

MANAGEMENT INSIGHT

ON LABOR RELATIONS

Spring 1997

Department of Administrative Services

Human Resource Services Division, Labor Relations Unit

TA REACHED WITH OPEU

After 5 months of bargaining, including 25 central table bargaining sessions, the State of Oregon and OPEU reached a tentative agreement at 6 a.m., on April 25. The two year agreement includes general adjustments of 3 percent (effective July 1, 1997), 2 percent (effective November 1, 1998) and 1 percent (effective February 1, 1999). It also includes selective salary adjustments for 78 classifications. A new top step will be added to the compensation plan for non-DOC classifications beginning July 1, 1998. On insurance, the Employer will continue its monthly \$386 contribution. There is also a provision allowing for midterm bargaining in 1998, to address potential changes that may occur if a new benefits board replaces SEBB and BUBB. Bilingual pay is increased to 4 percent on July 1, 1998, and other agency specific differentials are established. Language changes are made to a number of the currently existing articles. OPEU is expected to complete its ratification process prior to the end of May.

DIRECT APPOINTMENT BILL SIGNED

Governor Kitzhaber has signed SB 24, which authorizes direct appointments to state positions in certain circumstances. The bill amends section (5) of ORS 240.306, which currently provides for noncompetitive selection and appointment only for unskilled or semi-skilled positions, or where job related ranking measures are not practical or appropriate. SB 24 provides that noncompetitive selection and appointment or direct appointment procedures also may be used by agency appointing authorities to fill positions that (1) require special or unique skills such as expert professional level or executive positions; or (2) have critical timing requirements affecting recruitment. The bill will go into effect on the 91st day after the final day of the legislative session. DAS plans to promulgate administrative rules to clarify the specific positions and situations in which SB 24 will apply.

Some collective bargaining agreements currently in force may not allow for such noncompetitive

IN THIS ISSUE

ITEMS OF INTEREST

| | |
|---|---|
| TA Reached with OPEU | 1 |
| Direct Appointment Bill Signed | 1 |
| ERB Clarifies Supervisory Exclusion | 3 |
| "Subject To" Rule Narrowed | 4 |
| Snowballing Comp Time | 7 |
| Revisions to PD Forms | 7 |
| Communications During Bargaining | 7 |

ARBITRATION SUMMARIES

| | |
|--|---|
| Reclassification Appeal - <i>Forestry v. OPEU</i> | 2 |
| Demotion, Pay Reduction and Just Cause - <i>AFS v. OPEU</i> | 2 |
| Directive or Reprimand - <i>AFSCME v. DOC</i> | 4 |
| Contractual Interest Arbitration - <i>AFSCME v. DOC</i> | 5 |
| Pattern of Conduct and Just Cause - <i>AFS v. OPEU</i> | 6 |

**Look for Helpful Hints throughout
the Insight**

Distribution:

Executive and Management Service Employees

Editors:

Mike Halpern & Pam Murdock

selection and appointment or direct appointment procedures for represented positions. If you have any questions regarding such a contract provision, please contact your appointed Labor Relations Manager.

In the Matter of the Arbitration between the State of Oregon, Department of Forestry and the Oregon Public Employees Union (Forest Practice Foresters). (Arbitrator, Kathryn A. Logan; February 18, 1997).

In a reclassification upward action, the burden of proof is on the Union to establish, by a preponderance of the evidence (1) that the purpose of the job is consistent with the concept of the proposed classification, and (2) that the class specification for the proposed classification more accurately depicts the overall assigned duties, authority and responsibilities of the position.

Facts: The State of Oregon and the Oregon Public Employees Union (Union) agreed to implement a new classification series—the Natural Resource Specialist (NRS) series—effective January 1, 1997. Among other things, the new series would replace the Department of Forestry’s Forest Practice Forester (FPF) classification. To implement this change, the Department of Forestry (Forestry) proposed to allocate 54 FPF positions to the new NRS 2 classification level. The 54 FPFs disagreed with this proposed allocation, and instead asserted that NRS 3 was the more appropriate new level.

Question presented: Did Forestry violate the collective bargaining agreement when it refused to classify the FPFs as NRS 3s?

