

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-32-07

(UNFAIR LABOR PRACTICE)

GRESHAM-BARLOW EDUCATION)	
ASSOCIATION/OEA/NEA,)	
Complainant,)	
)	ORDER
v.)	ON PETITION FOR
)	RECONSIDERATION
GRESHAM-BARLOW SCHOOL)	
DISTRICT NO. 10J,)	
Respondent.)	
_____)	

On June 4, 2009, this Board issued an Order which held that the Gresham-Barlow School District (District) violated ORS 243.672(1)(a) when it transferred Josie Minni and Tony Williamson from East Gresham Elementary School. As part of the remedy for this violation of the Public Employee Collective Bargaining Act (PECBA), we ordered the District to post a notice of its wrongdoing within 30 days of the date of our Order and to keep the notice posted for 30 days. 23 PECBR 170, 199 (2009).

On June 17, 2009, the Gresham-Barlow Education Association/OEA/NEA (Association) filed a timely petition for reconsideration. OAR 115-035-0050. We grant reconsideration to address the issues raised by the Association's motion.

The Association points out that if the District complies with our Order, it will post the required notice during the summer recess, a time when bargaining unit members are not working. The Association asks that we require the District to post the notice when bargaining unit members return to work for the 2009-2010 school year.

We agree with the Association that it would be fruitless to order the District to post a notice of its wrongdoing during the summer recess period. The purposes of the posting are to inform bargaining unit members of the District's wrongdoing, and to

assure bargaining unit members that they may engage in protected activity without fear of retaliation. These purposes will not be served if the notice is posted during a time when no bargaining unit members are in their workplaces to read it. We will order the District to post the notice for the first 30 days of the teachers' 2009-2010 work year.

The Association also asks that we require the District to post the notice electronically at the same time the District physically posts the notice in District buildings. The Association contends that in the modern workplace, "day-to-day communications as well as important notices and announcements are posted via email, not on bulletin boards or walls."

In an increasing number of workplaces, modern communication methods such as e-mail or posting on the employer's website supplement or replace company bulletin boards. We agree that electronic notice of an employer's wrongdoing may be appropriate in some cases. We do not believe it is appropriate in this case, however. We adopt the standard used by the National Labor Relations Board (NLRB). *See Elvin v. OPEU*, 313 Or 165, 177-178, 832 P2d 36 (1992). The NLRB requires an employer to electronically notify employees of its wrongdoing when evidence indicates that this is the customary and preferred method the employer uses to communicate with employees. *Pacific Bell*, 330 NLRB 271 (1999), *enforced*, *Pacific Bell v. NLRB*, 259 F3d 719 (D.C. Cir. 2001); *Windstream Corp*, 352 NLRB No. 9, *modified* 352 NLRB No. 68, (2008). If a union fails to present evidence at the unfair labor practice hearing that the employer customarily communicates with employees through electronic means, the NLRB will not order an employer to electronically post a notice. *National Grid USA Service, Inc.*, 348 NLRB No. 88 (2006); *Nordstrom, Inc.*, 347 NLRB No. 28 (2006).

Here, the record contains evidence of many e-mail exchanges between teachers and administrators. There is no evidence, however, that this is the customary and preferred way by which the District communicates with bargaining unit members. Consequently, we will not order the District to electronically post notice of its wrongdoing

ORDER

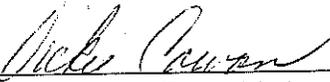
Reconsideration is granted. We adhere to our June 4, 2009 Order with the following modification to the requirement that the District post a notice of its wrongdoing: On bargaining unit members' first work day of the 2009-2010 school year, the District will post copies of the notice attached to our June 4, 2009 Order for a period of 30 days in prominent places in all buildings in which Association bargaining unit

members work, as well as in prominent places in all District Administrative offices.

DATED this 30th day of June 2009.



Paul B. Gamsón, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.