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ERB WEBSITE LINKS

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ERB and Oregon LERA Commemorate 50 Years of the PECBA

More than 200 labor relations professionals gathered to celebrate the golden anniversary of Oregon's Public Employee Collective Bargaining Act and look toward the PECBA's future during a conference co-hosted by the Oregon Chapter of the Labor and Employment Relations Association and the Oregon Employment Relations Board.

Keynote speaker Henry Drummonds, professor emeritus of law at Lewis and Clark Law School, opened the day by reflecting on the PECBA's early years from its inception in 1973 to 1995, when the passage of Senate Bill 750 further altered the state's collective bargaining landscape.



"It seems striking that so many of these stories and disputes from the oldest days of the PECBA carry implications and sometimes lessons for today," Drummonds said. "Political circumstances change; what goes around may come back around."

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Drummonds said that despite the progressive policies fostered by former Oregon Governor Tom McCall and a Democrat-controlled state legislature in the early 1970s, “the PECBA’s passage remained in doubt to the end. Many local governmental officials, state agency heads, and school administrators and school boards fought the bill. To most Republican legislators – and some Democrats – public employee bargaining seemed to be bad public policy, a process not focused on the voters and taxpayers.”

The PECBA’s next two decades had their share of twist and turns, but Drummonds noted that it was effective in limiting labor disruption, as fewer than 1 percent of collective bargaining negotiations resulted in a strike.



Regardless, Drummonds said growing disillusion with a system that was perceived to favor unions over employers culminated in the Republican-controlled state legislature pushing for the passage of Senate Bill 750. Negotiations with former Governor John Kitzhaber toned down some of the more restrictive items in the original bill, but the final bill’s provisions altered the PECBA by including a prohibition on unconventional strikes, stricter timelines for successor contract and mid-contract bargaining, and changes to the method and criteria of interest arbitration.

ERB and Oregon LERA Commemorate 50 Years of the PECBA

As the PECBA continues to evolve, Drummonds said the conflict and compromise that marked the law's first two decades provide a helpful road map for labor relations practitioners in the future.

"Collective bargaining involves, like marriage, a relational contract, rather than a mere transactional contract like buying a cell phone or loaf of bread," Drummonds said. "In relational situations, issues must still be resolved, but a relationship must be maintained with all parties accepting the process and feeling heard. And perhaps – at least to an old professor – there are lessons here as well for our politics and the many divisions today. Perhaps getting our way, right now, is less important than listening to others, understanding their perspective, and responding with solutions that reflect all the stakes, of those who agree and are like us, and of those who are different and see things differently."



Before Drummonds took the stage, Governor Tina Kotek, ERB Chair Adam Rhynard, Oregon LERA President Phil Johnson, and event MC and ERB Mediation and Election Coordinator Sabrina Dunsworth welcomed attendees to the conference, which featured four panel discussions.

ERB and Oregon LERA Commemorate 50 Years of the PECBA

The day's first panel featured guest speaker Patrice Mareschal, professor of public policy and administration at Rutgers University-Camden, in a discussion of how the PECBA compares to other state and federal statutes that included Trevor Caldwell of Miller Nash, Adam Collier of CDR Labor Law, Caitlin Kauffman of McKanna Bishop Joffe, and Mike Tedesco of Tedesco Law Group.

After a lunchtime presentation from Oregon LERA President Johnson on the 105-year history of the State Conciliation Service and a remembrance of Oregon labor relations community members who have passed away, the spotlight turned to recent PECBA changes brought about by the Supreme Court's *Janus* decision and Oregon House Bill 2016 from the perspective of interim Oregon AFSCME Executive Director Joe Baessler, State Labor Relations Unit Administrator Nettie Pye, PRH Labor Law attorney Steven Schuback, and SEIU 503 Executive Director Melissa Unger.

