

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-040-13

(UNFAIR LABOR PRACTICE)

SERVICE EMPLOYEES INTERNATIONAL)	
UNION LOCAL 503, OREGON PUBLIC)	
EMPLOYEES UNION,)	
Complainant,)	RULINGS,
v.)	FINDINGS OF FACT,
CITY OF TIGARD,)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
_____)	

On June 18, 2014, this Board heard oral argument on Complainant’s objections to a recommended order issued by Administrative Law Judge (ALJ) Julie D. Reading, after a hearing held on January 27, 2014, in Salem, Oregon. The record closed on February 26, 2014, following receipt of the parties’ post-hearing briefs.

Christy Te, Staff Attorney, Service Employees International Union Local 503, Oregon Public Employees Union, Salem, Oregon, represented Complainant.

Daniel Rowan, Attorney at Law, Bullard Law, Portland, Oregon, represented Respondent.

On September 18, 2013, the Service Employees International Union Local 503, Oregon Public Employees Union (Union), filed a complaint alleging that the City of Tigard (City) violated ORS 243.672(1)(a) by directing employees to remove Union materials from the outside of their lockers and from specific areas in and around their cubicles. The Respondent filed a timely answer.

The issues are:

1. In August and September 2013, did the City require removal of, or remove, Union materials from a bargaining unit employee's cubicle and another unit employee's locker while permitting non-Union material in these areas?

2. If so, did the City violate ORS 243.672(1)(a)?

We conclude that the City violated ORS 243.672(1)(a) when it removed Union flyers from a bargaining unit employee's locker. The City's other actions did not violate ORS 243.672(1)(a).

RULINGS

The rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

1. The Union is a labor organization within the meaning of ORS 243.650(13).
2. The City is a public employer within the meaning of ORS 243.650(20).
3. The City and the Union were parties to a collective bargaining agreement (CBA) effective through June 30, 2013.
4. Article 6, section 3 of the CBA was titled "Bulletin Boards." It stated that the "City agrees to furnish and maintain suitable bulletin board space in convenient places to be used by the Union. The Union shall limit its posting of notices and bulletins to such bulletin boards."
5. On March 6, 2013, the Union and the City began bargaining a successor agreement. While bargaining, the parties struggled to reach consensus on health care cost apportionment.
6. In order to show support for the Union's position on health care, bargaining unit employees began wearing Union stickers to work and placing Union flyers in their work spaces. Employees also attended bargaining sessions and City Council meetings. Some employees were part of a designated Contract Action Team (CAT). CAT members actively worked to raise support for the Union's position in negotiations and presented members of management with letters requesting support of the Union's position.
7. Employees staged a Union support rally on August 25, 2013.
8. While waiting for the opportunity to mediate with the City, the Union began discussing the possibility of a strike. The Union started to analyze whether there would be bargaining unit employee support for a strike and how health care benefits would be administered during one.
9. On October 16, 2013, the parties reached an agreement on a new CBA.

Requested Moving of Poster in Utility Billing Employee's Cubicle

10. The City's Finance and Information Services Department (Department) is managed by Director Toby LaFrance. Utility Billing and Passports (Division) is a division in the Department and is headed by Ron Blecker, Utility Billing Supervisor. Blecker became the Utility Billing Supervisor in April of 2013.

11. The Division is located in City Hall. It has a lobby area, a passport counter, and a utility billing counter for members of the public. Employee cubicles are located directly behind those counters.

12. The passport counter is to the left of the utility billing counter. It is open on Tuesdays and Thursdays. It is typically visited by five to 15 members of the public on those days. Most passport customers are pleasant, but some are upset about the circumstances surrounding their need to obtain a passport and direct their frustrations at employees.

13. The utility billing counter is to the right of the passport counter. It is open Monday through Thursday. It is typically busier than the passport counter. Utility billing counter customers are generally pleasant and known to the employees. However, some customers are upset about their utility bills and direct anger at Division employees.

