

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-7-07

(UNFAIR LABOR PRACTICE)

AFSCME LOCAL 189,)	
)	
Complainant,)	
)	
v)	ORDER ON
)	RECONSIDERATION
CITY OF PORTLAND,)	
)	
Respondent.)	
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On October 23, 2008, this Board issued an Order which held that the City committed various violations of ORS 243.672(1)(a) and (b). 22 PECBR 752. The City asks this Board to reconsider the portion of the remedy which requires the City to “purge” its files of certain documents that arise from or are based on the City’s unlawful conduct. The City asserts that this Board’s purge order conflicts with state laws and regulations that require the City to retain documents for a specified period of time.

In support of its position, the City cites ORS 652.750 (requiring employers, including public employers, to retain an employee’s personnel records for at least 60 days after termination); and ORS chapter 192 (regarding the retention and destruction of public records). The City also relies on various state administrative rules that implement the public records retention law, including OAR 166-200-0090(4) (requiring cities to retain investigations which result in discipline, exoneration, or are unfounded for three years); OAR 166-200-0090(7) (requiring cities to retain letters of reprimand and notices of disciplinary action for three years, and all other personnel

documents for six years after separation); and OAR 166-200-0090(14) (requiring cities to retain investigations, grievance, and complaint records for three years).¹

The City's arguments under these rules and statutes are all based on the premise that this Board's order to "purge" documents from the City's files requires the City to destroy the documents. The City implicitly recognizes the weakness of this premise. It argues that it can "envision an argument * * * that 'purge' means 'destroy.'" (City's Reply Brief at 1.) Purge means "get rid of." *Webster's Third New International Dictionary* 1845 (unabridged ed. 1971). Although destroying the documents would certainly be one way to "get rid of" them, our purge order does not *require* the City to destroy them. AFSCME's position is that our order "simply requires the employer to remove the documents from its active records and to set them aside for destruction pursuant to its normal procedures authorized by law for destruction of any and all obsolete or inactive City documents." (AFSCME's Response to Petition for Reconsideration at 2.)

Thus, the parties are in agreement. Both AFSCME and the City acknowledge that our Order does not require the City to immediately destroy the documents. As a consequence, we do not need to answer the question posed by the City of whether this Board has the authority to order the immediate destruction of the documents.

¹The City also cites two criminal statutes, although it does not explain how they would apply here. ORS 162 305 makes it a Class A misdemeanor to destroy, conceal or remove a public record "without lawful authority." We consider this Board's Order to constitute "lawful authority" for the City to act. ORS 162 295 makes it a Class A misdemeanor to tamper with physical evidence with the intent that it be "used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted." The City does not explain, and we cannot discern, how this provision would criminalize compliance with this Board's order. Other than this case, we are unaware of any pending or contemplated official proceeding involving these documents.

ORDER

The City's Petition for Reconsideration is granted. The Board adheres to its Order of October 23, 2008, as clarified herein.

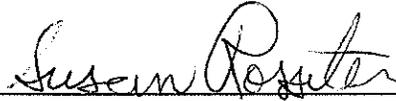
Dated this 5th day of January 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.