

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-007-09

(UNIT CLARIFICATION PETITION)

SEIU LOCAL 503, OPEU,)	
)	
Petitioner,)	
)	
v.)	
)	ELECTION ORDER
OREGON UNIVERSITY SYSTEM,)	
PORTLAND STATE UNIVERSITY,)	
)	
Respondent.)	
_____)	

On April 6, 2009, SEIU Local 503, OPEU (Petitioner) filed a unit clarification petition under OAR 115-025-0005(4) which seeks to include the Recycling Specialist and Recycling Specialist (Crew Lead) classifications in an existing bargaining unit of employees of the Oregon University System, Portland State University (Respondent). The parties' collective bargaining agreement expires on June 30, 2009. The agreement's recognition clause describes the bargaining unit as:

"All classified employees of the Oregon University System in positions represented by SEIU at the universities designated in Article 1-Parties to the Agreement of the collective bargaining agreement and all classified positions currently represented by SEIU in the Chancellor's office. Excludes: employees currently represented by other labor organizations, students who are not classified employees, unclassified, exempt, temporary, supervisory, managerial and confidential employees as defined by law or determined by the Employment Relations Board."

Portland State is one of the universities designated as a party to the agreement. The classifications sought in the petition are currently unrepresented.

On April 7, 2009,¹ this Board's Elections Coordinator served the petition on Respondent. On April 9, Respondent certified that it had posted the required notice in the workplace that a unit clarification election had been requested.

Also on April 7, the Elections Coordinator sent a letter asking Respondent to send, by April 17, a list of employees in the Recycling Specialist and Recycling Specialist (Crew Lead) classifications so the Elections Coordinator could determine if the showing of interest submitted with the petition was timely and adequate. Respondent did not provide such a list. On April 21, the Elections Coordinator notified the parties that due to Respondent's failure to provide the list, she would assume the Petitioner's showing of interest was timely and adequate.²

The Elections Coordinator's April 7 letter also notified Respondent that it had "14 days from the date of the notice (until April 24, 2009) to file *specific* written objections to the petition." (Emphasis in original.) The letter further stated that if no valid objections were filed and any party refused to sign a consent election agreement, this Board would deem that the parties had waived their right to a hearing and would order an election. No timely objections to the petition were filed.

On April 27, the Elections Coordinator faxed a consent election agreement to Petitioner and Respondent with instructions to sign and return it by 5:00 p.m. on May 1. She also directed the Respondent to provide, by May 4, a list of names and addresses of the employees in the Recycling Specialist and Recycling Specialist (Crew Lead) classifications. Petitioner promptly signed and returned the agreement.

On April 30, Respondent's representative called the Elections Coordinator stating that there are no employees in these classifications. The Elections Coordinator asked the Respondent's representative to put the information from the phone call into a letter. The letter had not arrived by May 7, so the Elections Coordinator asked Respondent to fax her the letter.

¹All dates are in 2009 unless otherwise noted.

²*Portland Community College Faculty Federation, Local 2277 of AFT, AFT-Oregon, AFL-CIO, NOLC v. Portland Community College*, Case No. UC-13-00, 19 PECBR 129, 130 (2001) (a showing of interest is considered timely and adequate when an employer fails to provide the Elections Coordinator with the requested names, addresses, and position titles of the subject employees).

Respondent's letter states:

“* * * We reviewed the positions that are involved in our recycling efforts that possibly should be classified in the SEIU Local 503, OPEU bargaining unit and we determined that there were none, and thus had no list to submit to your office.

“* * * Reporting to the Customer Service Manager of the Facilities and Planning department there is an Administrative Program Specialist, Classification #0108, who is responsible for the recycling collection on campus, and there are rotating students who report to this classified position.”

Respondent has not signed the consent election agreement.

On May 5, Petitioner voluntarily offered and submitted a list of 11 individuals it believes are in the subject classifications.

RULINGS

On May 12, Respondent filed a motion for permission to file late objections. Objections to a petition such as this one must be filed within 14 days from the date on the notice we draft and require the employer to post in the workplace. OAR 115-025-0030(1)(c). Here, the date on the posted notice is April 10. The posting itself includes notice of the 14-day deadline for filing objections, and the Elections Coordinator's April 7 letter to Respondent expressly notes that Respondent had “14 days from the date of the notice (until April 24, 2009) to file *specific* written objections to the petition.” (Underlining and emphasis in original). Respondent now seeks to object 18 days after the deadline has passed. We deny Respondent's motion.

This Board typically does not accept late objections to a unit clarification petition. *E.g., Teamsters Local 57 v. City of Bandon*, Case No. UC-47-91, 13 PECBR 225, 226 (1991) (Board deemed objections to a unit clarification petition invalid because they were filed 22 days after the deadline). One of the core rights under the Public Employee Collective Bargaining Act (PECBA) is the right of public employees to join labor organizations of their own choosing for purposes of collective bargaining. ORS 243.662. To ensure that public employees are fully afforded these rights, this Board gives priority to cases such as this one that raise representation issues. We have purposely adopted and enforced short timelines, such as the 14-day objection period at issue here. *See also* OAR 115-025-0045 (requiring a hearing on objections to a petition within 21 days after the

end of the objection period). Allowing objections as late as these would significantly delay the process and deprive employees of a prompt determination of their rights. Such a delay would undermine the purposes and policies of the PECBA, and we accordingly deny Respondent's motion.

