Employment Relations Board
Administrative Overview
March 1996

Background

The Civil Service Commission was established in 1945 to form a system of personnel administration based on merit principles governing the appointment, transfer or removal of classified state employees. It also administered training and compensation plans. The Commission operated until 1969 when the Executive Department's Personnel Division assumed responsibility for state personnel management. The Commission was renamed the State Public Employee Relations Board and continued to carry out the appellant functions of the Civil Service Commission along with additional responsibilities.

In 1959 the legislature passed a bill which to give public employees the right to bargain with their public employers and authorized public employers to bargain with their employees. This bill was vetoed by the Governor.

In 1963 a bill was passed which permitted but did not mandate public employee bargaining. This was a bare bones bill which gave employees the right to organize and the right to bargain with their employers. It gave the employers the right to bargain with their employees if they wished to. It prohibited strikes by public employees and provided that the services of the State Conciliation Services could be used in the resolution of labor disputes between public employees and their public employers. The bill provided no real structure for bargaining, for establishing bargaining units or for conducting elections. Because of this and because of the permissive nature of the legislation only a scattering of local governments began to bargain and there was no bargaining in state service.

In 1965 the legislature removed public school teachers from the collective bargaining law and established a separate mandatory meet and confer law for them.

The State Civil Service Commission established rules and began to receive representation petitions early in 1966. Activities in the counties was slower. Most classified employees in the state service already belonged to or were represented informally by the Oregon State Employees Association [now Oregon Public Employees Union.] At that time the Oregon State Employees Association felt it could do better on economic matters by its political activity in the legislature than it could through bargaining, so there was no real desire of that organization to bargain on economic matters. As a result, the bargaining units set up in 1966 in state service covered all of an individual state agency or part of a state agency. Bargaining units didn't cross agency lines.

In 1969, as a result of a major reorganization in state government, and because of an increasing concern in the legislature about public employee bargaining, the independent State Civil Service Commission was abolished and personnel management in state service was centralized in a Personnel Division in the Governor's Executive Department, and the State Public Employee Relations Board [PERB] was established. This was a five member citizen board appointed by the Governor. The board was given the responsibility for carrying on the quasi-judicial functions of

the old Civil Service Commission. It was also given responsibility for administering the collective bargaining law for state employees and for employees of all units of local government where the local officials opted to place their governments under the state law. Finally, the 1969 law transferred the State Conciliation Service which was concerned with the mediation of private sector labor disputes, from the State Bureau of Labor to the Public Employee Relations Board.

In the 1971 session of the legislature, the meet and confer law for public school teachers was amended to broaden the subjects over which school boards must meet and confer. Further, classified employees of school districts were placed under a mandatory meet and confer law. By this time a number of local governments also were bargaining with their employees. The bargaining units were established under local ordinances and the local employers conducted the elections. A crazy-quilt pattern of local ordinances were adopted--some were excellent and some were not. Some local governments refused to bargain with their employees. The state administration determined that it would be in the public interest to have a state law which would provide uniform procedures and a regulated structure for collective bargaining for all public employees in the state. In 1972 Governor McCall appointed a task force to study the problems of collective bargaining in both state and local governments and to recommend legislation to the 1973 legislature. The bill developed by this task force, amended in legislative committees, became law in October 1973.

Labor Relation Law

Collective bargaining. The law gives all public employees the right to organize and bargain with their employer. This includes the state, cities, counties, school districts, community colleges, higher education and special districts. It requires public employers to bargain with their employees.

The law permits voluntary recognition of a labor organization by a public employer if the employer is satisfied that the labor organization represents a majority of the employees. If a question of representation exists, an employer, labor organization or public employees may petition the Board for an election. The law requires that to call for an election, 30 percent of the employees must support a particular labor organization. It further provides that to get on the ballot an intervening labor organization must be supported by 10 percent of the employees. The Board hearing can be waived if all parties agree to the scope of the bargaining unit and consent to an election.

In order to maintain stability in labor relations, the law prohibits an election for a period of 12 months from the time the last election was held and during the first two years of a collective bargaining agreement.

Bargaining Units. Labor organizations are elected to represent employees in a bargaining unit. A bargaining unit is a group of employees having a common set of interests. For example, in a city--police could be in one bargaining unit, firefighters in another and all other city employees in a third. In a typical school district teachers comprise one bargaining unit and non-teaching employees another.

Mandatory Subjects for Bargaining. Until June 6, 1995 the law had a broad definition of the matters subject to mandatory bargaining. It provided that the parties would bargain on employment relations and defined employment relations to include, but not be limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, and grievance procedure. After June 6, 1995 the law defines employment relations to not include subjects which the Employment Relations Board determines to have a greater impact on management's prerogative than on employee wages, hours, or other terms and conditions of employment.

