

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-11-06

(UNFAIR LABOR PRACTICE)

OREGON SCHOOL EMPLOYEES )  
ASSOCIATION, CHAPTER 81, )

Complainant, )

v. )

STANFIELD SCHOOL )  
DISTRICT 61R, )

Respondent. )  
\_\_\_\_\_ )

DISMISSAL ORDER

On March 17, 2006, the Oregon School Employees Association, Chapter 81 (OSEA) filed this unfair labor practice complaint against Stanfield School District 61R (District) alleging that the District violated the parties' labor contract and hence ORS 243.672(1)(g) by terminating Donna Sutton and Juanita Doherty without just cause. The case was assigned to Administrative Law Judge (ALJ) Vickie Cowan for processing. On April 3, 2006, the District filed a motion to dismiss for failure to state a claim. OSEA filed its response to the motion on April 14, 2006.

By letter dated June 14, 2006, ALJ Cowan notified the parties that she would recommend that this Board dismiss the case unless OSEA could convince her to the contrary. OSEA filed a supplemental response on June 23, 2006. For reasons which follow, we dismiss OSEA's complaint.

## STATEMENT OF FACTS<sup>1</sup>

1. OSEA is the exclusive representative of a bargaining unit of classified personnel employed by the District, a public employer.

2. Donna Sutton and Juanita Doherty, members of the OSEA bargaining unit, worked for the District as teacher's assistants.

3. On December 16, 2005, the District terminated Sutton and Doherty's employment for alleged misconduct.<sup>2</sup>

4. The parties' collective bargaining agreement does not provide a standard or a procedure for dismissal or other disciplinary action.

5. Section 22 of the contract addresses procedures for layoff. It states:

"REDUCTION IN FORCE: The District shall adhere to board policy GDPA for procedures relating to Layoff and Recall of Classified personnel."

6. Board policy GDPA provides:

"When it is determined that a layoff of classified employees is necessary, the following procedures will be implemented:

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<sup>1</sup>When deciding whether to dismiss a complaint without hearing, we assume the facts alleged in the complaint are true. *Service Employees International Union Local 503, Oregon Public Employees Union v. State of Oregon, Judicial Department*, Case No UP-6-04, 20 PECBR 677, 678 (2004). The facts recited are taken from the complaint.

<sup>2</sup>The complaint does not allege that any contract grievance was filed regarding the terminations of Doherty or Sutton. However, a review of the District's Motion to Dismiss establishes that grievances were filed on behalf of Doherty and Sutton, and that the District School Board upheld their terminations.

“A. Classified employees shall be grouped as follows:

- |     |                        |   |
|-----|------------------------|---|
| “1. | Grounds or Maintenance | A |
| “2. | Custodian              | B |
| “3. | Cook Manager           | C |
| “4. | Assistant Cook         | D |
| “5. | Cook Helper            | E |
| “6. | Teacher Assistant      | F |
| “7. | Secretary              | G |
| “8. | Media Assistant        | H |
| “9. | Media Manager          | I |

“B. Reduction within each grouping shall be made on the following basis:

1. First - Temporary employees within the group;
- “2. Then - If further reductions in force are made within that group, six months probationary employees shall be reduced next;
- “3. Last - In determining which classified employees are to be laid off within the groupings in district policy, the district will give consideration to qualifications, merit and previous evaluations. All these factors being

equal, the employee with the most seniority will be retained. Seniority means the employee's total length of continuous uninterrupted service in the district as a classified employee. As an exception to the above, the district shall comply with any requirements established by law or government agency relating to the reduction of minority employees.

“Recall will be at the discretion of the district. Recall will be by grouping in reverse order of layoff from within the grouping in which the individual was previously employed by the district, providing the employee being recalled is qualified and capable of satisfactorily performing the duties of the open position.”

7. Section 23 of the parties' labor contract establishes a three-step grievance procedure which does not contain an arbitration clause. Instead, the District's School Board makes the final decision. Section 23 defines a grievance as follows:

“GRIEVANCE PROCEDURES: A grievance, for purpose of this contract, is defined as a claim by an employee, a group of employees or the Association of an alleged violation of any provision of this Agreement. \* \* \*”

#### CONCLUSION OF LAW

1. The District did not violate ORS 243.672(1)(g) when it terminated Donna Sutton and Juanita Doherty.

#### DISCUSSION

The applicable labor contract contains no “just cause” clause or other provisions which restrict the District's right to discipline or terminate its

employees. The contract incorporates a District policy which establishes the order of layoff and recall. Finally, although the contract contains a broad grievance procedure, it does not provide for arbitration of grievances. Instead, the School Board makes the final decision.<sup>3</sup>

OSEA nevertheless urges this Board to hold that the District violated the contract when it terminated Doherty and Sutton. It asks us to imply a “just cause” standard for termination based on the layoff language of the contract. In support of this contention, OSEA relies on private sector arbitration cases in which arbitrators, with court approval, have made just cause clauses implied terms of labor agreements, even when the parties did not negotiate them.

