



June 2010

## Inside this Brief

- **National Labor Relations Act**
- **Oregon Public Employee Collective Bargaining Act**
- **Election Process**
- **Bargaining Process**
- **Articles in a Collective Bargaining Agreement**
- **Strike vs. Arbitration**
- **Staff and Agency Contacts**

Legislative Committee Services  
State Capitol Building  
Salem, Oregon 97301  
(503) 986-1813

Background Brief on ...

# Collective Bargaining

Approximately 250,000 employees in public and private employment in Oregon are represented in a collective bargaining agreement. Collective bargaining consists of negotiations between an employer and a group of employees to determine employment conditions. Both federal and state law requires collective bargaining for employers and bargaining units who have either voted in an election conducted by the National Relations Board, Oregon Employment Relations Board, or when the employer has voluntarily recognized the employees' union. Collective bargaining activities of employees who work in the private sector are regulated by the National Labor Relations Act, while public employees in Oregon are covered under the Public Employee Collective Bargaining Act.

## National Labor Relations Act

The National Labor Relations Board (NLRB) is an independent federal agency created by Congress in 1935 to administer the [National Labor Relations Act](#) (NLRA), the primary law governing relations between unions and employers in the private sector. The NLRA guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union or to refrain from all such activity. The Act outlines the basic rights of employees to self-organize; form, join, or assist labor organizations; collectively bargain for wages and working conditions through representatives of their own choosing; engage in other protected concerted activities with or without a union, such as group activities (two or more employees acting together) attempting to improve working conditions such as wages and benefits; and refrain from any of these activities, unless state statute allows a lawful union-security clause to be included in an agreement between a union and employer. Besides public employees, the

NLRA does not cover a number of employee groups, including agricultural laborers, independent contractors, and employees of entities subject to the Railway Labor Act (such as railroads and airlines). However, states are allowed, under the Act's provisions, to establish guidelines for exempt groups, and can further regulate collective bargaining and make collective agreements enforceable under state law.

The NLRA also extends a number of rights for employers to protect them from illegal activities. Examples of unfair labor practices against employers include threats to employees that they will lose their jobs unless they support their union's activities, refusing to process a grievance because an employee has criticized union officers or union activities, or limit employee productivity and insist that more workers be hired.

The NLRB is responsible for conducting elections to determine whether employees desire union representation, and investigating unfair labor practice allegations made by employees, unions, and employers.

### **Oregon Public Employee Collective Bargaining Act**

The evolution of public employee collective bargaining has taken place over the past several decades, beginning in the 1959 legislative session. Public employees were first able to conduct collective bargaining in 1963 via the enactment of a law that permitted employees to organize and bargain with their employers regarding "employment relations," which included, but was not limited to, "matters concerning wages, salaries, hours, vacations, sick leave, holiday pay and grievance procedures." Slight changes were made through the years in regards to the employee groups covered under the public sector bargaining statute and the issues that these groups could meet and confer about.

In 1969, as a result of a major reorganization in state government and because of an increasing concern in the legislature about public employee

bargaining, the independent State Civil Service Commission was abolished and personnel management for state service was centralized in the personnel division of the Governor's Executive Department. The Civil Service Commission was retitled the Public Employee Relations Board. By 1971, while a number of local governments were bargaining with labor organizations representing their employees, other local governments refused to bargain. A task force was created to develop a framework of law and regulation that would permit orderly collective bargaining, and submitted their findings to the 1973 Legislative Assembly.

The [Public Employee Collective Bargaining Act \(PECBA\)](#) became effective in October 1973.

The PECBA administers the laws governing employment relations and public employers and employees in the state, counties, cities, school districts, transportation districts, and other local governments of private employers and employees not subject to NLRB jurisdiction. Employees that are not covered under the PECBA and cannot organize include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under section 41, Article I of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.

