

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-45-04

(UNIT CLARIFICATION)

OCCUPATIONAL AND PHYSICAL)
THERAPIST EMPLOYEES OF MULTNOMAH)
SCHOOL DISTRICT NO. 1)

Petitioner,)

v.)

PORTLAND ASSOCIATION OF TEACHERS,)
AND SCHOOL DISTRICT NO. 1,)
MULTNOMAH COUNTY,)

Respondents,)

and)

PORTLAND FEDERATION OF TEACHERS)
AND CLASSIFIED EMPLOYEES,)
AFT, LOCAL 111,)

Incumbent.)

DISMISSAL ORDER

Kevin Keaney, Attorney at Law, Lloyd Center Towers, 825 N.E. Multnomah Street,
Suite 960, Portland, Oregon 97232, represented Petitioner.

On June 10, 2004, a number of occupational and physical therapists
employed by Multnomah County School District No. 1, and represented by Attorney
Kevin Keaney, filed this OAR 115-25-005(6) petition to transfer themselves as a group

from their current bargaining unit, which is represented by Portland Federation of Teachers and Classified Employees, to the unit represented by Portland Association of Teachers (PAT). Petitioners did not identify themselves as a labor organization, nor did they seek to represent a separate bargaining unit of occupational and physical therapists. Consistent with this, no showing of interest accompanied the petition. PAT does not seek to represent these employees, nor seek their inclusion in its existing bargaining unit.

Shortly after filing, this Board's elections coordinator contacted Keaney and informed him that the petition did not seem to be a valid petition and asked upon what authority Keaney relied. By letter dated June 21, 2004, Keaney replied that he was relying upon ORS 243.682(1). The case was then transferred to Administrative Law Judge (ALJ) Vickie Cowan for processing.

By letter dated July 2, 2004, the ALJ warned Keaney that the petition did not comply with ORS 243.682 or OAR 115-25-005(6), and that she would recommend that this Board dismiss the petition unless Keaney could convince her to the contrary.

On July 16, 2004, Keaney requested the ALJ hold the case in abeyance so he could consult with PAT. By letter dated October 1, 2004, Keaney informed the ALJ that PAT would not participate in the transfer, but that he wished to pursue the petition because the employees more appropriately belonged in the PAT bargaining unit.

ORS 243.682 provides, in relevant part:

“* * * If a question of representation exists, the Employment Relations Board shall:

“(1) Upon application of a public employer, public employee or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.

“(2) Investigate and conduct a hearing on a petition that has been filed by:

“(a) A *labor organization* alleging that 30 percent of the employees in an appropriate bargaining unit desire to be represented for collective bargaining by an exclusive representative;

“(b) A *labor organization* alleging that 30 percent of the employees in an appropriate bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

“* * * * *

“(d) An *employee or group of employees* alleging that 30 percent of the employees assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit.” (Emphasis added.)

Although ORS 243.682 allows a public employee to file a petition, the statute limits the type of employee-filed petition to that of decertifying the bargaining agent. Only a labor organization may represent employees in collective bargaining, so only a labor organization may petition to transfer a group of employees from one bargaining unit to another.

Even if filed by a labor organization, a petition to transfer employees from one bargaining unit to another must be supported by a showing of interest. OAR 115-25-005(6) provides, in relevant part:

“When the issue raised by the clarification petition is whether a group of employees who are represented within (as a fragment of) 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. * * *” (Emphasis added.)

No showing of interest accompanied the petition in this case.

To conclude, the petition in this case fails to meet any of the requirements established by statute and our rules. It is dismissed.

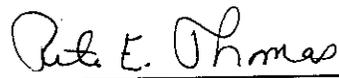
ORDER

The petition is dismissed.

DATED this 3rd day of November 2004.



Paul B. Gamson, Chair



Rita E. Thomas, Board Member

This Order may be appealed pursuant to ORS 183.482.