

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. CC-05-12

(PETITION FOR CERTIFICATION WITHOUT AN ELECTION)

COALITION OF GRADUATE EMPLOYEES,)
 LOCAL 6069, AFT,)
)
 Petitioner,)
)
 v.)
)
 OREGON UNIVERSITY SYSTEM,)
 OREGON STATE UNIVERSITY,)
)
 Respondent.)
 _____)

DISMISSAL ORDER

Richard Schwarz, Executive Director, and Eben Pullman, Field Coordinator, AFT-Oregon, represented Petitioner.

Jeffrey Chicoine, Attorney at Law, Miller Nash LLP, represented Respondent.

On November 16, 1999, this Board certified the Coalition of Graduate Employees, AFT, AFL-CIO (Union)¹ as the exclusive representative of a bargaining consisting of the following employees:

“* * * all graduate students with Graduate Teaching Assistant (GTA) or Graduate Research Assistant (GRA) appointments employed by Oregon State University [OSU] in a given academic term with a minimum 0.15 FTE appointment, provided that at least 0.10 FTE is devoted to service as an employee, excluding (a) supervisory employees; (b) confidential employees; (c) managerial employees; and (d) graduate students with GTA or GRA appointments in their capacity as students who are teaching or performing research primarily to fulfill an advanced degree requirement.”

¹This labor organization subsequently changed its name to the Coalition of Graduate Employees, Local 6069, AFT. The bargaining unit description has never changed, however.

On March 9, 2012, the Union filed a petition seeking: (1) certification without an election under ORS 243.682(2)(a) and OAR 115-025-0000(1)(c) to add a group of approximately 767 unrepresented GTAs and GRAs employed by OSU to the existing Union bargaining unit of approximately 951 GTAs and GRAs; or, in the alternative, (2) addition of the same group of unrepresented GTAs and GRAs to the Union bargaining unit under the unit clarification procedure in OAR 115-025-0005(4). The GRAs and GTAs who are the subject of the Union's petition have traditionally been excluded from the Union bargaining unit because OSU asserts that the teaching or research work these employees perform is performed primarily to fulfill degree requirements and not in service to OSU.

The authorization cards submitted with the petition were signed only by the GRAs and GTAs the Union seeks to add to its bargaining unit. These cards complied with the requirements for signed authorizations under the procedures for certification without an election, OAR 115-025-0065(2); ORS 243.682(2)(a).

By letter dated March 12, 2012, the Elections Coordinator told the Union that its petition appeared to present an issue of unit clarification and was not properly filed under ORS 243.682(2)(a). The Elections Coordinator stated that she would recommend that this Board dismiss the petition unless the Union amended its petition to pursue only a unit clarification.

On March 20, the Union objected to the recommendation for dismissal, moved to bifurcate the certification without election and unit clarification sections of its petition, and also filed a restated petition seeking only unit clarification under OAR 115-025-0005(4).

By letter dated April 17, the Elections Coordinator told the parties she was bifurcating the Union's petition and creating two separate cases: one to determine whether the employees at issue should be added to the Union's existing bargaining unit under OAR 115-025-0005(4) (Case No. UC-004-12);² and a second to determine if the employees at issue could properly be added to the Union's bargaining unit under the procedures for certification without an election found in OAR 115-025-0000(1)(c) and ORS 243.682(2) (Case No. CC-05-12).

The Union indicated that it was unwilling to withdraw its petition in CC-05-12. It submitted written argument in support of its position that certification without an election was an appropriate procedure to add the employees at issue to the Union bargaining unit. OSU filed a response in opposition to the Union's arguments.

The issue is: Can the unrepresented GRAs and GTAs be added to the existing Union bargaining unit under the procedure for certification without an election in ORS 243.682(2) and OAR 115-025-0000(1)(c)?

DISCUSSION

Public employees in Oregon have the right to form, join, and participate in the activities of a labor organization under ORS 243.662. ORS 243.682, 243.686, and 243.692 set forth the requirements for when and how employees can form or join a labor organization. Under ORS 243.682, this Board is

²UC-004-12 has been assigned to an Administrative Law Judge for processing.

vested with the authority to decide matters that involve a question of representation and determine whether a proposed group of employees constitutes “a unit appropriate for bargaining” under the Public Employee Collective Bargaining Act (PECBA). The Board has enacted rules governing the specific procedures and processes for handling the various types of representation matters. See OAR 115-025-0000 through 115-025-0090.

ORS 243.682 currently provides two separate processes for unrepresented employees to seek to have a labor organization certified as their exclusive representative. First, under ORS 243.682(1)(b)(A), a labor organization may file a petition for representation if they allege that at least 30 percent of the employees in an appropriate bargaining unit wish to be represented by the organization. If the Board determines that the proposed unit is appropriate and the showing of interest is sufficient, a question of representation exists and a secret ballot election is conducted by the Board in accordance with ORS 243.686. If a majority of voting employees choose to be represented by the labor organization, the Board will certify that organization as the exclusive representative of the proposed unit for collective bargaining purposes.

The second process for certifying bargaining units was established in 2007, when the Legislature amended ORS 243.682(2)(a) as follows:

“* * * when an employee, group of employees or labor organization * * * files a petition alleging that a majority of employees in a unit appropriate for the purpose of collective bargaining wish to be represented by a labor organization for that purpose, the [Employment Relations] [B]oard shall investigate the petition. If the board finds that a majority of the employees in a unit appropriate for bargaining have signed authorizations designating the labor organization specified in the petition as the employees’ bargaining representative and that no other labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the board may not conduct an election but shall certify the labor organization as the exclusive representative unless a petition for a representation election is filed as provided in subsection (3) of this section.”

