

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No.

In the Matter of the Amendment of
OAR 115-025-0030 and 115-025-0065
(Rescission of Card Check)

PETITION TO AMEND OAR 115-025-0030
AND 115-025-0065
(Rescission of Card Check)

Introduction

On December 17, 2007, the Employment Relations Board (ERB) published permanent rules which included provisions establishing a procedure for employees to rescind signed authorization cards designating a bargaining representative (OAR 115-025-0030(2)(e) and OAR 115-025-0065(3)). On January 10, 2008, the ERB published a Notice of Proposed Rulemaking Hearing to address a proposed amendment to the above rules that would eliminate the rescission procedures from the rules, and that amendment went into effect March 17, 2008. DAS/HRSD is now requesting an amendment to those rules to reinstate the rescission procedures and to add additional provisions relating to rescission.

Petition

1. Petitioner's name and address is: Department of Administrative Services, Human Resource Services Division, (DAS/HRSD) 155 Cottage Street NE, Salem, OR 97301

2. Petitioner proposes that the rules should read as follows (additions are in *italics*; deletions are in ~~strikethrough~~):

OAR 115-025-0030

Posting Notice of Petition

(1) Upon receipt of a petition under OAR 115-025-0010(1), (2), (3) or (4), a Board Agent will cause a notice of the petition to be posted in the work areas granting maximum access to employees in the existing or proposed unit. Copies of the notice shall be served on the public employer and any known exclusive representative. The notice shall set forth:

- 1 (a) The name of the petitioning organization or employer.
- 2 (b) A description of the unit involved.
- 3 (c) A statement that parties and interested persons will have 14 days from the date of the
4 notice to file:
- 5 (A) Objections to the appropriateness of the proposed unit;
- 6 (B) Objections to the positions to be included or excluded;
- 7 (C) Objections to the petitioner's designation of the issue(s) in cases filed under OAR
115-025-0005;
- 8 (D) Petition to intervene as provided in OAR 115-025-0035.
- 9 (d) Interested persons may notify the Board Agent of their specific objections. Such
10 objections must also be served on the petitioner. Upon good cause shown, the Board
Agent may call an interested person as a witness.
- 11 (2) Upon receipt of a petition for certification without an election under OAR 115-025-
12 0010(5), a Board Agent will cause a notice of the petition to be posted in the work areas
granting maximum access to employees in the proposed bargaining unit. Copies of the
13 notice shall be served on the public employer. The notice shall set forth:
- 14 (a) A statement that certification without an election has been requested;
- 15 (b) The name of the labor organization which seeks certification;
- 16 (c) A description of the proposed bargaining unit;
- 17 (d) A statement that there are 14 days from the date of the notice to file:
- 18 (A) Objections to the appropriateness of the unit;
- 19 (B) Objections that a labor organization is currently certified or recognized as the
exclusive representative of one or more employees in the proposed unit;
- 20 (C) Objections to the positions to be included or excluded; or
- 21 (D) A request for an election pursuant to ORS 243.682(3).
- 22
- 23 (e) *A statement that employees have 14 days from the date of the notice to notify the
Board in writing that the employee rescinds the signed authorization designating a
24 bargaining representative. A timely rescission shall be effective if it substantially
complies with OAR 115-025-0065(3).*
- 25 (f) Interested persons may notify the Board Agent of their specific objections. Such
26 objections must also be served on the petitioner. Upon good cause shown, the Board
Agent may call an interested person as a witness.

1 **OAR 115-025-0065**

2 **Certification Without Election**

3 (1) Upon receipt of a petition under OAR 115-025-0010(5) for certification without an
4 election, a Board Agent shall commence an investigation and shall cause a notice of the
petition to be posted as described in OAR 115-025-0030(2).

5 (2) Authorization Cards.

6 (a) An authorization card submitted in support of a petition for certification without an
7 election must, at a minimum, contain the following:

8 (A) The employee's name typed or legibly printed;

9 (B) The employee's signature;

10 (C) The date of the employee's signature;

11 (D) A statement that the employee designates the named labor organization as the
employee's exclusive representative for purposes of collective bargaining with the
12 employee's employer;

13 (E) A statement that the employee understands that the employee's signature on the card
may be used to obtain certification of the named labor organization as the exclusive
14 bargaining representative without an election;

15 (F) *A statement that the employee signed the authorization card of his/her own free will,
and*

16 (G) *A statement that the employee may rescind the authorization card prior to
17 submission of the signed cards with the petition for representation to the Board.*

18 (b) An employee authorization card must be signed and dated within the 90-day period
before the petition was filed.

19 (c) Authorization cards shall be submitted in alphabetical order.

20 (d) An employee authorization card that does not comply with this subsection shall be
21 deemed invalid.

