

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-004-10

(UNFAIR LABOR PRACTICE)

CITY OF SALEM,	)	
	)	
Complainant,	)	ORDER TO STAY
	)	ARBITRATION
v.	)	
	)	
SALEM POLICE EMPLOYEES	)	
UNION,	)	
	)	
Respondent.	)	
_____	)	

On February 22, 2010, the City of Salem (City) filed this unfair labor practice complaint. It alleges that the Salem Police Employees' Union (Union) acted unlawfully in a number of ways when it initiated interest arbitration regarding a work schedule dispute. On February 23, the City asked us to stay the interest arbitration proceedings pending resolution of the unfair labor practice complaint. The City asserts that a stay would permit this Board to decide if interest arbitration is appropriate before the parties are required to participate in the process. The Union objects to the requested stay.

On March 22, 2010, the City amended its complaint. The Amended Complaint alleges, in pertinent part:

"14. The Union's initiation of interest arbitration is inappropriate and not in compliance with the provisions of the Public Employee Collective Bargaining Act (PECBA), governing interest arbitration, including ORS 243.698, 243.712, 243.742 and 243.746.

"a. ORS 243.698 was violated because –

"i. The Union and the City did not engage in the requisite bargaining (or any bargaining) prior to the initiation of interest arbitration.

- “ii. Even if there were bargaining, 90 days did not elapse from notice of the change in schedule to five 8-hour days before initiating interest arbitration.
  - “iii. There was no bargaining obligation. The subject is already covered by the terms of the parties' collective bargaining agreement and the Union has waived any right to bargain.
  - “iv. This statutory provision does not provide for interest arbitration following expedited bargaining process.
- “b. ORS 243.712 was violated because the Union failed to follow its procedures, including engaging in 150 days of bargaining, mediation before declaring impasse and the submission of its final offer and cost summary when initiating interest arbitration.
  - “c. ORS 243.742 was violated because the provisions of ORS 243.712 were not complied with.
  - “d. ORS 243.746 was violated because the procedures set forth in ORS 243.712(2)(e) and 243.742 were not followed.

“Consequently, the Union's actions constitute an unfair labor practice under ORS 243.672(2)(c).

“16.[<sup>1</sup>] The Union, moreover, has breached its obligation to bargain in good faith by invoking the bargaining obligation and taking a matter for which there is no duty to bargain through the PECBA's dispute resolution process and initiating interest arbitration. The Union's actions therefore constitute an unfair labor practice under ORS 243.672(2)(b).”

In its request for a stay, the City argues that it would waste the resources of the parties and the Board to allow interest arbitration to proceed before this Board has an opportunity to determine whether the parties are required to engage in interest arbitration. The Union focuses on the merits of the complaint. It asserts we should deny the stay because the City's legal claims are “frivolous, unfounded and not based in fact or law.”

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<sup>1</sup>The Amended Complaint does not contain a paragraph 15.

This Board's role in the interest arbitration process is "basically ministerial." *State of Oregon, Department of Justice v. Criminal Investigators' Association*, Case No. UP-14-00, 18 PECBR 630, 631 (2000).<sup>2</sup> Nevertheless, on rare occasions in the past, when it furthered the purposes and policies of the PECBA, this Board temporarily stayed interest arbitration proceedings. In *Clackamas County v. Federation of Parole and Probation Officers*, Case No. UP-91-91, 13 PECBR 261 (1991), later proceeding 13 PECBR 538 (1992), the union sought interest arbitration, and the employer filed an unfair labor practice complaint alleging that the dispute was not subject to interest arbitration because the employees at issue were strike-permitted. This Board determined that "the interests of equity and economy will be best served if further arbitration proceedings involving the parties to this case are stayed pending resolution of the unfair practice charges raised in the County's complaint." 13 PECBR at 261. We also granted a stay on similar facts in *Marion County v. Federation of Parole and Probation Officers*, Case No. UP-77-91, 13 PECBR 258 (1991).

We reach the same conclusion here. The Amended Complaint does not lack merit on its face and presents a reasonable likelihood of success. We find it significant that the Union and the City both assert that the dispute is covered by the parties' contract: the Union filed a grievance asserting that the *contract prohibits* the City's changes to the work schedule; the City asserts in its motion to stay that the *contract permits* the changes. If the City is right and the contract permits the schedule changes, then it is not obligated to bargain over the issue and need not proceed to interest arbitration. *Association of Oregon Corrections Employees v. DOC*, 209 Or App 761, 149 P3d 319 (2006). If the Union is right and the contract prohibits the schedule changes, then the dispute is a matter for grievance arbitration rather than bargaining. See *Clackamas County Employees' Association v. Clackamas County*, Case No. UP-53-09, 23 PECBR 571, order on reconsid. 23 PECBR \_\_\_\_ (2010) (a breach of contract does not constitute bad-faith bargaining). In other words, if either party's contract interpretation is correct, then this dispute is not subject to interest arbitration.

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<sup>2</sup>The Union's reliance on *Criminal Investigators' Association* is misplaced. Although the case expresses our generally strong reluctance to interfere with the interest arbitration process, it does not foreclose our ability to stay proceedings in unusual circumstances where the purposes and policies of the PECBA are best promoted by a stay. In *Criminal Investigators' Association*, this Board refused the State's request to stay interest arbitration because, unlike the present case, there was no unfair labor practice complaint pending. The State then filed an unfair labor practice complaint and the Board decided on the merits of the complaint that the State was not required to proceed to interest arbitration. Given this limited holding, and the fact that this Board has previously stayed interest arbitration on at least two occasions (discussed above in the text), *Criminal Investigators' Association* is not controlling here. We emphasize that although such stays are possible, they are unusual and will be addressed on a case-by-case basis considering the specific facts presented.

In these circumstances, it would best serve the interests of equity and economy to stay the interest arbitration proceedings until the issues raised in the City's complaint are resolved. Staying the proceedings will preserve our ability to award a full and fair remedy if we conclude the City's complaint has merit.

The pending grievance could resolve this dispute if an arbitrator determines that the contract either permits or prohibits the City's actions. The interests of equity and economy will also be served if the parties proceed promptly with their grievance arbitration. Accordingly, as a condition of the stay, we will require the City to cooperate with the Union and the arbitrator in processing and resolving the grievance as promptly as practical.<sup>3</sup>

ORDER

Interest arbitration in the negotiations dispute between the City and the Union is stayed pending resolution of the complaint. As a condition of the stay, the City will cooperate with the Union and the arbitrator to assure that the pending grievance is processed and resolved as promptly as practical.

DATED this 3 day of May, 2010.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482

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<sup>3</sup>The parties' positions make the meaning of their contract a core issue in this unfair labor practice proceeding. The parties agreed that disputes over the meaning of their contract would be resolved by an arbitrator. The PECBA favors resolution of contract disputes through arbitration. It is therefore a logical progression for the grievance arbitration to proceed first. The outcome of the grievance arbitration will inform the Board on issues raised in the unfair labor practice complaint. The Board can then decide the complaint and determine if the parties are required to engage in interest arbitration.