

An Attorney's View Of Collective Bargaining

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When House Bill 1688, OSEA's employee representation procedures bill in the 1965 legislature becomes law on August 13 and the State Civil Service Commission has performed the duties given to it by the bill, collective bargaining in an orderly manner between state agencies and organizations representing their employees will become possible.

Oregon has had a public employment collective bargaining law since 1963 (See Oregon Revised Statutes, Sections 243.710 to 243.760, reproduced with HB 1688 elsewhere on this page.) Until recently, the provisions of existing law were interpreted to merely "permit" bargaining in public employment, an authority which was not used, to some extent because of lack of procedures such as those provided in HB 1688.

On April 28, 1965, an opinion of the Attorney General stated that under the 1963 law, public employers have a legal duty to "bargain in good faith over meaningful goals" with employee organizations. HB 1688, which was introduced by OSEA in expectation of such an opinion and which the Senate passed shortly after the opinion was issued, requires the Civil Service Commission to adopt rules for selection and certification of collective bargaining representatives for classified employees, including designation of bargaining units and setting up election processes.

COMPARATIVELY NEW

Formal collective bargaining is comparatively new to public employment. Some Federal departments have negotiated agreements with unions for a number of years, but collective bargaining as a matter of right throughout the Federal service did not come until 1962. The State of Washington has had a type of formal collective bargaining for some time.

Dr. John Keltner of O.S.U., a former Federal labor mediator and an expert on collective bargaining, told OSEA's 1964 General Council, "Collective bargaining in public employment has become a reality and will continue to grow. Oregon, with early experience in the field, can set an example for the nation in the area of public employee representation."

OSEA has on its Law and Legislation committee and headquarters staff, lawyers experienced in the field of labor law. But it also becomes necessary that as many association members and leaders as possible understand the essentials of collective bargaining and its application to public employment. It is hoped that this article will be of some assistance towards this understanding.

BARGAINING UNIT

The collective bargaining process usually begins with a claim or petition on the part of an employee association or union that it represents a majority of the employees in a proposed bargaining unit and should be recognized as the exclusive representative of all the employees in the unit in their employment relations. Rules are needed to guide determination of the appropriateness of the unit and which employees shall be included in it.

In private industry, plants sometimes are organized on a "horizontal" or "craft" basis, where employees are represented by a number of unions, depending upon the kind of work the employees are doing, and sometimes on a "vertical" or "industrial"

basis, where all of the employees are represented by one union. In Oregon at the present time, more employees are represented by industrial than by craft unions.

OSEA has advised the Civil Service Commission that it favors all of the employees of an agency being included in one bargaining unit and represented by one organization, with possible exceptions in a few cases involving skilled or licensed trades traditionally represented by craft organizations, such as printers, electricians, and plumbers.

The Federal rules exclude from bargaining units (1) any managerial executive, (2) personnel department employees who work other than in a purely clerical capacity, (3) certain supervisors, and (4) professional employees, unless a majority of the professionals vote for inclusion in the unit. Some exclusions of these types will no doubt be included in the Oregon rules.

SELECTION AND CERTIFICATION

The appropriateness of the unit and its membership having been decided, means are needed to allow employees to express whether they want to be represented by the petitioning organization, by another organization, or by none. This is usually by election. HB 1688 directs the Commission to set up an election process and specify practices which will be prohibited as improper influences on elections.

In order to obtain an election, the petitioning organization usually is required to show that it has on its membership rolls some percentage (such as 30%) of the employees in the unit. Lesser percentages are required for an additional organization to get its name on the ballot or a group of

employees to oppose any organization.

In order to avoid unnecessary elections, the rules may provide that if an organization can show that it has a majority of the employees on its rolls, and no other organization makes a claim for recognition and no group makes a "no representation" petition, the petitioning organization could be certified without further procedures.

Certification is the formal recognition of the organization for a set period of time, usually a year or more, as the exclusive representative of all employees in the bargaining unit. The rules may provide for decertification of the representative under certain circumstances.

BARGAINING

The term "collective bargaining" is not defined in the Oregon public employment collective bargaining law, but it is possible to look to general labor law for a definition of the term. Most courts would probably accept as a definition the provisions in Section 8 (d) of the National Labor Relations Act, that require an employer and the representative of his employees to meet at reasonable times, to confer in good faith about certain matters, and to put into writing any agreement reached if requested by either party.

The Attorney General's opinion laid some stress on the term "good faith" collective bargaining. Under the NLRA, good faith includes an intention to reach agreement, although it is not necessary that agreement always be reached. The NLRB and the courts have been quick to detect "stalling" or "going through the motions" by employers or unions seeking to avoid the responsibility of good faith bargaining.

Under the NLRA, bargaining

means more than just getting together and talking. The employer's duty includes such things as supplying upon request information in its control that is "relevant and necessary" to allow the employee representative to bargain intelligently and effectively (such as payroll and personnel records, cost figures, etc.). The employer has a duty to refrain from unilateral action, meaning taking action on his own with respect to matters on which he is required to bargain, and from making changes in terms and conditions of employment without consulting the employee representative.

