

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-043-13

(UNFAIR LABOR PRACTICE)

RICHARD BELL,)	
)	
)	
Complainant,)	
)	
v.)	
)	
TRI-COUNTY METROPOLITAN)	ORDER ON RECONSIDERATION
TRANSPORTATION DISTRICT OF OREGON)	
and PENSION PLAN FOR BARGAINING)	
UNIT EMPLOYEES OF TRIMET,)	
)	
Respondents.)	
)	

Stephen L. Brischetto, Attorney at Law, Portland, Oregon, represented Complainant Bell.

Kimberly A. Sewell, Director of Legal Services, Portland, Oregon, represented Respondent Tri-County Metropolitan Transportation District of Oregon.

Aruna A. Masih, Bennett, Hartman, Morris & Kaplan LLP, Portland, Oregon, represented Respondent Pension Plan for Bargaining Unit Employees of TriMet.

On February 12, 2016, Respondent Pension Plan for Bargaining Unit Employees of TriMet (Plan) requested reconsideration of our January 29, 2016, order that dismissed Complainant Bell’s unfair labor practice complaint against the Plan and the Tri-County Metropolitan Transportation District of Oregon (TriMet). We granted the Plan’s request and allowed the other parties the opportunity to respond.¹ After considering the Plan’s request and Bell’s response, we adhere to the conclusions and reasoning of our prior order, as supplemented by this order.

¹TriMet did not file a response to the Plan’s reconsideration request.

Bell's complaint alleged that TriMet and the Plan violated the terms of three collective bargaining agreements between TriMet and the Amalgamated Transit Union, Division 757 (ATU). Specifically, Bell alleged that TriMet and the Plan violated those agreements in how they calculated and paid his pension benefits. In our prior order, we dismissed the ORS 243.672(1)(g) claim against TriMet and the ORS 243.672(1)(g) and (2)(d) claims against the Plan. With respect to the Plan, we concluded that it was not a public employer, a labor organization, or the designated representative of either. Accordingly, we held that any actions taken by the Plan regarding this case were not cognizable under ORS 243.672(1)(g) and (2)(d). As to TriMet, we dismissed the (1)(g) claim because Bell did not establish that TriMet violated the collective bargaining agreements. Specifically, we reasoned that Bell's allegations concerned the calculation and payment of his pension benefits, but that, under the agreements and the facts of this case, it was the Plan, not TriMet, that was responsible for making the calculations and paying those benefits.

In its request for reconsideration, the Plan does not take issue with our ultimate disposition of the claims—*i.e.*, dismissal against all parties. We also do not understand the Plan to be seeking reconsideration of that portion of the order that dismissed the claims against it. Rather, the Plan seeks reconsideration of *how* we disposed of the (1)(g) claim against TriMet. According to the Plan, our reasoning “leaves open the possibility that * * * [we] created an exception to [our] exclusive jurisdiction over interpretation of collective bargaining agreements * * *.” The Plan further avers that

“‘pension benefits’ must be treated the same as any other ‘collectively bargained’ benefits [that] are administered by a third party (e.g. health benefits). * * * If pension claims involve the interpretation of a collective bargaining agreement (which Bell’s claims do), they remain within the exclusive jurisdiction of the Board.”

We do not disagree with the larger point asserted by the Plan—*i.e.*, that this Board has exclusive jurisdiction over unfair labor practices involving the interpretation of collective bargaining agreements, including provisions concerning pension benefits. We disagree with the Plan's assertion, however, that our prior order created some sort of exception to that principle with respect to collectively-bargained pension benefits. To the contrary, we specifically interpreted the collectively-bargained pension benefits and determined that Bell had not established that TriMet breached the cited provisions of the at-issue collective bargaining agreements. That is so because, in this case, the parties bargained a pension plan that obligated TriMet to make contributions to the Plan, and Bell did not assert (or prove) that TriMet had failed in that obligation. Rather, Bell's claims rested on the calculation and payment of his pension benefits, determinations that, under the terms of the collective bargaining agreements and the Plan documents, are made by the Plan, not TriMet.

We also disagree with the Plan's suggestion that we are treating collectively-bargained pension benefits that are administered by a third party in a manner different from how we would treat collectively-bargained health benefits administered by a third party. If, for example, a collectively-bargained health insurance policy merely required a public employer to make premium contributions to a third party, and a complainant alleged that the public employer had violated that agreement by not making those contributions, we would certainly have jurisdiction

to decide that claim under ORS 243.672(1)(g). However, if the allegation concerned whether that third party (not a public employer or its designated representative) improperly denied a claim or a benefit under the terms of the purchased health plan (*e.g.*, that a particular drug or procedure was not covered by the plan), we would not have jurisdiction under (1)(g) for such a claim against that third party. In that same scenario, a (1)(g) claim would not lie against the public employer (who had made the required premium contributions) for the third party's benefit denial.

Our prior order in this case treats Bell's claims for pension benefits in the same manner that we would treat an analogous claim for a collectively-bargained health benefit that is administered by a third party. In other words, our jurisdiction over alleged violations of collectively-bargained benefits administered by third parties depends on the nature of the collectively-bargained terms and the nature of the claim. Here, the claim asserts that TriMet violated collective bargaining agreements regarding the calculation and payment of Bell's pension benefits. Yet, under those agreements, TriMet is not entrusted with the calculation and payment of those benefits. Therefore, Bell has not established that TriMet violated ORS 243.672(1)(g), as alleged.

In sum, for the reasons set forth above and in our prior order, we will dismiss the complaint.

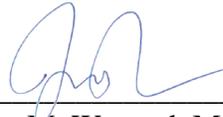
ORDER

1. The Plan's request for reconsideration is granted.
2. We adhere to our prior order, as supplemented by this order.

DATED March 8, 2016.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.