

# **PERB INJUNCTIVE RELIEF**

**BASIC PRACTICE AND  
PROCEDURE**

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## INTRODUCTION

At its inception, the Taylor Law (Civil Service Law [CSL] §§ 200-214) did not authorize injunctive relief in aid of improper practice charges, and parties were required to apply directly to Supreme Court under Civil Practice Law and Rules (CPLR) Article 63 for a preliminary injunction. Effective January 1, 1995, the NYS Legislature passed a bill amending the Taylor Law authorizing PERB to apply for this relief.<sup>1</sup> Initially, the bill expired every two years; however, after decades of regular renewal, the Taylor Law's injunctive relief provision became permanent.<sup>2</sup>

### A. STATUTORY AUTHORITY

CSL § 209-a.4 (a) provides that:

A party filing an improper practice charge...may petition the board to obtain injunctive relief, pending a decision on the merits of said charge by an administrative law judge, upon a showing that

- (i) There is reasonable cause to believe an improper practice has occurred, and
- (ii) Where it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief.

Notably, the Taylor Law standard for injunctive relief is NOT the same standard as required for an injunction under CPLR Article 63. Specifically, charging party does not need to show a balancing of the equities in their favor, nor is an undertaking sufficient to compensate the other party if movant's underlying improper practice charge is unsuccessful.

PERB has 10 days from its receipt of an application to issue a decision. If PERB determines that the elements warranting injunctive relief are shown, it is authorized to petition the Albany County Supreme Court, on notice to all parties, for an injunction. PERB will initiate the action via Order to Show

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<sup>1</sup> 1994 N.Y. Laws ch. 695

<sup>2</sup> 2022 N.Y. Laws ch. 713

Cause and Petition, with request for Temporary Restraining Order. The Order to Show Cause notifies the respondent when PERB will appear, affording it an opportunity to argue against the injunction. Alternatively, PERB may authorize the charging party to petition the Court, with PERB named as a party in the action. If PERB fails to act within 10 days of its receipt of an application, it shall be deemed a final order to deny the application. CSL § 209-a.4. (b).

If PERB determines that a charging party has not made a sufficient showing, such determination is deemed a final order and may be immediately reviewed pursuant to CPLR Article 78 in Supreme Court Albany County. CSL § 209-a.4 (c). The standard of review for such action is whether PERB's decision was arbitrary and capricious. *Local 1000, Transport Workers Union v NYS PERB*, 28 PERB ¶ 7010 (Sup Ct, Albany County 1995). A court may not issue an injunction under the Taylor Law without PERB's determination. *Matter of NYS Sup Ct Officers Ass'n v Lippman*, 35 PERB ¶ 7009 (Sup Ct, Albany County 2002).

If the Court issues an injunction, its ordered relief expires upon a decision by the ALJ or Board that no improper practice had occurred (or if the respondent successfully modifies or vacates the Court's order). Therefore, PERB's processing of the underlying improper practice charge is expedited. The ALJ is required to conclude the hearing process and issue a decision on the merits within 60 days of the Court's order, unless an extension is mutually agreed upon by the parties, and PERB is required to notify the Court of its determinations. CSL §§ 204-a.4 (d)-(g). The Taylor Law does not provide for the reinstatement of an injunction if the ALJ dismisses the improper practice charge and the Board reverses and finds that an improper practice did occur. If respondent moves to appeal a court's injunction, all proceedings to enforce the injunction are stayed pending the appeal.

## **B. PERB'S REVIEW/PRACTICE**

The PERB Board has delegated the review and processing of applications for injunctive relief to Office of Counsel. Due to the emergent nature of such applications and quick timelines required by the process, PERB's Rules of Procedure are followed very strictly. Procedural questions

should be posed directly to Office of Counsel to ensure that both the application and the response are properly filed and considered.

Effective March 16, 2026, PERB's Chair, in consultation with the Board, has authorized electronic filing of documents for all filings related to Applications for Injunctive Relief. Electronic filing is now mandatory unless a party is filing *pro se* or requests to opt-out. Filings must be emailed to [officeofcounsel@perb.ny.gov](mailto:officeofcounsel@perb.ny.gov). No originals or hard copies need to be mailed to PERB. Please consult the specific filing instructions on PERB's website ([www.perb.ny.gov/electronic-filing](http://www.perb.ny.gov/electronic-filing)) prior to filing or responding to an injunctive relief application.

