



## Ohio Revised Code

### Section 4117.12 Board to investigate charge of violation.

Effective: July 17, 2009

Legislation: House Bill 1 - 128th General Assembly

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(A) Whoever violates section 4117.11 of the Revised Code is guilty of an unfair labor practice remediable by the state employment relations board as specified in this section.

(B) When anyone files a charge with the board alleging that an unfair labor practice has been committed, the board or its designated agent shall investigate the charge. If the board has probable cause for believing that a violation has occurred, the board shall issue a complaint and shall conduct a hearing concerning the charge. The board shall cause the complaint to be served upon the charged party which shall contain a notice of the time at which the hearing on the complaint will be held either before the board, a board member, or an administrative law judge. The board may not issue a notice of hearing based upon any unfair labor practice occurring more than ninety days prior to the filing of the charge with the board, unless the person aggrieved thereby is prevented from filing the charge by reason of service in the armed forces, in which event the ninety-day period shall be computed from the day of the person's discharge. If the board dismisses a complaint as frivolous, it shall assess costs to the complainant pursuant to its standards governing such matters, and for that purpose, the board shall adopt a rule defining the standards by which the board will declare a complaint to be frivolous and the costs that will be assessed accordingly.

(1) The board, board member, or administrative law judge shall hold a hearing on the charge within ten days after service of the complaint. The board may amend a complaint, upon receipt of a notice from the charging party, at any time prior to the close of the hearing, and the charged party shall within ten days from receipt of the complaint or amendment to the complaint, file an answer to the complaint or amendment to the complaint. The charged party may file an answer to an original or amended complaint. The agents of the board and the person charged are parties and may appear or otherwise give evidence at the hearing. At the discretion of the board, board member, or administrative law judge, any interested party may intervene and present evidence at the hearing. The board, board member, or administrative law judge is not bound by the rules of evidence prevailing in the courts.



(2) A board member or administrative law judge who conducts the hearing shall reduce the evidence taken to writing and file it with the board. The board member or the administrative law judge may thereafter take further evidence or hear further argument if notice is given to all interested parties. The administrative law judge or board member shall issue to the parties a proposed decision, together with a recommended order and file it with the board. If the parties file no exceptions within twenty days after service thereof, the recommended order becomes the order of the board effective as therein prescribed. If the parties file exceptions to the proposed report, the board shall determine whether substantial issues have been raised. The board may rescind or modify the proposed order of the board member or administrative law judge; however, if the board determines that the exceptions do not raise substantial issues of fact or law, it may refuse to grant review, and the recommended order becomes effective as therein prescribed.

(3) If upon the preponderance of the evidence taken, the board believes that any person named in the complaint has engaged in any unfair labor practice, the board shall state its findings of fact and issue and cause to be served on the person an order requiring that the person cease and desist from these unfair labor practices, and take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of Chapter 4117. of the Revised Code. If upon a preponderance of the evidence taken, the board believes that the person named in the complaint has not engaged in an unfair labor practice it shall state its findings of fact and issue an order dismissing the complaint.

(4) The board may order the public employer to reinstate the public employee and further may order either the public employer or the employee organization, depending on who was responsible for the discrimination suffered by the public employee, to make such payment of back pay to the public employee as the board determines. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or require the payment to the employee of any back pay, if the suspension or discharge was for just cause not related to rights provided in section 4117.03 of the Revised Code and the procedure contained in the collective bargaining agreement governing suspension or discharge was followed. The order of the board may require the party against whom the order is issued to make periodic reports showing the extent to which the party has complied with the order.

(C) Whenever a complaint alleges that a person has engaged in an unfair labor practice and that the



complainant will suffer substantial and irreparable injury if not granted temporary relief, the board may petition the court of common pleas for any county wherein the alleged unfair labor practice in question occurs, or wherein any person charged with the commission of any unfair labor practice resides or transacts business for appropriate injunctive relief, pending the final adjudication by the board with respect to the matter. Upon the filing of any petition, the court shall cause notice thereof to be served upon the parties, and thereupon has jurisdiction to grant the temporary relief or restraining order it considers just and proper.

(D) Until the record in a case is filed in a court, as specified in Chapter 4117. of the Revised Code, the board may at any time upon reasonable notice and in a manner it considers proper, modify or set aside, in whole or in part, any finding or order made or issued by it.