Discussion and Ruling: The 1995–1997 collective bargaining agreement between the Union and the State of Oregon added new procedures and standards for reclassification. Under these provisions, Arbitrator Logan observed, the “[A]rbitrator must determine whether the purpose of the job is consistent with the concept of the NRS 3 classification, and whether the NRS 3 class specification more accurately depicts the overall assigned duties, authority, and responsibilities of the FPFs.”

Addressing the question of burden of proof, the arbitrator found that not only must a decision be based on both of the tests noted above, but “[T]he burden of proof is upon the Union to establish, by a preponderance of the evidence, both of those prongs.” Thus, “Unless the Union meets this burden, [the] arbitrator must follow the contract language and ‘allow the decision of the Agency to stand....’ ”

As to the first prong (whether the purpose of the job is consistent with the concept of the proposed classification), “[I]t is important to review the distinguishing features of the specification in light of

the general description. In other words, none of the sentences should be read in a vacuum. Not only is it necessary to read and interpret the NRS 3 specification as an integrated document, it is also necessary to review it in conjunction with the other class specifications in the series.” As to the second prong (whether the proposed class specification more accurately depicts the overall assigned duties, authority, and responsibilities of the position), these factors are determined by the position description and other duties assigned by the Agency.

Analyzing the duties performed by the FPFs, the arbitrator concluded that, as to the first prong of the test, “[T]he job performed by FPFs is not consistent with the concept of the NRS 3 classification.” As to the second prong, “[T]he NRS 3 classification does not ‘more accurately’ depict the overall assigned duties, authorities and responsibilities of the FPFs.”

While there is overlap between the two classifications, and while the duties of the FPFs “occasionally” fit the NRS 3 classification, “These situations do not occur frequently enough to raise the entire level of work performed by the FPFs to NRS 3 qualifications.” As such, Forestry did not violate the collective bargaining agreement by refusing to classify the FPFs as NRS 3s, and the group grievance is denied.

HELPFUL HINT . . .

When updating a PD, it is important to consult the class specifications to assure that the class and level remain the most appropriate choices for the assigned duties.

In the Matter of the Arbitration between the State of Oregon, Adult and Family Services Division and the Oregon Public Employees Union, SEIU Local 503, AFL-CIO (Arbitrator, Timothy D.W. Williams; January 13, 1997).

Involuntary demotion was for just cause, since (1) grievant knew that she was engaging in conduct that was wrong and in violation of agency practice or policy and (2) the discipline imposed reasonably reflected the seriousness of the infraction. Involuntary pay reduction was also for just cause, since there was sufficient evidence to prove that grievant engaged in the conduct in question, and she had previously been both counseled and reprimanded in writing as a result of similar inappropriate behavior.

Facts: Grievant was employed as a vault teller for the unit which administers the USDA Food Stamp Program in Oregon. After discovering that she had sent one too many food stamp coupon books to a branch office,

cont. pg. 3

grievant phoned a clerk at the branch and asked her to send the extra book back and to change her paperwork to delete the entry regarding it. Grievant told the clerk that, "no one would ever know."

Grievant then altered the log and the form listing food stamp issuances, to delete references to the extra book. The next day, while grievant was out sick, one of grievant's supervisors corrected the log to document the overissue and the book's return. He also cancelled the returned book.

Returning to work the next day, grievant created a replacement of the previous day's original log page, and eliminated the changes that her supervisor had made (in the process, tearing up and discarding the supervisor's paperwork). Despite "feeling uneasy" about it, she then added an uncanceled book to the inventory in place of the book cancelled by her supervisor. Grievant also allegedly stated in her co-worker's presence that her supervisor, "should stay the f--- out of her paperwork."

Following a predismittal hearing, two disciplinary actions were taken against grievant. As a result of the actions she took in connection with the overissue, grievant was involuntarily demoted from Office Specialist 2 to Office Specialist 1. For inappropriate communication with a coworker, grievant received a one-step, two-month reduction in pay.

Questions presented: Were the demotion and pay reduction for just cause?

Discussion and Ruling: *Pay Reduction*—This action rested solely on grievant's alleged use of inappropriate language, which use grievant denied. Arbitrator Williams focused on two questions in addressing this issue: Whether there was sufficient evidence to prove that grievant made the statement, and whether a two-month reduction was too severe a penalty for the infraction. On the first question, the only evidence presented in support of the charge was that of the co-worker, who testified that she heard the grievant make the statement. The arbitrator, noting that resolution of the issue turned on his determination as to "who was the more credible witness, the Grievant or the fellow employee;" could find no reason why the coworker would "make up" her testimony. Furthermore, the "[N]ature of the

statement matches the tone and character of past indiscretions by the Grievant and is entirely consistent with behavior for which she previously has been counseled."