The Employment Relations Board (**ERB**), who is responsible for enforcing the PECBA, performs similar duties as the NLRB. Examples of responsibilities include determining appropriate bargaining units and conducting elections regarding collective bargaining representation for employees; resolving disputes over union representation and collective bargaining negotiations, including providing mediation and conciliation services; and issuing declaratory rulings and orders in contested case adjudications of unfair labor practice complaints, appeals from state personnel actions, and related matters.

### **Election Process**

The process for a collective bargaining representation election differs between public

and private sector employees. In Oregon, the PECBA allows what is known as “card check.” Under the card check process, employee(s) or the labor organization acting on behalf of the employees can file a petition to the ERB to organize via the card check process. If the Board, which is responsible for investigating the petition, finds that more than 50 percent of the bargaining unit’s employees have signed authorizations designating the labor organization as the employees’ bargaining representative, and that no other labor organization is currently certified or recognized as the exclusive representative of any of the unit’s employees, the Board shall certify the organization as the exclusive representative.

The election process can still be used if 30 percent of the employees in the bargaining unit request an election within 14 days after a majority of workers have signed the authorization cards. In those circumstances, the representation election must be conducted on-site or by mail no later than 45 days after the date the petition was filed. The ballot must include only those labor organizations designated to be placed on the ballot by more than 10 percent of the employees in the proposed bargaining unit, and a provision for marking no representation. The labor organization that receives the majority of the votes cast will be certified by the ERB as the bargaining unit’s exclusive representative.

Private sector employee groups covered under the NLRA must file a petition with the NLRB, who will conduct the secret-ballot election, which typically is held at the worksite but can be conducted off-site or by mail if employees are dispersed over a wide geographic area or other circumstances. Elections are generally held less than 50 days from the date a petition is filed, and election details such as the description of the bargaining unit and the date and place of the election are usually agreed to by the petitioning union and the employer (with assistance of the Board agent).

Post-election, the NLRB issues a formal certification of the union as the as the duly designated collective bargaining representative

or a certification of the results of the election in the event the union does not receive the support of a majority of the unit employees.

### **Bargaining Process**

All employers under a collective bargaining agreement are required to act in good faith with the certified labor organization that represents the employees. The provisions of the agreement are binding on both sides for a mutually acceptable period of time.

Under the NLRA, the obligation to bargain is imposed equally on the employer and the labor organization, but does not compel either party to agree to a proposal by the other, nor does it require either party to make a concession to the other.

The PECBA includes a number of steps designed to help the parties reach agreement. The public employer and the employees’ labor organization are initially required to meet and bargain directly with each other, and both parties are to participate in good faith negotiations for at least 150 calendar days before either party may unilaterally request the assignment of a mediator. For a new bargaining unit, the 150 days begin when a labor organization is first recognized or certified; for negotiations over a successor agreement or a reopener in a current agreement, the 150 calendar days begin when the parties meet for the first bargaining session and have exchanged their initial proposals.

Each party typically has a bargaining team that generally meets in face-to-face negotiation sessions during this stage of the process. The parties may adopt bargaining ground rules, such as the traditional “position/proposal-based” process, in which the parties usually identify the issues for bargaining and then exchange and discuss proposals in an attempt to reach agreement on those issues. Some parties use a variety of other collaborative processes.

If the parties do not reach agreement in direct bargaining, they move to mediation. The State Conciliation Service, a division of ERB, is responsible for providing the mediation services. Once the initial 150 calendar days of bargaining

has expired, either party can initiate the mediation process by written request to the State Conciliation Service. The parties may mutually agree to go to mediation prior to the expiration of the 150-day period. In these cases, the request for mediation must be signed by both parties.

Once the request for mediation is made, a mediator is appointed, the parties are notified of the appointment, and a mediation session is scheduled as soon as a mediator and the members of both bargaining teams are available. If the first session is unsuccessful, additional mediation sessions may be scheduled. The PECBA mandates that parties remain in mediation for a minimum of 15 calendar days. Typically, one or two sessions will occur during this time. After the 15 days, the parties may continue in mediation or either party can initiate the next step in the process by declaring an impasse in the negotiations.

