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COLLECTIVE BARGAINING

BACKGROUND BRIEF

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 employees in bargaining units who have either been certified in an election conducted by the National Labor Relations Board, Oregon Employment Relations Board, or when the employer has voluntarily recognized the employees' union. Collective bargaining activities of the U.S. Postal Service and most private-sector employees are regulated by the National Labor Relations Act. Federal employees are covered under the Federal Service Labor-Management Relations statute, and state and local employees in Oregon are covered under the Public Employee Collective Bargaining Act **(PECBA)**. This Background Brief will focus on collective bargaining under the PECBA.

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THE PECBA

The PECBA became effective in October 1973. The PECBA contains the laws governing employment relations with respect to public employers and employees in the state, counties, cities, school districts, transportation districts, and other local governments, as well as private employers not subject to the jurisdiction of the National Labor Relations Board **(NLRB)**. Employees who are not covered under the PECBA and cannot organize include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under Article 1, section 41, of the Oregon Constitution, or persons who are managerial employees, confidential employees, and supervisory employees.

Oregon's Employment Relations Board **(ERB)** is responsible for administering the PECBA; it performs duties similar to those performed by the NLRB under the National Labor Relations Act. Examples of the ERB's responsibilities include determining appropriate bargaining units and conducting elections regarding collective bargaining representation; resolving disputes over union representation and collective bargaining negotiations; and issuing declaratory rulings and orders in contested case adjudications of unfair labor practice complaints, appeals from state personnel actions, and other related matters.

LABOR ORGANIZATION REPRESENTATION

The ERB also oversees the certification (and decertification) of labor organizations for purposes of representing public employees. While in the past elections occurred through a mail-ballot process, currently the vast majority of petitions are filed under the card-check process.

Under the card-check process, a petition may be filed with the ERB alleging that more than 50 percent of the bargaining unit's employees have signed authorizations designating the labor organization as the employee's bargaining representative, and that no other labor organization is currently certified or recognized as the exclusive representative of any of the bargaining unit's employees. If that is factually correct, no election is held and the unit is certified, unless at least 30 percent of the employees in the bargaining unit petition for an election, in which case the matter will proceed to a mail-ballot election.

Under the mail-ballot process, a petition may be filed for purposes of certifying a labor organization as the exclusive representative of an appropriate unit of public employees. That petition must be accompanied by a showing of interest of at least 30 percent of the employees in the designated unit indicating that they desire to be represented by the petitioning labor organization. The parties may enter into a consent election agreement, and then voting is done by mail ballot.

Under either the card-check or mail-ballot process, a notice is posted at the work site, granting individuals 14 days to file objections. Those objections usually relate to whether the petitioned-for unit is appropriate. If objections are filed and cannot be resolved informally, the matter goes to a hearing.

The ERB also resolves representation questions where: (1) another labor organization alleges that 30 percent of employees in an appropriate bargaining unit assert that the existing exclusive bargaining representative is no longer the representative of a majority of employees in the unit; (2) a public employer alleges that one or more labor organizations has presented a claim requesting to be recognized as the exclusive bargaining representative; and (3) an employee or group of employees alleges that 30 percent of the employees assert that the existing exclusive representative is no longer the representative of a majority of employees in the unit.

ARTICLES IN A COLLECTIVE BARGAINING AGREEMENT

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

BARGAINING PROCESS

Under the PECBA, both the public employer and the labor organization are required to collectively bargain in good faith with respect to "employment relations," which is defined as including (but not limited to) matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures, and other conditions of employment. Subjects that are included within "employment relations" are also called mandatory subjects of bargaining, meaning that the bargaining representative and the employer must negotiate on those subjects.

"Employment relations" does not include: (1) subjects that the ERB determined to be permissive, non-mandatory subjects of collective bargaining before June 6, 1995; (2) subjects that have a greater impact on management's prerogatives than on employee wages, hours, and other terms and conditions of employment; and (3) subjects that have an insubstantial effect on public employee wages, hours, and other terms and conditions of employment.

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 must participate in good-faith negotiations for at least 150 calendar days before either party may unilaterally request the assignment of a mediator.

Each party typically has a bargaining team that meets in face-to-face negotiation sessions. The parties may or may not adopt bargaining ground rules to govern their negotiations.

If the parties do not reach agreement in direct bargaining, they move to mediation. The ERB's State Conciliation Service 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. The parties may mutually agree to go to mediation before the expiration of the 150-day period; under these circumstances, the request for mediation must be signed by both parties.

Once the request for mediation is made, a mediator is appointed and a session is scheduled. 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, in which one or two sessions typically occur. At the end of the 15-day period, the parties may continue to mediate or either party can initiate the next step in the process by declaring an impasse in the negotiations. Within seven days of an impasse, both parties must submit a written final offer and the mediator will make them public. A 30-day cooling off period then begins.

The PECBA provides for an expedited bargaining process when an employer proposes to change 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 for strike-permitted employees. The parties may jointly request mediation during the 90-day period. For strike-prohibited units, binding arbitration (discussed below) cannot be initiated during the 90-day period.

STRIKE VS. ARBITRATION

Under the PECBA, the final step in the collective bargaining process after the cooling-off period depends on the type of work done by the employees in the bargaining unit. Most bargaining units are designated as strike-permitted. However, certain represented groups are expressly prohibited from striking. Examples of bargaining units that are prohibited from striking include police officers, firefighters, emergency dispatchers, parole officers, corrections guards, deputy district attorneys, and employees of mass

transit districts, transportation districts, and municipal bus systems.

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. 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 a 10-day notice of intent to strike. The notice must specify the first day of the strike and the reasons for the strike, including the list of unresolved issues.

Labor organizations and employers of strike-prohibited units must use binding interest arbitration as an alternative to striking. The binding arbitration process is initiated by a petition filed with the ERB along with the final offer. The Board then sends notice to the parties that binding arbitration has been initiated.

Unresolved mandatory subjects submitted to the arbitrator in the "last best offer" packages shall be decided by the arbitrator. The interest arbitration award becomes the parties' contract.

THE ERB

The ERB is comprised of three full-time members who are appointed by the Governor for a term of four years. In the selection of the members, the Governor gives due consideration to the interests of labor, management, and the public. Each member of the Board shall be trained or experienced in labor-management relations and labor law or the administration of the collective bargaining process. With limited exceptions, the members of the ERB are prohibited from holding any other office or position of profit or pursue any other business or vocation, but must devote their entire time to the duties of the ERB.

The ERB also employs Administrative Law Judges (ALJs), who typically first review unfair labor practice complaints and representation matters and then conduct hearings on those submissions. The ALJs then draft Recommended Orders, which may be appealed to the members of the ERB. The ERB members are responsible for drafting a Final Order, which may be appealed to the Oregon Court of Appeals.

As indicated above, the ERB also provides mediation services through the State Conciliation Service. The Conciliation Service office mediates collective bargaining disputes, contract grievances, unfair labor practice complaints, and State Personnel Relations Law appeals. The office also provides training and facilitation in interest-based, collective-bargaining/problem-solving techniques and labor-management cooperation.

Additionally, the office maintains an arbitration panel and provides arbitrator lists for contract grievances, interest arbitrations, fair dismissal hearings, and appeals of reduction/recall of teacher staff.

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