2025 EMPLOYMENT RELATIONS BOARD PRESENTATION TO THE HOUSE COMMITTEE ON LABOR AND WORKPLACE STANDARDS

Adam Rhynard, Chair, Oregon Employment Relations Board

January 22, 2025

OVERVIEW



PUBLIC EMPLOYEE COLLECTIVE BARGAINING ACT ("PECBA") AND ERB



REPRESENTATION



BARGAINING AND DISPUTE RESOLUTION



UNFAIR LABOR PRACTICES



Q&A

WHAT IS THE EMPLOYMENT RELATIONS BOARD?

• The Board is charged with administering the Public Employee Collective Bargaining Act (PECBA) and resolving labor disputes and deciding representation matters primarily for public employers, public employees, and labor organizations. The Board is the "labor court" that resolves disputes between state and local governments and their employees, as well as some private sector employers and their employees. The Board issues final orders in contested case adjudications of unfair labor practice (ULP) complaints, union representation matters, and appeals from state personnel actions.



STRUCTURE OF THE BOARD

- Three Person Board appointed by the Governor, confirmed by the Senate, with consideration of the interests of management, labor, and the public.
 Assisted by Board Secretary. On Board member is the Chair and director of the agency.
- State Conciliator and two mediators.
- Three in-house administrative law judges (ALJs) and a Hearings Assistant.
- Election/Mediation Coordinator.
- Business Operations Administrator.

STATUTES ADMINISTERED BY ERB

ERB administers three separate statutory schemes:

- The Public Employee Collective Bargaining Act (PECBA)
 - ORS 243.650 through 243.809, which covers collect bargaining in state and local governments in Oregon;
- The State Personnel Relations Law (SPRL)
 - ORS Chapter 240, which creates appeal rights for certain personnel actions for management service and non-union employees of the State of Oregon; and
- The private sector labor-management relations law
 - ORS 662.405 through 662.455, and 663.005 through 663.295, which concerns collective bargaining for private sector employees who are not covered by federal law.

PECBA

- ORS 243.650 243.809
- Covers Public Sector Employers/Employees
- "Public employees have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations." ORS 243.662
- Administered by Employment Relations Board
- Enacted in 1973 (Major Revisions in 1995, 2013, and 2019)

REPRESENTATION

- Representation Matters Largely Determine Whether Employees Will or Won't Be Represented by a Labor Organization. Types of Petitions Include:
- Petitions for Representation for a New Bargaining Unit
 - (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

REPRESENTATION

- Employees are represented in "bargaining units"
- Appropriate bargaining unit determined generally by "community of interest"
- Employees seek representation by filing a petition for representation and must submit a "showing of interest" via "cards"
- Card Check Petition: If a petition is filed and more than 50% of the employees have signed authorization cards (and no other labor organization is currently recognized and there is no petition for an election), ERB will certify the union as the exclusive representative.
- Election Petition: A petition must be supported by at least 30% of the employees in the proposed bargaining unit for ERB to conduct an election.

REPRESENTATION (ERB PROCESS)

Petition with Showing of Interest

Posting of Notice of Petition

Ability to Waive Hearing and Agree to Consent Election if Not a Card-Check Petition

Any Objections or Motions to Intervene

- If so, Hearing and Recommended Order (case process same as for ULPs and discussed later)
- If case concerns unrepresented employees, subject to an expedited process

Election and Tally of Ballots if Election is Held

Any Objections to Conduct of Election or Conduct Affecting Results of Election

Certification of Election Results

BARGAINING AND DISPUTE RESOLUTION

Once a bargaining unit is established, parties bargain in good faith to reach a contract.

Fundamental Concept in Labor Law – Both Parties Have a Duty to Bargain in Good Faith –

Mandatory vs. permissive subjects of bargaining

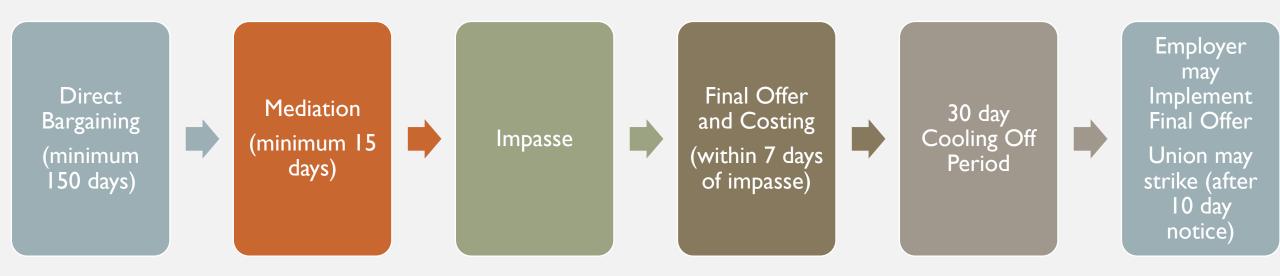
Duty to bargain over mandatory subjects of bargaining

