

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-26-12

(UNFAIR LABOR PRACTICE)

JACKSON COUNTY SCHOOL DISTRICT #9,	)	
	)	
Complainant,	)	
	)	
v.	)	RULINGS,
	)	FINDINGS OF FACT,
EAGLE POINT EDUCATION	)	CONCLUSIONS OF LAW,
ASSOCIATION/OEA/NEA,	)	AND ORDER
	)	
Respondent.	)	
_____	)	

On August 15, 2013, the Board heard oral argument on Complainant’s objections to a recommended order issued by Administrative Law Judge Peter A. Rader, after a hearing held on November 21, 2012, in Salem, Oregon. The record closed on December 13, 2012, following receipt of the parties’ post-hearing briefs.

Jackie Marks and Lisa Freiley, Designated Representatives, Oregon School Boards Association, Salem, Oregon, represented Complainant at hearing and oral argument, respectively.

Thomas Doyle, Attorney at Law, Bennett, Hartman, Morris & Kaplan, LLP, Portland, Oregon, represented Respondent.

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On May 4, 2012, Complainant Jackson County School District #9 (District) filed this unfair labor practice complaint alleging that Respondent Eagle Point Education Association/OEA/NEA (Association) violated ORS 243.672(2)(d) during negotiations for a new contract in 2012. The Association filed a timely answer.

The issues are:

1. Did the Association violate the parties' Agreement and ORS 243.672(2)(d) by using the District's e-mail system to communicate with its members to initiate or coordinate a strike against the District, once the parties had entered into the 30-day cooling off period?
2. If the Association violated ORS 243.672(2)(d), what is the appropriate remedy?

For the reasons stated below, we find that the Association did not violate the parties' Agreement and ORS 243.672(2)(d) because the Agreement was no longer in effect when the Association used the District's e-mail system.

### RULINGS

The rulings of the ALJ were reviewed and are correct.

### FINDINGS OF FACT

1. The District, a public employer, operates ten schools in Jackson County. The Association is a labor organization and the exclusive representative of a group of certified and classified employees employed by the District.<sup>1</sup>

2. The District and the Association have been parties to a series of collective bargaining agreements, including the 2008-2011 Agreement at issue here. Article 1 of the Agreement, titled "DURATION OF AGREEMENT," stated that "the agreement shall be effective upon ratification and shall terminate on June 30, 2011."

3. Article 17 of the parties' Agreement states in relevant part:

"C. USE OF SCHOOL EQUIPMENT

"\* \* \* \* \*

"The Council and the local Association may use the District's e-mail system to communicate with its members regarding Union business within the following conditions:

- "1. The Council and the local Association agree to abide by the District's policy and administrative regulations (those in effect as of 3/31/2009) regarding the use of District e-mail facilities.

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<sup>1</sup>The parties' Agreement lists the Southern Oregon Bargaining Council/Eagle Point Education Certified and Classified Employees, OEA/NEA as the exclusive representative, but these groups are affiliated and treated as one entity for the purposes of this complaint.

“2. The Council and the local Association will not use the District’s e-mail system to lobby, solicit, recruit, persuade for or against any political candidate, ballot measure, legislative bill or law, or to initiate or coordinate strikes once the parties have entered into the thirty (30) day cooling off period, walkouts, work stoppages or activities that violate the Contract.”

4. On March 28, 2012, following unsuccessful bargaining and mediation for a successor Agreement, the Association declared impasse with final offers due on April 4.<sup>2</sup> The parties entered a 30-day cooling off period pursuant to ORS 243.712, which was in effect from April 5 through May 5.

5. Dave Carrell was the Association’s acting president during the negotiations, and David Sours was chair of the bargaining support team.

6. Beginning in March and continuing through the 30-day cooling off period, Carrell and Sours sent approximately nine e-mails to bargaining unit members using the District’s e-mail system. Sours occasionally attached union-related newsletters to his e-mail communications. The subject line of Sours’ e-mails all contained phrases such as “Read Off Duty” or “Off Duty.”

7. The subjects of the e-mails to or from Carrell and Sours during the cooling off period included topics such as encouraging members to wear red as a sign of support, scheduling weekly question and answer meetings to address issues related to bargaining and a possible strike, engaging members in one-on-one interviews about their support for a strike, encouraging members to attend a pre-strike assessment meeting, and scheduling a strike vote.

8. Human Resources (HR) specialist and District bargaining team member Christine Richmond construed some or all of these e-mail communications to be coordinating or initiating a strike in violation of Article 17 and brought them to the attention of the District’s HR director.

#### CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.

2. The Association did not violate ORS 243.672(2)(d) when it sent e-mails to bargaining unit members in April 2012, during the 30-day cooling off period.

#### DISCUSSION

The District alleges that the Association violated ORS 243.672(2)(d) when its members used the District’s e-mail system to initiate or coordinate a strike during the parties’ 30-day cooling off period because such conduct was expressly prohibited by the parties’ expired Agreement. The Association responds that because the Agreement had expired, there was no contract in effect during

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<sup>2</sup>Unless indicated otherwise, all remaining events occurred in 2012.

the relevant period and there can be no violation of ORS 243.672(2)(d). Alternatively, the Association contends that the disputed e-mails sent through the District's e-mail system in April 2012 did not "initiate" or "coordinate" a strike. We agree with the Association that its actions in April 2012 did not violate the terms of the 2008-2011 Agreement because the Agreement had expired.<sup>3</sup> We reason as follows.