The conference's penultimate panel was devoted to the rights to strike, implement and arbitrate provided by the PECBA. Labor consultant Alice Dale was part of a panel that covered trends in strike and arbitrations around the state with special attention to:

- ◆ 2023 negotiations between nurses and management at Oregon Health Sciences University featuring Tom Doyle of the Oregon Nurses Association, OHSU Labor Relations Director Regina Lagging, and Elisa Youngman, president of AURN, the ONA bargaining unit at OHSU;
- ◆ Changes in the PECBA that removed transit workers' right to strike in favor of interest arbitration featuring Amalgamated Transit Union executive board officer Bill Bradley and Miller Nash attorney Jeff Chicoine; and
- ◆ Recent developments in K-12 education featuring Nancy Hungerford of Hungerford Law Firm and Oregon Education Association Director of Advocacy and Affiliate Services Evan Wickersham.



ERB and Oregon LERA Commemorate 50 Years of the PECBA



The day concluded with a discussion of PECBA changes constituents and practitioners would like to see in the future that included labor-side perspectives from Liz Joffe of McKanna Bishop Joffe, Jason Weyand of Tedesco Law Group and David White of the OEA, and employer-side perspectives from Kyle Abraham of Ogletree Deakins, Multnomah County Deputy Chief Human Resources Officer Cessa Diaz and City of Portland Labor Relations Coordinator AnnMarie Kevorkian Mattie.

The conference was the culmination of the work of a Planning Committee consisting of: Barbara Diamond, Arbitrator; Sabrina Dunsworth, ERB Mediation and Election Coordinator; Jerrell Gaddis, Labor Relations Manager, City of Portland; Janet Gillman, ERB State Conciliator; Nancy Hungerford, Attorney, Hungerford Law; Phil Johnson, ERB State Mediator; Luella Nelson, Arbitrator; Nettie Pye, Labor Relations Unit Administrator, Oregon DAS; Adam Rhynard, ERB Chair; Whitney Stark, Attorney, Albies and Stark; Mike Tedesco, Attorney, Tedesco Law Group; Lane Toensmeier, Attorney, Oregon AFSCME; and Marcus Widenor, Faculty Emeritus, LERC.

The conference's sponsors included: Barran Liebman, LLP; Bennett Hartman, LLP; CDR Labor Law; Hungerford Law Group; Labor Education and Research Center; Miller Nash, LLP; Oregon AFSCME; Oregon Department of Administrative Services; Oregon State Fire Fighters Council; Portland Fire Fighters Association; PRH Labor Law; Public Safety Labor Group; SEIU Local 503; Tedesco Law Group; and Thenell Law Group.

Diversity, Equity and Inclusion Committee

As part of its ongoing DEI work, ERB formed a **Diversity, Equity and Inclusion Committee**, including Board staff and practitioners as follows: Shirin Khosravi (ERB), Sabrina Dunsworth (ERB), Juril Stover (ERB), Lisa Umscheid (DOJ), Alex Wheatley (Fisher Phillips), Andi Pla (SEIU Local 503), Luke Kuzava (Tedesco Law Group), and Katelyn Oldham (Oldham Law Office). The Committee was formed last fall and has had four meetings thus far. The Committee is focused on how the agency can better serve our community, from a DEI perspective.

So far, the Committee has largely focused on law school outreach. There is a critical need to ensure that law students have access to opportunities to practice labor law – to both improve diversity of the labor bar and to address the arbitrator diversity “pipeline” issue. Accordingly, the Committee has proposed a mentorship program that would pair practitioners with current law students interested in pursuing labor law. The ERB would act as a liaison, pairing students and practitioners based on the student’s specific interests (*e.g.* a student interested in becoming general counsel for a union would then be put in contact with in-house counsel at an Oregon union). The three Oregon law schools (Willamette Law School, University of Oregon Law School, and Lewis and Clark Law School) have been contacted about the mentorship program and are very excited to offer the opportunity to students.

If you are interested in participating in the mentorship program, please reach out to Board Member Shirin Khosravi (Shirin.khosravi@erb.oregon.gov) with your name and contact information. Member Khosravi will follow up with you directly to discuss your availability. We hope that you join fellow practitioners in this critical outreach to students that wish to be part of our legal community!