Concluding that the grievant did, indeed, make the alleged statement, the arbitrator next turned to the second question, the appropriateness of the penalty imposed. Noting that grievant was on record as having been previously counseled and reprimanded in writing for similar behavior; "[T]he next step in progressive discipline ... would involve some form of a loss of pay...." The fact, moreover, that the statement was made in response to "reasonable efforts made by her supervisor to correct [her] errors" made the inappropriateness of the statement particularly significant. As such, the employer's action did not violate the just cause standard.

HELPFUL HINT . . .

The "Supporting Facts" section of a disciplinary document is especially important since it establishes the action's "cause." Allege facts and avoid conclusions; state facts which *lead to* conclusions. Use active voice.

Involuntary Demotion—Arbitrator Williams framed the question presented as whether grievant knew that she was engaging in conduct that was wrong and in violation of agency practice or policy. The fact that grievant told the branch clerk that "no one will ever know" indicates that she was fully aware of the Agency expectation and practice of recording every transaction in the log. The fact that she admitted feeling uneasy about placing a book in inventory with an incorrect serial number, further establishes that she was aware that her conduct violated appropriate protocols. Her actions, moreover, in altering the work of her supervisor without his knowledge, constitutes a "lesser form of insubordination." The evidence thus established that grievant knew she was acting incorrectly.

As to the appropriateness of the discipline imposed, the question is whether it was, "[R]easonably reflective of the seriousness of the infraction?" The answer is yes, since, "[T]he charges against the Grievant involve a compromise of the fiduciary responsibilities contained within her position." Thus, the punishment—grievant's removal from her position of fiduciary responsibility—fits the infraction.

HELPFUL HINT . . .

Depending on the findings of an investigation, more than one disciplinary action may be imposed.

THE ERB FURTHER CLARIFIES PECBA SUPERVISORY EXCLUSION

How many employees must another employee supervise to qualify the latter employee for the PECBA supervisory exclusion? This question was answered to a large extent in the recent ERB case of *City of Forest Grove v. City of Forest Grove Employees Local 3786* (ERB Case No. UC-29-96). In this case, one employee was supervised by two project engineers. The Board ruled that, "[I]t is not appropriate for us to exclude an employee from a bargaining unit solely because he allegedly supervises one-half of an employee—that is, that he purportedly shares supervision of only one worker with another 'supervisor.'" Furthermore, clarifying its previous ruling that an individual who "super-vises" only one employee could qualify for the PECBA supervisory exclusion, the Board stated: "While it may be appropriate in a rare case such as *City of Wilsonville* to exclude an employee who supervises only one other worker, this Board believes the provisions of the PECBA generally require that an alleged supervisor have control over multiple workers in order to be excluded from PECBA coverage."

“SUBJECT TO” RULE NARROWED BY U.S. SUPREME COURT

On February 19, the U.S. Supreme Court narrowed the “subject to” rule, in the case of *Auer v. Robbins*, 117 S. Ct. 905 (1997). Prior to *Auer*, the possibility of an improper deduction in pay from a salaried employee’s compensation could defeat that employee’s FLSA exempt status. This interpretation of the “subject to” rule was recently followed in *McGuire v. Portland, Oregon*, which held that the mere existence of an express policy which allowed for an improper deduction compromised the FLSA exempt status of employees “subject to” the policy, even though no such pay deduction had been made and the city did not intend to ever impose such a deduction (see, *Management Insight*, December, 1996, p.6). As a result of the *Auer* decision, *McGuire* is no longer good law.

In *Auer*, the Court ruled that the mere possibility of an improper pay deduction from a salaried employee’s compensation does not defeat the employee’s exempt status under the FLSA. Instead, under *Auer*, an employer must actually make an improper deduction from the employee’s pay, or have in place a clear and particularized policy creating a “significant likelihood” of such a deduction, before the FLSA’s salary basis test is violated. Moreover, the Court also ruled that the employer could preserve an employee’s FLSA exempt status even in a case where an improper deduction had been made, by complying with the FLSA’s “window of correction” rule. This rule provides that where an impermissible deduction is inadvertent or is made for reasons other than lack of work, the employee’s FLSA exemption will not be lost if the employer reimburses the employee for the improperly made deduction and promises to comply with the FLSA in the future. Finally, the Court also noted that since the “window of correction” regulation does not specify the reimbursement’s timing, immediate repayment is not required.

