



# Oregon

John A. Kitzhaber, MD, Governor

## Employment Relations Board

Old Garfield School Building

528 Cottage Street NE Ste 400

Salem, OR 97301-3807

Phone: 503-378-3807

Fax: 503-373-0021

e-mail: [EmpRel.Board@state.or.us](mailto:EmpRel.Board@state.or.us)

<http://www.oregon.gov/ERB>

April 15, 2013

Sen. Elizabeth Steiner Hayward, Co-Chair  
Rep. Greg Smith, Co-Chair  
General Government Subcommittee of the  
Joint Ways and Means Committee  
900 Court Street NE  
Salem, OR 97301

Dear Co-Chairs:

At the budget hearing, I was asked to provide information regarding the agency's policies and practices regarding telecommuting, set out issues related to administrative law judges' (ALJ) travel costs being paid by parties, and provide a time line for how the agency handles filings that ask to change or disband union representation.

### Telecommuting

The agency allows ALJs and Board members to telecommute up to two days per week. Each employee must sign a telecommuting agreement, which defines their work hours, methods of communication (cell phone, e-mail), equipment, and security requirements. Employees must be available during the agreed-upon work schedule, and absences for personal reasons must be pre-approved, just as they are when the employee is in the office.

The agency requires all three ALJs to be in the office on the same day at least once a week to facilitate collaboration and problem solving. The three Board members have two days per week when we are all in the office. At least one ALJ and one Board member are in the office each day.

The mediators generally work out of the office due to the nature of their job. However, they also have signed telecommuting agreements. Mediators have agency cell phones and can be reached when needed.

I have found telecommuting to be beneficial to the agency. Being away from the office gives the ALJs and Board Members time to write with fewer interruptions than occur in the office. This enables a faster turn around time on recommended and final orders. Further, most of our employees do not live in the Salem area. Telecommuting allows them to work on their caseloads without having had the stress of a difficult commute.



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I believe that the best measure of an employee's productivity is the work product. As Board Chair, I focus on the timeliness and quality of the recommended and final orders. Currently, telecommuting is beneficial to the agency in meeting both quality and timeliness. If I suspect that a single person's use of telecommuting, or telecommuting as a whole, does not meet agency objectives, I will re-evaluate our policy and consider other options.

### ALJ travel

During the public hearing, the issue arose of having ALJs travel to the hearing site rather than having all the hearing participants travel to Salem. There was testimony that the parties to a case could fund the travel of the ALJs.

I have some concerns about how this process would work, as it should not devolve to where unions and employers who have the ability to pay are granted "traveling ALJs" while employers and unions who do not have the fiscal resources are required to come to Salem. Such a situation could possibly lead to legal claims against the agency and its orders. Further, the time required for an ALJ to travel to a hearing site is time not spent on drafting recommended orders. With only three ALJs, I anticipate it taking longer to issue recommended orders if they travel.

The agency would like additional time to study other options, such as video conferencing, to address the issues involved.

### Elections

The "elections" category in our performance measures incorporates several types of petitions: representation, unit clarification, decertification, and amendment of certification, to name a few. Each of these petition-types has a somewhat different time frame, with unit clarification petitions usually reflecting the greatest amount of time between filing and final order. Generally, unit clarification petitions are not subject to an election.

I was asked to present the Board's time line on responding to petitions for changing or disbanding union representation. To decertify a union, 30 percent of the employees in an existing bargaining unit must assert that their exclusive bargaining representative no longer represents a majority of the unit's employees. If such petition is timely and appropriately filed, the Elections Coordinator serves it on the employer and union within two days of receiving the petition. The employer is provided with notices to post, which are to be posted within a few days of receipt and remain posted for 14 days. During the 14 day posting time, the employees, union, or both may object to the petition. If there are objections which cannot be resolved, the matter will go to hearing. That rarely occurs. Usually, the parties sign a consent election agreement, and the matter

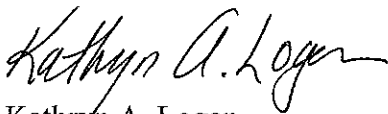
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goes to an election. The time between the issuance of a consent election agreement and counting the ballots is approximately six weeks (balloting is done by mail). Objections to the conduct of the election are due 10 days later. If no objections are filed, the election results are certified the following day. The entire process takes a little more than 11 weeks.

This time frame would be extended if, for some reason, a hearing was necessary. The hearing is scheduled to accommodate the parties, and the ALJ has 180 days to issue the recommended order after the record closes. If objections are filed to the recommended order, oral argument is set before the Board, again at the parties' convenience. From the date of oral argument, the Board will take 30 – 90 days to issue a final order, depending on the complexity of the issues. The Board may dismiss the petition or order an election. If an election is to be held, it will follow the process outlined above. However, as I previously stated, these cases rarely go to a hearing.

Please let me know if you have any questions or would like further information.

For the Board,



Kathryn A. Logan  
Board Chair

c: John Borden, Legislative Fiscal Officer  
William McGee, DAS Policy and Budget Analyst