

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-47-09

(UNFAIR LABOR PRACTICE)

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
LOCAL 189,

Complainant,

v.

CITY OF PORTLAND,

Respondent.

ORDER ON
RECONSIDERATION

On July 13, 2012, this Board issued an Order holding that the City of Portland (City) violated ORS 243.672(1)(e) and (f) when it failed to bargain about the impacts of its decision to eliminate the City Police Bureau (Bureau) Information and Referral (I&R) Unit with the American Federation of State, County and Municipal Employees Local 189 (Union). 25 PECBR 14. On July 30, 2012, the Union petitioned us to reconsider our decision. The City responded to the Union's petition.

Our Order concerned the City's actions in eliminating the I&R Unit, a division of the Bureau staffed by five I&R Specialists who answered telephone calls, from police officers and members of the public, regarding a wide variety of issues. We held that the City was not required to bargain about its decision to eliminate the I&R Unit, because that decision involved a permissive subject for bargaining. We concluded, however, that the City was obligated to bargain about the impact of the elimination of the I&R Unit on mandatory subjects such as workload, because the City shifted work formerly performed by the I&R Specialists to other bargaining unit employees—Police Desk Clerks (PDCs) and Police Records Specialists (PRSs).

The Union asks us to reconsider our decision, contending that we erred: (1) by failing to conclude that the City was obligated to bargain its decision to eliminate the I&R Unit, and (2) by failing to order a make-whole remedy for the violations of the Public Employee Collective

Bargaining Act (PECBA) we held that the City committed. We grant reconsideration to address the contentions raised by the Union in its petition.

In regard to the Union's first contention, it asserts that:

"This Board's conclusion that the City was obligated to bargain only the impacts of the decision to eliminate the I&R Unit is erroneous because it ignores the material and undisputed decision of the City to transfer work from the I&R Specialists to other employees in the bargaining unit, thus eliminating five relatively high-paying positions and increasing the amount and difficulty of the work load of other positions." (Union Petition for Reconsideration, p. 3.)

The Union equates the facts of this case to those in *American Federation of State, County and Municipal Employees Local 189 v. City of Portland*, Case No. UP-049-08, 24 PECBR 612 (2012). In that case, the City reclassified three Senior Police Administrative Support Specialists (PASS) positions in the bargaining unit; as a result of the reclassification, work formerly performed by the Senior PASSs was transferred to Administrative Assistants, positions not in the bargaining unit. We held that the reclassification was lawful, but required the City to bargain about its decision to transfer work because it involved a mandatory subject for bargaining—contracting out work to non-bargaining unit employees. *Id.* at 640 n 5. According to the Union, our holding in *City of Portland*, applies here "because the City's actions had the same or similar effects on the bargaining unit – the elimination of positions from the unit, in addition to an increase in the volume and complexity on other unit employees." (Union's Petition for Reconsideration, p. 4-5 n 3.) The Union's reliance on this case is misplaced because this case is not about contracting out work, but reorganizing City services.

Under the PECBA, an employer does not violate its duty to bargain in good faith under ORS 243.672(1)(e) if it decides to eliminate an existing department and reorganize its workforce. It does, however, violate subsection (1)(e) by refusing to bargain about the impacts of that decision on mandatory bargaining subjects. *International Association of Firefighters, Local 1308 v. City of The Dalles*, Case No. C-25-76, 2 PECBR 759 (1976). In addition, under ORS 243.650(7)(g), "assignment of duties" is a permissive subject for bargaining. Thus, the City's decision to abolish the I&R Unit and to give the work formerly performed by I&R Specialists¹ to PDCs and PRSs concerns permissive subjects: reorganization of its workforce, elimination of an existing department, and assignment of duties to bargaining unit employees. We correctly concluded that the City was not required to bargain about this decision.

¹As discussed in our Order, on June 12, 2009, the City revised its telephone menu so that calls previously received by the I&R Specialists went to the PDCs and PRSs. Also on June 12, the City assigned the I&R Specialists duties they had not previously performed. (25 PECBR at 25-26, Findings of Fact 43 through 46.)

Finally, the Union contends that our Order is inadequate to remedy the City's violation of the PECBA and inconsistent with prior Board precedent. The Union makes the following request:

“At a minimum, the Board should order the City to calculate the pay the five I&R Specialists would have received from the June 12, 2009 transfer until the City has satisfied its bargaining obligation and to distribute that sum to the lower classifications in the bargaining unit whose workload was increased. That pay would represent what the parties had previously agreed the work was worth.” (Union's Petition for Reconsideration, p. 7 n 6.)

In support of its argument, the Union cites *Teamsters Local 670 v. City of Vale*, Case No. UP-14-02, 20 PECBR 337, *recons*, 20 PECBR 388 (2003), and *City of Portland*, 24 PECBR 612. In *City of Vale*, we held that the city was not required to bargain its decision to close its police department, but was required to bargain about the mandatory impacts of its decision. Although we declined to order that the city reconstitute the police department, we ordered the city to provide employees who lost their jobs as a result of the department closure with back pay and benefits. As discussed above, in *City of Portland*, 24 PECBR 612, we concluded that the City unlawfully failed to bargain about the decision to remove administrative support work from the Union bargaining unit, and the impacts of that decision. One employee, who worked as a Senior PASS before the City's unlawful transfer of bargaining unit work, was not offered a job as an Administrative Assistant.² We ordered the City to make this employee whole for lost wages and benefits she would have earned had she continued in the Senior PASS position for the period from the date of our Order until the City completed its bargaining obligation. *Id.* at 646. The Union asserts that we should make a back pay award in this case that is similar to the one we ordered in *City of Vale* and *City of Portland*. We disagree.

In *City of Vale* and *City of Portland*, we awarded back pay and benefits to remedy a loss—the loss of employment by workers whose jobs were eliminated by the employer's unlawful actions. Here, the Union asks us to do something completely different—calculate and award an appropriate salary increase for employees whose work load was increased by an unspecified amount³ because of the City's failure to bargain about the elimination of the I&R Unit. We decline to do so. The appropriate salary for the PDCs and PRSs, the employees affected by the City's actions, is a matter for the parties to determine through negotiations, and not a matter to be determined by this Board.

²At the time of the reclassification, the other two Senior PASS positions were vacant. (24 PECBR at 618, Finding of Fact 32.)

³The record does not clearly demonstrate the extent to which the City's elimination of the I&R Unit increased the workload of PRSs and PDCs. After the City changed its call menu on June 12, the “number and complexity of calls received by the precinct PDCs substantially increased.” (25 PECBR at 26, Finding of Fact 45.) For the PRSs, the change resulted in “about a 25 percent increase in the number of calls as well as a change in the types of calls they received * * *.” (25 PECBR at 26, Finding of Fact 48.)

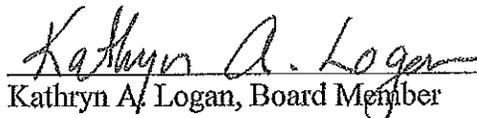
ORDER

We grant reconsideration and adhere to our July 13, 2012 Order.

DATED this 11 day of September, 2012.



Susan Rossiter, Chair



Kathryn A. Logan, Board Member

*Jason Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.

*Member Weyand did not participate in the deliberations and decision in this case.