14. On his third day as Utility Billing Supervisor, Blecker told Division employees that the work area needed to be cleaned up to promote a more professional environment. Blecker met with employees individually and as a group to provide this directive. Items that Blecker asked employees to remove included dead plants, dirty dishes, food, and trash. Blecker did not prohibit all personal items. He allowed employees to keep small sentimental personal items in their cubicles. Blecker stated that employees were prohibited from displaying items that were "offensive" or that a member of the public could "use against them personally."

15. Jill Bentley is an Accounting Assistant 2 in the Division. Bentley has worked for the City for 16 years. Bentley has served as Union President since 2011. She was an active member of the Union's collective bargaining team in 2013, acting as the general spokesperson.

16. Bentley's cubicle is approximately 17 feet directly behind the passport counter. The back wall of Bentley's cubicle faces the passport counter directly. Along the cubicle's back wall, Bentley maintains a filing cabinet where she stores Union information in her capacity as President.

17. Bentley has always displayed a number of personal items in her cubicle that have varied over the years. Items that she has displayed include pictures of family and friends, calendars, humorous flyers, stuffed animals, and purple balloons in support of the Union.

18. In April 2013, shortly after becoming Utility Billing Supervisor, Blecker asked Bentley to remove a framed poster depicting an illustrated lion as part of his efforts to professionalize the Utility Billing office area. Also, sometime between April and August 2013, Blecker asked Bentley to remove a large plastic rat that bore a Harley-Davidson sticker after receiving a complaint about it from a customer.

19. In mid-July 2013, Bentley displayed a Union poster above her Union filing cabinet, directly in view of the passport counter. The poster was approximately 11 by 17 inches. It was purple and stated “Affordable Healthcare for All” with the Union logo. Bentley placed the poster there to designate the location of Union materials. She had not previously displayed personal items there.

20. At the time that Bentley displayed the Union poster, she had some personal items in her cubicle. Most of these items were located on a wall visible from the passport counter, at approximately a 45 degree angle. Against the wall were bookshelves and a corkboard. Items on the bookshelves include or have included: a Christmas nutcracker dressed as a police officer, a chicken statue with a plaque stating “[r]aising children is like being pecked to death by a chicken,” and a child’s building block. In addition, Bentley keeps photos of her children in this area. On the corkboard, Bentley displays personal items such as photos and calendars. This area is where Bentley had displayed the framed illustrated lion poster before Blecker asked her to remove it.

21. After the Union poster had been displayed in Bentley’s cubicle for approximately two to four weeks, Blecker approached LaFrance. Blecker and LaFrance discussed that Bentley had been wearing a Union t-shirt to work, although t-shirts violated the office dress code policy. Further, Blecker asked LaFrance if he should direct Bentley to either remove the Union poster or move it outside the direct public view.

22. LaFrance stated that he wanted to talk to human resources and City management before removing the Union poster or asking Bentley to do so.

23. After consulting management, human resources, and legal counsel, LaFrance asked Bentley to move the Union poster to an area of her cubicle outside direct public view. LaFrance also told Bentley that she could wear Union insignia on office appropriate apparel, but that t-shirts were prohibited under the dress code.

24. Bentley complied with LaFrance’s request by taking the Union poster down and setting it on a filing cabinet. The City did not administer any warnings or discipline to Bentley due to the t-shirt or poster.

25. Another Division employee removed a Union poster from the outside of her own cubicle after learning that LaFrance had directed Bentley to move or remove her poster.

Library Manager Removal of Union Items from Locker

26. Margaret Barnes is the Director of the City Library (Library) and was a member of the City’s 2013 management bargaining team. Craig Carter is the Library’s Circulation Manager. Sandra Hughs is the Circulation Supervisor and reports to Carter. Theresa Ferguson is the Library’s Technical Services Manager.

27. The Library building was constructed in 2004. It has two floors. The second floor includes administrative offices and the adult services work room. The first floor contains Library materials for the public. It has an area that is off limits to patrons, but is accessible by employees,

volunteers, and vendors with keycard access. This area has a hallway leading to a break room. It also contains the circulation work room area for employees.

