

Understanding the Employment Relations Board

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Overview of the Oregon Employment Relations Board

- What is the Employment Relations Board?
 - fondly referred to as “ERB” (pronounced like herb) or “the EE-ARE-BEE”
- What statutes govern?
- Jurisdiction?
- Mission?
- Duties?
- Composition?



Primary Duties of ERB

- To determine appropriate bargaining units and conduct elections regarding collective bargaining for employees;
- To resolve disputes over union representation and collective bargaining negotiations, including providing mediation and conciliation services;
- To issue declaratory rulings and orders in contested cases, including:
 - Unfair labor practice cases;
 - Claims by union members against unions (duty of fair representation claims);
 - Appeals from state personnel actions.

What types of conduct constitute a ULP?

- Public Employer ULPs
 - ORS 243.672(1)
- Labor organization ULPs
 - ORS 243.672(2)

ORS 243.672 (1): Employer ULPs

An employer may not:

- interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed under the PECBA.
- dominate, interfere with or assist in the formation, existence or administration of any employee organization.
- discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization.
- discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony in an ERB proceeding.
- refuse to bargain collectively in good faith with the exclusive representative.
- refuse or fail to comply with any provision of the PECBA.
- violate the provisions of any written contract with respect to employment relations.
- refuse to reduce to writing and sign a collectively-bargained agreement.
- use public funds to oppose or support a union organizing campaign, or to take certain actions against employees who participate in hearings under this section. (See ORS 243.670.)

ORS 243.672(2) Labor Organization ULPs

- **A labor organization may not:**
 - interfere with, restrain, or coerce any employees in the exercise of any statutory right.
 - refuse to collectively bargain in good faith.
 - refuse or fail to comply with any PECBA provision.
 - violate the provision of any written contract with respect to employment relations.
 - refuse to reduce to writing and sign a collectively-bargained agreement.
 - engage in unconventional strike activity.
 - picket at the residence or business premises of any member of the governing body of a public employer.

Processing of ULPs

- Complaint filed with the Board.
- ALJ investigates the complaint to determine if there should be a hearing.
- The ALJ sets a hearing date, conducts a hearing, and issues a Recommended Order.
- If any party disagrees with the Recommended Order, objections to that order can be filed with the Board.
- Board issues a Final Order that can be appealed to appellate courts.

Representation Petitions

- Petitions for Representation
 - (Card Check or Election)
- Petition to add Unrepresented Employees to an Existing Bargaining Unit
 - (Card Check or Election)
- Other Petitions for Unit Change/Clarification
- Decertification Petitions

Procedures in Representation Cases

- Petition with Showing of Interest
- Posting of Notice of Petition
- Ability to Waive Hearing and Agree to Consent Election
- Any Objections or Motions to Intervene
 - If so, Hearing and Recommended Order
- Election and Tally of Ballots
- Any Objections to Conduct of Election or Conduct Affecting Results of Election
- Certification of Election Results

Mediation and Conciliation Services

- Mediation of Collective Bargaining Disputes
- Grievance and ULP Mediation
- Interest-based Bargaining Training and Facilitation
- Arbitrator List

Takeaways from Recent Board Decisions

- AFSCME Council 75, Local 189 v. City of Portland
 - The obligation to bargain in good faith includes responding to information requests from the other party.
 - The Board looks at the totality of the circumstances when determining whether a response to an information request constitutes good-faith bargaining.
 - Four General Considerations
 - The reason for the request (some requests require a quicker response)
 - The ease or difficulty in producing the information
 - The kind of information requested
 - The parties' history regarding information requests
 - Cost disputes arising out of information requests are treated as part of the totality analysis—generally speaking, if a cost dispute arises, the parties must bargain in good faith as to how the costs are paid.

Takeaways from Recent Board Decisions

- Sofich v. Salem Professional Firefighters Local 314 and Salem Fire Department/City of Salem
 - Duty of Fair Representation: A union has a duty to fairly represent members of the bargaining unit—that means it may not act arbitrarily, discriminatorily, or in bad faith.
 - Arbitrary Action=No rational basis
 - Discriminatory Action=Intentional, severe, and unrelated to legitimate union objectives
 - Bad Faith=Acting intentionally against a member's interest for an improper reason
 - Most Common DFR Claim: How the union handles a grievance
 - The Board considers how the union handled the grievance, not the merits of the grievance.

Takeaways from Recent Board Decisions

- LIUNA Local 483 v. Metro
- A public employer may not interfere with an employee's right to wear union insignia in the workplace, unless the employer proves that special circumstances exist.
- Special circumstances include:
 - jeopardizing public safety
 - damaging employer equipment
 - interfering with the ability to maintain discipline
 - interfering with an established public image
 - controversial language that is susceptible to derisive and profane construction and that is disruptive of EE/EE relationship
- Uniform or public exposure do not automatically=special circumstances
- Even if special circumstances established, limitations on wearing union insignia must be narrowly tailored

Takeaways from Recent Board Decisions

- SEIU Local 503 v. Lane Council of Governments
- Board declined to address whether Oregon public employers must provide employees with the assurances required by the NLRB in *Johnnie's Poultry Co.* when interviewing those employees in preparation for a ULP hearing.
- Under *Johnnie's Poultry*, when an employer questions employees about protected union activities, the employer is required to (1) communicate to the employee, before the interview begins, the purpose of the questioning; (2) assure the employee that no reprisals will take place for refusing to answer any question or for the substance of any answer given; and (3) obtain the employee's participation in the interview on a voluntary basis.
- In this case, however, the employer did not ask employees about protected union activities, so the Board left open the question of whether it would adopt the *Johnnie's Poultry* doctrine.

Resources

- ERB Website
 - <http://www.oregon.gov/erb/pages/index.aspx>
- Oregon State Bar Treatise: *Labor and Employment Law: Public Sector*
- University of Oregon's Labor Education and Research Center's Monograph Series
 - <http://lerc.uoregon.edu/research/monograph-series/>
- Public Employee Collective Bargaining Reporter