

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-29-09

(UNFAIR LABOR PRACTICE)

OREGON AFSCME COUNCIL 75,	)	
	)	
Complainant,	)	RULING ON COMPLAINANT'S
	)	PETITION FOR
v.	)	RECONSIDERATION
	)	
CITY OF EUGENE,	)	
	)	
Respondent.	)	
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On December 21, 2009, this Board issued a Dismissal Order in this case for failure to prosecute. Complainant filed a petition for reconsideration on December 29, 2009. We grant reconsideration and adhere to the prior order.

Complainant filed an unfair labor practice complaint on June 17, 2009. The case was assigned to an Administrative Law Judge (ALJ) for processing. As more fully described in the underlying order, Complainant's attorney failed to respond over a period of more than four months, despite numerous directives from the ALJ. Finally, the ALJ warned he would recommend dismissal if Complainant did not respond by a specified time. Complainant's attorney ignored this final directive as well. On December 21, 2009 this Board dismissed the case, 23 PECBR 442 (2009)

Complainant now requests that we grant reconsideration and reverse our dismissal order. Complainant's attorney argues that a heavy workload contributed to her delay. She also argues that, although she did not respond to the ALJ, she was in contact with opposing counsel.

Reconsideration of a prior order is discretionary with this Board. Except in cases in which no recommended order has been issued, we do not automatically grant reconsideration requests. *Oregon School Employees Association v. South Coast Education Service District, Region #7*, Case No. RC-2-99, 18 PECBR 186 (1999).

Here, the ALJ offered to hold the case in abeyance while the parties completed arbitration. Complainant objected and requested the ALJ to promptly set the case for hearing.<sup>1</sup> When the ALJ attempted to set the matter for hearing, Complainant ignored the ALJ's requests. We recognize that there may be justifiable reasons to delay a hearing. When the parties communicate those reasons to us, we will attempt to work with the parties to address those concerns. However, when a litigant fails to communicate and repeatedly ignores an ALJ's directives this Board may dismiss the case for failure to prosecute.<sup>2</sup>

In this technological age, a litigant has several communication options—telephone, voice-mail, email, etc. With these available options, we see no justifiable reason for even the busiest Complainant's lack of response. We grant reconsideration. The case is dismissed for failure to prosecute.

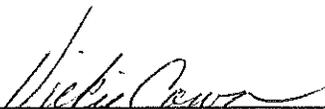
### RULING

Reconsideration is granted. Former order adhered to.

Dated this 25<sup>th</sup> day of February, 2010.

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\*Paul B. Gamson, Chair

  
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Vickie Cowan, Board Member

  
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Susan Rossiter, Board Member

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<sup>1</sup>We note that this case involves a potential back pay award. A lengthy delay could prejudice Respondent.

<sup>2</sup>In addition to the cases cited in the underlying order *see also Dennis Voss and Lane County Public Works Association Local 626 v. Lane County*, Case No. UP-90-89, 12 PECBR 471 (1990) (Board dismissed case and upheld ALJ's refusal to grant Complainant's request for a lengthy postponement).

\*Chair Gamson, Concurring

I write separately to add my concerns. The agency's Administrative Law Judges (ALJs) have a full docket. The interests of justice and the pursuit of labor peace are best served when the ALJs spend their time assisting parties who have legitimate disputes that need to be resolved rather than chasing down unresponsive parties. The message of this case is simple but important: parties ignore the directives of the ALJs at their peril.



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Paul B. Gamson

This order may be appealed pursuant to ORS 183.482.