28. Employee lockers are located in the hallway outside the break room. The Library does not have any written policies on the use of the lockers or limitations on what can be displayed on them. Further, employees have not been given any verbal guidance on locker decoration. However, Library employees typically have not decorated the outside of their lockers.

29. Barnes has expressed a verbal policy to employees that items are not to be affixed to vertical flat surfaces in the Library building unless blue painter's tape is used. Employees are generally familiar with this policy and refer to it colloquially as the "blue tape rule."

30. The Library has between 40 and 48 employees. It also has approximately 200 volunteers, with about 100 reporting weekly.

31. Dela Burgess is a part-time employee who reports to the Library four days a week. Burgess also serves as an on-call employee for several other libraries in the area. Burgess has an assigned locker on the first floor. She has sometimes decorated the outside of her locker with summer reading program stickers, Christmas decorations, and items to support fellow employees. Library managers have not asked Burgess to remove any of these items. Decorating lockers is a common practice in some other libraries where Burgess works.

32. When the parties began collective bargaining, Burgess started wearing a Union sticker each day that she reported to the Library. At the end of her shift, she would place the sticker on the outside of her locker door. In order to prevent her locker door from appearing cluttered, Burgess began arranging the stickers in a configuration that resembled a daisy.

33. In September 2013, Barnes noticed that the area around the circulation mailboxes had become cluttered. Therefore, Barnes raised this with the Library management team at a September 12, 2013, meeting. Ferguson, having recently noticed Burgess's stickers, mentioned that there were stickers on an employee's locker. Barnes directed Carter to take care of it.

34. On September 12, 2013, Carter removed the Union stickers from Burgess's locker. Carter also sent an e-mail to the Library circulation staff, stating, "[p]lease don't put stickers, labels or anything adhesive on the lockers. Once on, they are extremely difficult to get off."

35. Hughs had previously noticed Burgess's stickers and had asked Carter about locker decorations shortly after seeing the September 12, 2013 e-mail. Carter instructed Hughs to remove items displayed on the outside of lockers based on the discussion at the management meeting.

36. Not knowing that Carter had already removed her stickers, Burgess responded to his e-mail, stating "I'll be responsible for removing any adhesive on my locker when I remove the floral design of the stickers on my locker, just as I have removed adhesive from the inside of my locker when necessary. It wasn't that hard for me to get it off but perhaps your experience has been different. Meanwhile, my stickers will remain for a bit longer unless you are requiring them to be removed."

37. Carter responded to Burgess by e-mail, stating “It is OK to have stickers, pictures, etc. inside your locker, but please we don’t want them on the outside. Thanks[.]”

38. After Carter removed Burgess’s Union stickers, she replaced them with a Union flyer affixed with blue painter’s tape. Hughs, relying on Carter’s previous direction regarding employees not putting items on the outside of lockers, removed the flyer.

39. Following Hughs’s removal of Burgess’s taped flyer, Burgess hung another Union flyer on her locker by cutting and folding the edges so that it would hang securely and flat on the outside of her locker door without requiring adhesive.

40. Hughs removed the altered flyer. Hughs pinned either that flyer or the previous flyer on the Union break room bulletin board after removing it from Burgess’s locker.

41. The City did not administer any warnings or discipline to Burgess due to the Union materials.

42. Library employees with personal cubicles outside the public view were permitted to display Union flyers on their cubicle walls.

City Policies

43. The City has a 69-page handbook of personnel policies. These policies cover several areas of personnel matters and were last updated in December 2012.

44. Policy 32 is titled “Conduct and Appearance.” One requirement under that policy is that “each employee shall exhibit care and responsibility with public property and shall strive to reduce costs of materials and services in the performance of their duties.”

45. Policy 54 is titled “Use of City Property and Information,” and states in relevant part that “[a]ll city property and information is to be used solely for job related purposes. Use of such property or information for personal purposes is strictly prohibited unless specifically authorized by city policy or the department director.”