Stay tuned for further developments in this area, since interpretation of the Court’s “significant likelihood” standard is an open question.

In the Matter of the Arbitration between the American Federation of State, County and Municipal Employees and the State of Oregon, Department of Corrections (Arbitrator, Howell L. Lankford; December 5, 1996).

Under the contract, a written record of employee misbehavior which could later be used to support steps of progressive discipline is a written reprimand. If the writing only directs the employee, without attempting to establish a written record of his or her past misbehavior, the writing is a directive and not a reprimand.

Facts: The employer addressed separate “letters of instruction” to three employees and placed copies of the letters in the working files of the employees’ supervisors (and not in the employees’ personnel files). The letters referred to the employees’ repeating of unverified rumors and related conduct which violated the employees’ code of ethics. Each of the employees was instructed in the letters to conduct all future relationships with staff in a respectful manner, and in conformity with the code of ethics.

Question presented: Whether “letters of instruction” addressed to three employees were written reprimands or only letters of instruction?

Discussion and Ruling: Arbitrator Howell L. Lankford first noted that the contract in question follows the great majority of collective bargaining agreements in distinguishing between the arbitrability

of written and oral reprimands: “[C]hewing out’ an employee is not subject to arbitration, but ‘writing him up’ is.” The “generally recognized reason” for this distinction is that when a reprimand is written down, it is usually done to build a record of disciplinary action which would support possible later steps of progressive discipline. Like an oral reprimand, a written directive is not generally subject to arbitration. This is because a written directive is not a record of misbehavior which would support subsequent steps of progressive discipline. If a writing is a record of employee misbehavior which could be used to support subsequent steps of progressive discipline, then the writing constitutes a written reprimand. On the other hand, “If the writing only directs the employee without attempting to establish a written record of his or her misbehavior in the past, then the writing is a written directive and not a letter of reprimand.”

HELPFUL HINT . . .

Many collective bargaining agreements have broad requirements regarding the need for employees to sign documents placed in their personnel files which reflect critically upon them (whether they are “written reprimands” or not). Please contact your assigned Labor Relations Manager if you have any questions regarding such a requirement.

In this case, the letters in question refer to the employees’ lack of justification for their actions, their failure to live up to the code of ethics, and their contributing to an unhealthy work environment by repeating the rumors. “In short, the great majority of the content of each of these letters is a record of what the author clearly considered to be the employee’s misbehavior. Regardless of where these records are kept, they are clearly letters of reprimand, designed to justify the imposition of more substantial disciplinary action for future similar misbehavior.”

The “letters of instruction” were thus actually letters of reprimand. As such, pursuant to stipulation between the parties, the arbitrator ordered that as a remedial measure the letters must be removed from all records of the employer.

HELPFUL HINT . . .

A thorough and complete investigation is essential to a good disciplinary letter. It is best to refrain from preparing such a letter until you are satisfied that you have adequately completed the fact-finding process.

In the Matter of the Arbitration between the American Federation of State, County and Municipal Employees Council 75, Local 2376 and the State of Oregon, Department of Corrections, Snake River Correctional Institution (Arbitrator, Timothy D.W. Williams; December 3, 1996).

The parties to a collective bargaining agreement governed by the PECBA may mutually agree in the contract to use a modified form of interest arbitration to resolve an interest dispute which might arise during the agreement's term—so long as the contract's interest arbitration provision is very narrowly focused and grants less authority to the arbitrator than does the interest arbitration procedure set forth in SB 750. In this case, the contractual interest arbitration clause limited the arbitrator's scope of authority to determining whether or not the employer's decision to modify the work schedules of a group of employees was “unreasonable.” The arbitrator found that the employer's decision was not “unreasonable.” Under the collective bargaining agreement, this finding upheld the employer's decision.

