

MANAGEMENT *Insight*

A NEWSLETTER ON EMPLOYEE RELATIONS
FROM THE LABOR RELATIONS UNIT

HUMAN RESOURCE SERVICES DIVISION, DEPARTMENT OF ADMINISTRATIVE SERVICES

FEBRUARY 2003

ITEMS OF INTEREST

SUCCESSOR NEGOTIATIONS BEGIN

Over the next six to nine months, the State and eleven public employee unions will renegotiate 32 collective bargaining agreements covering most of the State's classified represented workers. The first bargaining session with the union representing the majority of represented State employees, the Service Employees International Union Local 503, OPEU (SEIU), took place on December 11, followed by a number of sessions in January.

SEIU's initial bargaining proposals include increasing personal leave to 24 hours each fiscal year, establishing a new bereavement leave separate from sick leave, accelerating the accrual rate of vacation leave and establishing a new maximum accrual rate of 18 vacation hours per month. SEIU also proposed increasing the overtime rate for mandated overtime to double time and one-half the regular hourly rate of pay. The union also proposed that the State implement a program which would allow employees to pay for parking and mass transit costs with pre-tax dollars. Other SEIU proposals include allowing union representatives and employees to use the State's e-mail system to communicate about union business, and granting employees the right to union representation when they are given letters of expectation or instruction. The union also included proposals regarding contracting out, the grievance and arbitration procedure, use of private vehicles for official business, sick leave and a new article which would establish a panel to review employee complaints concerning "misuse of managerial authority."

Under the agreed upon ground rules, negotiations at SEIU coalition tables are to begin no later than March 1.

Central table bargaining with the American Federation of State, County and Municipal Employees is set to begin on February 4.

IN THIS ISSUE

ITEMS OF INTEREST

Successor Negotiations Begin	1
Statewide Layoff Coordinator Named	1
The LRU Welcomes	2
LRU Bargaining Assignments	2

FROM THE HR MANAGEMENT & CONSULTATION SECTION

Update—Hiring Temporary Employees	3
---	---

BACK TO BASICS

Layoff Q and A Update	4
-----------------------------	---

MANAGEMENT INSIGHT, CUMULATIVE ARTICLES INDEX	5
--	---

Distribution:

Executive and Management Service Employees

Editors:

Mike Halpern and Pamela Murdock

STATEWIDE LAYOFF COORDINATOR NAMED

Mary Jo Sikorra has joined HRSD as Statewide Layoff Coordinator. Mary Jo has many years of experience in Oregon State Government, most recently as Labor Relations Manager at the Department of Human

... continued page 3

LABOR RELATIONS BARGAINING ASSIGNMENTS FOR 2003-05

Eva Corbin, Deputy Administrator 378-8321

AFSCME:

Oregon State Fire Marshal (OSFM)
Oregon State Police (OSP Support Unit)
Oregon Emergency Management (OEM)

OSPOA:

Oregon State Police (OSP)

SEIU:

Central Table (with Craig Cowan)
Homecare Commission (HCC)(with Cathy Schuh)

Craig Cowan, State Labor Relations Mgr 378-5611

AEE:

Department of Forestry (DOF), Department of
Transportation (ODOT), and Parks and
Recreation Dept (OPRD)

AFSCME:

Employment Department (EMPL)

KFAFFA:

Oregon Military Department (OMD)

IAFF/PANG:

Oregon Military Department (OMD)

SEIU:

Central Table (with Eva Corbin)
ODOT Coalition

Cathy Schuh, State Labor Relations Mgr 373-7608

AFSCME:

Central Table (with Jan Weeks)
Department of Justice (DOJ-OAJA)

CIA:

Department of Justice (DOJ)

GCU:

Dept of Administrative Services (DAS)

SEIU:

Human Services Coalition
Homecare Commission (HCC) (with Eva Corbin)

Tom Perry, State Labor Relations Mgr 378-4201

AFSCME:

Dept of Pub Safety Standards & Train (DPSST)
Dept of Corrections (with Kevin Dull)

SEIU:

Institutions Coalition:
Dept of Corrections (DOC) (with Kevin Dull)

Mike Halpern, State Labor Relations Mgr 378-2705

AFSCME:

Building Codes Division (BCD)
Oregon Liquor Control Commission (OLCC)
Oregon Military Department (OMD)
Division of State Lands (DSL)

SEIU:

Special Agencies Coalition

STEA:

Department of Education (ODE)

Jan Weeks, State Labor Relations Mgr 378-6483

AFSCME:

Central Table (with Cathy Schuh)
Dentists at Dept of Corrections (DOC)
Physicians at Oregon State Hosp (OSH) and
E Oregon Training/Psych Center (EOTC/PC)
State Operated Community Prog (SOCP)
Oregon Youth Authority JPPO's (OYA)

AOCE:

Dept of Corrections (DOC) (with Scott Allan)

ONA:

State Operated Community Prog (SOCP) and
E Oregon Training/Psych Center (EOTC/PC)

Kevin B. Dull, State Labor Relations Mgr 378-3138

AFSCME:

Dept of Corrections (DOC) Security
(with Tom Perry)
Dept of Corrections (DOC) Non-Security
(with Tom Perry)
Dept of Environmental Quality (DEQ)

SEIU:

Institutions Coalition

Scott Allan, State Labor Relations Mgr 378-3967

AFSCME:

Nurses at Oregon State Hospital (OSH)
Dept of Land Conservation & Dev (DLCD)
Real Estate Agency (REA)
Construction Contractors Board (CCB)

AOCE:

Dept of Corrections (DOC) (with Jan Weeks)

THE LRU WELCOMES...

The Labor Relations Unit is happy to welcome Scott Allan, who joins the LRU with experience from both the public and private sectors. Scott's most recent position was Director of Labor Relations with Samaritan Health Services, a healthcare system in the mid-Willamette Valley. Prior to that, Scott held labor relations positions with the Oregon Nurses Association and, before that, the Washington Public Employees Association. Scott is a graduate of Lewis and Clark Law School and a member of the Washington State Bar Association. Scott fills the position previously occupied by Mark Hunt, who left the LRU to become the Human Resource Director of the Oregon Department of Education.

Layoff Coordinator cont. from page 1. . .

Services. Mary Jo will link agencies needing to place employees being laid off with agencies having positions to fill. To accomplish this task, she will be working with agency layoff coordinators to identify specific job skills of displaced workers and skills sought by hiring agencies. Mary Jo will also seek to provide options and resources to employees which go beyond layoff procedures established by policies and collective bargaining agreements.

Mary Jo will be establishing a layoff information site on the HRSD web page in the near future. Mary Jo may be contacted by phone at (503)373-7065, or by e-mail at maryjo.sikorra@state.or.us.

FROM THE HR MANAGEMENT AND CONSULTATION SECTION

UPDATE-HIRING TEMPORARY EMPLOYEES

In early 2000, the Employment Relations Board (ERB) in *Fairbank vs. State of Oregon, EOTC*, Case No. MA-3-98, and *Reger vs. State of Oregon, EOTC*, Case No. MA-17-98, issued orders clarifying ORS 240.309, Temporary Appointments. The ERB found in these cases that the Eastern Oregon Training Center (EOTC) violated ORS 240.309 by employing temporary workers for more than six months without meeting either of the statute's two exceptions to the six-month limitation. The Board explained:

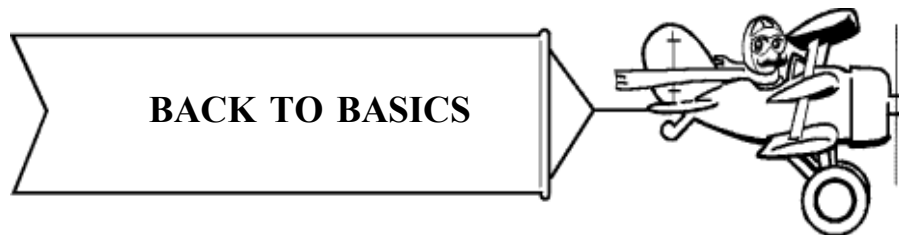
“In sum, we interpret ORS 240.309 as allowing the State to employ a temporary employee for more than six months in only two circumstances: (1) in an emergency, a temporary employee may be hired for the need created by that emergency, and may continue to be employed for more than six months, **if** the particular emergency continues to exist **and** no other reasonable way to address it exists; and (2) when an employee goes on an approved leave, a temporary employee may fill in behind that permanent employee for the entire length of that leave, even if that means the temporary employee remains employed longer than six months.” (*Emphasis added.*)

In response to these two decisions, the Department of Administrative Services, Human Resource Services Division (DAS, HRSD) revised State Policy 40.025.01, Temporary Appointments. The policy revisions revoked the authority previously delegated to agency heads to extend temporary appointments beyond six months. DAS, HRSD approval is now required for such an extension.