It is an unfair labor practice under ORS 243.672(2)(d) for a labor organization to violate the provisions of any written contract with respect to employment relations. ORS 243.672(2)(d) is an analogue to subsection (1)(g). Under both statutes, we interpret the agreement to determine whether it has been violated. *Oregon University System (OUS) v. Oregon Public Employees Union, Local 503*, Case No. UP-61-98, 19 PECBR 205, 217 (2001), *recons*, 19 PECBR 431 (2001), *rev'd on other grounds*, 185 Or App 506, 60 P3d 567 (2002), *dismissed on remand*, 20 PECBR 233 (2003).

The parties' dispute requires us to interpret the Agreement. We follow well-established rules when interpreting collective bargaining agreements:

"As with other contracts, the general rule applicable to the construction of an unambiguous collective bargaining agreement is that it must be enforced according to its terms. A contract is ambiguous if it can reasonably be given more than one plausible interpretation. 'If a contract is ambiguous, the trier of fact will ascertain the intent of the parties and construe the contract consistent with' that intent. Specifically, if a term of the contract is ambiguous, the court will 'examine extrinsic evidence of the contracting parties' intent,' if such evidence is available. 'If the ambiguity persists, we resolve it by resorting to appropriate maxims of contractual construction.'" *Portland Police Assoc. v. City of Portland*, 248 Or App 109, 113, 273 P3d 192 (2012) (quoting *Arlington Ed. Assn. v. Arlington Sch. Dist. No. 3*, 196 Or App 586, 595, 103 P3d 1138 (2004)).

The parties do not dispute that Article 1, titled "Duration of Agreement," explicitly states that the Agreement terminates on June 30, 2011. Rather, the District asserts that notwithstanding the "Duration of Agreement" clause, Article 17 extended beyond the Agreement's expiration (June 30, 2011) through the time of the disputed action (April 2012). In other words, even though the Agreement did not contain an evergreen clause, the District contends that Article 17 contained its own evergreen clause because the time period involved, the "cooling off period," would more likely than not occur after the expiration of the agreement. We disagree.

Neither Article 1 nor Article 17 is ambiguous. Neither article contains language that indicates they are "susceptible to more than one plausible interpretation" when considering "the contract as a whole, including the circumstances in which the contract was made." *City of Portland*, 248 Or App at 116-17 (quoting *Cassidy v. Pavlounis*, 227 Or App 259, 264, 205 P3d 58 (2009)); *accord Tualatin Employees' Association v. City of Tualatin*, Case No. UC-012-12, 25 PECBR 565(2013).

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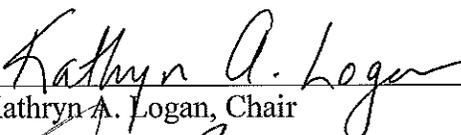
<sup>3</sup>Therefore, we do not address whether the disputed e-mails initiated or coordinated a strike within the meaning of the Agreement.

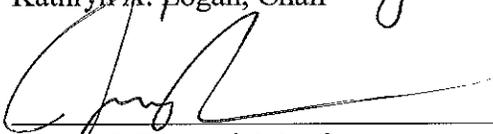
The Agreement is unambiguous in that all of its provisions, including Article 17, expired on June 30, 2011. Article 1 states that “[t]his agreement shall be effective upon ratification and *shall terminate on June 30, 2011.*” (Emphasis added.) There are no exceptions to that termination date in that article or elsewhere in the Agreement. Moreover, the Agreement does not contain an express “evergreen clause,” which we have described as “a contract provision that specifies that the provisions of a collective bargaining agreement will remain in effect during negotiations for a successor agreement.” *Association of Oregon Corrections Employees and Oregon State Police Officers’ Association v. State of Oregon, Department of Corrections, Department of State Police*, Case Nos. UP-25/35-04, 21 PECBR 139 (2005), *aff’d*, 213 Or App 648, 164 P3d 291, *rev den*, 343 Or 363, 169 P3d 1268 (2007). Finally, Article 17 does not contain a provision that extends its terms beyond June 30, 2011. Under these circumstances, we conclude that the Agreement, including the terms of Article 17, terminated on June 30, 2011. Consequently, the Association’s actions in April 2012 did not violate Article 17 of the Agreement.<sup>4</sup>

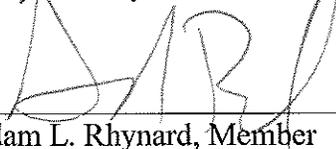
ORDER

The complaint is dismissed.

DATED this 9 day of September 2013.

  
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Kathryn A. Logan, Chair

  
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Jason M. Weyand, Member

  
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Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.

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<sup>4</sup>Even if we were to find the Agreement ambiguous regarding the termination date of Article 17, we would reach the same conclusion. As discussed above, the language of the Agreement strongly supports the Association’s position, and the District has not presented extrinsic evidence to overcome the clear language of the Agreement.