



# City of Florence Work Session

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**CITY OF**  
**FLORENCE**



# PECBA 101

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# What is PECBA?

- Public Employees Collective Bargaining Act
- This is the set of state laws (ORS Chapter 243) that provides a framework for the labor-management relationship for bargaining, dispute resolution, unfair labor practices, etc.

# Purpose of PECBA

- The purposes of PECBA are as follows:
  - To obligate public employers, public employees and their representatives to enter into collective negotiations on employment relations,
  - To obligate those parties to enter into written and signed contracts evidencing their agreements from the negotiations, and
  - To promote the improvement of employer-employee relations by recognizing the right of the employees to join and be represented by organizations in their employment relations with public employers.

# Bargaining Timelines:

## ■ Collective Bargaining

- ❖ 150 days (or more) of bargaining
- ❖ Mediation – 15 days (or more)
- ❖ Declaration of impasse
- ❖ 7 days to issue list of arbitrators
- ❖ Final offers and costing
- ❖ 30 day cooling off period
- ❖ Strike v. Arbitration (Police and Dispatch are prohibited from striking)

# Composition of your bargaining team



# Who should be at the table?

- **Members from the Governing Body?**
- **Good faith bargaining requires the negotiators “to present the agreement to their ratifying entities and to support its approval.”** *Hood River County v. AFSCME, 2010*
- **It can place elected officials in an awkward position as they will be required to vote yes on any TA’d agreement.**



# One size does not fit all. . .

- **Things to consider:**
  - **How big is the union bargaining team**
  - **Need folks who can commit to regular attendance**
  - **Need someone familiar with operations**
  - **Need someone familiar with HR and Finance**
  - **Do we want a note taker**
  - **Do we have anyone who bargained the last CBA**



# What is Collective Bargaining?

# **ORS 243.650 (4) defines collective bargaining as:**

- 1. a mutual obligation of the parties**
- 2. to meet and confer in good faith**
- 3. regarding employment relations**
- 4. for the purpose of negotiations**
- 5. concerning mandatory subjects**
- 6. to execute written contracts incorporating agreements that have been reached.**

# **Defines employment relations as including but not limited to:**

- **Matters concerning direct or indirect monetary benefits**
- **Hours**
- **Vacations**
- **Sick leave**
- **Grievance procedures**
- **Labor organization access to and communication with represented employees**
- **Other conditions of employment**

# Is it a Mandatory Subject of bargaining?



# PECBA

- **Collective bargaining is defined as an obligation of both parties to meet at reasonable times and confer in good faith with regard to mandatory subjects of bargaining**

# Mandatory Obligation to Bargain

- Employment relations includes but is not limited to matters concerning **direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures, labor organization access to and communication with represented employees (new-ish) and other conditions of employment.**
- A **Mandatory Subject** is any proposal within the definition of employment relations that is neither prohibited nor permissive.

# Balancing Test

- PECBA provides for a balancing test for determining whether bargaining subjects are “**other conditions of employment,**” and therefore mandatory.
- The test is whether subjects have a greater effect on management’s prerogative than on employee wages, hours, or other terms and conditions of employment.



# Impacts

- If a bargaining subject falls within one of the specifically listed subjects, however, the balancing test does not apply; the subject is per se mandatory.
- In addition, if a proposal impacts a mandatory subject of bargaining, the impact must be bargained.

# Past Practices

- ***Lesson:*** If you create a “past practice”, regarding employment benefits, you are stuck with it unless you bargain it away.
- **Past practice: clarity & consistency; repeated over some length of time; and, mutually acknowledged and acceptable.**

# What is the Status Quo?



## What is it?

- The status quo is not realistically subject to major alteration or modification unless (a) there is demonstrable evidence that the status quo has proved to be unworkable or mischievous, **or** (b) external evidence establishes 'changed circumstances' which impel modification, **or** (c) there is a perceptible trade-off in which the party seeking change has "bought" agreement.

# What Bargaining Looks Like

- Each team responsible for bringing proposals that their members/body support. We exchange proposals, elicit feedback/justifications.
- With the goal of reaching Tentative Agreements (TAs).
- After the entire CBA is TA'd, then each body (union membership and City Council) vote to ratify the agreement.
- Concessions are NOT required – only required to meet and confer in good faith.
- **Council Role:** Generally, the Council is concerned with big picture items and the bargaining team addresses operations.
  - We can meet in executive session to review and discuss bargaining proposals. Mainly these discussions revolve around money items – wages, paid time off, holidays, insurance, etc.
  - Our goal is to bring the Council a TA'd agreement that the Council is sure to ratify.

# How do we get there?

- ORS 243.746 provides some guidance.
- If the parties are unable to reach an agreement through collective bargaining, ultimately an arbitrator decides (baseball arbitration)
- Arbitration Factors: (a) interest and welfare of the public (b) ability to pay (c) ability to recruit and retain qualified personnel (d) overall compensation (e) comparison of overall compensation to other “comparable” jurisdictions (f) CPI (g) other factors, if needed.

# Bargaining Considerations

- Total cost of compensation – can we pay for it?
- Compensation Comparison– do we know how we sit in the market?
- Address non-economic proposals first
- Identify core issues
- Are we looking to change the status quo, and if so, why
- Continue to narrow the issues
- Are there new laws that need to be addressed
- Avoid regressive bargaining

# Bargaining is never done!

*Mid-term bargaining obligations*





## ORS 243.698

- Bargaining “during the term of a collective bargaining agreement”, and
- the union “demands to bargain”,
- “within 14 calendar days after the employer’s notification of anticipated changes”
- bargaining for 90 days “after the date of notification”

# Unfair Labor Practices (ULPs)



# Duty to Bargain in Good Faith

- Regressive bargaining
- Duty to provide information
- Per se violation – unilateral change to mandatory subject of bargaining
- Totality of conduct violation (surface bargaining)

## Other ULPs: “Because of” and “In the exercise of”

- An employer violates ORS 243.672(1)(a) if it (1) takes action “because of” an employee’s exercise of PECBA-protected rights or (2) takes action that interferes with an employee “in the exercise” of protected rights.

# Other ULPs

## ■ ENCOURAGING OR DISCOURAGING UNION MEMBERSHIP

- It is an unfair labor practice for a public employer or its designated representative to “[d]iscriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization.” ORS 243.672(1)(c).
- Very similar to the “Because of Claim”

# MORE ULPs

- **EMPLOYER DOMINATION OF, INTERFERENCE WITH, OR ASSISTANCE TO LABOR ORGANIZATIONS. ORS 243.672(1)(b).**
- “A complaining union must prove that the employer’s actions impeded or impaired the labor organization in performing its duties as exclusive representative.” *Lebanon Education Ass’n/OEA v. Lebanon Community School Dist.*
- An employer’s action must amount to actual domination, interference, or assistance and must have a direct effect on the labor organization.
- Very Similar to “in the exercise of” claim.

# Remedies for ULPs

- (1) Issue a cease-and-desist order, and, in some cases, require a posting of compliance with the order
- (2) Subject to the ERB's discretion, order affirmative relief "as necessary to effectuate the purposes" and policies of the Public Employee Collective Bargaining Act
- (3) Award representation costs to the prevailing party
- (4) Award attorney fees to the prevailing party
- (5) In certain cases, award a civil penalty.



# How to avoid ULPs

- For the Council – don't discuss bargaining outside of an executive session.
- This prevents a direct dealing claim
- This prevents an interference claim
- This keeps the Council out of trouble



# Questions / Discussion

