



Mashantucket Pequot
Tribal Nation

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

PROCEDURES MANUAL FOR PROCESSING CLAIMS ALLEGING PROHIBITED PRACTICES UNDER THE MASHANTUCKET PEQUOT LABOR RELATIONS LAW (Labor Law)

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1.0 Introduction

This manual sets forth the procedures of the Mashantucket Employment Rights Office (MERO) for processing claims brought pursuant to Section 7 of the Mashantucket Pequot Labor Relations Law (Labor Law). Sections 7 and 16 set forth alternative methods for resolution of alleged Prohibited Practices. Section 6(a) of the Labor Law identifies Prohibited Practices by Tribal Employers. Section 6(b) of the Labor Law identifies Prohibited Practices by Labor Organizations. A claim under Section 7 is also referred to in this Manual and MERO forms as a charge.

The forms referenced in this manual are available by contacting the MERO. Forms available through the MERO website may not be current.

2.0 Filing a Prohibited Practice Charge

2.1 Who May File a Charge

A claim may be filed by an individual, a labor organization (union) or an employer. The individual or entity that files a claim is the Charging Party.

2.2 What Must be Filed

In each prohibited practice case, the Charging Party must file a fully completed Charge Form (Form 32-1010 Charge Against Tribal Employer or Form 32-1020 Charge Against Labor Organization), as well as a completed Intake Questionnaire (Form 32-1030). The MERO Director may provide pre-filing assistance to the Charging Party.

The responses to the Intake Questionnaire shall be sufficiently detailed to enable the Charged Party to understand the offenses charged, the issues in dispute, and the remedy sought. Non-exclusive examples follow:

- Specify the names of offending employer or union agents, with the dates and locations of each incident.
- Describe the location of each incident as specifically as possible, consistent with the need to protect the identity of the witnesses.
- Provide the names of any alleged discriminatees and dates of the underlying acts.
- Provide a general description of the type of alleged violations sufficient to provide the Charged Party adequate notice upon which to base a defense.
- Specify the remedy sought.

Names of employees alleged to be the objects of Section 6(a)(1) or 6(b)(1) conduct who are not claimed to be entitled to specific individual relief and the names of non-supervisory witnesses should not appear on a Charge or Intake Questionnaire.

2.3 Where and in What Manner to File a Charge

To file a charge, the charge must be submitted to the MERO Director. The filing may be accomplished by email, fax, in person, by U.S. mail delivery, or in any other manner by which the MERO receives a completed charge form and intake questionnaire.

2.4 Notifying Charged Party

The Charging Party must deliver to the Charged Party a copy of the completed Charge Form (Form 32-1010 or Form 32-1020) and Intake Questionnaire (Form 32-1030) for receipt by the Charged Party on the same day as the submission of the completed forms to the MERO.

3.0 Initial Case Processing

3.1 When a Charge is Filed

Upon receipt of a properly completed Charge Form (MERO Form 32-1010 or 32-1020) and Intake Questionnaire (MERO Form 32-1030), the MERO shall assign a MERO docket number to the charge and note the date of filing.

3.2 Creating a Case File

The MERO shall create a case file for each prohibited practice case. The case file shall include copies of all documents sent and received in the case, including correspondence, MERO forms, notes of oral communications, printed copies of e-mails, faxes and other documents. Each case file should contain a contact information sheet (MERO Form 32-0100) containing the names, addresses, telephone numbers, and other contact information for the parties and their representatives.

3.3 Case Processing Overview

Generally, within the first five (5) days after a charge is filed, any party may elect to have the charge decided by a MERO Board, which is an ad hoc panel selected by the parties to hear and decide the particular case. If no timely request for a MERO Board is received, the charge is referred to the Tribal Court for assignment to a Special Master to hear and decide.

When an individual is the Charging Party, the MERO Director, in their discretion, may decide to divert the case to a MERO investigation. (See Section 9.0) After an investigative decision issues, the parties have the right to proceed to a hearing before a MERO Board or Special Master, provided an individual Charging Party's timely election of a Special Master controls.