Unfair Labor Practices. In order to maintain orderly labor relations, the law prohibits a number public employer or a labor organization actions. Complaints that an unfair labor practice has been committed are filed with the board, which investigates, hears evidence, and issues orders.

Dispute Resolution. If a public employer and the representative of its employees are unable to reach agreement on a contract, the law sets out specific steps for the resolution of the dispute.

1. Mediation. When the parties can't reach agreement they must notify the Board and a staff mediator is assigned. Mediators are experienced in labor relations and skilled in dispute resolution and can help the parties reach agreement in a majority of cases.

2. Fact-finding. If a dispute is not resolved in mediation it can go to fact-finding. In this process, the parties to the dispute select a fact-finder or a panel of fact-finders from a list supplied by the Board. The fact-finder conducts a hearing on the unresolved issues and makes findings of fact and recommendations to resolve the dispute. If either side does not accept the fact-finder's report, it must notify the board within five days. Five days after receiving notice of a rejection of the report, the Board makes the fact-finder's report public. The purpose of this is to inform the public and give the public an opportunity to respond.

Typically after the rejection of a fact-finding report a mediator reenters the dispute. As public opinion begins to jell, the parties may modify their positions.

Strikes. Except for police, firefighters, prison guards, and emergency telephone operators, the law permits represented employees to strike. Employees may strike 30 days after a fact-finding report has been made public and 10 days after they have given notice of intent to strike.

Certain kinds of strikes are prohibited. Employees not in an appropriate bargaining unit and not represented by a certified or recognized representative are prohibited from striking. Second, it is unlawful for employees to strike without first going through mediation, fact-finding, a cooling off period and providing a 10 day notice. Strikes over a grievance or an unfair labor practice are unlawful. Since 1973 the board has mediated almost 4,000 contract negotiation cases. Only 31 cases, [1 %] resulted in strikes.

Binding arbitration. Where the right to strike is prohibited by law, and contract negotiations have not culminated in a signed agreement, the law establishes procedures for Board arbitration between the parties. The parties may select their own arbitrator or choose from a list supplied by the Board. The law sets out general and specific criteria for arbitrators to consider. The

arbitrator selects one of the last best offers submitted by the parties and promulgates written findings along with an opinion and order. Costs of arbitration are shared equally by the parties in dispute. The arbitrator's decision is final and binding upon the parties.

The Employment Relations Board

Current Mission. The mission of the Employment Relations Board is to resolve disputes concerning labor relations for an estimated 3,000 different employers and 250,000 employees in *public and private employment* in the state. The Board administers the laws governing employment relations of private employers and employees not subject to National Labor Relations Board [NLRB] jurisdiction and public employers and employees in state government, counties, cities, school districts, transportation districts, and other local governments.

The Board has three primary functions: 1. Designate appropriate bargaining units and conduct elections for collective bargaining representation for employees; 2. Resolve disputes over union representation and collective bargaining negotiations, including providing mediation and arbitration services, and; 3. Issue declaratory rulings and orders in contested case adjudications of unfair labor practice complaints, appeals from state personnel actions, and related matters.

The Board holds oral arguments on contested cases filed under ORS 240 [State Personnel Relations Law], ORS 243.650 to 246.782 [Collective Bargaining], ORS 662.405 - 555 [Conciliation Services], and ORS 663.005 to 663.325 [Private Sector Labor Relations]. It issues final Board Decisions which may be appealed to Circuit, Appellate and Supreme Courts.

State government labor relations

Collective bargaining. As the neutral third party, the Board designates and clarifies appropriate bargaining units in state service and conducts elections to determine the labor organization, if any, which the employees want to represent them. It hears unfair labor practice complaints and can order a respondent to provide a remedy to a complainant.

The Board provides mediation to resolve collective bargaining and contract interpretation disputes. It maintains lists of qualified fact-finders and arbitrators and furnishes lists of names to parties on request.

State personnel relations. The Board reviews personnel actions alleged to be arbitrary or contrary to law or rule and affirms or sets aside the actions taken, hears appeals of disciplined unrepresented classified employees and management service employees, affirming, modifying or setting aside the disciplinary actions and has limited review authority of grievance arbitration decisions.

Local government and private employment labor relations

[Counties, cities, school districts, community colleges, special districts, and private companies not involved in interstate commerce.]

Collective bargaining. The Board designates and clarifies bargaining units and conducts representation elections to determine which labor organization, if any, the employees want to

represent them. It also resolves and remedies, complaints that an unfair labor practice has been committed. It provides mediation to resolve collective bargaining and contract interpretation impasses. The Board maintains a list of fact-finders and arbitrators for referral to parties on request. The board also determines if strikes are unlawful.

Organization

The current organization consists of the Board, the Hearings Division, the Conciliation Service Division, and administrative support. Current staff consists of 18 fte. Funding is from the state General Fund, agency assessments, contract mediation fees, and unfair labor dispute complaints filing fees.

Bibliography

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