Contract can cover any subject other than prohibited subject

BARGAINING DISPUTES

- Two types of bargaining units strike permitted and strike prohibited
- Strike permitted: Where the bargaining reaches "impasse" parties may elect to use "self help."
 - Union = Strike
 - Employer = Implementation
- Strike prohibited: Interest Arbitration
 - Winner take all chooses between final offers

BARGAINING DISPUTES (STRIKE PERMITTED)



BARGAINING DISPUTE RESOLUTION (STRIKE PROHIBITED)

Same as for strike-permitted groups until impasse





- Mediation of Collective Bargaining Disputes
- Grievance and ULP Mediation
- Interest-based Bargaining Training and Facilitation
- Arbitrator List (agency appoints an arbitrator in law enforcement misconduct cases)

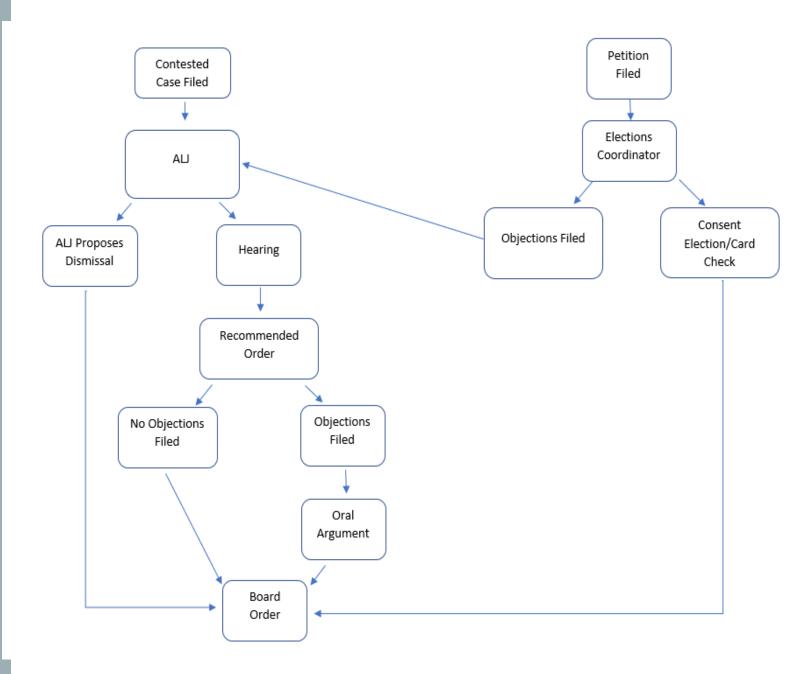


- Process for Complaints & Remedies
- Types:
 - Employer ULPs 243.672(1)
 - Labor organization ULPs 243.672(2), including Duty of Fair Representation ULPs (DFRs)

ULP COMPLAINTS

- Can be filed by an individual, union, or employer.
- Statute of limitations: 180 days from the "occurrence" of the ULP or within 180 days of when complainant knew or reasonably should have known of the occurrence of the ULP.
- Filed on a form approved by the Board, along with a \$300 filing fee. Filed using online Case Management System-CMS (preferred), email, mail, fax, or in person.

CASE PROCESSING



EMPLOYMENT RELATIONS BOARD RESOURCES

- ERB Website: http://www.Oregon.gov/erb/pages/index.aspx
 - ERB Rulebook, Forms, Orders, Complaints, Interest Arbitration Awards, Conciliation Services, Active Cases, and more.
 - ERB ULP User Guide
 - SPRL Digest: Summaries of Board Orders decided under the SPRL
 - SPRL Q&A: Guide to SPRL procedures and cases
- Advanced Searchability of ERB Final Orders on State of Oregon Law Library Digital Collection website

(https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll9)



QUESTIONS