

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. DR-1-06

(DECLARATORY RULING)

ROGUE RIVER SCHOOL	)	
DISTRICT NO. 35,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	DISMISSAL ORDER
SOUTHERN OREGON	)	
BARGAINING COUNCIL	)	
	)	
Respondent.	)	
_____	)	

On April 7, 2006, Rogue River School District No. 35 (District) filed this Petition to Declare Strike Unlawful. For purposes of this Order, we assume that all well-pled facts in the petition are true. We dismiss the petition because on its face, it does not raise an issue of fact or law that requires a hearing.

Southern Oregon Bargaining Council (Council) is the exclusive bargaining representative for a group of teachers in the District. On March 15, 2005, the Council and District began negotiations for a successor to their contract that was due to expire on June 30, 2005. The parties were unable to reach agreement, and by letter dated March 29, 2006, the Council gave notice of its intent to commence a strike on April 12, 2006. The Council sent its notice to this Board by certified mail; to Bruce Zagar, the District's attorney and representative in the negotiations, by certified mail and hand delivery; and to Dick Handbury, School Board Chair, by hand delivery.

ORS 243.726(2)(c) requires the exclusive bargaining representative to give 10 days' notice of its intent to strike "by certified mail" to this Board and to "the public

employer.” The District’s petition asserts that the proposed strike would be unlawful because “the public employer” did not receive the required notice by certified mail. According to the petition, the School Board Chair or the District Superintendent would constitute “the public employer” for purposes of the statute, and neither received service by certified mail. The petition further alleges that service by certified mail on Zagar does not comply with the statute:

“No representative of the Council requested that Bruce Zagar accept service of the Notice of Intent to Strike on behalf of the District. Furthermore, Bruce Zagar did not express any willingness or agreement to accept such service on behalf of the District.” (Petition at 2).

We do not need to decide the merits of this contention,<sup>1</sup> because even if we assume it is correct, we must nevertheless dismiss the petition as improperly served. Under OAR 115-40-020, “[a] copy of the petition [to declare a strike unlawful] *shall be served upon the labor organization* which is alleged to have declared or authorized the unlawful strike and proof of service shall be provided to the Board.” (Emphasis added.) The proof of service required by this rule indicates that the District served the Council by mailing a copy of the petition to Barbara Diamond, an attorney for the Council.

This is a classic case of “what’s sauce for the goose is sauce for the gander.” If the District is correct that service of the strike notice on the District’s attorney and designated negotiator does not constitute service on “the public employer,” then the same rule would apply to the District’s service of its Petition to Declare Strike Unlawful: mailing a copy to the Council’s attorney does not constitute service “on the labor organization.” The District has the burden of proving that it properly served the petition. We will dismiss a petition which does not show on its face that it has been properly served.

The District’s assertion regarding service of the strike notice is either correct or it is incorrect. If it is correct, then the District’s Petition to Declare Strike Unlawful was not properly served on the Council and must be dismissed. If it is incorrect, then the petition lacks merit and must be dismissed. Either way, the petition fails to raise an issue of law or fact that warrants a hearing. We will therefore dismiss the petition.

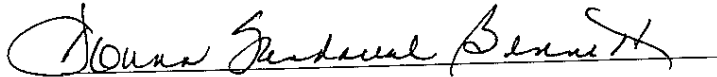
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<sup>1</sup>We also do not decide whether hand delivery of the notice to the School Board Chair is sufficient under ORS 174.170.


**ORDER**

The District's Petition to Declare Strike Unlawful is dismissed.

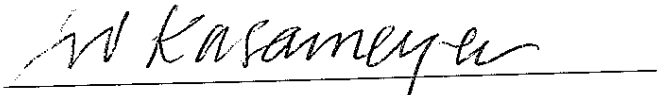
DATED this 10<sup>th</sup> day of April 2006.



Donna Sandoval Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.