



COLLECTIVE BARGAINING AND MEET & CONFER

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Texas State Law

- Collective Bargaining by public employees - prohibited by Texas Government Code §617.002
- Strikes by public employees prohibited in §617.003
- Collective bargaining for police and fire is permitted as allowed by Texas Local Government Code, Chapter 174, if the voters adopt it
- Meet & Confer, or “Collective Bargaining – Lite” was adopted by the Legislature for police and fire in 2005
 - Police, Texas Local Government Code §§142.051 et seq.
 - Fire, Texas Local Government Code §§142.101 et seq.

Comparison of Collective Bargaining & Meet and Confer

	Meet & Confer	Collective Bargaining
Enabling legislation	TLGC Police 142.051, et seq., Fire TLGC 142.101, et. seq.	TLGC Ch. 174
Applicability	50,000 population or covered by Chapter 143, and not 174	No minimum population
Duty to negotiate in good faith	No	Yes
Strikes prohibited	Yes	Yes
Preemption of other state laws	Yes, if in writing	Yes, and agreement must be in writing
Mandatory subjects of bargaining	None	Yes
Method of adoption	Council option to adopt or refer to vote	Vote
Statutory remedies for failure to reach bargain	None	Mediation, impasse, arbitration, judicial enforcement

Provisions in Meet & Confer Agreements

- No mandatory subjects
- Pre-emption of existing laws
- Wages – probably
- Hours of work – probably
- Leave – probably
- Discipline – probably
- Hiring – probably
- Promotions – probably
- Dispute resolution – not necessary

Mandatory Subjects of Collective Bargaining

Collective Bargaining, 174.105 Duty to Bargain Collectively in Good Faith

(b)(1) meet at reasonable times; (2) confer in good faith regarding compensation, hours, and other conditions of employment or the negotiation of an agreement or a question arising under an agreement; and (3) execute a written contract incorporating any agreement reached, if either party requests a written agreement

Corpus Christi Fire Fighters' Association v. City of Corpus Christi, 10 S.w.3 723 (Tex. App. – Corpus Christi, 2013, pet. denied).

- Grooming standards and Vehicle Accident Review Boards unilaterally implemented by City were *not* mandatory subjects of bargaining
- FPERA sets forth same duties on employers as does the National Labor Relations Act: “wages, hours and other terms or conditions of employment”

Provisions in Collective Bargaining Agreements under Chapter 174

- “Wages, hours and other terms or conditions of employment”
- No reason to expand the statute and willingly negotiate provisions that are not mandatory subjects in Texas

What provisions are mandatory in Chapter 174?

- Wages
- Hours of work
- Leave
- Discipline
- Hiring /Promotions
- Grievance Resolution
- Dispute resolution
 - Mediation (174.151)
 - Arbitration (174.153, et seq.)
 - Judicial enforcement (174.251, et seq.)

Start-to-Finish: Common provisions in collective bargaining agreements - Do you need them?

- Recognition
- Management Rights
- Subcontracting
- Association Rights/Union Security/Dues Deduction
- No Strike/No Layoff
- Grievance/Arbitration
- Seniority
 - Definition of Seniority
 - Application of Seniority
 - Termination of Seniority
 - Seniority List
 - Probationary Period

Start-to-Finish:

- Non-discrimination
- Discipline
- Drug and Alcohol Testing
- Hours of Work and Overtime
 - Definition of Work Cycle (Police and Fire)
 - No guarantee
 - Regular Day and Regular Week
 - Overtime after 40? Daily OT? Saturday/Sunday/Holiday OT?
 - Compensatory Time
 - 7(g) Overtime
 - Inclement Weather
- Filling of Vacancies, Hiring, and Promotions
- Layoff and Recall

Start-to-Finish:

- Health Insurance
- Wages
- Leaves of Absence
 - Vacation
 - Holidays
 - Sick Leave
 - Personal Leave
 - Funeral Leave
 - Jury Duty Leave
 - Union Business Leave
 - Statutory Benefits
 - FMLA Leave
 - Military Leave
 - Others
 - Effects of Leave on Insurance Coverage
 - Failure to Return from Leave
 - No Secondary Employment

Start-to-Finish:

- Filling of Vacancies, Hiring, and Promotions
- Layoff and Recall
- Minimum staffing
- Secondary Employment
- Safety/Equipment*
- Physical Fitness/Fitness for Duty Exams
- Residency

Start-to-Finish:

- Prevailing rights/Past practice/Maintenance of Standards (Avoid!)
- Legislative cost increases
- Entire agreement / Zipper clause
- Savings clause
- Reopener clause
- Termination (no evergreen!)

Employee Investigation & Discipline

Federal law – due process

State Law

Investigations

If CBA/M&C – and investigation and discipline is covered in the agreement, then Texas Government Code §§614.021.- 023, does not apply

Discipline

Civil service only

Wages, Overtime, and Leave Mandatory in Texas

- Federal laws cannot be negotiated
- State law can be preempted
 - TLGC section 142.0015 (exemptions and overtime for police and fire)
 - TLGC section 142.0013 (holidays and leave accruals)

Health Insurance Mandatory in Texas?

It is a term or condition of employment . . .

See *City of San Antonio v. Int'l Association of Fire Fighters, Local 624*, 2013
LEXIS 12277 (Tex.App.—San Antonio, 2013)

- Union sought a declaratory judgment; City sought to have health insurance grieved through CBA

Drug Testing Mandatory in Texas?

- It's a condition of employment
- But, it's also safety-oriented
- Random?
- Return to work?
- Fitness for duty?
- Post-accident?

Other Issues

- COVID-19 Vaccines
- Ground rules
- Physical fitness
- Psychological fitness
- Residency

QUESTIONS?





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