

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-029-13

(UNFAIR LABOR PRACTICE)

|                                |   |                     |
|--------------------------------|---|---------------------|
| INDEPENDENT ASSOCIATION OF     | ) |                     |
| LINN-BENTON COMMUNITY          | ) |                     |
| COLLEGE CLASSIFIED EMPLOYEES,  | ) |                     |
|                                | ) |                     |
| Complainant,                   | ) | RULINGS,            |
|                                | ) | FINDINGS OF FACT,   |
| v.                             | ) | CONCLUSIONS OF LAW, |
|                                | ) | AND ORDER           |
|                                | ) |                     |
| LINN-BENTON COMMUNITY COLLEGE, | ) |                     |
|                                | ) |                     |
| Respondent.                    | ) |                     |
| _____                          | ) |                     |

On May 9, 2014, the Board heard oral argument on Complainant’s objections to a recommended order issued by Administrative Law Judge (ALJ) Larry L. Witherell on March 31, 2014, after a hearing held on December 9, 2013, in Salem, Oregon. The record closed on January 15, 2014, following receipt of the parties’ post-hearing briefs.

John Sutter, Attorney at Law, Law Office of John Sutter, LLC, Portland, Oregon, represented Complainant.

Brian Hungerford, Attorney at Law, The Hungerford Law Firm, Oregon City, Oregon, represented Respondent.

On June 26, 2013, the Independent Association of Linn-Benton Community College Classified Employees (Association) filed this unfair labor practice complaint against Linn-Benton Community College (College) alleging that the College unilaterally failed or refused to grant a step increase to bargaining unit employees in violation of ORS 243.672(1)(e) and (1)(f). The College filed a timely answer.

The issues, as agreed to by the parties, are:

1. Did the College fail to bargain in good faith by not granting step increases after the expiration of the 2008-2013 collective bargaining agreement in violation of ORS 243.672(1)(e)?

2. Did the College fail to comply with obligations under ORS 243.712(2)(d) by not granting step increases after the expiration of the 2008-2013 collective bargaining agreement in violation of ORS 243.672(1)(f)?

For the reasons set forth below, we conclude that the College did not violate ORS 243.672(1)(e) or (1)(f) as alleged.

### RULINGS

The rulings of the ALJ were reviewed and are correct.

### FINDINGS OF FACT

1. The College is a public employer as defined by ORS 243.650(20). The Association is a labor organization as defined by ORS 243.650(13) and the exclusive representative for a bargaining unit of approximately 195 classified employees.

2. The College and Association were parties to a collective bargaining agreement that was effective from July 1, 2008 through June 30, 2013 (Agreement).

3. Article 31, Salary Schedule, of the Agreement is as follows:

“A. Appendices A-E, attached to this Agreement, shall be the salary schedules for classified employees effective July 1, 2008 through June, 2013. The new schedules are comprised of 16 steps. The process for transitioning to this 16-step schedule is explained below: *Any adjustments to compensation after June 30, 2013 shall be controlled by a successor agreement.*

“1. Effective July 1, 2008 the college shall increase the salary schedule in effect July 1, 2007 through June 30, 2008 by 3.5%. Current employees will progress two steps on that salary schedule, effective July 1, 2008. Employees at step 17 of their salary grade as of academic year 2007-08 will progress one step on the salary schedule and will receive a one-time bonus of 2.04% of their 2008-09 salary, effective July 1, 2008. Employees at step 18 of their salary grade will not progress a step but will receive a one-time bonus of 4.08% of their 2008-09 salary, effective July 1, 2008. The salary resulting from the 3.5% schedule increase and the individual step progression shall be the employee’s salary for fiscal year 2008-09.

- “2. Following the implementation of paragraph A.1., the college will transition employees to the new 16-step salary schedule by placing each employee at the step equivalent to his or her salary for fiscal year 2008-09. (For example, an employee at Step 4 under the schedule in effect during academic year 2007-08 will be at Step 4 under the new schedule).
- “B. For the fiscal year 2009-10, the salary schedule shall be increased by 3.5% at each step, effective July 1, 2009. Current employees will progress one step on the salary schedule, effective July 1, 2009.
- “C. For the fiscal year 2010-11 the salary schedule shall be increased by 3.5% at each step, effective July 1, 2010. Current employees will progress one step on the salary schedule, effective July 1, 2010.
- “D. For the fiscal year 2011-12 the salary schedule shall be increased by 3.5% at each step, effective July 1, 2011. Current employees will progress one step on the salary schedule, effective July 1, 2011.
- “E. For the fiscal year 2012-13 the salary schedule shall be increased by 3.5% at each step, effective July 1, 2012. Current employees will progress one step on the salary schedule, effective July 1, 2012.
- “F. The compensation provided for in this Article extinguishes any obligation owed by the College to its classified employees for savings due to lowered insurance premiums (‘insurance gap money’) under the contract in effect from July 1, 2005 through June 30, 2008.
- “G. Classified employees hired after July 1, 2008, will be placed in the appropriate grade for their job classification in accordance with District guidelines for initial placement.
- “H. It is the practice of the College that new employees will start employment at the initial step of the salary range provided that they meet the minimum qualifications of the position. Placement above Step 1 will be allowed in special circumstances (such as recruitment problems) with notification and consultation with the Association.” (Italics added.)