In a recent ERB decision, *Goetz vs. State of Oregon, Department of Administrative Services*, Case No. MA-8-00, the ERB held that the State violated ORS 240.309 by employing Goetz for longer than six months and ordered the State to pay damages. The ERB reiterated in *Goetz* that a temporary employee's term of employment could be extended beyond six months when “... the same emergency need continues to exist at the end of the six months, ... provided that there is no other reasonable way to address the emergency.” In this case, however, the ERB found that, “... there is no evidence to establish that the same emergency workload need continued Nor is there evidence to establish that employing Goetz was the only reasonable means to address that emergency workload need, assuming it continued to exist”

The *Goetz* decision is a reminder to State agencies that to employ a State temporary employee beyond six months, the same emergency need must continue to exist **and** there must be no other reasonable means to meet the emergency. In addition, DAS, HRSD must approve the extension.

When employing a temporary employee in State service the “best practice” is to check the personnel system first to make sure the employee has not worked for more than six months as a temporary for any other State agency in the last 12 months. The ERB has stated that the State is one employer for the purpose of ORS 240.309. As such, the six-month limitation is not just for time worked at the hiring agency, but for time worked in State government.



LAYOFF Q AND A UPDATE

Comprehensive articles regarding layoff and recall—in question and answer form—can be found in the February and April 2002 issues of the Management Insight (accessible at www.hr.das.state.or.us). This article supplements the previous two. The answers given below are general in nature; please review the applicable provisions in your agency's labor contract before relying on the information in this article. Questions should be directed to agency personnel offices.

Q: What circumstances stop the running of a seniority provision's break-in-service period?

A: For most of the State's collective bargaining agreements, calculating seniority involves a determination of continuous or "unbroken" service (either with the State or the agency, depending on applicable contract language). A break in service is generally defined as a separation or interruption of employment for a certain time period, usually between 90 days and two years. But, once an employee leaves State or agency service and the applicable break-in-service period begins to run, can it be stopped? The answer is yes. Generally, any State employment (or agency employment, if required by the contract) *prior* to the running of the applicable labor contract's full break-in-service period will stop the period from running any further. This would typically include a direct temporary appointment, as well as employment in a State classified, unclassified, management service or exempt service position. A subsequent separation from State or agency service would result in a new period starting over again (e.g., requiring two full years for a member of the SEIU bargaining unit). A personal service contract with the State generally does not stop a break-in-service period from continuing to run, since it does not constitute employment with the State or agency.

Q: Do employees on leave without pay for a compensable job-incurred injury continue to accumulate seniority for layoff purposes?

A: It depends. Conditions of reinstatement and reemployment of such injured workers are subject to a collective bargaining agreement's seniority provisions and employment restrictions. So, the terms of the applicable labor contract control.

Q: Do employees on military leave without pay continue to accumulate seniority for layoff purposes?

A: Yes. Generally, an employee on military leave is treated as if continuously employed. Thus, an employee on military leave without pay will accrue the same seniority which he or she would have accrued if no military leave had been taken.

Q: Do employees on FMLA or OFLA leave without pay continue to accumulate seniority for layoff purposes?

A: It depends. Accrual of seniority during FMLA and OFLA leave is subject to the employer's policies and the terms of any applicable collective bargaining agreement.

Q: What happens to an employee on promotional trial service whose new position is targeted for layoff?

A: Generally, the employee exercises his or her layoff rights in the current (promotional trial service) classification. The fact that the employee has not yet gained regular status in the new position is not determinative.

Q: What rules or policies govern layoff of management service and classified unrepresented employees?

A: Human Resource Services Division (HRSD) State Policy 50.025.01, Layoff/Removal, provides policy direction for the layoff of management service and classified unrepresented employees and contains model layoff/removal plans. Agencies use HRSD's model policy unless they have adopted an alternative layoff/removal plan. The complete policy may be accessed through HRSD's web page at www.hr.das.state.or.us, by clicking on "HRSD Rule and Policy Manual."

... continued page 8

MANAGEMENT INSIGHT - CUMULATIVE ARTICLES INDEX
(December 1996 – February 2003)

ADA

ADA and emergency workplace evacuation	February 2002, page 2
Accommodation obligation and negotiated seniority system	March 2001, page 3
Confidentiality requirements	July 2001, page 7
Determining when a condition is a disability	February 2002, page 4
Not every impairment is a disability	July 2001, page 10
Reasonable accommodation is a continuing duty	July 2001, page 7
State immunity	July 2001, page 8
Accommodation obligation and non-negotiated seniority system	July 2002, page 4