46. Policy 63 is titled “Solicitation on City Property.” It states in relevant part that the City

“does not allow peddling, solicitation or sale of goods or services for charitable or any other purposes on city property during working hours without the approval of the City Manager. In addition, the City Manager may designate specified locations on city property to be used by employees for the purpose of posting notices of items for sale or otherwise of interest to other employees.”

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The City's actions regarding the poster in the Division did not violate ORS 243.672(1)(a).

ORS 243.662 provides that “[p]ublic employees have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.” Under ORS 243.672(1)(a), it is unlawful for a public employer to “[i]nterfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.” ORS 243.672(1)(a) includes “two distinct prohibitions: (1) restraint, interference, or coercion ‘because of’ the exercise of protected rights; and (2) restraint, interference, or coercion ‘in’ the exercise of protected rights.” *Portland Assn. Teachers v. Mult. Sch. Dist. No. 1*, 171 Or App 616, 623, 16 P3d 1189 (2000); *see also International Association of Firefighters, Local 890 v. Klamath County Fire District #1*, Case No. UP-049-12, 25 PECBR 871, 887-88 (2013). The Union alleges a violation of both prongs of subsection (1)(a).

To determine if an employer violated the “because of” prong of subsection (1)(a), we examine the employer’s reasons for the disputed action. *Portland Assn. Teachers*, 171 Or App at 623; *Klamath County Fire District #1*, 25 PECBR at 888. It is not necessary for a complainant to demonstrate that an employer acted with hostility or anti-union animus, nor must a complainant prove that the employer was subjectively motivated by an intent to restrain or interfere with protected rights in order to show a violation of the “because of” prong of subsection (1)(a). *Klamath County Fire District #1*, 25 PECBR at 888. A complainant need only show that the employer took the disputed action because an employee exercised a protected right. *Id.*

When we analyze an employer’s actions under the “in” prong of subsection (1)(a), we focus on the effect of the employer’s actions on the employees. *Id.* If the employer’s conduct, when viewed objectively, has the natural and probable effect of deterring employees from engaging in activity protected by the Public Employee Collective Bargaining Act (PECBA), the employer commits an “in” violation. *Portland Assn. Teachers*, 171 Or App at 624. In an “in” claim, “neither motive nor the extent to which employees actually were coerced is controlling.” *Id.* A derivative “in” violation may also be found when an employer commits a “because of” violation, as the natural and probable consequence of an employer taking actions because of protected activity is to deter protected activity. *Klamath County Fire District #1*, 25 PECBR at 888; *Oregon Public Employes Union and Termine v. Malheur County*, Case No. UP-47-87, 10 PECBR 514, 521 (1988).

We begin our analysis of the alleged “because of” violation by examining the record to determine the reason that the City asked Bentley to move the poster from the back wall of her cubicle to another location in her cubicle. This is a fact determination. *Portland Assn. Teachers*, 171 Or App at 626; *Klamath County Fire District #1*, 25 PECBR at 888. Here, after assuming the position of Utility Billing Supervisor, Blecker determined that the employee cubicles behind the passport and utility billing counters should appear more professional given their public visibility.

Blecker spoke with employees individually and collectively about removing personal items from their cubicles. Items that Blecker asked employees to remove included dead plants, dirty dishes, food, and trash. Applying this effort to Bentley's cubicle specifically, Blecker requested that she remove a framed poster featuring an illustrated lion. Subsequently, after receiving a customer complaint, Blecker asked Bentley to remove a large plastic rat. Then, in August 2013, Blecker talked with LaFrance about Bentley's Union poster. After consulting with management and legal staff, LaFrance asked Bentley to move it out of the public's direct view to a different area in her cubicle.

On these facts, we conclude that the City asked Bentley to move the poster to a different area of her cubicle to make the work area that was visible to the public look cleaner and more professional and not because Bentley had exercised a protected right. In reaching this conclusion, we note that the City did not, as the Union alleged, ask Bentley to move the Union poster from the back wall of her cubicle, while allowing other non-union posters or displays on that back wall. Bentley had not previously displayed *any* items on this back cubicle wall. Moreover, the City's request that Bentley move the Union poster to an area of her cubicle that was less visible to the public was consistent with its request that Bentley and other employees not display such non-work materials in areas of high public visibility. Consequently, we conclude that the Union has not proved a "because of" violation.

