

ATTACHMENT 2B3

DESCRIPTION OF THE UNFAIR LABOR PRACTICE INVESTIGATION PROCEDURE

What happens after a charge is received by a Regional Office?

After a charge is received, it is docketed and given a case number. An opening letter is then sent to both parties with a copy of the charge, a notice of designation of representative form, and an information sheet on alternative dispute resolution services. Both parties are informed of their obligations to cooperate fully in the investigation and are encouraged to resolve informally the dispute that gave rise to the charge.

Can the charge be transferred to a different Regional Office?

Yes. Occasionally, when necessary to avoid unnecessary costs or delay and to effectuate the purposes of the Statute, a charge may be transferred to a different Regional Office. The charge is processed in the same manner regardless of the Region processing the charge.

When will I first speak with the Agent?

Soon after the charge is filed, the assigned Agent contacts both parties and: (1) clarifies the allegation(s) in the charge; (2) describes each party's obligation to cooperate in the investigation; (3) reviews each party's testimonial and documentary evidence; (4) explains how the case will be investigated; and (4) clarifies and determines whether official time is needed for any employees.

Will the Agent assist the parties in resolving the dispute that gave rise to the charge?

Yes. The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, assists the parties in informally resolving their dispute. The charge may be resolved and withdrawn by the Charging Party at any stage of the investigation. More information is contained in the ADR Services questions and answers.

Can the Office of the General Counsel assist the parties in resolving a dispute that gave rise to a pending unfair labor practice charge without deciding whether an unfair labor practice occurred?

Yes. Upon joint agreement by the parties, the Regional Director may determine to utilize an alternative case processing technique to assist the parties in resolving the dispute underlying the pending charge by facilitating a problem solving approach, in lieu of initially investigating the particular facts and determining the merits of the charge.

How will the charge be investigated?

The Regions utilize a variety of investigative techniques to obtain the best possible, relevant evidence. The investigation may involve: (1) an on-site visit and the taking of signed and affirmed affidavits and the gathering of documents; (2) the taking of affidavits over the telephone; (3) parties filling out signed and affirmed questionnaires; and (4) letters confirming information discussed telephonically. The RD relies upon this evidence in deciding whether or not the ULP charge has merit. Agencies are always notified before an Agent visits the workplace.

When are employees entitled to official time?

Employees deemed necessary by the Region to give evidence during the investigation are granted official time under section 7131(c) of the Statute. Employees requested to complete a questionnaire and to review a telephone affidavit also are entitled to reasonable official time. The Agent arranges such time with the agency. Official time to gather information during the course of the investigation depends upon the parties' contract and past practices and does not involve Regional Office authorization.

How do the parties cooperate with the Region during an investigation?

Cooperation includes, as determined by the Regional Director: (1) making union officials, employees and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation; (2) producing documentary evidence pertinent to the matters under investigation; and (3) providing statements of position in the matters under investigation.

What happens if a party does not cooperate in the investigation?

A Charging Party's failure to cooperate could result in a dismissal of the charge for lack of cooperation. A Charged Party's failure to cooperate, as requested, could result in the issuance and enforcement of an investigative subpoena.

When is an investigation completed?

An investigation is completed when each party has been given a reasonable opportunity to provide relevant evidence and there are sufficient facts for the Regional Director to render a decision on the merits of the charge.

What happens if the Regional Director determines that the charge does not have merit?

If the Regional Director determines that the charge does not have merit and therefore should be dismissed, the Charging Party is afforded a brief opportunity to withdraw the charge without issuance of a written dismissal. If the charge is not withdrawn or is not withdrawn promptly, a written dismissal issues and is served on the parties. The dismissal letter describes the allegation(s), the facts disclosed during the investigation, the applicable law and the reasoning upon which the Regional Director's decision to dismiss is based.

Can that dismissal decision be appealed?

Yes. A dismissal is appealable to the Office of the General Counsel in Washington, D.C. The General Counsel may dismiss the appeal and close the case or remand the case for further investigation or issuance of a complaint. The General Counsel's decision to deny an appeal and close a case is not subject to review.

What happens if the Regional Director determines that the charge has merit?

If the Regional Director determines that the evidence supports issuance of a complaint, the Region, as the public prosecutor, attempts to settle the charge prior to issuance of a complaint and notice of hearing which schedules the matter for trial before a FLRA Administrative Law Judge. The complaint sets forth the allegations to be prosecuted and is served on all parties to the charge.