

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. CC-06-10

(REPRESENTATION PETITION)

LABORERS' INTERNATIONAL UNION )  
OF NORTH AMERICA, PROFESSIONAL )  
LAW ENFORCEMENT OFFICERS )  
ASSOCIATION, AURORA, )

Petitioner, )

v. )

CITY OF AURORA, )

Respondent. )  
\_\_\_\_\_ )

ORDER ON RESPONDENT'S  
MOTION FOR  
RECONSIDERATION

Lon Holston, Field Representative, Laborers' International Union of North America, Local 483, Portland, Oregon, represented Petitioner.

Dennis E. Koho, Attorney at Law, Koho & Beatty, PC, Keizer, Oregon, represented Respondent.

On December 7, 2010, this Board issued an Order holding that City of Aurora "Professional Law Enforcement Officers, Patrol" bargaining unit was an appropriate unit. We subsequently certified the unit on December 10, 2010.

On January 12, 2011, Respondent City of Aurora (City) filed a Motion to Reconsider our December 7, 2010 Order and the December 10, 2010 Certification. Petitioner Laborers' International Union of North America, Professional Law Enforcement Officers Association, Aurora (Association) provided a timely response.

## DISCUSSION

In its Motion, the City asserts that effective January 1, 2011, it reduced the number of patrol officers it employs to a total of one officer. Since one employee does not constitute an appropriate bargaining unit, the City requests that we reconsider our Order and stay the Certification. (City's Motion for Reconsideration.)

Petitions for reconsideration must be filed no later than 14 days from the date of service of the order. OAR 115-010-0100. This Board issued the Order in this case on December 7, 2010, and the unit was certified on December 10, 2010. To be timely, the City must have filed its motion by no later than December 21, 2010. The City filed its motion on January 12, 2011, far beyond the 14 days allowed under our rules. The motion is untimely and will be dismissed.

Shortly after the Board certified the two-member bargaining unit, the City laid off one bargaining unit member. The City argues that because of this reduction, the City is not required to recognize or bargain with the Association. Although not properly before us, we address these issues solely to provide the parties with guidance.

1. What effect does the reduction of the bargaining unit to one employee have on the certification?

OAR 115-025-0015 provides that Board certification of an exclusive bargaining unit serves "as a bar to an election for a period of one year from the date of certification unless:

"(a) The certified labor organization has dissolved or become defunct;

"(b) A schism developed in the certified labor organization so that it cannot effectively represent bargaining unit members;

"(c) The size of the bargaining unit has fluctuated radically within a short period of time; or

"(d) Other changed circumstances warrant waiver of the certification bar."

One of the purposes of a one-year certification bar is to insure the parties a reasonable time in which to bargain without outside interference or pressure, such as a rival petition. *Salem Education Association v. Salem School District 24J*, Case No. C-241-81, 6 PECBR 5373, 5386-5387 (1982); *Mar-Jac Poultry Company, Inc. and Local 454 Amalgamated Meat Cutters and Butcher Workmen of America, AFL-CIO*, 136 NLRB 785 (1962), and *Goya Food of Fla.*, 347 NLRB No. 103 (2006) (absent unusual circumstances, an employer will be required to honor a certification for a period of one year).<sup>1</sup>

A certification, however is not everlasting. Either party may petition this Board for revocation at any time. We will normally order revocation upon a showing that no collective bargaining agreement is in effect and the labor organization either disclaims interest or is defunct.<sup>2</sup> OAR 115-025-0009. *Washington County Prosecuting Attorney's Association v. Washington County*, Case No. UC-26-00, 18 PECBR 721 (2000).

An employer may also appeal this Board's post-election certification order to the court of appeals. *Linn-Benton-Lincoln Education Association v. Linn-Benton-Lincoln ESD*, 152 Or App 439, 954 P2d 815 (1998).

2. What effect does a reduction to one employee have on an employer's duty to bargain?

Normally an employer's duty to bargain in good faith commences at the time of certification by this Board. *Faculty Members of Oregon College of Education v. Oregon College of Education Federation of Teachers/AFT and Oregon College of Education*, Case No. C-162-77, 3 PECBR 2007 (1978). However, like the National Labor Relations Board (NLRB) we have consistently held that the principle of collective bargaining presupposes that there

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<sup>1</sup>The US Supreme Court has held that "unusual circumstances" occur when 1) the certified union dissolved or became defunct; 2) as a result of schism, substantially all the members and officers of the certified union transferred their affiliation to a new local or international; and 3) the size of the bargaining unit *increased* radically within a short time. *Brooks v. National Labor Relations Board*, 348 U.S. 96, 75 S. Ct 176 (1954).

<sup>2</sup>A union is defunct if it is unable or unwilling to represent the employees. However, mere temporary inability to function does not constitute defunctness nor is the loss of all members in the unit the equivalent of defunctness if the representative otherwise continues in existence and is willing and able to represent the employees. *Hershey Chocolate Corp.*, 121 NLRB 901, 911 (1958).

is more than one employee who desires to bargain. *Oregon AFSCME Council 75 v. City of Hines*, Case No. C-15-80, 5 PECBR 2982, 2984 (1980). Also see *American Radio Ass'n, AFL-CIO*, 258 NLRB 1251, 1257-58 (1981) (while union may lawfully represent an employee in a one employee unit, employer is not required to bargain); *Parris, d/b/a D & B Masonry*, 275 NLRB 1403, 1408 (1985) (if employer employs one or fewer unit employees on a permanent basis, the employer may withdraw recognition from union); *Foreign Car Center, Inc.*, 129 NLRB 319, 320 (1960) (unit consisting solely of a single employee is inappropriate for collective bargaining).

Accordingly, an employer has no duty to bargain with a union while there is only one person in the bargaining unit.

ORDER

Respondent's Motion for Reconsideration is dismissed.

Dated this 11<sup>th</sup> day of March, 2011.

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\* Paul B. Gamson, Chair

  
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Vickie Cowan, Board Member

  
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Susan Rossiter, Board Member

\* Chair Gamson Concurring

I agree that the petition for reconsideration is untimely and should be dismissed. The remainder of the majority order is unnecessary and ill considered and I do not join it.

  
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Paul B. Gamson, Chair