

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-014-14

(UNFAIR LABOR PRACTICE)

LABORERS' INTERNATIONAL UNION)	
OF NORTH AMERICA LOCAL 483,)	
)	
Complainant,)	
)	DISMISSAL ORDER
v.)	
)	
CITY OF PORTLAND,)	
)	
Respondent.)	
_____)	

Erica B. Askin, Business Manager, Laborers' International Union of North America, Local 483, Portland, Oregon represented Complainant.

Lory J. Kraut, Deputy City Attorney, City of Portland, Portland, Oregon, represented Respondent.

On March 27, 2014, the Laborers' International Union of North America, Local 483 (LIUNA) filed an unfair labor practice complaint against the City of Portland (City), alleging that the City had violated ORS 243.672(1)(a), (c) and (e). LIUNA filed an amended complaint on May 20, 2014, and removed the ORS 243.672(1)(c) allegations. The complaint was assigned to an Administrative Law Judge (ALJ).

On August 21, 2014, the ALJ issued a Notice of Hearing and Pre-hearing Order (prehearing order), setting a hearing for October 15 and 16, 2014.¹ Sections 8 and 9 of the prehearing order required each party to deliver a witness list, an exhibit list, and copies of all exhibits regarding the party's case-in-chief to the other party by no later than seven days before the hearing date, *i.e.* by October 8, 2014. Failure to do so, according to the prehearing order, would result in a party not being able to call witnesses and offer exhibits unless good cause was shown.

On October 8, 2014, the City provided LIUNA with the City's lists and exhibits, pursuant to the prehearing order. LIUNA, however, did not provide the City with LIUNA's lists and

¹The parties subsequently agreed to add hearing dates in November, if needed.

exhibits. On October 10, 2014, the City filed a Motion to Dismiss, citing OAR 115-010-0068(3) and (4), and asking the ALJ to cancel the hearing and dismiss the complaint.

The ALJ directed LIUNA to show cause why the City's motion should not be granted. LIUNA filed a timely response to the show cause order.

On October 13, the ALJ determined that LIUNA lacked good cause for failing to provide an exhibit list, witness list, and copy of the exhibits to the City as required by the prehearing order. He postponed the hearing indefinitely and referred the case to this Board for a decision.² For the following reasons, we dismiss LIUNA's complaint.

Generally, an issue of dismissal without a hearing arises immediately after the informal investigation that is required by ORS 243.676(1)(b) has been completed. That is not the case here. We are being asked to dismiss this matter because if the complaining party is unable to call witnesses and submit exhibits in order to meet its burden of proof, there is no need for a hearing. For purposes of this order, we may rely on undisputed facts that we discover during our investigation and case processing. *Upton v. Oregon Education Association/UniServ*, Case No. UP-58-06, 21 PECBR 867, 867-68 (2007); *Hood River Education Association v. Hood River County School District*, Case No. UP-38-93, 14 PECBR 495, 498 n 2 (1993).

Here, the relevant undisputed facts are as follows. LIUNA was required, by prehearing order and OAR 115-010-0068,³ to submit an exhibit list, witness list and copies of exhibits to the City by October 8, 2014. LIUNA did not do so. Its failure to comply means that it is "denied the right to offer such evidence or make argument regarding such matter at the hearing unless good cause is shown." OAR 115-010-0068(4). If LIUNA is unable to call witnesses or offer exhibits in support of its complaint, it cannot establish a *prima facie* case or meet its burden of proof. Therefore, the sole issue before us is whether LIUNA had good cause for not complying with the prehearing order and rule. We hold that LIUNA does not.

LIUNA, in its show cause response, states that it had a "good faith idea" that the matter was "substantively settled." However, Askin, LIUNA's business manager, knew as of early afternoon on October 7 that there was no agreement to postpone exchanging exhibits. Specifically, in response to LIUNA's October 7 suggestion that the parties "agree to wait to exchange exhibits," the City unequivocally responded that it was "ready to exchange exhibits tomorrow [October 8]." Moreover, LIUNA does not claim that the parties agreed to not exchange lists and exhibits after their early evening discussion on October 7.

The Board evaluates good cause based on the circumstances of the individual case. *SEIU Local 503, OPEU v. Oregon University System, Portland State University*, Case No. UC-07-09, 23 PECBR 137, 140 (2009). In this case, the City informed LIUNA on October 7 that the City

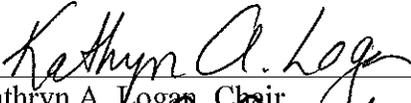
²After the matter was transferred to the Board, both parties made "*sua-sponte*" submissions to the Board. Those "*sua-sponte*" submissions have not been considered in our determination.

³Although the current rule has changed from when the ALJ issued the prehearing order, none of the changes affect the long-standing purpose of the rule.

expected to exchange the lists and exhibits the following day, as required by the prehearing order. LIUNA does not claim that the City agreed at any point to delay that exchange or that the ALJ permitted LIUNA to do so. Under these facts, LIUNA has not shown that it had “good cause” for failing to comply with the prehearing order and rule (OAR 115-010-0068).

The complaint is dismissed.

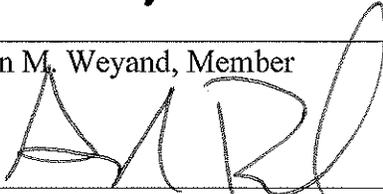
DATED this 21 day of October, 2014.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.