

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. DA-001-12

(DEAUTHORIZATION)

EMPLOYEES OF STATE OF)	
OREGON, CONSTRUCTION)	
CONTRACTORS BOARD,)	
)	
Petitioners,)	ORDER AND NOTICE OF
)	DEAUTHORIZATION ELECTION
v.)	
)	
OREGON AFSCME COUNCIL 75,)	
LOCAL 3581,)	
)	
Respondent.)	
_____)	

In *Abood v. Detroit Board of Education*, 431 US 209 (1977), the US Supreme Court held that under the First Amendment, public employees cannot be required to join a union. The Court recognized, however, that employees who choose not to join the union nevertheless continue to belong to the bargaining unit, are covered by and receive the benefits of the collective bargaining agreement, and are entitled to fair representation by the union. As a result, the Court held that a union can require these non-members to pay their fair share of the costs of bargaining, administering, and enforcing the collective bargaining agreement.

In Oregon, a public employee union is entitled to "fair share" payments from non-members if the union and the public employer agree to it. ORS 243.650(10) defines "fair-share agreement" as "an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization * * *."

That same statute contains a safeguard. If at least 30 percent of the employees in the bargaining unit petition this Board to rescind the fair-share agreement, this Board must conduct a secret ballot election to determine the employees' desires. Unless a majority of those voting favor the agreement, this Board "shall certify deauthorization of the agreement." ORS 243.650(10).

Petitioners are members of a bargaining unit covered by a fair-share agreement. On January 12, 2012, they petitioned this Board to deauthorize the fair-share agreement. The petition applies to a bargaining unit of employees of the State of Oregon, Construction Contractors Board (CCB) who are represented by Oregon AFSCME Council 75, Local 3581 (AFSCME).

On December 20, 2011, CCB and AFSCME signed a collective bargaining agreement covering the bargaining unit in question. The agreement contains a fair-share provision. The collective bargaining agreement describes the bargaining unit as:

"All classified employees of the Construction Contractors Board excluding supervisory, confidential and managerial employees as defined by ORS 243.650, employees working less than half-time, and temporary employees within the meaning of ORS 240.309."

The petition was duly served and investigated. The petition was filed within 90 calendar days after the parties executed the collective bargaining agreement. OAR 115-030-0000(1)(b). This Board finds the showing of interest provided in support of the petition to be timely and adequate.¹

¹On January 24, 2012, AFSCME sent this Board a copy of the 2011-2013 collective bargaining agreement between AFSCME and the CCB. In the letter accompanying the agreement, AFSCME stated that although the parties signed the contract on December 20, 2011, the contract was effective on July 1, 2011 and ratified on September 2011. It asserts the petition is untimely. Also in its January 24 letter, AFSCME challenges the adequacy of the showing of interest submitted with the petition.

Showing of interest cards in a deauthorization election are timely if signed not more than 90 days after the collective bargaining agreement is "executed." OAR 115-030-0000(1)(b). Here, the showing of interest cards were signed within 90 days of the date on which the contract was executed—December 20, 2011. The cards are, therefore, timely.

In regard to the adequacy of the showing of interest, this Board's determination regarding the sufficiency of a showing of interest in a representation election is an administrative matter that is not subject to collateral attack. *Oregon Public Employees Union, Local 503, SEIU, AFL-CIO, CLC v. City of Pendleton*, Case No. RC-31-85, 8 PECBR 8288 (1985).

Accordingly, pursuant to ORS 243.650(10) and OAR 115-030-0000, we direct the Elections Coordinator to conduct a secret ballot election by mail so that eligible bargaining unit employees can vote on whether they wish to retain or rescind the fair share agreement.

The election will be conducted as follows:

February 8, 2012 CCB shall provide this Board an alphabetical list of names, home addresses, and position titles, together with mailing labels, for all eligible voters.

February 23, 2012 ERB will mail ballots to home addresses of eligible voters.

March 8, 2012 Ballots must be received in ERB offices by 5:00 p.m. to be counted.

March 9, 2012 ERB will tally the ballots in its offices at 10:00 a.m.

Eligible voters shall be those bargaining unit members who were employed on the date of this Order and remain so employed at the close of the election March 8, 2012.

CCB shall post the notices of election provided with this Order in areas giving maximum access to employees. After posting, CCB shall promptly complete the provided Certificate of Posting and return it to the Elections Coordinator.

DATED this 2 day of February 2012.



Susan Rossiter, Chair



Paul B. Gamson, Board Member

This Order may be appealed pursuant to ORS 183.482.