Facts: This case arose out of a work schedule change which the employer, the State of Oregon, decided to implement at the Snake River Correctional Institution during the term of a collective bargaining agreement (CBA) between the employer and the American Federation of State, County and Municipal Employees (AFSCME). The group of employees affected by the schedule change all occupied Correctional Recreation Specialist II (CRSII) positions represented by AFSCME. At the time the CBA was implemented, a four-tens work schedule was in effect for the CRSIIs. Subsequently, the employer announced its intent to switch the CRSIIs to a five-eights schedule. The union made a demand to bargain the schedule change, which the employer then unilaterally implemented. The union and employer met and bargained the schedule change question but were unable to reach an agreement, and the union moved for arbitration.

Article 1, Section 5 of the CBA calls for “interest arbitration” in the event that the parties fail to reach an agreement on a midterm, employer-initiated change of a policy, procedure or rule that either (1) the parties agree is a mandatory subject of bargaining, or (2) the Employment Relations Board so rules. The CBA provision further calls for the employer to withdraw the new policy, procedure or rule, should the arbitrator find that it is “unreasonable.”

Questions presented: (1) Is the employee work schedule question properly before the arbitrator pursuant to the CBA's interest arbitration provision? (2) Was the change to a work schedule composed exclusively of five-eights, from the previous schedule of four-tens, unreasonable under the contract?

Discussion and Ruling: Addressing the question of arbitrability, Arbitrator Timothy D.W. Williams initially explained that this case concerns an “interest dispute,” since it, “[I]nvolves a disagreement over what provisions will be included in the parties' Collective Bargaining Agreement.” Such a dispute should be distinguished from a “rights dispute,” which, “[I]nvolves a disagreement as to the meaning and/or application of the provisions that the parties negotiated into their Collective Bargaining Agreement.” In particular, this dispute concerns language in the CBA, which, “[P]rovides that whenever the Employer attempts to change a current practice, during the term of the Agreement, that is related to mandatory subjects of bargaining, the Union has the right to request to negotiate those changes...and, in the event that the negotiations fail to produce an agreement, the Union may request that the matter be submitted to interest arbitration...” This language is consistent with the general application of interest arbitration to a labor dispute, since interest arbitration is a process used to resolve an impasse in the parties' negotiations over the terms and conditions of employment, where such arbitration is authorized by statute or, as here, by agreement between the parties.

HELPFUL HINT . . .

Absent provisions in a collective bargaining agreement to the contrary, parties engaging in midterm expedited bargaining are not required to participate in the mediation process mandated in the PECBA for successor negotiations (*see, OSEA v. Morrow County School District* (ERB Case No. UP-79-95, 17 PECBR 1 [November 4, 1996]).

The threshold question for the arbitrator is whether the work-schedule dispute falls within the scope of the CBA's interest arbitration clause. The key issue on this point is whether the parties agreed that this dispute involves a mandatory subject of bargaining—since the CBA requires either an agreement between the parties that the issue involves a mandatory subject of bargaining or an ERB ruling to that effect before its interest arbitration procedure is triggered. Using this test, the arbitrator found such agreement in the state's conduct in meeting with the union and discussing the matter without contesting the mandatory-subject-of-bargaining issue. The arbitrator further noted that correspondence from the state at the time of the new

schedule's implementation acknowledged the mandatory-subject-of-bargaining nature of the schedule change.

In making this ruling, Arbitrator Williams also found that Senate Bill 750 did not bar the parties, "[F]rom mutually agreeing to use a modified form of interest arbitration to resolve a very limited interest dispute during the term of the parties' Collective Bargaining Agreement." In the absence of statutory prohibition, "[T]he parties are free to reach an agreement as to how to resolve their disagreements over such an issue." This is especially the case herein since the interest arbitration provision in the CBA, "[I]s a very narrowly focused provision and...grants less authority to the Arbitrator than does Senate Bill 750." The last best offer provision of Senate Bill 750 thus would have permitted both the union and the employer to have set forth their last best offers regarding the work-schedule dispute; and the arbitrator would have been empowered to select between the two positions. The CBA, on the other hand, limits the authority of the arbitrator to determining whether or not the employer's decision was "unreasonable." The remedy is also limited by the CBA, since the only

possible outcomes are the employer's going forward with the change or a return to the prior practice.