Respondent argues that we should allow late filings for good cause. Even if we were to adopt a good cause standard, Respondent does not meet it. According to an affidavit attached to the motion, Respondent received a copy of the petition, the posting, and a letter stating that objections to the petition were due by April 24. The President's Office assigned the matter to the Associate Vice President of Human Resources at Portland State University. The Vice President mistakenly concluded that the petition did not apply to Portland State, and therefore did not file objections.

This Board evaluates good cause based on the circumstances of the individual case. *Oregon School Employees Association v. Reynolds School District No. 7*, Case No. C-237-79, 5 PECBR 4353 (1981). The circumstances here do not constitute good cause for an untimely filing. The timeline for filing objections is clear in this Board's rules, in the posting sent to Respondent, and in the April 7 letter from the Elections Coordinator. Inadvertence, or lack of awareness of Board rules or the contents of a notice do not permit a filing that is even one day late. *Multnomah County Correction Deputies Association v. Multnomah County*, Case No. UP-58-05, 22 PECBR 422, 426-27 (2008) (citing cases). Failure of support staff to follow through or properly calendar a deadline is not good cause for a late filing. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-45-98, 18 PECBR 377 (1999).

Respondent has not demonstrated good cause for its untimely objections. We will not consider them.³

³Even if we were to consider the objections, they appear on their face to be without merit. Respondent asserts that the subjects of the petition are students. The mere fact that these employees are also students at the university does not alone preclude them from coverage under the PECBA. See *Portland Community College Faculty Federation v. Portland Community College*, Case No. UC-34-87, 10 PECBR 700, 738 (1988). Respondent also points out that the employees work part time. Part-time employees can be included in the same unit as full-time employees. *Portland Community College*, 19 PECBR at 141. Respondent further asserts the positions are "transitory in nature." Temporary employees can be included in a unit with full-time employees. *Oregon Public Employees Union v. State of Oregon, Department of Administrative Services*, Case Nos. UC-22/23-99, 18 PECBR 452, 466-467 (2000), *aff'd* 173 Or App 432, 22 P3d 251 (2001). Respondent next asserts the employees are funded in part by student fees. We know of no

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FINDINGS OF FACT

1. Petitioner, SEIU Local 503, OPEU, is a labor organization. Respondent, Oregon University System, Portland State University, is a public employer.

2. The parties' collective bargaining agreement expires on June 30, 2009. Petitioner filed a petition for unit clarification on April 6. Respondent was duly notified of the petition and did not file timely objections.

3. The positions that are the subject of the petition are currently unrepresented.

4. Petitioner presented an adequate showing of interest to support its petition.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over these parties and this subject matter.

2. The petition presents a question of representation requiring an election. Because Respondent did not file timely or valid objections to the petition, there is no issue of fact or law that requires a hearing.

ORDER

1. The Elections Coordinator shall conduct a secret ballot election by mail to allow employees in the classifications of Recycling Specialist and Recycling Specialist (Crew Lead) to express their desires for representation by Petitioner for the purposes of collective bargaining. Eligible voters shall be those employees employed on the date of this order and still employed at the close of the election.

2. The choices and order of choices on the ballot shall be:

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reason why a separate funding source alone is relevant to this petition. *See Oregon Workers Union v. State of Oregon, Department of Transportation and Service Employees International Union Local 503, Oregon Public Employees Union*, Case No. RC-26-05, 21 PECBR 873, 889 n 7 (2007). Last, Respondent asserts that the parties' contract expressly excludes the subject employees from the bargaining unit. The main purpose of this type of unit clarification proceeding is to determine whether unrepresented employees should be included in the bargaining unit. A contractual exclusion is not a valid defense to a timely petition under OAR 115-025-0005(4).

- (1) SEIU Local 503, OPEU; and
- (2) No Representation.

3. No later than May 26, 2009, Respondent shall provide this Board with an alphabetical list of the names, home addresses, and position titles of all eligible employees, along with a mailing label for each employee on the list. Alternatively, if Respondent cannot determine the 11 individuals in question, it shall promptly ask this Board for a copy of the list of employees submitted by the Petitioner. By May 26, 2009, Respondent will provide the Board with the home address and a mailing label for each name on the list.

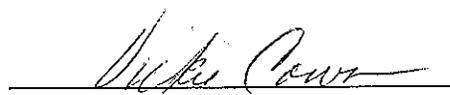
4. The dates for the election shall be as follows:

June 2, 2009	Employer to post election notices and return certification of posting to the Employment Relations Board (ERB).
June 16, 2009	ERB to mail ballots to eligible voters
June 30, 2009	Ballots due in ERB offices no later than 5:00 p.m.
July 1, 2009	Tally of ballots in ERB offices at 10:00 a.m.

DATED this 15th day of May 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.