An application sent to the incorrect PERB email address may cause inordinate delays and may be rejected. All filings must conform to the time requirements of Rules §§ 204.7 and 213.11, explained further below. Submissions received by Office of Counsel after 5:00 p.m. on the day of filing, or during a weekend, or on a federal and/or State designated holiday, will be deemed filed on the next business day.

Once received, Office of Counsel reviews an application for injunctive relief immediately, and issues a processing letter to all parties typically the same day, but no later than close of business the following calendar day. The processing letter, sent via email, advises the parties as to the receipt and status of the application, identifies any technical or fatal defects found, and confirms the timeline for filing a response and issuing a decision. The letter will also identify the manner in which the application was filed with Office of Counsel for purposes of service of a response. An application form must provide email addresses for all parties to ensure their timely receipt of this important notification.

The initial review consists of a careful analysis of the papers received to verify that proper proof of service upon respondents, and delivery of the application to respondents' chief legal officer(s), have been submitted. Electronic filings must contain proof of service and proof of delivery, as

required by the rules, or will be rejected without further review.<sup>3</sup> The failure to properly serve respondents and deliver a copy of the application, with all attachments, to respondent's chief legal officer prior to filing with PERB is a fatal defect; Office of Counsel will not review *ex parte* applications. Practitioners should remember that, although PERB has authorized electronic filing of applications for injunctive relief with PERB, service and delivery of the application by electronic mail is only acceptable upon consent by respondent(s) and their chief legal officer(s), and proof of that consent must be filed with the application.

Because respondent has only five days from its receipt of the application to respond, and the response must be received by Office of Counsel on that fifth day to constitute proper filing, it is imperative that the applicant provide respondents with every opportunity to be heard on a request to enjoin their actions. All parties must be served with the application and proof of proper service must accompany the application when filing with Office of Counsel.

Upon receipt of an application, Office of Counsel also confirms with the Office of Public Employment Practices and Representation that an associated improper practice charge is being processed before PERB. Office of Counsel cannot process an application unless an associated charge is actively being reviewed by PERB, as no remedy may attach where no claim exists. Therefore, if an improper practice charge has not been filed, or has been found deficient by the Office of Public Employment Practices and Representation and is not being processed, the application for injunctive relief will be denied.

Because there is no timeline within which to file an application for injunctive relief, PERB's denial of an application does not impair a re-filing

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<sup>3</sup> If the application is otherwise complete and was properly served on respondents, but the applicant has not delivered a copy to the chief legal officer for the respondents, it will be denied. However, the applicant can request, upon written request and notice to the parties, to have their application reinstated once they provide PERB with the necessary proofs needed to cure this specific defect. PERB will advise that there is no need for the applicant to re-serve respondents with its original application, once it is properly delivered to the chief legal officer. Respondents' five-day time period to submit a response to the application will commence once the application is reinstated by PERB and a processing letter is issued.

with the identified defects cured. However, a re-filed application is treated as a new submission which must be properly re-served upon respondent's chief legal counsel and contain the required copies and proof of service when filed with Office of Counsel.

A completed application should contain various affidavits sworn to by persons with personal knowledge of the alleged facts, circumstances, and harm. A memorandum of law providing support for applicant's position is encouraged.

Support for an application for injunctive relief must be clear, detailed and convincing; PERB will reject vague, conclusory, and speculative allegations. *Matter of the Application of Rockland Co. Patrolmen's Benev. Assn. v Town of Orangetown*, 46 PERB ¶ 7005 [Sup Ct, Albany County 2013]; *Matter of NYS Supreme Ct. Officers Assn. v Lippman*, 35 PERB ¶ 7009 [Sup Ct, Albany County 2002]; *Matter of the Application of the NYS Pub. Empl. Relations Bd. v Town of Lewiston*, 31 PERB ¶ 7005 [Sup Ct, Albany County 1998]. Likewise, respondent's response should be as detailed as possible.

An applicant seeking injunctive relief must prove both (1) that there is reasonable cause to believe that an improper practice has occurred AND that immediate and irreparable injury, loss or damage has or will occur which the Board's broad remedial powers cannot address in its determination. Therefore, an application for injunctive relief, as well as a response, should address both prongs of the required standard.

Although PERB is authorized to move the court to maintain the status quo and to return to the status quo, it is recommended that an application be filed with PERB prior to the harm actually occurring, if at all possible.