Arbitration

Arbitration award reinstating public employee found unenforceable	July 2002, page 3
Burden of proof (Helpful Hint)	July 2000, page 8
Interest arbitration	August 1999, page 7
Interest arbitration – withdrawal of bargaining proposal	July 2000, page 7
Past practice	November 2002, page 9
State wins interest arbitration	July 2002, page 1
Weight of arbitrator’s decision on appeal	July 2000, page 6
Who decides substantive arbitrability (Helpful Hint)	November 2000, page 6

Bereavement leave

March 2001, page 10

Bargaining

Direct communications with represented employees on bargaining issues	November 2002, page 1
Mandatory and permissive subjects	July 2001, page 2
Prohibited subjects	October 2001, page 10
Responding to PECBA information requests	March 2001, page 9
State budget process and collective bargaining	October 2001, page 8
Status quo, duty to maintain	February 2002, page 8
Successor negotiation process	November 2002, page 2; January 1999, page 2
Unilateral changes during a labor contract’s term	July 2002, page 9

Bargaining unit exclusions

Confidential employees	Fall 1997, page 9
Managerial exclusion under SB 750 (DOJ vs. OAJA)	December 1996, page 1
Supervisory exclusion (number of employees supervised)	Spring 1997, page 3
Supervisory exclusion under SB 750 (DAS vs. OSPOA)	December 1996, page 2

College degrees which may not be used in Oregon

April 2000, page 4

Communicate for results

April 2000, page 10

Compensatory time

Snowballing comp time	Spring 1997, page 7
U.S. Supreme Court rules on compelled use of comp time	July 2000, page 6

Criminal history verification

January 2000, page 4

Direct appointment bill

Spring 1997, page 1

Discipline

Employee right to conduct an independent investigation	March 2001, page 10
ERB clarifies Weingarten “Reasonable Belief” standard	April 2002, page 1
Fair process lets able managers oust miscreants	March 2001, page 2
Progressive and appropriate discipline (Helpful Hint)	August 1999, page 5
Seven steps of just cause	Fall 1997, page 9
State credit/travel card, employee use	November 2002, page 7
Suspensions without pay during personnel investigations	Fall 1997, page 2
Union representation at investigatory interviews	January 1999, page 10

Documentation

November 2000, page 7

EEOC addresses employment rights of Muslims, Arabs, South Asians and Sikhs

July 2002, page 4

E-mail

Arbitrator denies OPEU access to OUS e-mail system	January 2000, page 2
ERB reconsiders OPEU/OUS e-mail ruling	October 2001, page 2
OPEU denied access to statewide e-mail system	Fall 1997, page 1

Employee theft, reporting of	Summer 1998, page 3
---	---------------------

Employee Suggestion Awards Program (ESAP), management's role	November 2002, page 3
---	-----------------------

Employment Relations Board (ERB)

Year in review	January 1999, page 5
----------------------	----------------------

Fair Labor Standards Act (FLSA)

DOL formal opinion letters (Helpful Hint)	Fall 1997, page 2
FLSA claims subject to tort claims notice requirements	July 2000, page 7
Monetary disciplinary sanctions for exempt employees	October 2001, page 11
Need for FLSA updates reflecting changed duties	Summer 1998, page 11
“Subject To” rule narrowed	Spring 1997, page 4
Temporary military leave and FLSA exempt employees	Fall 1997, page 2
Weather-related closures and exempt employees	November 2000, page 2

Family leave

BOLI issues revised OFLA regulations	April 2000, page 2
FMLA leave during an emergency situation (Y2K)	August 1999, page 2
FMLA—top ten violations	Summer 1998, page 2
Frequently asked FMLA questions	July 2000, page 11
US Supreme Court strikes down penalty for untimely FMLA notice	April 2002, page 2
Use of comp time and FMLA leave	July 2001, page 9
Workers' comp and family leave	January 2000, page 10

Grievance administration

Responding to PECBA information requests	March 2001, page 9
Who owns the grievance (Helpful Hint)	July 2002, page 7

Hardship leave

Donated leave and disability payments	December 1996, page 9
Donated leave and PERS	December 1996, page 9
SEIU hardship leave clarification	January 2000, page 3

Higher Ed OPEU employee rights under DAS/OPEU agreement	December 1996, page 9
--	-----------------------

Holidays

Working on holidays	October 2001, page 10
---------------------------	-----------------------

HRSD

HR management and consultation section	February 2002, page 1
New audit program	October 2001, page 1

Labor and employment laws

Excerpts of new laws	January 2000, page 5; Fall 1997, page 19
----------------------------	--