No costs are charged to the parties for the MERO Director investigation and decision. The costs and fees associated with a MERO Board proceeding are shared by the parties. Any costs or fees associated with a Special Master proceeding are established by the Tribal Court.

3.4 Initial Inquiry

After a prohibited practice charge is filed, the MERO Director, or their designee, may communicate with the parties for the purpose of ascertaining facts and other information to advance the processing of the charge. The purpose of the initial investigation shall be to secure information and narrow the issues for the MERO Board or Special Master, explore the possibility of a mutually agreed resolution of the matter, or otherwise effectuate the purposes of the Labor Law. In conjunction with, or after referral, the MERO Director will forward relevant information to the MERO Board or Special Master, as applicable. If the claim is filed by an individual, an initial inquiry may be for the purposes of determining whether the charge will be investigated by the MERO Director.

4.0 Selecting MERO Board or Special Master

4.1 Requesting and Appointment of a MERO Board

The following provision for requesting and appointing a MERO Board are based on two (2) parties to the case, which yields a three (3) member MERO Board.

Step 1: Any party may request a MERO Board by submitting a completed Form 32-0300 (Request for a MERO Board), which must be received by the MERO Director within five (5) days of the filing of the charge and served by the requesting party upon the other party or parties, via hand delivery, electronic mail or facsimile transmission, on the same date.

Step 2: Within five (5) days of a party's submission of a completed Form 32-0300 to the MERO Director, the parties must submit to the MERO Director a completed Form 32-0310 (Appointment by Party of MERO Board Member) and a Form 32-1115 (Certification for Appointment to MERO Board) completed by the party's appointee. Completed Forms 32-0300 and 32-1115 are not required to be served on the opposing party.

Step 3: Upon receipt of the parties' Forms 32-0310 and 32-1115, the MERO Director shall notify the selected Board Members of their appointments by email, with a copy to the parties or their representatives.

Step 4: Within five (5) days of both party appointees' receipt of notice of appointment, the parties or their MERO Board Member appointees must complete and return to the MERO Director Form 32-0320 (Designation of MERO Board Presiding Officer) advising of the status of selection of the third MERO Board member, who would serve as the presiding officer of the MERO Board. If so indicated on the Form 32-0320, the MERO Director shall request from the American Arbitration Association (AAA) a random panel of seven (7) labor arbitrators who are members of the National Academy of Arbitrators. Within five (5) days of receipt of the list, the parties or the MERO Board Member appointees shall select the Board's presiding officer from among the seven (7) names received, and submit a completed Form 32-0320 to the MERO Director.

Under the following circumstances, the MERO Director may request from AAA a random panel of seven (7) labor arbitrators who are members of the National Academy of Arbitrators and appoint a MERO Board member from the list:

- If a party fails to submit Form 32-0310 or Form 32-1115 in accordance with Step 2.
- The MERO Board members do not submit a completed Form 32-0320 timely or fail to select a presiding officer or an AAA panel as set forth in Step 4.

The MERO Director may take any other actions in their discretion to advance the processing of the charge.

Step 5: The MERO Director will issue Form 32-0360 (Referral of Charge to MERO Board).

4.2 Referral to Tribal Court

If neither party timely requests a MERO Board, the MERO Director shall refer the case to the Tribal Court for adjudication before a Special Master pursuant to Section 7 of the Labor Law. The MERO Director shall complete MERO Form 32-0365 (Referral of Case to Tribal Court) and transmit the completed form and the applicable attachments to the Clerk of the Tribal Court. The MERO will certify to the Court and the parties the date of referral and manner of delivery.

5.0 MERO Board or Special Master Proceedings

5.1 General Duties

The MERO Board or Special Master, as applicable, shall determine the parameters of processing the charge in accordance with the Labor Law, which may include, without limitation:

- Determining whether the MERO has jurisdiction;
- Determining whether the charge was filed within the statute of limitations,
- Determining the manner by which the parties are provided full opportunity to present evidence and argument in support of their positions;
- Reviewing and deciding any issues raised by the charge and/or the parties;
- Making findings of fact and conclusions of law;

- If applicable:
 - overseeing any settlement of the charge allegations;
 - fashioning an appropriate remedy for any violation of the LABOR LAW;
 - dismissing any claims; or
 - assessing sanctions for frivolous conduct of a party

The MERO Board or Special Master, as applicable, may gather information and perform its functions through investigation, evidentiary hearings or in such other manner deemed appropriate under the circumstances. The duties of the MERO Board or Special Master are to be carried out expeditiously.