22 (3) *Rescission of an Authorization Card An employee may rescind his or her
authorization card by providing a written statement to the Board within 14 days of the
23 date of the notice posted pursuant to OAR 115-025-0030(2). The written statement must
contain the employee's name typed or legibly printed, the employee's signature, the date
24 of the signature, the name of the employee's public employer and a statement that the
employee rescinds the prior designation of the named labor organization as the
25 employee's exclusive bargaining representative An authorization card that has been
timely rescinded shall be invalid*

1 (a) If the Board receives any challenge relating to the rescission of authorization cards,
2 representatives of the named labor organization and the employer may be present if the
3 number of challenged cards affects the outcome of the tally.

4 (4) Eligible Employees. For the purpose of determining the adequacy of the authorization
5 cards, public employees who were employed on the filing date of the petition for
6 certification without an election are included in the proposed bargaining unit and are
7 considered eligible in the processing of the petition. The Board may also include as
8 eligible other employees who have a reasonable expectation of continuing employment,
9 including but not limited to seasonal employees or employees on layoff.

10 (5) List of Eligible Employees. Within 7 days after a public employer receives notice
11 under OAR 115-025-0030(2) that a petition has been filed seeking certification without
12 an election, it will submit to the Board an alphabetical list of employees in the proposed
13 bargaining unit, including their names, addresses and job classifications. The Board will
14 provide a copy of the list to the labor organization named in the petition.

15 (6) Challenges to the List of Eligible Employees.

16 (a) Challenges to the inclusion of a name on or exclusion of a name from the list of
17 eligible employees must be filed with the Board within 7 days after the Board provides
18 the labor organization a copy of the list under subsection (5) of this section.

19 (b) The Board Agent shall determine whether a majority of employees on the list supplied
20 by the employer has signed valid authorization cards. The Board Agent shall then
21 determine whether there is a sufficient number of challenged names to affect the result.

22 (A) If the number of challenges is insufficient to potentially affect the result, then the
23 challenges shall be dismissed.

24 (B) If the number of challenges is sufficient to potentially affect the result, the Board
25 Agent shall investigate and, when appropriate, issue a notice of hearing on the challenges.
26 The hearing will be conducted as set forth in OAR 115-025-0045. The challenging party
shall bear the burden of proof.

(7) Authentication. The Board shall determine whether each otherwise valid authorization
card was signed by an eligible employee;

(8) Objections. Objections to a petition for certification without an election must be filed
within 14 days of the date of the notice posted pursuant to OAR 115-025-0030(2).
Hearings on such objections shall be conducted under OAR 115-025-0045.

(9) Certification. If it is determined that a majority of an appropriate unit has signed valid
authorization cards designating the labor organization named in the petition as the
exclusive representative, and that no other labor organization is currently certified or
recognized as the exclusive representative for any employee in the proposed bargaining
unit, then the Board shall certify the labor organization named in the petition as the
exclusive representative without an election unless a timely petition for election is filed
under OAR 115-025-0075.

1 3. Pursuant to ORS 183.390 and OAR 137-001-0070, petitioner offers the following
2 facts and comments to support the inclusion of rescission procedures in ERB's card check rules:

3 In some past organizing efforts, in both the election and volunteer contexts, employees
4 who did not want to be represented felt coerced into signing the cards. The union's tactics
5 included verbal confrontations during visits to employees' homes or work place. Employees
6 have indicated that just to be left alone they signed the cards believing that there would be an
7 opportunity to later cast a vote (an option which will not be available in connection with the
8 authorization cards).

9 Petitioner believes that the proposed rescission procedures would achieve the existing
10 rule's substantive goals of accurately determining employees' intent with respect to designating a
11 bargaining representative and would not have a negative economic impact on businesses

12 Petitioner is not requesting repeal of the existing rule, but instead asks that rescission
13 procedures be included in the rule because without such procedures, the opportunity for
14 employees to withdraw their authorization cards may be lost if nothing in the rule addresses
15 whether they can do so

16 The rescission procedures do not add substantial complexity to the rule; instead they
17 provide a process to safeguard the card authorization process to ensure that employees' true
18 desires are followed.

19 There is no concern that the existing rule overlaps, duplicates or conflicts with other state
20 or federal rules or with local government regulations

21 The rule-making process is quite recent; accordingly, changes in technology, economic
22 conditions, or other factors in the subject area affected by the exiting rule are not a factor in this
23 analysis.

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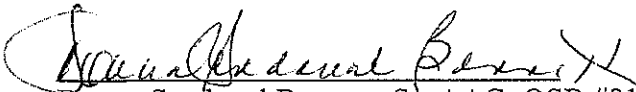
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1 **Conclusion**

2 WHEREFORE, for the foregoing reasons, Petitioner urges the ERB to adopt the proposed
3 amendments to OAR 115-025-0030 and 115-025-0065.

4 DATED this 29th day of May, 2008.

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6 Respectfully submitted,

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8 
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11 Compensation
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