4. During bargaining for the Agreement, the parties did not discuss the last sentence in paragraph A, “[a]ny adjustments to compensation after June 30, 2013 shall be controlled by a successor agreement.” This sentence was included in the final agreement signed in June 2008.

5. During bargaining for a successor agreement in May 2013, it became apparent to the Association and College that the negotiations would not be concluded by June 30, the expiration date of the existing Agreement. At one of the bargaining sessions in May, a question

arose regarding what the College would do with respect to step increases and cost of living increases when the contract expired. The College made it clear that there would not be any increases in compensation after June 30, except as provided for in a successor agreement. The College pointed to the language in the Agreement in Article 31, Section A, and Sections B through E. Sections B through E provide that specific step increases were granted on July 1 of each year of 2009 through 2012.

6. In August 2013, the parties reached an agreement for a contract effective July 1, 2013 to June 30, 2015 (the 2013-15 Agreement), which was ratified in September 2013. The Agreement provided retroactive compensation increases from July 1, 2013.

7. In addition to the contract discussed above, the Association and College were parties to the following agreements:

July 1, 1978 through June 30, 1981  
July 1, 1981 through June 30, 1983  
July 1, 1983 through June 30, 1985  
July 1, 1985 through June 30, 1988  
July 1, 1988 through June 30, 1991  
July 1, 1991 through June 30, 1994  
July 1, 1994 through June 30, 1997  
July 1, 1997 through June 30, 2000  
July 1, 2000 through June 30, 2003  
July 1, 2003 through June 30, 2005  
July 1, 2005 through June 30, 2008.

All the contracts identified above granted salary increases on July 1 for each year during the contract, but did not provide for any increases on the July 1 immediately following the expiration of the particular contract. On those occasions when some of the bargaining for the contracts extended beyond the expiration date, there was no occasion on which the College granted any compensation increases after the expiration date unless it was specifically provided for by the successor contract.

#### CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matter of this dispute.
2. The College did not violate ORS 243.672(1)(e) or (1)(f) when it did not grant step increases after the expiration of the 2008-13 Agreement.

## DISCUSSION

The Association and the College were parties to a collective bargaining agreement that expired on June 30, 2013. The College did not grant step increases on July 1, 2013. The Association alleges that the College was required to do so. Because the College did not grant step increases, the Association claims that the College unilaterally changed employment conditions after the expiration of the agreement, in violation of ORS 243.672(1)(e) and (1)(f).

Under ORS 243.672(1)(e), an employer is required to bargain in good faith with the labor organization. That duty includes the obligation to maintain the *status quo* for mandatory subjects of bargaining after the expiration of a collective bargaining agreement and during negotiations for a successor agreement. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-33-06, 22 PECBR 159, 165 (2007).

In these cases, we first identify the *status quo* and determine whether the employer has changed it. If the *status quo* has been changed, we then determine whether the change concerns a mandatory or permissive subject of bargaining. We may further need to determine whether the employer exhausted its duty to bargain and consider any affirmative defenses raised by the employer. However, we do not need to apply these steps mechanically and may proceed to a particular step if it would dispose of the issue. *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District*, Case No. UP-24-09, 24 PECBR 730, 761 (2012).

The crux of this case is determining the *status quo*, which the parties agree is established by the expired contract. According to the Association, the expired agreement contained a longevity step pay increase that should be part of the *status quo* because the agreement did not expressly provide otherwise. Therefore, the Association argues, the College was required by ORS 243.712(d)<sup>1</sup> to preserve that *status quo* (i.e., grant a longevity step increase to employees) until “completion of the impasse procedures.” Specifically, the Association contends that, under the expired agreement, a longevity step pay increase was due July 1, 2013, and that the College’s refusal to grant the increase failed to preserve that *status quo*. The College disagrees, asserting that the contract did not require it to provide any salary increases after the expiration of the contract.

Thus, as a threshold matter, we must review the expired 2008-13 Agreement and determine whether that Agreement contained provisions regarding merit or longevity step pay

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<sup>1</sup>Under ORS 243.712(2)(d),

“\* \* \* [a]fter a collective bargaining agreement has expired, and prior to agreement on a successor contract, the status quo with respect to employment relations shall be preserved until completion of impasse procedures except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise.”

increases. As discussed below, we find that the expired collective bargaining agreement did not provide for either merit or longevity step increases as part of the *status quo*.

