

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-18-05

(UNIT CLARIFICATION)

SALEM POLICE EMPLOYEES UNION,)
)
 Petitioner,)
)
 v.)
)
CITY OF SALEM,)
)
 Respondent,)
)
 and)
)
AFSCME COUNCIL 75, LOCAL 2067,)
)
 Incumbent.)
_____)

DISMISSAL ORDER

On April 21, 2005, Salem Police Employees Union (Petitioner) filed a unit clarification petition seeking to add or transfer the Telephone Report Officer/Specialist classifications to Petitioner's bargaining unit. It appeared on the face of the petition that the Telephone Report Officer/Specialist classification is currently represented by AFSCME Council 75, Local 2067 (AFSCME). According to the petition, there are five individuals employed in the subject classification. The petition was accompanied by a single showing of interest. Nevertheless, the petition was filed under both subsection (4) and (6) of OAR 115-25-005.

On April 22, the Elections Coordinator wrote Petitioner's representative requesting clarification. She noted that the petition relies on two different procedures

for clarifying these employees into the Petitioner's bargaining unit: a subsection (4) petition which seeks to clarify *unrepresented* employees into Petitioner's bargaining unit; and a subsection (6) petition which seeks to transfer employees *currently represented* by AFSCME into Petitioner's bargaining unit. The Elections Coordinator asked Petitioner to clarify whether the affected employees were currently represented.

The Elections Coordinator also questioned the timeliness of the petition. The term of Petitioner's contract with the City of Salem (Respondent) is July 1, 2004 to June 30, 2006, which would make the petition untimely under both subsection (4) and subsection (6). She also asked whether the classifications in question were created after July 1, 2004.

Petitioner replied on May 2. It explained that it filed the petition under two different subsections because there were two types of employees at issue: full-time Telephone Report Officers, who are represented by AFSCME, and part-time Telephone Report Officers, who are unrepresented. Petitioner did not specify which employees were full-time, and which are part-time. The showing of interest submitted with the petition does not indicate which employees are full- or part-time.

Regarding timeliness, Petitioner argues that it was appropriate to file the petition now because AFSCME's collective bargaining agreement is currently open and due to expire, so "an appropriate window to file a UC petition exists now." Petitioner also claims the petition is timely due to the unrepresented nature of some of the employees at issue and the changes in the classification.

Further, Petitioner claims the position has "morphed" through the years, thus limiting Petitioner's ability to answer whether the positions existed when Petitioner's last collective bargaining agreement was executed. Petitioner does not believe the classification, as it currently exists, was in effect at that time.

The Elections Coordinator wrote to Petitioner's representative on May 5 stating that, upon further review, the petition was untimely filed. Her letter pointed out that the *petitioning* labor organization's collective bargaining agreement determines the timeliness of petitions filed under both OAR 115-25-005(4) and (6). Petitioner's collective bargaining agreement expires June 30, 2006, thus rendering this petition—which was filed on April 21, 2005—untimely. She asked Petitioner to withdraw the petition within 10 days. Petitioner did not respond.

DISCUSSION

Petition Under OAR 115-25-005(6) (Represented Employees)

OAR 115-25-005(6) states in part:

“When the issue raised by the clarification petition is whether a group of employees who are represented within * * * another bargaining unit more appropriately belongs in a unit represented by the petitioning labor organization, the petition must be supported by a petition (or cards) signed by more than 50 percent of the employees in the affected group certifying that they wish to be represented by the petitioning labor organization as part of that organization’s bargaining unit. The petition must be filed during the open period provided for in OAR 115-25-015(4), *as that rule applies to the petitioning organization’s bargaining unit.* * * *” (Emphasis added.)

Petitioner argues that the subsection (6) portion of the petition is timely based on AFSCME’s window period. Our rule is clearly to the contrary. Timeliness is determined by Petitioner’s circumstances. The petition was not filed within the window period based on Petitioner’s contract. This portion of the petition is dismissed as untimely.

Petition Under OAR 115-25-005(4) (Unrepresented Employees)

OAR 115-25-005(4) states in part:

“When the issue raised by the clarification petition is whether certain unrepresented positions should be added to an existing bargaining unit, the petition must be supported by a 30 percent showing of interest among the unrepresented employees sought to be added to the existing unit. If the employees sought to be added to the unit occupy positions that existed and were filled at the time of the most recent * * * agreement, the petition must be filed during the open period provided for in OAR 115-25-015(4) * * *.”

OAR 115-25-015(4) provides in part:

“ * * * A petition for an election where a contract exists must be filed not more than 90 days and not less than 60 days before the end of the contract period. * * * ”

Petitioner did not specify which of the subject employees were part-time and allegedly unrepresented. Nor did Petitioner submit a separate showing of interest in support of its subsection (4) petition, as required by our rule. We dismiss Petitioner's subsection (4) petition for failure to comply with OAR 115-25-115(4).

For reasons set forth above, we will dismiss the petition in its entirety.

ORDER

The petition is dismissed.

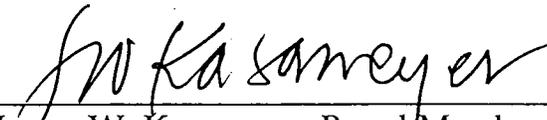
DATED this 27th day of May 2005.



Paul B. Gamson, Chair

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Rita E. Thomas, Board Member



James W. Kasameyer, Board Member

*Member Thomas concurs with this Order but was absent on the date of signing.

This Order may be appealed pursuant to ORS 183.482.