EVENTS

NW Dispute Resolution Meeting

27th Conference

In Person: March 27 - 28, 2025

Seattle, WA

<https://nwdrconference.org>

NW LERA Meeting

48th CB & Arbitration Conference

In Person: April 10 - 11, 2025

Tacoma, WA

<https://lerachapter.org/northwest/events/48th-collective-bargaining-and-arbitration-conference/>

NAA Meeting

78th Annual Meeting

In Person: April 30 - May 3, 2025

Seattle, WA

<https://naarb.org/meetings/>

National LERA Meeting

77th Annual Conference

In Person: June 12 - 15, 2025

Seattle, WA

<https://www.leraweb.org/lera-77th-annual-meeting>

Thank You for Your Service on the Arbitrator Panel and Best Wishes

Mark Downing
Pilar Vaile

Arbitrator Remembrance

In Memoriam: Dave Gaba, 1959 - 2024

by Michael Loconto of Boston, MA and Shianne Scott of Portland, OR



Gaba? Yes, I knew him. I can't get his voice out of my head.

As the prologue to George Packer's biography of the American diplomat Richard Holbrooke begins,

That voice! ...A trace of [Queensland*], a sing-song cadence when he was being playful, but always *doing* something to you, cajoling, flattering, ... needling, analyzing, one-upping you—applying continuous pressure like a strong underwater current, so that by the end of a conversation, even two minutes on the phone, you found yourself far out from where you'd started, unsure how you got there, and mysteriously exhausted.

David Mark Gaba passed away in his sleep on June 23, 2024, a day prior to his 65th birthday. Dave was a study in contrasts. Born in Aruba, he frequently visited family in Australia as a child, and matured in Nebraska from age 9. A triple Cornhusker, Dave earned bachelor's, law and business degrees at the University of Nebraska before moving to Seattle. Known as a securities lawyer – “I sue stockbrokers” is how he'd typically introduce himself to a new audience at labor conferences – labor arbitration was almost an *alter ego*. Yet Dave was thoroughly accomplished in the field, a veteran member of the Academy with dozens of awards published and cited in later editions of *How Arbitration Works*.

*Mike's note: Did you know the man used to order his lager with ice, calling it “Queensland style”? Is that a true Australian tradition, or an affront to the brewing industry? These were our disputes.

The advocates in our field knew him well. From Union advocate Will Aitchison of the Public Safety Labor Group:

I knew Dave as an employee relations manager for King County (Washington), as a securities lawyer, as an arbitrator, as an entrepreneur, as one of the only other people on Earth who would think that writing a book on interest arbitration could actually be a profitable venture, and through it all I knew him as a friend. Best of all was the Dave who was the raconteur in charge of a dinner table, telling wonderful tales that had everyone laughing out loud, with his facile intelligence shining through at every moment.

Todd Lyon of Fisher Phillips agreed:

Dave was always one to bring levity and wit to any situation – even those moments where the parties were at their most contentious. This trait reminded us to appreciate what we were doing and not take it too seriously as it is, indeed, based upon our relationships and many of our relationships will endure. Because I have always held Dave’s intellect in the highest regard, when he spoke, I paid attention. And, as an advocate appearing before him for many years, I appreciated his questions during the hearing as they required careful consideration in the overall analysis of the grievance. I will miss him as a neutral and as a friend.



Where Dave’s legacy as an arbitrator will endure is in how hard he worked to bring newer practitioners into the field. This is where we came to know him.

From Shianne:

I read one of his interest arbitration awards in 2011, which changed my approach to bargaining on behalf of the City of Portland. In 2017, Dave was the featured speaker at a local conference. I introduced myself and complimented him on his prior award. The very first thing he said to me was, “We need more arbitrators who look like you. You *must* become an arbitrator.” After that, he persistently encouraged me to take the leap. By 2020, I did – under Dave’s tutelage and guidance. Dave was consistently supportive and encouraging to younger, newer arbitrators like me. I truly miss not having him around to provide good advice and mentorship - and I especially miss his big, hearty laugh!



Arthur Pearlstein, FMCS Director of Arbitration, frequently worked with Dave in developing new arbitrators:

I first met Dave when he was co-trainer in the FMCS course called “Becoming a Labor Arbitrator.” His vast knowledge and experience along with his disarming sense of humor impressed me greatly and we were sure to have Dave teach the course again on several occasions. I had made raising the bar in labor arbitration a major goal and Dave proved to be an outstanding resource in the promotion of best practices and mentoring new and diverse talent in the field. Dave had become not only a favorite professional colleague but a cherished friend over the years. Dave was youthful and so much larger than life, a towering figure not only in physical stature but in professional prowess and personal charm – yet like others who knew him well I learned that underneath the consummate showman, leader, and expert, Dave Gaba was a modest, self-effacing guy filled with kindness and generosity. He brightened my world.