“Merit step and longevity step pay increases” are not defined by statute. They are, however, terms of common usage in the world of labor relations. Merit step increases link pay increases to work performance (Harold S. Roberts, *Roberts’ Dictionary of Industrial Relations*, 468 (4<sup>th</sup> ed 1994)), while longevity step increases link pay increases to an employee’s length of service or seniority. (*Id.* at 435.) There is nothing in this record to suggest that step increases provided during the life of the Agreement related to how work was performed. We are left, then, with determining whether the Agreement provided for longevity pay step increases.

We interpret labor contracts in the same manner that we interpret other contracts. *Portland Fire Fighters’ Assn. v. City of Portland*, Case No. UP-58-99, (2000), 181 Or App 85, 91, 45 P3d 162, *rev den*, 334 Or 491, 52 P3d 1056 (2002). In *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 20, 29 (2005), this Board explained that

“[w]e first examine the text of the disputed provision in the context of the document as a whole. If the provision is clear, the analysis ends. If the provision is ambiguous, we proceed to the second step, which is to examine extrinsic evidence of the contracting parties’ intent. Finally, if the provision remains ambiguous after applying the second step, we resort to the use of appropriate maxims of contract construction. *Yogman v. Parrott*, 325 Or 358, 937 P2d 1019 (1997).”

Article 31 of the Agreement, which is the Salary Schedule, provided for a 3.5% increase in the salary schedule and a two-step increase on July 1, 2008, along with 3.5% increases in the salary steps and one-step increases on July 1 of 2009, 2010, 2011 and 2012, respectively. According to the Association, an additional step increase was due on July 1, 2013. These steps, granted on July 1, are not based on an employee’s length of service or seniority but rather, are granted to the employee for simply being employed by the College on those specific dates. Additionally, the Agreement is devoid of any language establishing that employees receive an automatic yearly step increase, or that a step increase is automatically granted upon being employed for a specified length of time. The agreement also provided no substantive right to future step increases, much less a date on which employees would purportedly be entitled to such step increases. Thus, the contractual step increases granted on July 1 of each year from 2008-2013, were not longevity step increases, but merely yearly salary increases that the parties agreed to through the prior bargaining process.

To agree with the Association, we would need to find that the *status quo* in the expired agreement contained a longevity step pay increase on a date certain, and that the College discontinued that *status quo* by not paying that increase. As we understand the Association’s argument, that date certain was July 1, 2013. The expired agreement, however, makes no mention of any future step advances beyond July 1, 2012, much less establish that on July 1, 2013, the *status quo* included an additional step advancement. Under these circumstances, we do not conclude that the expired agreement contained a longevity step pay increase as part of

the *status quo*. Consequently, when the College maintained the employees' current salaries on July 1, 2013, it did not unilaterally change the *status quo*.

This assessment is bolstered by the statement that "any adjustments to compensation" after the end of the contract are controlled by the successor agreement. This agreed-upon language supports our conclusion that these step increases under this particular agreement are not longevity step increases. Finally, when bargaining extended beyond the expiration date of a previous contract, the College did not grant any compensation increases after the expiration date unless the parties agreed to such an increase in the successor contract.<sup>2</sup>

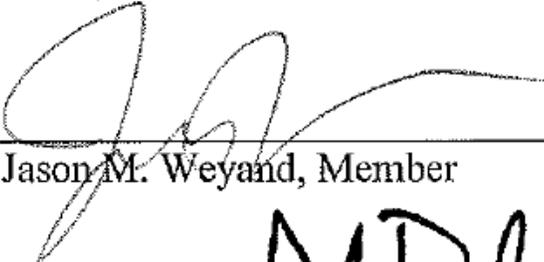
The language of the Agreement is clear—it did not provide for longevity step increases as part of the *status quo*. Rather, it provided for specific step increases on certain dates identified in the contract. Consequently, the College did not change the *status quo* when it maintained the employees' existing compensation after June 30, 2013. As the *status quo* was not altered, the Association's complaint must be dismissed.<sup>3</sup>

ORDER

The complaint is dismissed.

SIGNED AND ISSUED on June 19, 2014.

  
Kathryn A. Logan, Chair

  
Jason M. Weyand, Member

  
Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.

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<sup>2</sup>In fact, the College and Association agreed to step increases effective July 1, 2013, in their successor agreement.

<sup>3</sup>The Association also alleges a violation of ORS 243.672(1)(f) which makes it an unfair labor practice to "[r]efuse or fail to comply with any provision of ORS 243.650 to 243.782." Because we conclude that the College has not violated ORS 243.672(1)(e) or ORS 243.712, we will dismiss the (1)(f) allegation.