Moving to the second question presented—whether the schedule change was "unreasonable"—the arbitrator cited both *Black's Law Dictionary* and *Webster's Encyclopedic Unabridged Dictionary* for the term's meaning. The question then became, "Was the decision by the Employer 'not reasonable,' 'irrational,' 'excessive,' 'immoderate,' 'unconscionable,' 'foolish,' 'unwise,' 'absurd,' 'preposterous,' 'senseless?'" And the answer: "The Arbitrator can find no evidence on the record to lead him to conclude that the decision by the Employer to exclusively impose 5x8 work schedules on the recreation specialists can be tainted with any of the above meanings. The State certainly had specific reasons for making the change including the fact that it wanted the recreational specialist IIs to have more contact time with prisoners. This reason is not irrational, unconscionable or any other such designation, nor can the Arbitrator find that the State's actions were in any way arbitrary, capricious or vindictive." Since the employer's implementation of the schedule change was not "unreasonable," pursuant to the CBA, the employer may go forward with it..

In the Matter of the Arbitration between the State of Oregon, Adult and Family Services Division and the Oregon Public Employees Union, SEIU Local 503, AFL-CIO (Arbitrator, Timothy D.W. Williams; January 6, 1997).

The employer's listing of incidents in a letter of reprimand which includes matters previously discussed with grievant and resolved, is not a violation of double jeopardy or of the contract's just cause provision, since they provide evidence of a continuing pattern of conduct, which pattern is the subject of the current charge. However, to warrant a disciplinary action under the contract, the just cause standard requires a fair investigation which provides grievant with an opportunity to have input into it.

Facts: Grievant is a caseworker employed by the State of Oregon, Adult and Family Services Division (Employer). After two client complaints regarding grievant's allegedly inappropriate demeanor, his supervisor gave him a letter of reprimand. The letter referred not only to the conduct which gave rise to the two client complaints, but also to four separate incidents of allegedly "inappropriate or intimidating communication towards either co-workers or AFS clients." These latter incidents had occurred prior to the two which gave rise to the complaints. At the arbitration hearing, grievant's supervisor testified that she considered the earlier incidents to have been dealt with prior to the last two episodes. No

distinction was made in the letter of reprimand between the first four and the last two incidents. Grievant's supervisor did not discuss the two client complaints with grievant prior to issuing the written reprimand.

Question presented: Was the letter of reprimand for just cause?

Discussion and Ruling: Declining to accept the Union's argument that, "[R]aising [the old] issues anew is clearly unfair to the Grievant since corrective measures had already been enacted," Arbitrator Timothy D.W. Williams responded: "Had the Letter of Reprimand indicated the Grievant was being disciplined specifically for the inappropriate behavior found in the six incidents, then the Union's arguments would have been much more persuasive. However, the Letter of Reprimand is clear in indicating that the discipline is imposed because of a continuing pattern of inappropriate behavior. Thus the Grievant is not being inappropriately disciplined twice for the same incident."

HELPFUL HINT . . .

When including references in a letter of reprimand to past incidents which were the subject of previous counseling or discipline, it may be best to include separate categories in the letter called, "background" and "current charges."

Turning to the question of whether the Employer conducted a fair investigation in compliance with the requirements of the collective bargaining agreement (CBA), the arbitrator noted that under the circumstances in question (where there is a complaint signed by a client), the CBA requires that: "[A]n investigation will be made. The employee shall be informed of the complaint and allowed to give his/her supervisor and/or branch manager information during the

course of the investigation. The employee's response, if in writing, shall be attached

permanently to the complaint and copies thereof." In this case however, despite two complaints (one of which was signed), the Employer did not conduct an official investigation. And, "Since there was no formal investigation, the Grievant lost any opportunity of input into such investigation and he was not granted

the right to attach a written statement to the signed complaint." As such, by "ignoring" the CBA's requirements when assessing discipline to grievant, the Employer, "[V]iolated the [contract's] just cause provision." Consequently, despite the fact that the evidence presented at the hearing, "[C]onstitute[s] a sufficient basis to raise concerns about the appropriate-ness of the Grievant's actions," it fails to satisfy the just cause standard. For this reason, the arbitrator affirmed the grievance.

SNOWBALLING OF COMP TIME

If institutions and other agencies with round-the-clock staffing needs fail to carefully monitor and manage their use of both overtime and the accrual of compensatory time when overtime is worked, compensatory time can "snowball."

