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

- 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/](http://lerc.uoregon.edu/research/monograph-series/)

- Public Employee Collective Bargaining Reporter