A response to an application must also be filed electronically with PERB and served upon all parties. A respondent who improperly serves a response upon the other parties may place their submission in jeopardy, as it is imperative that all parties receive both commencing and responding papers in time to prepare for a potential court action. Additionally, although Office of

Counsel may exercise discretion to reduce the five-day response time dependent on the urgency of the application, it cannot extend the 5-day timeline within which to submit a response.

A response should address all facts and claims alleged in the application, and submit any defenses it has to the underlying improper practice charge as well as the immediacy and/or irreparability of the alleged harm. A response must also be supported by affidavits from persons with personal knowledge of the facts, and filing a memorandum of law is encouraged.

PERB's Rules provide for no reply, or amendment, or requests for reconsideration; therefore, none are accepted by Office of Counsel. In making its determination, like the Board, Office of Counsel's analysis is based on the limited papers before it, and no additional information may be submitted to court. *NYS Sup Court Officers Ass'n. v Lippman*, 35 PERB ¶ 7009 (2002). If PERB does not issue a decision within the 10-day time period, it will be deemed a denial of the application.

### **C. FILING REQUIREMENTS; PERB PROCESS**

The Taylor Law authorizes PERB to make rules and regulations as may be appropriate to effectuate these provisions. PERB's Rules of Procedure (Rules) relevant to this process may be found at Rules §§ 204.7-204.10. Questions regarding processing may be forwarded to Office of Counsel at 518-457-2578.

#### **Filing an Application: Rules § 204.7**

An applicant seeking injunctive relief must have an associated improper practice charge pending before PERB. If an improper practice charge has not been filed, or has been found deficient by the Director of Public Employment Practices and Representation, Office of Counsel will not process the application for injunctive relief.

An applicant must file an application electronically with PERB's Office of Counsel at [officeofcounsel@perb.ny.gov](mailto:officeofcounsel@perb.ny.gov). Filings to other email addresses

may result in the rejection of the application. Electronic filings must be submitted in a searchable format.

An application must be initiated using the form designated by PERB for this purpose, found on PERB's website, and include the required information, as listed in Rules § 204.7 (b), in order to be processed: full contact information for all parties/representatives to the improper practice charge; the date when the charge was filed; and, if available, the case number of the charge.

Pursuant to Rules § 204.7 (c), an applicant must attach the following documents to the application:

(1) A copy of the Charge

(2) "Clear and concise" Affidavit(s) stating:

- a. Facts personally known to deponent that constitute the alleged improper practice
- b. Date of alleged improper practice
- c. Alleged injury/loss/damage resulting from it
- d. Date when injury/loss/damage will occur
- e. Why the damage
  - (i) Is immediate
  - (ii) Is irreparable: why can't the Board remedy it if you win
  - (iii) Requires a need to maintain/return to status quo

(3) Copies of documentary evidence in support of the application:

- a. Proof that a copy of the completed application and all supporting documents was actually delivered to respondent's chief legal officer, including The method and date that such delivery was made: return receipt card, USPS tracking, affidavit of personal service;
- b. Proof of service on all other parties to the Charge, including, as appropriate, written acknowledgement of

consent to electronic service by respondents and/or their chief legal officers;

- (4) May file a memorandum of law in support: not required but encouraged!

### **Filing a Response to an Application: Rules § 204.8**

A party to whom an application is delivered may file a response with PERB's Office of Counsel at [officeofcounsel@perb.ny.gov](mailto:officeofcounsel@perb.ny.gov) with proof of service of the response, with all attachments, upon all parties. As with filing an application, the filing of a response to the incorrect email address may result in the rejection of the submission.

The response must be signed and sworn to, and filed with PERB within five calendar days after the application was delivered. This filing deadline is strictly construed and applies whether or not a processing letter has been sent by PERB. We do not count the date of delivery in that calculation. Pursuant to Rules § 200.10, if a response is due on a Saturday, Sunday, or legal holiday, the deadline for submission to PERB is extended to the next working day.

Pursuant to Rules § 204.8 (b), the response *shall*:

- (1) Assert any defense it believes it could raise in answer to Charge;
- (2) Include affidavits in support of the response, made through personal knowledge of facts and evidence submitted;
- (3) May include a memorandum of law: not required, but encouraged!