As one confidant said about Holbrooke, “Far better to write a novel about [him] than a biography, let alone an obituary.” Suffice it to say that each of us brings to this practice our lived experience - our passions, our personalities and our intellect. Dave lived enough for several lifetimes and left us wanting more. May we suggest that the best way to honor Dave’s legacy is to tell a joke, mentor someone and do your best work (not necessarily in that order).

Dave leaves his wife, Kersten, and their son, Kitridge, of Seattle; and his sister Judith of Dallas. He will be laid to rest in Lincoln, Nebraska, next to his parents and grandparents.

Welcome to the ERB Arbitrator Panel

In this section, we introduce arbitrators new to the ERB panel, as they join. The description for each arbitrator was submitted to ERB by that individual. We hope that you enjoy learning more about who's new to the ERB roster.



Lee Hornberger

- Resides in Traverse City, Michigan
- Practiced as a labor and employment attorney for 35 years and has worked as an arbitrator, mediator, and Hearing Officer
- Active as a labor arbitrator since 2011
- Eligible to hear grievances and practices only in a virtual format

Arbitrator Hornberger has been an attorney since 1969, was an U. S. Army Military Police Corps officer from 1969 to 1971 (awarded Bronze Star Medal in Vietnam), and has been a full-time neutral since 2007.

He is a member of the National Academy of Arbitrators and a Diplomate Member of the National Academy of Distinguished Neutrals.

He is a former Chair of the ADR Section of the State Bar of Michigan and has received the SBM ADR Section's Distinguished Service Award, Bashara Award, and Hero of ADR Awards.

He has been an adjunct professor at the Northern Kentucky University Samuel P. Chase College of Law (teaching labor relations and school law) and the University of Cincinnati (teaching administrative law and civil rights).

He received his B.A. in political science from the University of Michigan, J.D. *cum laude* from the University of Michigan Law School, and LL.M. in Labor Law from Wayne State University Law School.

Arbitrator Mentor Directory

To further opportunities for individuals early in exploring a career in arbitration work, following is a list of experienced arbitrators who have expressed a willingness to participate in mentorship. You can find each individual's complete resume on the ERB website. Please see each listing below and reach out directly to begin a conversation. We will be bolstering the information here about each mentor in the near future to provide greater detail on the person's background and type of mentorship offered.

If you are an experienced arbitrator who would like to be included in the Mentor Directory, we would be glad to talk with you further. If you have established a mentor/mentee relationship through ERB's network, we would like to hear about your experience. Please reach out to Sabrina Dunsworth in either instance.

Brad Areheart

-Available to provide mentorship support

Contact: brad.areheart@tennessee.edu

Sue Bauman

-With party agreement, can offer opportunities for new arbitrators to observe virtual hearings

-Willing to serve as a sounding board for new arbitrators as they think about how to decide a case and to review drafts of awards

Contact: sjmbauman@gmail.com

Stephen Biersmith

-Willing to help mentor new and aspiring arbitrators over the phone regarding running hearings, draft awards, and resources used over the years

Contact: [\(805\) 648-7242](tel:8056487242)

Michael Cavanaugh

-Could add one or two mentees, dependent on calendar and commitments, welcoming especially women and minorities

Contact: mec@cavanaugh-adr.com

Joseph Daly

-Has been mentoring and teaching, and would be happy to continue doing so

Contact: jdaly@hamline.edu

Dennis Isenburg

-Happy to mentor one newer arbitrator at a time to include observation at hearings, experience reviewing the record and drafting documents, and collaborative dialogue

Contact:

dennis.isenburg.arbitrator@gmail.com

Jeff Jacobs

-Has been mentoring and willing to discuss the practice with a newer arbitrator

Contact: jjacobs@wilkersonhegna.com

[continued...]