In its Motion to Dismiss, the District argues that this Board will not imply a “just cause” provision in a labor agreement where none exists. The District relies on *Oregon School Employees Association v. Amity School District 4J*, Case No. UP-44-94, 15 PECBR 811 (1995); and *SEIU, Local No. 49 v. Clackamas Water District*, Case No. C-164-83, 7 PECBR 5953 (1983). We agree with the District and therefore dismiss the complaint.

ORS 243.672(1)(g) makes it an unfair labor practice for an employer to violate the provisions of “any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding on them.” In cases such as this, where the contract does not contain an arbitration clause, ERB may interpret the terms of the contract in proceedings brought under ORS 243.672(1)(g). *Oregon School Employees Chapter 115 v. Pendleton School District 16 R*, Case No. C-97-83, 8 PECBR 8223 (1985).

In *Elgin Education Association and Wilson v. Elgin School District No. 23*, Case No. UP-44-90, 12 PECBR 708 (1991), *reconsid.*, 12 PECBR 768 (1991), we upheld disciplinary action the District took against one of its teachers. The labor contract did not contain a “just cause” clause. However, it provided that

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<sup>3</sup>The contract provision that makes the School Board’s grievance decision “final” does not waive OSEA’s right to have this Board enforce the labor agreement under ORS 243.672(1)(g) *Oregon School Employees Association v. Crook County School District*, Case No. UP-66-93, 15 PECBR 30, 35-36 (1994).

employees could grieve “unjust or inequitable treatment.” The Association asked the Board to imply a “just cause” clause into the agreement. We declined:

“We reject the Association’s request that we read just cause into these terms [“unjust or inequitable treatment”]. Had the parties intended that there would be a just cause standard, the agreement would have so stated.” *Id.*, at 723.

We reached a similar result in *Clackamas Water District*. There, SEIU alleged that the District violated subsection (1)(g) by refusing to arbitrate a grievance concerning the termination of a bargaining unit employee. The contract contained no just cause protection for employees. SEIU did not contend that the termination violated any other part of the contract.

Relying on private sector arbitration cases, SEIU asked the Board to imply just cause protection. We considered, and specifically declined to adopt, this line of reasoning. We held that even where the contract lacked a just cause provision, the employer could be compelled to arbitrate a grievance alleging that the termination violated some other provision of a labor agreement. However, since SEIU did not contend that the termination violated any term of the existing contract, we refused to send the case to arbitration.

Finally, in *Amity School District*, we again declined to imply “just cause” protection into a labor agreement. There, OSEA made essentially the same arguments and relied on essentially the same authorities it relies on here. The labor contract in *Amity* contained no “just cause” provision, but did provide a probationary period for new employees, seniority protection for layoff, and “due process” protections for employees who were disciplined. In contract negotiations, the parties removed just cause and substituted due process protection for employees. Citing *Clackamas Water District*, we observed:

“Even if this Board were inclined to find an implied just cause provision in a contract . . . we would not find it appropriate to do so in the present case. . . . Based on bargaining history and the express language of the contract, we . . . are not authorized to substitute our

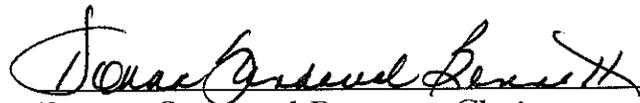
judgment for the District's concerning the appropriate degree of discipline to be imposed for proven misconduct. *Id.*, at 822-823.

OSEA does not allege that the District violated any existing contract term. It relies solely on an implied "just cause" provision. The Board has had several opportunities to imply a "just cause" clause into a labor agreement, and has declined to do so. This case falls squarely within existing precedent. The contract contains no "just cause" clause or due process protection for employees. It permits employees to grieve violations of the terms of the contract, not "unjust and inequitable treatment." Thus, there is no contract provision for us to enforce under subsection (1)(g). We will dismiss the complaint because it raises no issue of law or fact warranting a hearing. ORS 243.676.

ORDER

The complaint is dismissed.

DATED this 16<sup>th</sup> day of August 2006.

  
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Donna Sandoval Bennett, Chair

  
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Paul B. Gamson, Board Member

  
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James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.