

Rights & Responsibilities  
Under the Farm Laborer Fair  
Labor Practices Act

# Agenda

- Farm Laborer's Fair Labor Practices Act & the State Employment Relations Act
- Who is covered by the SERA?
- Farm Laborer Rights & Protections
- What is Protected Concerted Activity?
- Unfair Labor Practices (ULP)
- Union Certification Process
- Union Elections
- Filing Complaints/ULP Charges

# Farm Laborer Fair Labor Practices Act

Governor Andrew Cuomo signed the Farm Laborer Fair Labor Practices Act (FLFLPA) on July 17, 2019.

With the Farm Laborer Fair Labor Practices Act, the State Employment Relations Act (SERA) was amended to permit farm laborers to:

- Freely choose to join unions,
- to organize, and
- to collectively bargain.

# Who is covered by the SERA?

All farm laborers are covered by the SERA except for farm laborers who are “the parent, spouse, child, or other member of the employer’s immediate family”.

Undocumented farm laborers are also covered by the SERA.

# Farm Laborer Rights & Protections

All farm laborers have the right under SERA to:

- Choose to join, form, or assist a union;
- Collectively bargain through representatives of their own choosing;
- Engage in meetings, discussions, and other activities for the purpose of collective bargaining or their mutual aid or protection; and
- If an agreement cannot be reached through negotiations, to have an agreement settled by an arbitrator the workers and the employer both participate in choosing.

# What is Protected Concerted Activity?

Protected Concerted Activity is any activity, discussion, or meeting directed at improving terms and conditions of employment, or the group interests of employees.

Strikes, work stoppages or slowdowns are **NOT** protected concerted activity for farm laborers; they are unlawful.

# Can I speak to my employer about improving workplace conditions?

SERA rights protect farm laborers speaking with their employer on behalf of all workers or a group of workers. SERA allows employees to speak with their employers at any time, as long as the employer does not, during the conversation, attempt (directly or indirectly) to interfere with, restrain or coerce employees in the exercise of their rights under SERA.

# Can the employer prevent Union Organizers from visiting farm laborers at the labor camp?

Farm Laborers have a right to visitors at their housing. The employer may be committing an **unfair labor practice (ULP)** by denying Union Organizers access to the farm laborers if it is determined that visiting the labor camp is the only reasonable form of access.

There does not have to be a union in place for an employer to be charged with an unfair labor practice.

# Examples of Unfair Labor Practices (ULP)

An **Employer** commits an Unfair Labor Practice when they engage in any of the following:

- **Spying/Surveillance** of Farm Laborers or their Representatives while they are engaging in the exercise of their rights under the SERA.
- Preparing and/or distributing a **blacklist** of individuals for the purpose of preventing them from obtaining or retaining employment because they have exercised any of their rights under the SERA.
- **Interfering or dominating** the formation, existence or administration of any farm laborer organization or association which exists to collectively bargain.
- **Interfering** with the farm laborers choice of Union.

# Employer ULPs (continued)

- **Guiding or discouraging** farm laborer's exercise of SERA rights and choice
- **Refusing** to bargain in good faith with the representatives of farm laborers
- **Refusing to discuss** grievances with representatives of the farm laborers
- **Firing or discriminating** against a farm laborer because they have signed or filed an affidavit, petition or complaint or given testimony under the SERA.
- **Refusing to continue** the terms of an expired contract until a new one is negotiated.

# Can a Farm Laborer or Union organizer commit an Unfair Labor Practice (ULP)?

A farm laborer and/or Union commits an unfair labor practice when they go on strike. The term “strike” means a concerted stoppage of work or slow down by farm laborers.

# Union Certification Process

1. Farm Laborers voluntarily decide that they want to form a Union and contact existing unions for assistance.
  - Please note that farm laborers are free to decide that they do not want to join a union.
2. Workplace leaders are identified and an organizing committee representing the farm laborers is established.
3. The organizing committee develops the goals of improvement and a strategy for the union campaign.
4. Dues Deduction Authorization Card Drive takes place.

Farm laborers decide if they want to be represented by a union by signing dues deduction authorizations. If a majority of the farm laborers sign the dues deduction authorization for a particular union, no election is necessary and the union is certified by PERB.

# Union Certification Process (continued)

5. Union is certified or an election is held.

If there is a disagreement between the parties, PERB will conduct an election. If there is clear and convincing evidence that the employee's dues deduction authorizations were obtained fraudulently or through coercion, PERB shall conduct an election.

- PERB will also investigate allegations to determine possible employer fraud, coercion or any other ULP.
- If PERB determines that there was employer fraud, coercion or any other ULP and that Union would have had a majority interest, it shall designate the Union without an election.

# Union Elections

What do farm laborers need to know about Union elections?

- PERB has the power to determine who may participate in the election and to establish the rules governing any election;
- PERB determines where and how an election is held. The mechanics of an election such as the date, time, place and method are left to the discretion of an Election Supervisor, Administrative Law Judge or other PERB designee.
- The presumption is that the election will be held at the employer's premises (farm).

# Tips on Filing a Complaint

- You can access the complaint form at <https://perb.ny.gov/wp-content/uploads/2020/02/ULPC-A.pdf>
- Read over the form and provide as much information on the employer as possible (Items 1-7).
- Item 8: Describe in detail what happened, how it harmed you and why you believe it violated the SERA. You should include names, titles, dates and work locations involved in the alleged ULP.
- You may attach other documents. Please label and explain each document. Your statement may not consist solely of attachments.
- Your charge must be signed in front of a notary. Your charge will not be processed if it is not properly signed and notarized.
- You must submit one original and three copies of the charge along with attached documents.

# Process After Filing a Complaint

- Your complaint will be assigned a case number. You will reference the case number when you call or write to PERB.
- Your complaint will be reviewed:
  - If the facts in your complaint **may** constitute an Unfair Labor Practice, the case will be assigned to an Administrative Law Judge for processing. You will receive a “Notice of Conference” that will lay out next steps.
  - If the facts do not constitute an Unfair Labor Practice, the charge is dismissed. You do have an opportunity to appeal the decision.

PERB may provide you with an opportunity to amend your complaint to address any deficiency.

For More Information:

[www.PERB.ny.gov](http://www.PERB.ny.gov)

Or Call

518-457-6410