5.1.1 Presiding Officer: In addition to any other duties as a MERO Board member, the presiding officer shall be responsible for (1) ruling on joint requests or joint motions, (2) presiding over hearings, (3) ruling on pre-hearing or hearing requests or motions and (4) ruling on withdrawal requests; provided, appeal of an adverse ruling may be made to the full three (3) member MERO Board whose decision by majority vote shall control. Absent unusual circumstances, appeal of pre-hearing or hearing rulings must be made before the close of the hearing, appeal of post-hearing rulings must be made prior to the issuance of the MERO Board decision, and appeal of a withdrawal request ruling must be made within seven (7) calendar days.

5.1.2 MERO Director: The MERO Director shall be available to assist the MERO Board or Special Master in expediting processing of the case. Administrative, investigative or other duties may be delegated to the MERO Director. If an evidentiary hearing is held, the MERO Director shall receive notice and the MERO Director, or his/her designee, shall appear at the hearing to serve as a resource for the MERO Board, including without limitation with respect to interpretation of, and legal developments under, the Labor Law.

In addition, to any other duties, the MERO Director may rule or act upon (1) any matters prior to referral to a MERO Board or Special Master, (2) parties' mutual stipulations, agreements or resolutions, (3) requests for extensions of time, (4) requests or motions to hold a case in abeyance pending settlement negotiations, a decision on a request for financial assistance, or other reasonable basis. Any decision of the MERO Director may be appealed to the MERO Board or Special Master, as applicable or in the absence of either, the Tribal Court.

5.2 Conduct of Hearings

In addition to any requirements imposed by Title 31, M.P.T.L. or Title 32, M.P.T.L., any hearings conducted by a MERO Board shall include the following procedures:

- Written notice of hearing provided to the parties;
- An opportunity for all parties to appear, present evidence, and examine and cross-examine witnesses;
- A transcription of the proceedings;
- An opportunity for the parties to submit briefs;
- The issuance of a post-hearing written decision in a timely manner.

Hearings shall be conducted in a manner to minimize delay while affording all parties an opportunity to be heard. The MERO Board is not required to follow the Mashantucket Rules of Civil Procedure or any special procedures adopted by the Tribal Court for Special Masters.

Any hearing conducted by the Special Master shall be conducted in accordance with any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure.

Neither the MERO Director nor any agent of the MERO may be required to testify at a hearing and are not permitted to testify at a hearing without the written consent of the MERO Director.

5.3 MERO Board or Special Master Decisions

Except as otherwise provided in the law or this manual, MERO Board decisions must be by majority vote of the MERO Board. Written decisions must be signed by all members of the Board or accompanied by MERO Form 32-0370 signed by all members of the Board. A copy of the signed document bearing original signatures must be forwarded to the MERO Director. Oral decisions must be reduced to writing if requested by a party or the MERO Director.

Any final written decision of a MERO Board shall include, without limitation, the following:

- Findings of fact with respect to jurisdiction under the LABOR LAW, including Tribal employer and labor organization status issues;
- Findings of fact to support the MERO Board's conclusions of law;
- Findings of fact and conclusions of law addressing all allegations of the charge, or articulation of the Board's basis for declining to address one or more allegations of the charge.
- Any remedial action required by the charged party, if applicable.

Any party or the MERO Director may seek clarification of a written decision of a MERO Board by submission of a Request for Clarification within seven (7) calendar days of the issuance of the MERO Board's decision, with delivery to the other parties on the same date. The MERO Board shall provide a written response to any Request for Clarification.

Any decision by the Special Master shall be issued in accordance with any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure.