We turn to the alleged "in" violation. As set forth above, when analyzing such an allegation, we determine whether the natural and probable effect of the employer's conduct, viewed under the totality of the circumstances, would be to interfere with an employee's exercise of protected rights under an objective standard. *Portland Assn. Teachers*, 171 Or App at 624. Here, LaFrance asked Bentley to merely move the poster to a different area of her cubicle. In doing so, LaFrance did not threaten discipline or any form of reprisal. Moreover, LaFrance did not attempt to prevent Bentley from displaying the poster; to the contrary, he suggested that she move it to another location within her cubicle. Further, other employees were not asked to remove posters or other Union-related materials from their workspaces and there were numerous other displays of Union-related messages displayed throughout the workplace that were not objected to by the City. Having considered the totality of the circumstances in this case, we conclude that asking Bentley to move her poster to a different area of her cubicle would not have the natural and probable effect of interfering with an employee's exercise of protected rights.

Finally, we disagree with the Union's assertion that the City discriminatorily enforced a rule with respect to Union-related communications. "An employer may prohibit its employees from discussing nonwork-related or personal matters on work time, but it cannot permit discussions on those matters while prohibiting discussion of union matters." *Service Employees International Union Local 503, Oregon Public Employees Union v. State of Oregon, Judicial Department*, Case No. UP-3-04, 20 PECBR 864, 873 (2005).

At the outset, we note that, unlike many cases involving employer prohibitions on union-related communications, the City's request that Bentley move the poster to a different area in her cubicle did not target the nature of that communication. In other words, the City did not

seek to enforce a rule barring “union posters” on cubicle walls. *Cf. Association of Engineering Employees of Oregon v. State of Oregon, Department of Administrative Services*, Case No. UP-043-11, 25 PECBR 525, *recons*, 25 PECBR 764 (2013) (employer issued directive barring employees from using the employer’s e-mail system for union-related communications); *Judicial Department*, 20 PECBR at 875-76 (employer barred employee discussions concerning union issues); *Oregon Public Employees Union v. Jefferson County*, Case No. UP-22-99, 18 PECBR 146, 152-53 (1999) (employer sought to ban employee discussions of strike-related issues). Rather, the City asked Bentley to move a poster from her back cubicle that happened to contain a union message. Moreover, the record does not establish that the City permitted Bentley to post other non-Union and nonwork materials in that same area on the back cubicle wall. Rather, the City’s request that Bentley move the poster was consistent with the City’s overall directives concerning displays of nonwork materials in areas of high public visibility, such as Bentley’s back cubicle wall. Consequently, the Union has not established that the City discriminatorily enforced an otherwise facially neutral directive in violation of ORS 243.672(1)(a) when it asked Bentley to move her poster.

In arguing for a different result, the Union contends that Bentley’s display of the poster is identical to the wearing of union insignia, for which this Board has adopted a special rule that mirrors a rule adopted by the National Labor Relations Board (NLRB) under the National Labor Relations Act (NLRA). *See, e.g., International Association of Firefighters, Local 1817 v. Jackson County Fire District, No. 3*, Case No. UP-64-90, 12 PECBR 656, 662 (1991) (“[t]his Board analyzes union insignia cases under the principles announced in *Republic Aviation Corporation v. NLRB*, 324 U.S. 793, [65 S Ct 982] (1945), and its federal case law progeny”). Under that precedent, as a general rule, the wearing of union insignia or buttons in the work place is protected activity, and an employer may not prohibit such activity unless the employer can demonstrate that “special circumstances” exist that justify the prohibition. *Id.* The general rule also applies to employees’ rights to wear shirts or buttons with slogans that demonstrate union support. *Id.* The facts of each case determine whether “special circumstances” exist to warrant a particular prohibition. *Id.* at 662-63.