Notably, the defenses raised in answer to the charge in a response to an application for injunctive relief shall not constitute an answer or responsive pleading to the Charge, and shall not prejudice respondent in future pleadings on the Charge.

Importantly, pursuant to Rules § 204.8 (c), Office of Counsel may direct an earlier response upon presentation of clear evidence of a compelling need to process the application in less than the 10-day time period dictated by Rules § 204.9.

**PERB's Review of an Application: Rules § 204.9**

Within 10 days after receipt of a completed application, Office of Counsel will determine whether a sufficient showing of proof for the need for injunctive relief has been made by issuing a decision via email either denying or approving the application. Pursuant to Rules § 200.10, if the decision is due on a Saturday, Sunday, or legal holiday, its deadline is extended to the next working day.

If approved, PERB will either petition the court directly or authorize charging party to do so.

**Expedited Treatment Where Injunctive Relief Imposed: Rules § 204.10**

If a court imposes injunctive relief, after consulting with the parties, the ALJ shall issue a scheduling order for the Charge. Unless the parties mutually agree to waive the timelines contained in the Rules, this processing schedule will ensure that a decision will be issued by the ALJ within 60 days after the imposition of injunctive relief by the court.

**D. MORE ON EXPEDITED TREATMENT**

If a petition for injunctive relief is brought, either by Office of Counsel or upon a grant of authority, by an applicant, the injunction requested from the court may not be the same as the injunction the court issues after hearing arguments from counsel. If the court does issue an injunction enjoining respondent's actions, it may be limited by (1) an adverse decision by an ALJ; or (2) respondent's appeal. An injunction is not resurrected where an ALJ dismisses a charge but the PERB Board reverses.

Where an injunction is issued, the processing of the underlying improper practice charge is expedited. The assigned ALJ, after consultation with the

parties, must direct an expedited processing schedule which culminates in the issuance of a decision within 60 days of the court's initiation of the injunction. The court must be advised of the ALJ's decision to allow it to either extend the injunction or cancel it, dependent on their holdings. Just as an application for injunctive relief must be associated with a pending improper practice charge, the analysis of the allegations in that charge forming the basis for the injunction will drive the extension, or expiration, of the court's injunctive order.

### **E. IRREPARABLE HARM: EXAMPLES**

As the "reasonable cause to believe" standard is relatively low, PERB's review of an injunctive relief application initially focuses on an analysis of the alleged irreparable harm, which is a very high standard. The Taylor Law does not define "immediate and irreparable injury," but PERB and the Courts have issued instructive caselaw.

The Taylor Law does not require that injunctive relief decisions be published. Between 1995 and 2002, injunctive relief decisions were issued in brief form, and not published. From 2002 to 2007 Office of Counsel began publishing denial decisions as full PERB decisions; although not precedential, the decisions were published in order to provide guidance to advocates. In 2024, Office of Counsel again began publishing injunctive relief decisions as guidance for practitioners. These decisions may be found in PERB's bound reporter volumes and on Westlaw.

Some seminal caselaw regarding irreparable harm is addressed below:

It is well-settled that loss of salary or benefits, being economic damages, do not rise to the level of irreparable harm, because if the charging party wins their improper practice charge, PERB may address any monetary damages which may have been incurred by issuing a make-whole order. *Civil Service Employees Ass'n., Inc. v NYS Pub. Empl. Relations Bd.*, 73 Misc.3d 874 [2021], citing *Cohen v Dept. of Social Servs. of State of N.Y.*, 30 NY2d 571, 572 [1972]; *Matter of Armitage v Carey*, 49 AD2d 496, 498 [3d Dept 1975]; accord

*Suffolk County Ass'n. of Mun. Empls. v County of Suffolk*, 163 AD2d 469, 471 [2d Dept 1990].

A court also denied injunctive relief for a unilateral change to a vacation pick system, concluding that irreparable harm was a mere possibility. *Rockland County PBA v Town of Orangetown*, 46 PERB ¶ 7005 (Sup Ct, Albany County 2013).

The imposition of vaccine mandates and attendant procedures did not constitute irreparable harm. *CSEA, et al. v NYS Unified Court System*, 54 PERB ¶ 7020 (Sup Ct, Albany County, 2021).

