss the case with a written decision.

If the Director dismisses the case or deems it withdrawn, you may appeal their decision by filing “exceptions” with the Board.

If you wish to file exceptions, see the [SERA Rules of Procedure](#), Part 253.22 for non-agricultural employers, and Part 263.67 for agricultural employers.

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<sup>6</sup> If the Director determines that the facts alleged raise a question regarding representation, she will assign the case to an administrative law judge for processing, and the parties to the case will receive a Notice that contains information about the next steps. This assignment does not mean that the Director has made a determination regarding whether a bargaining unit should be certified; the other party/parties will have the opportunity to respond to the allegations.