SUBJECT FOR BARGAINING

Much of the opposition to collective bargaining in state employment has centered around such statements as, "You have nothing to bargain about in state employment. In private industry the employer can decide what he will pay, but in state government that is up to the legislature. What they don't decide is left up to the Civil Service Commission." Some thought on the subject, however, will reveal that there are many areas for bargaining, some examples of which will be given below.

Obviously the public employer does not have the freedom of action to deal with his employees that exists in private industry. He must operate within the powers granted to him legislatively, and he cannot act on matters decided by law or delegated to other agencies, such as the Civil Service Commission or the Department of Finance and Administration. He could not, for instance, agree to a pay scale different from what was set by Civil Service, or a per diem rate different from what is dictated by F & A.

A public employer and employ-

ee representative could agree to make joint recommendations and presentations to the appropriate body regarding such a matter as pay scales, and this joint action would probably be given great weight. The Attorney General's opinion put it this way: "The primary objectives to be gained by public employee organizations will certainly rest, to a great extent, in persuading public employers to agree with them on joint recommendations to be made to the governmental agency or organ which has the authority to act in the matter."

The opinion did not discuss the many conditions of state employment which are not covered, or only partially covered by law or Civil Service or other rules. Collective bargaining can fill the voids where the rules have not met or cannot solve the problems. Here are a few examples:

1. The Civil Service rule states that an appointing authority's working hours schedule "... normally shall provide for a work week of 40 hours. Exceptions to this general policy may be approved in instances where departmental operations necessitate longer hours ...". Bargaining could result in agreement that departmental decision by Civil Service to make exceptions and would give his employees the "normal" 40-hour week by redistributing the work load or other means.

2. Although the rules say that appointing authorities have a responsibility to provide grievance procedures, no particular procedure is prescribed. Employee organizations could secure agreement on grievance procedures which they felt would be in the best interests of employees.

3. Civil Service rules are extremely vague regarding merit salary increases (and many other matters). What is meant by a statement that the increases recommended by the appointing authority shall be "based on systematic evaluation of work performed in relation to establish work standards?" What system and what standards? These are suitable subjects for bargaining.

4. A state office observes a half-hour lunch period. Apparently this is acceptable to employees. Assuming, however, the employees do not agree, this is not covered by rules and is a proper subject for bargaining.

5. Where an institution operates 24 hours a day on three shifts and employees are not rotated or given the right to change to another shift when a vacancy occurs, as in most private plants, this is a negotiable item. On the same subject, somebody back along the line persuaded Civil Service to include differential pay for nurses on night shifts in the salary schedule. How about a joint presentation to strengthen OSEA's demands for differential pay for all of the employees on irregular shifts?

These have been only a half-dozen examples. Much more space could be consumed on varying departmental practices regarding transfers of personnel, moving allowances, private car mileage and many other things left for departmental decision by Civil Service and F & A rules.

When collective bargaining really gets under way, it is likely that instead of wondering what can be bargained about, the problem will be to find time and staff to handle all of the things that could be straightened out by good faith bargaining.

Collective Bargaining Law

243.710 Definitions for ORS 243.710 to 243.760. As used in ORS 243.710 to 243.760, unless the context requires otherwise:

(1) "Employment relations" includes, but is not limited to, matters concerning wages, salaries, hours, vacations, sick leave, holiday pay and grievance procedures.

(2) "Labor organization" means any organization which includes public employees and which has as one of its primary purposes representing such employees in their employment relations with the public employer.

(3) "Public employee" means an employee of a public employer.

(4) "Public employer" means the state, county or city or any political sub-division or agency thereof.

243.720 Purpose. It is the purpose of ORS 243.710 to 243.760 to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

243.730 Right of public employees to join labor organizations. (1) 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.

(2) Public employers shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights under subsection (1) of this section.

243.740 Right of public employer to enter into collective bargaining agreement. Public employers shall have the right to enter into collective bargaining agreements with labor organizations on matters concerning employment relations.

243.750 Use of State Conciliation Service. In the event that the public employer and the labor organization cannot agree on terms for collective bargaining, the State Conciliation Service established under ORS 662.415 may be called upon to aid in arriving at an agreement and the public employer and the labor organization may meet for mediation purposes with the person designated by the Labor Conciliator.

243.760 Striking or recognizing picket line prohibited. No public employee shall strike or recognize a picket line of a labor organization while in the performance of his official duties.

OSEA-Written HB 1688

Section 1. Sections 2 to 4 of this Act are added to and made a part of ORS chapter 243.

Section 2. Any board or commission which, pursuant to state law, administers a civil service system for public employees, shall establish, by rule, procedures for the selection and certification of the collective bargaining representative of the classified employees under such system.

Section 3. The rules shall include, but not be limited to, provisions for the designation of

the bargaining unit, to an election process for employee selection of the bargaining representative and to the specification of practices which will be prohibited as improper influences on that election process.

Section 4. Any board or commission which issues rules pursuant to this 1965 Act may apply to and obtain from a circuit court of this state, court process in enforcement of such rules and against any practice found to be violation of such rules.