The disclosure of confidential information by employees or a union, however, has been found to be irreparable harm warranting an injunction, because PERB's order cannot restore damaged privacy interests. *Spence v Miller, et al.*, 48 PERB ¶ 7004 (2015) (fingerprinting and background checks enjoined); *NYS PERB v Town of Islip*, 41 PERB ¶ 7005 (2008) (financial disclosures enjoined); *NYS PERB v City of Buffalo*, 28 PERB ¶ 7008 (1995) (financial disclosures enjoined).

A city's refusal to deduct union dues and fees necessary to effectively represent the unit in retaliation for a union vote against re-opening a collective bargaining agreement warranted an injunction. *NYS PERB v City of Troy*, 28 PERB ¶ 7002 (Sup Ct, Albany County 1995).

The State's refusal to resume payments into a union health fund that provided prescription drugs to all unit employees for a variety of life-sustaining purposes was found to warrant an injunction. *NYS PERB v State of NY*, 29 PERB ¶ 7006 (Sup Ct, Albany County 1996).

Loss of wages and potential loss of health insurance coverage do not constitute irreparable harm. *Matter of CSEA (UCS)*, 54 PERB ¶ 7020 (Sup Ct, Albany County 2021); *Matter of North Country Comm Coll Ass'n of Professionals (North Country Comm Coll)*, 36 PERB ¶ 6508 (2023) (PERB denied application where union did not show employer intended to stop

funding health care plan and that affected members did not aver they could not afford increased costs).

To obtain an injunction enjoining a change in health insurance coverage, a party must show they are unable to obtain a comparable policy and/or that the interruption in coverage would impact an ongoing course of treatment (*Matter of Application of CSEA (UCS)*, supra. Irreparable harm exists where employees would imminently, and not merely speculatively, lose access to vital, expensive prescription drugs or forego medical treatment (*Matter of NYS PERB v NYS Governor 's Office of Employee Relations*, 29 PERB ¶ 7006 [Sup Ct, Albany County 1996]).

A unilateral change in sick leave procedures which resulted in overtime assignments despite doctors' restrictions warranted an injunction. *NYS PERB v County of Onondaga & Sheriff of Onondaga Co.*, 29 PERB ¶ 7010 (Sup Ct, Albany County 1996); *NYS PERB v County of Onondaga & Sheriff of Onondaga Co.*, 51 PERB ¶ 7009 (Sup Ct, Albany County 2018).

A unilateral directive requiring an employee to undergo a medical assessment and to enroll in a substance abuse treatment program in retaliation for their exercise of Taylor Law rights also warranted an injunction. *NYS PERB v NYC Transit Auth.*, 36 PERB 7012 (Sup Ct, Albany County 2003).

A county's sending letters and a survey to union members asking about their satisfaction with the union was found to be an attempt to interfere with the union's administration by encouraging employees to file a decertification petition, and was enjoined as an improper collection of private information. *NYS PERB v County of Monroe*, 42 PERB ¶ 7007 (Sup Ct, Albany County 2009).

PERB's petitions for injunctive relief may be rejected by the Court. *NYS PERB v Town of Lewiston*, 31 PERB ¶ 7005 (Sup Ct, Albany County 1998) (alleged chilling effect upon union); *NYS PERB v Buffalo Water Board*, 30 PERB ¶ 7005 (Sup Ct, Albany County 1997) (alleged unilateral transfer of exclusive bargaining unit work to private company); *NYS PERB v Town of Orangetown*, 38

PERB ¶ 7015 (Sup Ct, Albany County 2005) (disciplinary proceeding under unilaterally imposed procedures).

The Court may also find PERB's petitions for injunctive relief moot because the harm had already occurred (*NYS PERB v City of Buffalo*, 34 PERB ¶ 7014 (Sup Ct, Albany County 2001), or that irreparable harm had not been proven because charging party had already obtained injunctive relief in a separate forum (*NYS PERB v County of Nassau*, 57 PERB ¶ 7014 (Sup Ct, Albany County 2024); *County Police Ass'n of Cortland, Inc. v County of Cortland & Sheriff of Cortland Co.*, 48 PERB ¶ 7001 (2015)).

Notable: PERB found Town had failed to bargain rescission of use of Town vehicles and ordered restoration of vehicle assignments, but the Town had sold off its fleet during processing. Court of Appeals held Board's remedy must be modified as purchase of new fleet was hardship for Town, and court noted charging party did not seek PERB injunction. *NYS PERB v Town of Islip*, 47 PERB ¶ 7002 (2014).