This procedure is commonly known as “card check.” The Board promulgated rules for the conduct of card check certifications under OAR 115-025-0065 through 115-025-0075.

This Board has never been asked to add unrepresented employees to an existing bargaining unit through card check procedures, but has instead utilized the established unit clarification procedure in OAR 115-025-0005(4). Nonetheless, the Union is seeking to add the unrepresented employees to the existing bargaining unit under the card check provisions, presenting a new issue for this Board to consider.

In considering the Union’s request, we must ensure that the petition complies with the requirements and purposes of ORS 243.682(2)(a) and the PECBA in general. Our goal in interpreting and applying statutes is to determine and give effect to the legislature’s intent. ORS 174.020(1)(a); *Marion County Law Enforcement Association v. Marion County*, Case No. UP-24-08, 23 PECBR 671, 687 (2010). We use the methodology explained in *PGE v. Bureau of Labor and Industries*, 317 Or 606,

859 P2d 1143 (1993), that was subsequently modified by amendments to ORS 174.020³ and the Oregon Supreme Court in *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009). We first examine the text and context of the statutes and then consider any relevant legislative history the parties offer. If we are unable to determine the legislature’s intent after examining the statute’s text, context, and legislative history, we then apply maxims of statutory construction. *PGE*, 317 Or at 612.

The Union’s position is that the currently unrepresented GRAs and GTAs should be added to the existing bargaining unit through the card check procedures. We disagree, and find that the under the facts presented to us, the Union’s position is not supported by a plain reading of the text of ORS 243.682(2)(a).

The card check statute explicitly requires that the Union submit a petition alleging that a majority of employees in the proposed unit wish to be represented by the Union. The unit proposed by the petition would include both the 951 employees currently represented by the Union and the 767 unrepresented employees it is attempting to represent, resulting in a proposed unit of approximately 1,718 employees. Accordingly, the showing of interest needed to meet this threshold would be a minimum of 860 signed authorization cards. The Union has only submitted cards from the unrepresented employees, a group which is limited to 767 employees. Even if the Union’s petition included an authorization card signed by each unrepresented employee, the Union could not reach the required threshold.

This approach is consistent with our decision in *Oregon School Employees Association v. South Coast Education Service District, Region #7*, Case No. RC-2-99, 18 PECBR 101, 104-105 (1999). In *South Coast*, OSEA sought to add unrepresented positions in an existing bargaining unit through a representation petition rather than a unit clarification petition. We noted that the “unit appropriate for collective bargaining” proposed by OSEA included both the existing represented employees and the unrepresented employees, and that the sufficiency of the showing of interest would be based off that combined number, not merely the number of unrepresented employees. *Id.* The result was that a greater showing of interest was required under the representation petition procedure than OSEA would have been required to provide under the unit clarification procedures.⁴

³ORS 174.020, as amended in 2001, provides in pertinent part:

“(1)(a) In the construction of a statute, a court shall pursue the intention of the legislature if possible.

“(b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute.

“* * * *”

“(3) A court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate.”

⁴*South Coast* was decided several years before the legislature adopted the card check provisions of ORS 243.682(2)(a). However, the language added by the legislature mirrors the language of ORS 243.682(1) in regards to the requirements for a showing of interest, with the obvious exception being that the latter only requires a 30 percent showing while the card check provisions require a showing of interest greater than 50 percent. Because of this similarity, we apply the holding of *South Coast* to the present dispute.

For these reasons, even assuming that the card check provisions of ORS 243.682(2)(a) could be applied in this case, the Union did not provide the required showing of interest.⁵ Accordingly, the petition will be dismissed.

ORDER

The petition is dismissed.

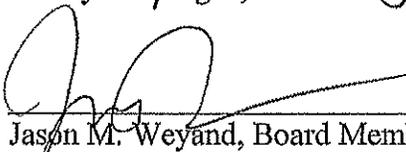
DATED this 20 day of August 2012.



Susan Rossiter, Board Chair



Kathryn A. Logan, Board Member



Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.

⁵The Union provided legislative history from the 2007 session of the Oregon Legislature that enacted House Bill (HB) 2891 (2007 Or Laws, ch 833). HB 2891 amended ORS 243.682 to add language in sections (2) and (3) regarding procedures for certification without an election. The Union offers excerpts from the testimony of a non-legislator, Richard Schwarz, who testified on behalf of AFT-Oregon before the House Committee on Business and Labor on March 14, 2007, and before the Senate Committee on Commerce on May 9, 2007. The Union also provides excerpts from the floor speeches made by Representatives Holvey, Rosenbaum, and Krummell during the floor debate over HB 2891 on April 8, 2007. We give this legislative history the weight we deem appropriate, *Gaines*, 246 Or at 171 (“[a] court need only consider legislative history ‘for what its worth’—and what it is worth is for the court to determine.”) We reviewed the legislative history provided by the Union and found nothing that contradicts the plain language of the statutory text upon which we rely. It is well established that the text of the statute must always be given primary weight in our analysis because “[t]he formal requirements of lawmaking produces the best source from which to discern the legislature’s intent, for it is not the intent of the individual legislators that governs, but the intent of the legislature as formally enacted into law * * *.” *Id.*