5.4 MERO Board Costs and Fees

The costs and fees associated with a MERO Board processing a prohibited practice case are borne equally between the parties.

5.4.1 MERO Board Members: Each party shall be responsible for the costs of its party-appointed MERO Board member. The parties shall share equally the costs of a presiding officer. The manner in which the MERO Board members are appointed does not affect the payment responsibilities of the parties.

MERO Board members should disclose to all parties at the outset of the proceedings the charges assessed for their services, the basis for the charges (e.g., hourly, daily, other), any associated fees and billing frequency. A final invoice should be provided no later than forty-five (45) days after the issuance of the final decision in the case.

5.4.2 Fees: Absent agreement of the parties otherwise, any fees associated with the appointment or service of the presiding officer or the proceedings generally shall be shared equally by the parties, including without limitation AAA arbitrator list fees and hearing transcription services. Any fees specific to a particular party are the responsibility of that party.

5.4.3 Invoices: All invoices shall be submitted directly to the parties. Payment is required to be made directly to, and invoice disputes addressed directly with, the individual or entity that issued the invoice.

5.4.4 Frequency of Invoices: Invoices may be forwarded in accordance with the agreed arrangements. MERO Board members should provide a final invoice no later than forty-five (45) days after the issuance of the final decision in a case.

5.4.5 Timing of Payment: Payment should be made upon receipt of an invoice and in no event later than thirty (30) days after receipt by a party.

5.4.6 Failure or Refusal to Pay: Failure or refusal to pay outstanding invoices may result in adverse consequences, including without limitation the case proceedings being delayed (if such delay does not prejudice a party to the case) until payment is made or a defaulting party being required to advance payments to MERO Board members in subsequent proceedings in the case at issue or future cases.

5.4.7 Other: A party's failure to ascertain costs for services or fees at the outset of a proceeding is not a basis for nonpayment of invoices.

5.5 Prohibited Practice Case Records

Prohibited practice case documents and other records must be transmitted to the MERO director within two (2) days of the close of a case or notice of an appeal. Prohibited practice case records may be transmitted to the MERO Director at such other times as deemed appropriate by the MERO Board or Special Master.

6.0 Appeals

Decisions of a MERO Board or Special Master, as applicable, may be appealed to the Tribal Court. When an appeal is filed, the MERO Director shall transmit Form 32- 1180 (Motion for Adoption of MERO Board Decision) or take such other action he/she deems appropriate under the circumstances.

On appeal, the Tribal Court shall adopt the decision of the MERO Board or Special Master unless it determines by clear and convincing evidence that the decision resulted from fraud or bias or is in direct conflict with Tribal law. The Tribal Court's decision is final, with no right of further appeal.

7.0 General Provisions Applicable to All Cases

7.1 Parties' Cooperation

A party's failure to cooperate with the MERO in the processing of a prohibited practice case may result in an adverse inference or adverse finding against the uncooperative party.

7.2 Time Calculations

Unless otherwise specified, when the Labor Law or this manual provide for a time period of ten (10) days or less, weekends and Tribal holidays shall be excluded. Any time period in excess of ten (10) days shall include weekends and Tribal holidays. The date of filing or notice from which a time period begins to run is not counted. Tribal holidays are posted on the MERO website.

7.3 Filing of Documents with the MERO

Unless otherwise specified in the Labor Law or this Manual or specifically directed by a MERO Board or Special Master (including as may be provided by any special procedures the Tribal Court may adopt for claims to be heard by a Special Master or, in the absence of such procedures, in accordance with the Mashantucket Pequot Rules of Civil Procedure), all documents permitted or required to be filed with the MERO, including a MERO Board, or Special Master, must be filed with the MERO Director.

7.4 MERO Director's Notice to Interested Parties

Notwithstanding the obligation of any party to notify any other parties of filings with the MERO, the MERO Director shall take reasonable and appropriate measures to notify the parties in interest of such filings.

7.5 Methods of Delivery

Unless otherwise specified, any reliable delivery method is acceptable for the delivery of documents to the MERO, including facsimile and e-mail. Unless otherwise specified, acceptable methods of delivery to and between parties include any reliable methods under the circumstances, which may include facsimile and e-mail. Text messages are not an acceptable method of delivery to the MERO or between the parties.

