

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-019-14

(UNFAIR LABOR PRACTICE)

INTERNATIONAL LONGSHORE AND)	
WAREHOUSE UNION, LOCALS 8 & 40,)	
)	
Complainant,)	
)	
v.)	DISMISSAL ORDER
)	
PORT OF PORTLAND,)	
)	
Respondent.)	
)	

Kevin Keaney, Attorney at Law, Portland, Oregon represented Complainant.

Randolph C. Foster, Attorney at Law, Stoel Rives LLP, Portland, Oregon, represented Respondent.

On May 28, 2014, the International Longshore and Warehouse Union Locals 8 and 40 (ILWU) filed this complaint against the Port of Portland (Port), alleging that the Port refused to negotiate for a successor agreement in violation of ORS 243.672(1)(e) and refused to submit the parties' disputes regarding the collective bargaining agreement to arbitration in violation of ORS 243.672(1)(g). The complaint was assigned to an Administrative Law Judge (ALJ).

By letter dated May 29, 2014, the ALJ asked the Port to submit an informal response, which it did by letter dated June 11, 2014.¹ On June 20, the ALJ ordered ILWU to show cause why the complaint should not be dismissed because 1) it was untimely filed, 2) the Port was not the employer for the ILWU employees, and 3) the October 1984 agreement was invalid and unenforceable. ILWU submitted its response on July 2, 2014.

¹The Port sent a copy of its informal response to ILWU's counsel. On June 24, 2014, ILWU submitted an unsolicited response to the Port's informal response.

After receipt of ILWU's response, the ALJ asked the parties to respond to five additional questions as part of the investigation. On July 11, 2014, the parties submitted answers to those questions. The ALJ then forwarded this matter to the Board, recommending that the matter be dismissed.

ORS 243.676(1)(b) requires this Board to investigate unfair labor practice charges to determine if a hearing is warranted. If our investigation "reveals that no issue of fact or law exists, the board may dismiss the complaint." *Id.* For purposes of deciding whether to dismiss a complaint without a hearing, we assume that the well-pleaded facts in the complaint are true. *Schroeder v. State of Oregon, Department of Corrections, Oregon State Correctional Institution, and Association of Oregon Correctional Employees*, Case Nos. UP-49/50-98, 17 PECBR 907, 908 (1999). We may also rely on undisputed facts we discover during our investigation. *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).

The complainant alleges that the Port violated ORS 243.672(1)(e) and (g) by "refus[ing] to submit the parties disputes with regard to the CBA to arbitration." The respondent asserts that no collective bargaining relationship exists between ILWU and the Port. Further, even if such relationship existed, ILWU did not file a timely complaint.

Our investigation has determined that we have no jurisdiction over this matter. The Port, although a public employer, does not employ members of ILWU.² Rather, the involved ILWU members are employed by the International Container Terminal Services, Inc. (ICTSI), which is a private, not public, employer. Consequently, ILWU is unable to meet the statutory requirements of an ORS 243.672(1)(g) or (e) violation because it is unable to plead that the *public employer* (or designated representative) of the affected employees acted unlawfully.

As we have no jurisdiction over this matter, we do not address any of the reasons posited by the Port for dismissing this complaint (timeliness and invalidity/unenforceability of the 1984 agreement).³

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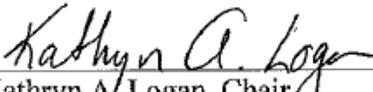
²When the ALJ asked whether members of ILWU were employed by the Port, ILWU responded, "Not currently in a direct sense. The Port does direct the work through ICTSI and has directed the work through another contractor." We understand this to mean that the Port does not employ members of ILWU.

³Our determination that we lack jurisdiction is supported by the NLRB's involvement in related matters with the Port, ICTSI and ILWU.

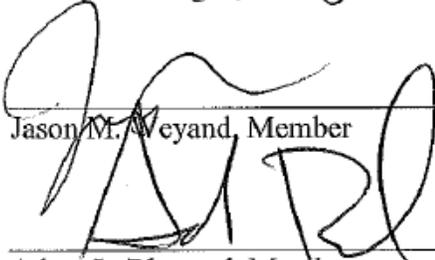
ORDER

The complaint is dismissed.

DATED this 5 day of September, 2014.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.