



***PECBA, NLRA, AND ULP
INTRODUCTION***

DISCLAIMER:

This presentation does not constitute legal advice. This presentation is intended to give union stewards/staff a better understanding of the law for identifying potential issues and seeking further advice, either from the Union for purposes of bargaining or pursuing unfair labor practices, or to refer represented employees to private attorneys if they believe an employer has violated an individual's rights under employment laws. Stewards are strongly encouraged to contact the Contract Enforcement Team if they believe an employer has committed an unfair labor practice.

OVERVIEW

- ★ ***PUBLIC VS. PRIVATE SECTOR***
- ★ ***UNFAIR LABOR PRACTICES
(PROCESS, CHARGES, REMEDIES)***
- ★ ***OTHER EMPLOYMENT VIOLATIONS***
- ★ ***FINAL QUESTIONS***

PUBLIC VS. **PRIVATE**



PECBA (ORS 243.650 to 243.806)

VS.

NLRA (29 USC §151 to §169)

ERB VS. NLRB

- ★ 3 members vs. 5 members (but only 3 required)
- ★ ERB: 1 union-rep, 1 employer-rep, 1 neutral-rep
- ★ NLRB: Political appointments vary based on White House and Senate control; currently 3 Democrats, 1 Republican, 1 vacant

ULP PROCESS

Public: Union (or Employer) Control

Private: NLRB Control

Both: Very Slow

***A ULP IS A TOOL
IT IS NOT FAST, IT IS NOT MAGIC
AND IT WORKS BEST WITH OTHER TOOLS***

1. EMPLOYER INTERFERENCE WITH WORKER RIGHTS

Workers' rights include:

- ★ Organize, form, join, and assist/participate in a union
- ★ Union representation in disciplinary meetings (Weingarten rights)
- ★ Bargain collectively
- ★ Engage in concerted activity
 - PECBA requires connection to union activity
 - NLRA protects activity independent of union
 - Limitations on strikes and related activity

1. EMPLOYER INTERFERENCE WITH WORKER RIGHTS (CONT.)

ORS 243.672(1)(a):

- ★ “In” the exercise of rights
- ★ “Because of” the exercise of rights

Section 8(a)(1)

- ★ “In” the exercise of rights
- ★ No “because of” the exercise of rights, but see Section 8(a)(3) violations

2. EMPLOYER INTERFERENCE WITH UNION RIGHTS

ORS 243.672(1)(b) and Section 8(a)(2)

- ★ Domination
- ★ Illegal assistance and support
- ★ Actual harm/benefit required

3. DISCRIMINATION AGAINST UNION MEMBERS

ORS 243.672(1)(c)

- ★ Must be employer action
- ★ Must prove motive
- ★ No union security exception since *Janus*
- ★ Almost always a (1)(a) violation

Section 8(a)(3)

- ★ Must be employer action
- ★ Must prove motive
- ★ Union security exception
- ★ Some overlap with Section 8(a)(1) violations

4. DISCRIMINATION BECAUSE OF ERB/NLRB ACTIVITY

ORS 243.672(1)(d) and Section 8(a)(4)

- ★ Requires formal ERB/NLRB process or activity
- ★ Often union interference and/or other union discrimination violations as well

5. REFUSAL TO BARGAIN IN GOOD FAITH

ORS 243.672(1)(e) and Section 8(a)(5)

- ★ Unilateral action prohibited
- ★ Mandatory vs. Permissive Subjects
 - *Per se* violations (ORS 243.650(7) and Section 8(d))
 - Precedent
 - Balancing Tests

5. REFUSAL TO BARGAIN IN GOOD FAITH (CONT.)

ORS 243.672(1)(e) and Section 8(a)(5)

- ★ Decision vs. Impact bargaining
- ★ Duty to provide information
- ★ Duty of successor employers in private sector

6. THE "CATCHALL" PECBA VIOLATION

ORS 243.672(1)(f)

- ★ Overlaps with almost all other public ULPs
- ★ Typically only used for violations of PECBA not otherwise covered by ORS 243.672
- ★ Examples:
 - Refusal to proceed to interest arbitration
 - Untimely final offer

7. VIOLATION OF A WRITTEN AGREEMENT

ORS 243.672(1)(g)

- ★ Primarily CBAs
- ★ But also MOUs, Settlements, etc.
- ★ May include written employer policies

Private Sector

- ★ Lawsuit for breach of contract (not NLRB)

8. REFUSAL TO AGREE IN WRITING

ORS 243.672(1)(h) and Section 8(d)

9. USE OF FUNDS TO PROMOTE OR DETER UNION ORGANIZING

ORS 243.672(1)(i):

- ★ ORS 243.670
- ★ Prohibits use of public funds for union busting
- ★ Includes staff time and subcontractors

Private sector

- ★ Possible Section 8(a)(2) violations but otherwise legal
- ★ Private employers spend millions on union busting every year

10. & 11. INFLUENCING/ENCOURAGING RESIGNATIONS & DUES CANCELLATIONS

ORS 243.672(1)(j)

- × Influence a public employee to resign/decline union membership

ORS 243.672(1)(k)

- × Encourage a public employee to cancel dues payments



ULP REMEDIES



ULP REMEDIES

1. Notice of findings
2. Cease and desist order
3. Make whole and affirmative action remedies
4. Representation costs
 - a. Private Sector: only for serious violations
 - b. Public Sector: limited amounts which are almost always less than actual costs
5. Civil penalties
 - a. Private sector: Only for contempt of NLRB order
 - b. Public sector: \$1000 limit, only for repetitive, knowing and/or egregious behavior
6. Triple damages for use of state resources to deter organizing

OTHER EMPLOYMENT VIOLATIONS



BOLI
(Oregon)

EEOC
(Federal)

OSHA
(Federal)

QUESTIONS?