Layoff

Another reason that PD's accurately reflect duties	July 2002, page 11
Bumping rights in a layoff	January 2000, page 2
Frequently asked SEIU layoff questions	February 2002, page 6
Frequently asked SEIU recall questions	April 2002, page 10
Layoff Q and A update	February 2003, page 4

Leadership: criticism	July 2001, page 11
------------------------------------	--------------------

Mediation confidentiality rule	January 1999, page 3
---	----------------------

Past practice	November 2002, page 9
----------------------------	-----------------------

Performance appraisals	Fall 1997, page 8
-------------------------------------	-------------------

Political campaigning

Restrictions on public employee campaigning	July 2000, page 4
---	-------------------

Position descriptions

And FLSA	Summer 1998, page 11
And layoff	July 2002, page 11

Public policy conflicts—assistance available	Summer 1998, page 5
Recall	
Frequently asked SEIU Recall Questions	April 2002, page 10
Reclassification appeals	January 2000, page 11
Recruitment	
About reference checks	July 2002, page 5
Criminal history verification	January 2000, page 4
Reference releases, drafting	April 2002, page 5
Reporting employee theft	Summer 1998, page 3
Safety committees	December 1996, page 8
SEIU	
Arbitrator denies OPEU access to OUS e-mail system	January 2000, page 2
Contract training, Q & A	February 2002, page 3
ERB reaches decision on SEIU temporary employees	April 2000, page 1
ERB reconsiders OPEU/OUS e-mail ruling	October 2001, page 2
Frequently asked SEIU Layoff Questions	February 2002, page 6
Frequently asked SEIU Recall Questions	April 2002, page 10
Hardship leave clarification	January 2000, page 3
OPEU denied access to statewide e-mail system	Fall 1997, page 1
Seniority	
ADA and negotiated seniority system	March 2001, page 3
ADA and non-negotiated seniority system	July 2002, page 4
Sex harassment	
New liability standard	Summer 1998, page 4
Status quo, duty to maintain	February 2002, page 8
Supervisors	
Communicate for results	April 2000, page 10
Effective documentation	November 2000, page 7
Personality + for supervisors	April 2000, page 9
Tips for new supervisors	April 2000, page 9
Supervisory working files, employee access to	Winter 1998, page 2
Suspensions without pay during personnel investigations	Fall 1997, page 2
Temporary employees	
ERB reaches decision on SEIU temporary employees	April 2000, page 1
Frequently asked questions regarding temporary appointments	April 2002, page 2
State policy on temporary appointments revised	July 2000, page 1
Update-hiring temporary employees	February 2003, page 3
Training	
New management training and development opportunities	November 2002, page 4
Travel Expenses	
State credit/travel card, employee use	November 2002, page 7
Trial service	
Extensions of trial service	Winter 1998, page 2
Selective salary adjustments and promotional trial service	January 2000, page 11
USERRA	
Employment and reemployment rights	October 2001, page 3
Leave for guard and reserve duty	July 2000, page 11
Vacation leave	
Accumulation and availability of vacation leave	Summer 1998, page 10
Weather-related agency closures	November 2000, page 1
Weingarten rights	
ERB clarifies Weingarten “Reasonable Belief” standard	April 2002, page 1
Union representation at investigatory interviews	January 1999, page 10

Department of Administrative Services
Human Resource Services Division
Labor Relations Unit
155 Cottage Street NE, U80
Salem OR 97301-3971

Layoff Q & A continued from page 4. . .

Q: What rules or policies govern restoration of management service employees to classified service?

A: HRSD State Policy 50.030.01, Restoration of Terminated Employees, provides for restoration of management service employees with former classified service under certain circumstances. Such restoration rights are subject to limitations contained in applicable collective bargaining agreements (*e.g.*, Article 46 for SEIU).

Q: What rules or policies govern restoration of executive service employees?

A: HRSD State Policy 50.030.01, Restoration of Terminated Employees, provides for restoration of executive service employees with former classified service under certain circumstances and subject to limitations in applicable labor contracts. HRSD State Policy 50.030.05, Restoration of Terminated Executive Service Employees to Management Service provides for restoration to management service under certain circumstances.

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. Back issues and a cumulative articles index may be accessed through the HRSD website, www.hr.das.state.or.us. Material covered in this newsletter may be reproduced without special permission. Please credit the *Management Insight*, DAS, LRU.

For questions, or if you have an item of interest which you would like considered for an issue of the *Management Insight*, please contact Michael Halpern, Labor Relations Unit . . .

Call: 503-378-2705 Fax: 503-373-7530 E-mail: Michael.Halpern@State.OR.US