



Oregon's Public Employee Collective Bargaining Act - The View from 10,000 Feet

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The Basic Purpose

- It is the purpose of the PECBA to:
 - provide a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by them in their relations with public employers.”
 - obligate public employers, public employee unions to negotiate with each other with willingness to resolve grievances and disputes relating to employment relations and to sign written agreements resulting there from.



The Basic Rights

- The PECBA establishes specific rights and principles:
 - The right to organize on the part of all non-elected, nonsupervisory and non-confidential public employees virtually everywhere in Oregon public employment.



The Basic Rights

- The principle of an exclusive representative who represents all of the employees in a given bargaining unit and establishes the procedures for selecting that representative.



The Basic Rules

- It requires that collective bargaining take place on a defined range of issues called “employment relations” more commonly referred to as “mandatory subjects of bargaining”.



The Basic Rules

- It creates for most public employees a right to strike. Occupations that may not strike are:
 - Police
 - Firefighters
 - Guards at correctional or mental institutions
 - Parole and probation officers for adult offenders
 - Public transit workers
 - Deputy district attorneys
 - Emergency telephone workers
- For these occupations, compulsory, binding interest arbitration is required.



The Basic Rules

- It provides for a dispute resolution process that includes mediation, optional fact finding, “final offers,” and a 30-day “cooling-off” period before any strike can be legal.



The Basic Rules

- It provides for enforcement of the Act and for enforcement of written agreements between employers and employees by a state agency called the Employment Relations Board.



The Basic Rules

- If a provision of a collective bargaining agreement is inconsistent with or contrary to:
 - A state or a federal law
 - A past practice in the workplace
 - A public employer's established policies
- Which authority has precedence?



The Basic Rules

General Answer:

1. State or federal law (including agency rules)
2. The Collective Bargaining Agreement
3. The Employer's established policies - absent a specific agreement that policy has precedence



The Basic Rules

- Inconsistencies between CBA's and Past Practice:
 - The presumption is that CBA's have precedence, but exceptions can occur based on circumstance.



The Public Employer's Central Obligations

1. “Meet and confer” (bargain) in good faith with the exclusive representative.



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 - But what does “good faith” mean?



The Public Employer's Central Obligations

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 - Answer: Bargain with a sincere willingness to come to agreement.



The Public Employer's Central Obligations

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- What doesn't “good faith” mean?



The Public Employer's Central Obligations

1. “Meet and confer” (bargain) in good faith with the exclusive representative.
 - Answer: It does not require that either party agree to particular proposals or make concessions.



The Public Employer's Central Obligations

1. “Meet and confer” (bargain) in good faith with the exclusive representative.
 - In other words, to “bargain in good faith” is to:
 1. Commit to a process of discussion...
 2. ...with the right attitude!



The Public Employer's Central Obligations

1. “Meet and confer” (bargain) in good faith with the exclusive representative.
2. Agree to put agreements so bargained into writing and sign them; and...



The Public Employer's Central Obligations

1. “Meet and confer” (bargain) in good faith with the exclusive representative.
2. Agree to put agreements so bargained into writing and sign them; and...
3. Obey those agreements.



Conduct Public Employers Must Avoid

- Unfair Labor Practices of employers and unions in hand-out.



The Scope of Bargaining

There are three types of bargaining subjects under the PECBA:

1. Mandatory – matters that employers must bargain with the Union – unless waived.
2. Permissive – matters that employers may bargain voluntarily – but do not have to; and
3. Prohibited – matters that employers and unions may not bargain. Agreements on such are unenforceable.



The Scope of Bargaining, or...

- “What policies or practices may we implement unilaterally – and which ones must we bargain? See lists of both in handout.

Policy



Questions?



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Permissive vs. Mandatory Subjects for Bargaining

Mandatory Subjects (Must bargain these)

Permissive Subjects (Bargaining permitted - not mandatory)

Payment of salaries and wages, including, overtime pay, holiday pay, creating or modifying step schedules, out of class pay, incentive pay, pay for special assignments and more.	Subjects having an insubstantial or de minimis effect on employee wages, hours, and other employment conditions.
Hours of work, including defining the work week, scheduling of hours, scheduling of shifts, job sharing, shift trading, assignment of overtime hours and more.	Subjects that are not insubstantial or de minimis but that the Employment Relations Board determines have a greater impact on management's prerogative than on employee wages, hours, or other conditions.
Vacations, including pay and scheduling procedures.	Workload when the effect on duties is insubstantial.
Sick leave benefits.	Scheduling of services provided to the public.
Retirement benefits	Determination of the minimum qualifications necessary for any position.
Health care benefits.	Criteria for evaluation or performance appraisal.
Discipline standards and grievance procedures.	Safety issues or staffing levels not directly impacting on-the-job safety.
Management Rights.	The assignment of duties.
Drug testing after hire.	Pre-employment drug testing.
Term and conditions of probation upon hire and promotion..	Grooming.
Safety issues or staffing levels directly impacting on-the-job safety.	Reasonable dress.
	On-the-job personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work.
	Fair share agreements.

	Ground rules agreements for bargaining.

Oregon Public Employer Unfair Labor Practices

243.672 Unfair labor practices; complaints; filing fees. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

- (a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.
- (b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.
- (c) 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. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If a “fair-share” agreement has been agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the payment-in-lieu-of-dues from the salaries or wages of the employees.
- (d) 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 under ORS 243.650 to 243.782.
- (e) Refuse to bargain collectively in good faith with the exclusive representative.
- (f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.
- (g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.
- (h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- (i) Violate ORS 243.670 (2).

Labor Union and Public Employee Unfair Labor Practices

(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

- (a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.
- (b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.
- (c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.
- (d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.
- (e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- (f) For any labor organization to engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.
- (g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any

individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other statewide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(3) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.