Arbitrator Mentor Directory Continued

Howell Lankford

-Happy to talk to any newer arbitrator, with mentorship detail dependent on experience

Contact: hll@iname.com

(503) 349-3842

Michael Marr

-Available to be a mentor

Contact: mmarradr@aol.com

Renée Mayne

-Available to be a mentor

Contact: mayne.adr@gmail.com

E. Patrick McDermott

-Available to provide mentorship support

Contact: drmcdarb@gmail.com

Bob Oberstein

-Open to a number of mentoring approaches, including having a newer arbitrator shadow observe at a hearing and shadow draft a decision for comparison and discussion

Contact: boberstein@aol.com

(602) 859-5522

Elizabeth Wesman

-Willing to be a resource for newer arbitrators including occasional conversation

Contact: ecwesman@gmail.com

Timothy Williams

-Willing to be a sounding board on mentee cases, and share insight on mentor cases

-Can provide insight into the labor arbitration profession including organizing and exposure

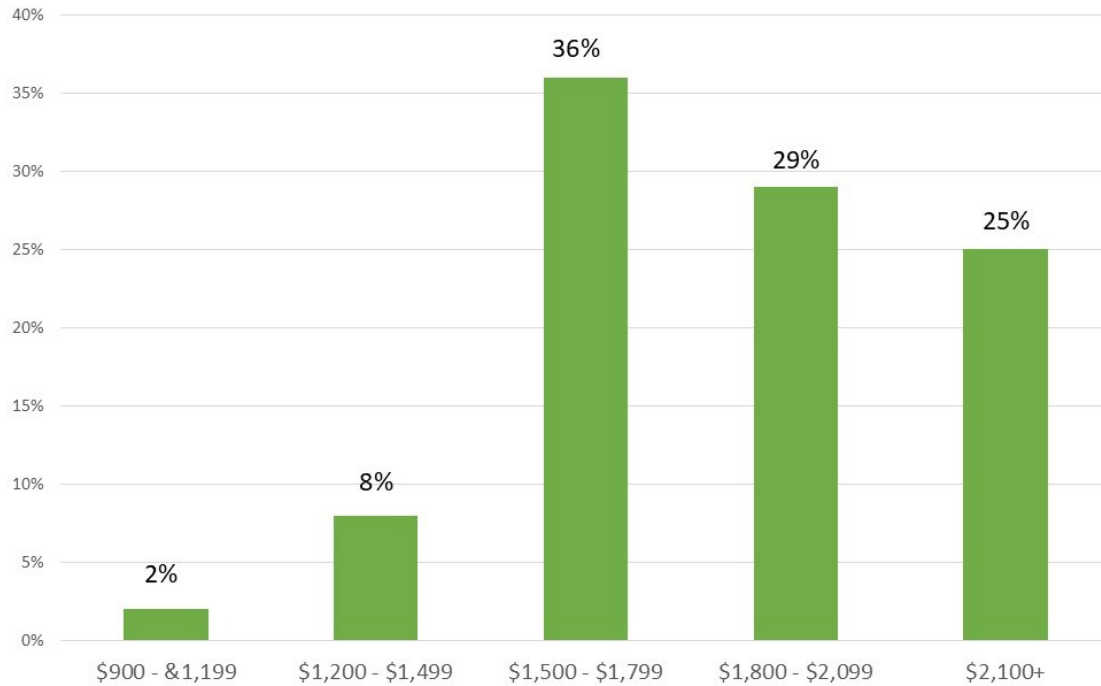
Contact: tim@arbitratorwilliams.com

(503) 490-7474

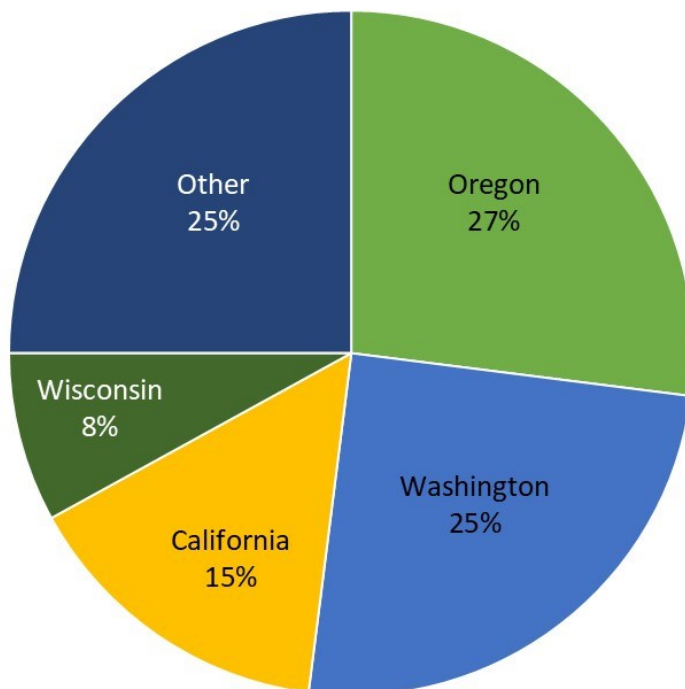


Panel Statistics

Per Diem Charged By ERB Arbitrators



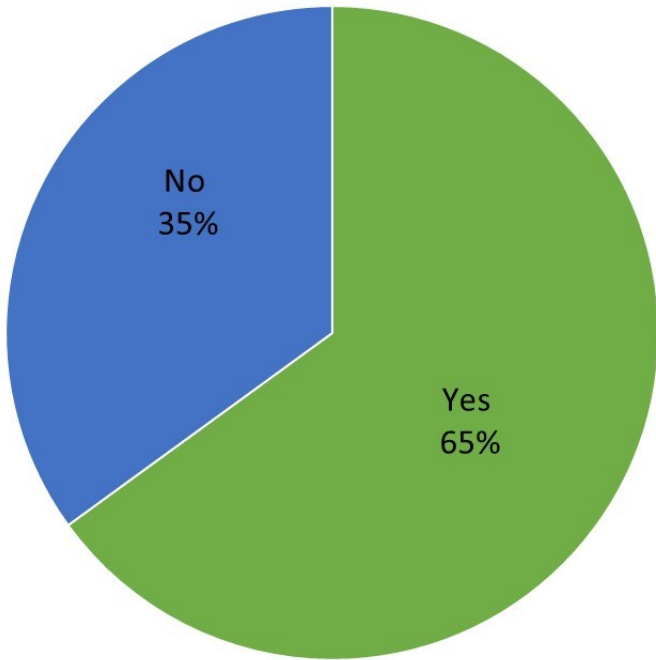
Where Do ERB Arbitrators Live?



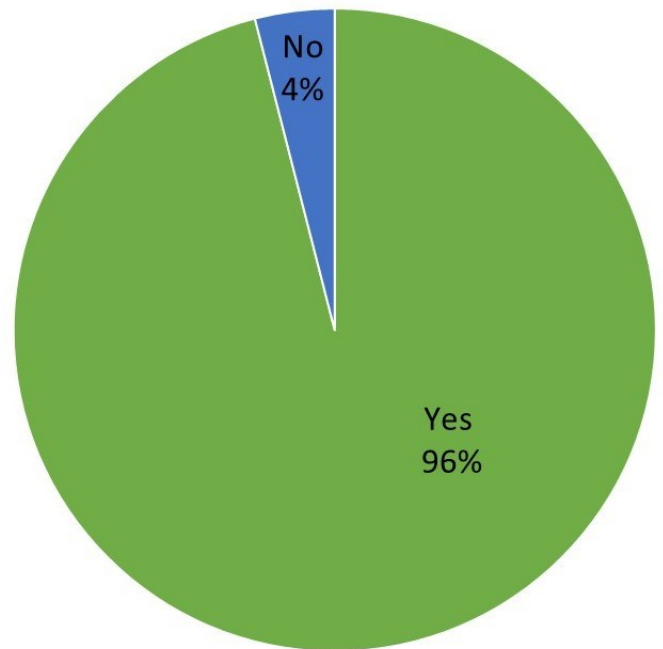
There are currently 52 members on ERB's arbitrator panel. In addition to Oregon, Washington, California, and Wisconsin, arbitrators reside in Arizona, Colorado, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, and Tennessee.

Panel Statistics

Practicing Interest Arbitration



Practicing Virtually



Police Misconduct Panel Participation