7.6 Communicating with Parties

If an attorney or representative has entered a notice of appearance (Form 31-0001) on behalf of a party, all communications to/with the party will be to/with the attorney or representative of record.

7.7 Extensions of Time

Any request for extension of time from the MERO or a MERO Board must be submitted to the MERO Director. The party making the request must make reasonable efforts to secure the position of the other party and represent to the MERO Director when making the request either the position of the other party

or efforts to secure the position to the extent said efforts were unsuccessful. Any request for an extension of time, including a multi-party request, will be denied if a determination is made that delay would not effectuate the purposes of the Labor Law.

7.8 Information and Witnesses

At the request of a party, MERO Board or Special Master, the MERO Director may require the submission of documents or attendance of witnesses to obtain information relevant and necessary to the processing of a case through the issuance of subpoenas or in any other manner consistent with the MERO Director's authority.

7.9 Withdrawals

Withdrawals must be in writing and bear the signature of an authorized representative of the charging party. A completed withdrawal request form (Form 32-0200) or letter are acceptable. Electronic completion and/or submission are acceptable.

7.10 Public Documents

Prohibited practice case documents available to the public shall be limited to the charge, any amended charge, any hearing transcript, and any publicized order or decision.

The MERO Director shall maintain a database of prohibited practice case decisions and shall make the decisions reasonably available to the public.

8.0 Concurrent Prohibited Practice and Representation Petition Cases

8.1 Concurrent Cases Generally

When a prohibited practice charge is filed before or after the filing of a representation petition but prior to an election, and the prohibited practice charge alleges conduct that, if proven, would interfere with employee free choice in an election, a party may request a determination as to whether the processing of the petition shall be affected.

8.2 Filing and Service of a Claim of a Concurrent Prohibited Practice Charge

A claim that a prohibited practice charge is sufficiently related to a representation petition that if proven, the prohibited practice charge conduct would interfere with employee free choice in an election, may be brought at any time prior to an election by submitting a completed and signed MERO Form 32- 2260 (Claim of Concurrent Prohibited Practice Charge) to the MERO in the representation petition case. The MERO Board or Special Master in the prohibited practice case claimed to be concurrent will receive notice of the filing of a Claim of Concurrent Prohibited Practice Charge.

8.3 Limitation on Authority

The Special Master or MERO Board, as applicable, in the representation petition case shall determine the effect of the prohibited practice charge on the processing of the representation petition, except that if the prohibited practice charge is filed prior to the representation petition being referred to the Special Master

or MERO Board, as applicable, the MERO Director may determine the effect of the prohibited practice charge on the processing of the representation petition.

In concurrent proceedings, any findings of fact or conclusions of law made in the representation petition case have no force or effect in the prohibited practice case unless and until adopted in a written decision of the prohibited practice case MERO Board or Special Master. Any findings of fact or conclusions of law made in the prohibited practice case have no force or effect in the representation petition case unless and until adopted in a written decision of the representation petition case MERO Board or Special Master.

Contents of the prohibited practice case file are not available to the representation petition case MERO Board or Special Master.

9.0 Additional Procedures Applicable to a Claim Filed by an Individual

Upon notice to the parties or their representatives, the MERO Director may divert a prohibited practice charge to a MERO Director investigation. An investigation results in a decision within 60 days of the filing of the charge, excluding any processing stays for purposes of conciliation.

Upon notice to the parties of the MERO's investigation, no request from a party for a MERO Board will be processed. Upon issuance of a decision after investigation, the MERO will provide notice to the parties of their hearing rights. A party will have five (5) days from the MERO's issuance of a decision to submit a request for a MERO Board, provided that if an individual Charging Party requests a Special Master at any time prior to the MERO Board being fully empaneled, the case will be referred to the Tribal Court for appointment to a Special Master.

10.0 Prohibited Practice Case Manual Amendments

This Prohibited Practice Case manual may be amended from time to time at the MERO Director's discretion.