The PECBA provides for an expedited bargaining process for employer proposals to change in certain working conditions during the term of a collective bargaining contract. Under this process, an employer must give the union notice of its intent to change a condition that imposes a bargaining obligation, and the union may file a demand to bargain within 14 days after the employer's notice. The required bargaining obligation ceases 90 days after the employer's notice to the union. At that time, if no agreement has been reached, the employer may implement its change. The parties may jointly request mediation during the 90-day period. Binding arbitration cannot be initiated during the 90-day period.

### **Articles in a Collective Bargaining Agreement**

Most items included in a collective bargaining agreement are common amongst all bargaining units. Examples include wages and fringe benefits, grievance procedures, arbitration, health and safety, nondiscrimination clauses, no-strike clauses, length of contract, management rights, discipline, seniority, and union security.

The PECBA defines items that can be discussed in the collective bargaining process as "employment relations," which is defined under statute to include, but is not limited to "matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures, and other conditions of employment."

"Employment relations" cannot include subjects that are determined to be permissive, non-mandatory subjects of collective bargaining, subjects determined by the ERB to have a greater impact on management than on terms and conditions of employment, or wages and hours, and subjects that have an insubstantial effect on these items. For some types of bargaining units, such as public safety employees, "employment relations" includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that have a significant impact on the on-the-job safety of the employees. For school districts, "employment relations" excludes items such as class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, and the time between student classes.

### **Strike vs. Arbitration**

Under the PECBA, the final step in the collective bargaining process depends on the type of work done by the employees in the bargaining unit. Most bargaining units are designated as strike-permitted while certain groups of public safety employees are prohibited from striking.

The final step for an employer of a strike-permitted employee bargaining unit is the right to implement its final offer, or to jointly agree with the labor organization to resolve their labor dispute through binding interest arbitration. The employer of a strike-permitted bargaining unit may implement its final offer after completing the prior steps of the PECBA bargaining

process. Under current ERB case law, the employer is required to provide the union reasonable notice of its intent to implement. In that case, the Board said five days was reasonable. An employer may implement all or a portion of its final offer.

A strike can take place only after completing the prior steps of the PECBA bargaining process in good faith and giving 10 days notice of their intent to strike by certified mail to the ERB and the public employer. The notice must specify the first day of the strike and the reasons for the strike, including the list of unresolved issues. The notice may be sent during the 30-day cooling off period, although a strike cannot occur until after the 30-day period. A lawful strike may only occur after the labor agreement has expired or pursuant to a reopener provision in a collective bargaining agreement, negotiations under the mid-term expedited bargaining process or the renegotiation of an invalid provision in the agreement.

Examples of bargaining units that are prohibited from striking include police officers, firefighters, 911 dispatchers, parole officers, corrections guards, deputy district attorneys, and employees of mass transit districts, transportation districts, and municipal bus systems. As an alternative to a strike by the employees and final offer implementation by the employer, labor organizations and employers of strike-prohibited units must use binding interest arbitration. The binding arbitration process is initiated by the petition filed with ERB along with the final offer. ERB then sends notice to the parties that binding arbitration has been initiated.

Prior to the arbitration hearing, unresolved mandatory subjects submitted to the arbitrator in the parties' "last best offer" packages shall be decided by the arbitrator, basing their findings and opinions on the interest and welfare of the public; the reasonable financial ability of the government unit to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body; the ability of the government unit to attract and retain

qualified personnel at the wage and benefit levels provided; the overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received; and the comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities (defined as those with the same or near the same population within Oregon).

An interest arbitration award becomes the parties' contract.

### **Staff and Agency Contacts**

[National Labor Relations Board](#)

866-667-NLRB

[Employment Relations Board](#)

503-378-3807

Theresa Van Winkle

[Legislative Committee Services](#)

503-986-1496