Assume that a manager in an institution authorizes an employee to work two hours of overtime. In this situation, many collective bargaining agreements entitle the employee to three hours of compensatory leave time. Should the employee choose to take the three hours of compensatory leave time the following week, and a second employee is asked to cover for the first, the second employee may thereby accrue three hours of overtime—or four and one-half hours of compensatory leave time. When a third employee is called upon to cover for the second, six and three-quarter hours of compensatory leave time is accrued. And so on.

What can agencies do to avoid this problem? If they have a pool of "floating" workers who are not incurring overtime, they can utilize these (at straight time) to cover the compensatory leave time. Or, if funds are available, they can simply pay for overtime. In some circumstances, depending on the provisions of the applicable collective bargaining agreement, they can—with employee consent—have their employees "flex" their hours within the workweek, and avoid incurring overtime in the first place (employee consent is implied for new hires if a flexible work schedule is specified during recruitment). Finally, they can work with Budget and Management, to acquire additional positions, or to establish limited duration positions, so that overtime is kept to a manageable minimum. Please be sure to review all applicable collective bargaining agreements before implementing any of these options to verify that the

option you choose is available under the contracts. If you have any questions, please consult your assigned Labor Relations Manager.

COMMUNICATIONS DURING BARGAINING

SB 750 removed the prohibition against direct communications between management and represented employees regarding bargaining issues during negotiations. Such discussions, however, could nonetheless result in unfair labor practice charges if they can be construed as constituting bargaining proposals made directly to employees before they are presented at the bargaining table (see, *Management Insight*, December, 1996, p.4). In general, such employer-employee bargaining-issue discussions are better left to the bargaining table.

REVISIONS PLANNED FOR PD FORMS

Based on suggestions stemming from recent audits, HRSD will be adding two pieces of information to the position description form. These revisions will allow agencies to specify the reason for Fair Labor Standards Act exemptions and collective bargaining exclusions. Check-off boxes will be added for "confidential," "supervisory" and "managerial," following the exclusion-from-collective-bargaining box. After the FLSA-exemption box, check-off boxes for "administrative," "professional" and "executive" will also be included.

Procedurally, the changes will be added the next time HRSD orders PD forms. Also, the next time the Classification Guide is updated (currently planned for the end of this biennium), the instructions and sample descriptions will be correspondingly updated. The PC-based computerized form has already been revised to reflect the changes. Agencies wishing to receive a copy of the blank form may contact Sierra Hernandez at 373-1847. Those agencies which have developed their own forms may update them at any time to reflect the additional information.

About the Management Insight...

The *Management Insight* is produced periodically by the Labor Relations Unit, Human Resource Services Division, Department of Administrative Services and is distributed to Executive and Management Service employees of the State of Oregon. It consists of items of interest in the labor/management realm of employment.

Material covered in this newsletter is of public record and may be reproduced without special permission. Please credit the *Management Insight*, Labor Relations Unit, Human Resource Services Division, Department of Administrative Services.

If you have any items of interest or other information you would like considered for an issue of the *Management Insight*, please produce them in typewritten form and send them to Michael Halpern, Labor Relations Unit.

Or Call: (503) 378-2705

Or Fax To: (503) 373-7530

Department of Administrative Services
Human Resource Services Division
Labor Relations Unit
155 Cottage Street NE
Salem, OR 97310

About the Labor Relations Unit . . .

The Labor Relations Unit is a part of the Human Resource Services Division in the Department of Administrative Services. The Administrator of the Division is Dan Kennedy. Currently, the LRU negotiates and administers 32 collective bargaining agreements with 12 different labor organizations, representing approximately 25,000 employees in the Executive Branch of Oregon State Government. Below is a list of the LRU staff and contact phone numbers for your convenience.

| | |
|--|----------|
| Eva Corbin, Lead Labor Relations Manager | 378-8321 |
| Craig Cowan, Labor Relations Manager | 378-5611 |
| Michael Halpern, Policy Analyst | 378-2705 |
| Lois Harrup, Administrative Assistant..... | 378-3141 |
| Mark Hunt, Labor Relations Manager..... | 378-3967 |
| Pam Murdock, Office Manager..... | 378-2616 |
| Tom Perry, Cost Analyst..... | 378-4201 |
| Cathy Schuh, Labor Relations Manager..... | 373-7608 |
| Jan Weeks, Labor Relations Manager | 378-6483 |