Neither this Board nor the NLRB (or enforcing federal courts), however, has extended this doctrine for the *wearing* of union insignia to the *posting* of union-related material anywhere in the workplace. Presumably, that is because what an employee wears in the workplace has less of an effect on an employer’s property and managerial rights than the physical posting of materials throughout the workplace. This Board has also adopted NLRB precedent concerning other forms of union support in the workplace, including those that concern solicitation of union support and the distribution of union literature. *See, e.g., Judicial Department*, 20 PECBR at 872-74; *Oregon Public Employees Union v. Executive Department, Adult and Family Services Union*, Case Nos. UP-111/124-87, 11 PECBR 79, 86-87 (1988); *Oregon Public Employees Union, Local 503, SEIU, AFL-CIO v. Department of Revenue, Executive Department, State of Oregon*, Case No. C-56-81, 6 PECBR 4901, 4905 (1981). The display of union support in this case (a poster on an employee’s cubicle wall), however, does not comfortably fit into any of the above categories, and we decline to squeeze such a display into one of those existing categories, or to apply one of the particularized special rules for those categories to the cubicle poster in this case. It is sufficient that, as set forth above, the City’s request that Bentley move the poster to a different area in her

cubicle did not “[i]nterfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.” ORS 243.672(1)(a). Therefore, we will dismiss the complaint.

3. The City’s removal of Union stickers from the outside of a Library employee’s locker did not violate ORS 243.672(1)(a).

The Union also alleges that the City violated ORS 243.672(1)(a) when it removed Union-related stickers and flyers from Burgess’s locker, while allowing personal, non-Union material on employee lockers. As with the directive concerning Bentley’s poster, the City’s actions regarding Burgess’s locker do not concern a directive specifically prohibiting Union-related materials. Rather, the Union similarly contends that the City discriminatorily enforced an otherwise facially neutral policy when it removed the stickers and flyers from Burgess’s locker because Burgess had previously displayed other personal, nonwork material on her locker without interference. For the following reasons, we agree with the Union’s contention with respect to the flyers on Burgess’s locker, but not with respect to the stickers.¹

Employee lockers in the Library are located in the hallway outside the break room. Although Library employees have not typically decorated the outside of their lockers, the Library does not have any written policies on the use of the lockers or limitations on what can be displayed on them. Further, Library employees have not been given any verbal guidance on locker decorations, with one caveat. The Library’s Director, Barnes, has expressed a verbal policy to employees that items are not to be affixed to vertical flat surfaces in the Library building unless blue painter’s tape is used. Employees are generally familiar with this policy and refer to it colloquially as the “blue tape rule.”

Even though Burgess was aware of the “blue tape rule,” she began placing a Union sticker on the outside of her locker at the end of each shift. When this was brought to Barnes’s attention, she directed Carter, the Library’s Circulation Manager, to take care of it, and Carter removed the stickers from Burgess’s locker. Carter also sent an e-mail to the Library circulation staff, telling them not to put stickers “or anything adhesive on the lockers” because they were “extremely difficult to get off.”

Here, the record does not establish that the City’s actions, which were consistent with the Library’s “blue tape rule,” discriminatorily targeted Union communications, while allowing other similar personal communications on the outside of employee lockers. Specifically, the City did not permit Burgess or other employees to affix personal stickers or other adhesives to the outside of their lockers in violation of the “blue tape rule.” The record also does not establish that the City had previously permitted any stickers or adhesives to be affixed to the outside of employee lockers. Therefore, we conclude that the City did not discriminatorily enforce its neutral “blue tape rule” when it removed the Union stickers from Burgess’s locker.

¹For the same reasons set forth above regarding the cubicle wall poster, we decline the Union’s request to apply our rule regarding the wearing of union insignia to the posting of stickers and flyers on City employee lockers.

4. The City's removal of flyers affixed to the outside of the employee's locker that complied with the "blue tape rule" violated ORS 243.672(1)(a).

In light of the City's removal of the stickers from her locker (and Carter's directive), Burgess then replaced the stickers with a Union flyer that she affixed with blue painter's tape, in compliance with the "blue tape rule." Hughs, the Circulation Supervisor, removed the flyer. Burgess then hung another Union flyer on her locker by cutting and folding the edges so that it would hang securely and flat on the outside of her locker door, without requiring any adhesive. Hughs again removed the flyer.

Here, unlike the stickers, Burgess's posting of the flyers comported with the Library's "blue tape rule." Yet, despite this compliance, the City nevertheless removed the flyers. Moreover, Burgess had previously placed other personal items on the outside of her locker without any interference by the City. Under these circumstances, we conclude that the City discriminatorily enforced a rule with respect to Union communications and that the City's removal of the Union flyers from Burgess's locker interfered with employees in the exercise of rights guaranteed in ORS 243.662.² See *Judicial Department*, 20 PECBR at 873.

In arguing for a different result, the City contends that the Union failed to establish that the City's Library managers or supervisors were aware of Burgess's other personal, non-Union, postings on her locker. Yet, Burgess testified without contradiction that she had displayed multiple personal items on the outside of her locker, which was visible to other employees. We find it highly improbable that managers and supervisors did not notice these personal items, which were posted on the outside of her locker in full visibility of anyone walking by the locker area. Rather, we find it more probable that those personal, non-Union, items were noticed by Library managers and supervisors and were left undisturbed.

Remedy

Because we have determined that the City committed an unfair labor practice, we will order that it cease and desist from any such further violations. ORS 243.676(2)(b). The Union requests that we also order the City to post a notice of its wrongdoing. We generally order such a posting if we determine that a party's violation of the PECBA was: (1) calculated or flagrant; (2) part of a continuing course of illegal conduct; (3) committed by a significant number of the respondent's personnel; (4) affected a significant number of bargaining unit employees; (5) significantly (or potentially) impacted the designated bargaining representative's functioning; or (6) involved a

²The recommended order reached this same conclusion of law, and the City did not file specific written objections to that order within 14 days, as required by OAR 115-010-0090 and OAR 115-035-0050(2). Yet, in its memorandum in aid of oral argument, the City nevertheless challenged this conclusion of law. Citing OAR 115-010-0090, the City contends that we may consider the objections raised for the first time in its memorandum upon a showing of good cause. Although the City is correct that we may, in our discretion, extend the time for filing objections upon good cause shown, the City made no motion to extend the time for filing specific written objections. Moreover, the City has not demonstrated "good cause" for why it did not file specific written objections to the recommended order within the required period. Therefore, we will not consider the objections raised in the City's memorandum in aid of oral argument.

strike, lockout, or discharge. *Oregon School Employees Association, Chapter 35 v. Fern Ridge School District 28J*, Case No. C-19-82, 6 PECBR 5590, 5601, *AWOP*, 65 Or App 568, 671 P2d 1210 (1983), *rev den*, 296 Or 536, 678 P2d 738 (1984). These factors are typically understood to be in the disjunctive and thus, not all of these criteria need be satisfied to warrant posting a notice. *Laborers' Local 483 v. City of Portland*, Case No. UP-015-05, 21 PECBR 891, 908 (2007).

The City's removal of Burgess's flyers: (1) did not affect a significant number of employees, (2) did not involve a strike, lockout, or discharge, (3) was not committed by a significant number of the City's personnel, (4) was not part of a continuing course of illegal conduct, or (5) did not significantly (or potentially) impact the Union's functioning. Further, there is no evidence in the record that it was calculated or flagrant. Therefore, we decline to order the posting of a notice.

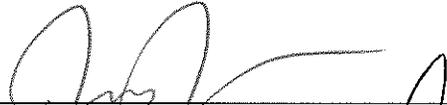
ORDER

The City shall cease and desist from violating ORS 243.672(1)(a) as described above.

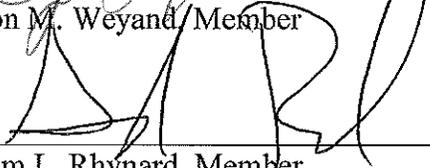
DATED this 1 day of August, 2014.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.