

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. DR-001-23

(PETITION TO DECLARE STRIKE UNLAWFUL)

CITY OF PORTLAND,	)	
	)	
Petitioner,	)	
	)	ORDER DISMISSING PETITION TO
v.	)	DECLARE STRIKE UNLAWFUL
	)	
LABORERS' INTERNATIONAL UNION OF	)	
NORTH AMERICA, LOCAL 483 (LIUNA),	)	
	)	
Respondent.	)	

On February 1, 2023, Petitioner City of Portland (City) filed a petition under ORS 243.726(4)(a) and OAR 115-040-0020 to declare a strike by Laborers' International Union of America, Local 483 (LIUNA) unlawful. For the following reasons, we decline to declare the strike unlawful and dismiss the petition.

When a public employer alleges, in good faith, "that a labor organization representing a group of its employees has declared or authorized a strike by such employees and that such strike is or would be in violation of ORS 243.726 or 243.732, the employer may petition the Board for a declaration that the strike is or would be unlawful." OAR 115-040-0020. "The petition shall contain a detailed statement of the facts on which petitioner bases its request for a declaration of an unlawful strike." *Id.* "Upon receipt of such a petition, the Board shall either dismiss the petition or set it for a hearing before the Board." *Id.* We set the matter for hearing only if there is an evidentiary dispute that warrants a hearing. Here, even accepting all of the relevant detailed facts on which the City bases its request, we decline to declare the strike unlawful.

The City's petition is premised on the argument that LIUNA's strike notice violated ORS 243.726(2)(c) and OAR 115-040-0018. ORS 243.726(2)(c) provides that a public employee may lawfully strike so long as, among other things, "[t]he exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to [this] board and the public employer." OAR 115-040-0018 provides:

"The exclusive representative shall send notice of intent to strike to the Board and the employer by certified mail. The notice shall state the reasons for the intent to strike including the unresolved bargaining issues. The Board and the employer must receive the certified notice ten days before the first date of the strike. However, the Board will not declare a strike unlawful when the exclusive

representative has entrusted the notice to the postal service for certified mailing at such time that timely delivery could reasonably be expected, provided that both the Board and the employer have actually received written notice of intent to strike at least ten days before the strike begins.”

The City asks this Board to declare LIUNA’s strike unlawful because the City asserts that LIUNA’s strike notice (1) was received nine days, rather than 10 days, before LIUNA’s February 2, 2023 strike; and (2) did not state the reasons for the intent to strike. We disagree with both assertions.

According to the City’s petition, LIUNA sent its strike notice in three ways: (1) by United States Postal Service (USPS) certified mail sent on Friday, January 20, 2023, and received by the City on Tuesday, January 24, 2023; (2) by USPS priority mail sent on Friday, January 20, 2023, and delivered to the City on Saturday, January 21, 2023, but not viewed by any City employee until Monday, January 23, 2023, because the City buildings are closed on the weekend; and (3) an email sent on Monday, January 23, 2023, and received by the City that same day. In arguing that the notice was untimely for the February 2, 2023, strike, the City asserts that the earliest possible date that it received notice was Monday, January 23, 2023. Based on that date, the City asserts that LIUNA could begin in its strike only on February 3, 2023 (or thereafter). We disagree.

ORS 243.726(2)(c) requires LIUNA to give “10 days’ notice by certified mail of its intent to strike.” OAR 115-040-0018 requires that this “Board and the employer *receive the certified notice* ten days before the first date of the strike.” (Emphasis added.) As alleged in the petition, the City did not *receive* the certified notice until Tuesday, January 24, 2023, which would presumably make the noticed February 2, 2023, strike unlawful under our rule, regardless of how the days were counted. However, the rule provides an exception to the more generalized receipt requirement. Specifically, the rule states that “the Board will not declare a strike unlawful when the exclusive representative has entrusted the notice to the postal service for certified mailing at such time that timely delivery could reasonably be expected, provided that both the Board and the employer have actually received written notice of intent to strike at least ten days before the strike begins.” OAR 115-040-0018. Here, the petition sets forth that the City actually received written notice of the intent to strike on Monday, January 23, 2023. In arguing that the February 2 strike is unlawful, the City argues that (1) Monday, January 23, 2023 is nine days before the February 2, 2023, strike; and (2) even if Monday, January 23, 2023, was ten days before the strike, LIUNA cannot avail itself of the “actual notice” provision of OAR 115-040-0018 because it was not reasonable for LIUNA to expect its certified letter to be delivered three days after it was mailed.

We begin with the City’s calculation of time under ORS 243.726(2)(c) and OAR 115-040-0018. There is no dispute that January 24, 2023, is one day after the City received actual notice of the intent to strike, which was on January 23, 2023. Under our rules, “day” means “calendar day,” and we generally exclude the first day and include the last day when computing time. *See* OAR 115-010-0010(12) and 0012. If we count January 24, 2023, as day one of our 10-day notice calculation, there is also no dispute that February 2, 2023 (the day of the strike) is day 10. The City asserts that LIUNA may only strike beginning day 11 (February 3) because the statute and rule require LIUNA to wait 10 full days after the notice is received, then commence striking on the eleventh day. That, however, is not what the statute and rules say. Rather, the statute provides that LIUNA was required to give “10 days’ notice \* \* \* of its intent to strike.” LIUNA gave notice of

its intent to strike in 10 days. If the statute required, for example, a labor organization to give a one-day notice of its intent to strike, LIUNA could give notice on February 1, 2023, that it intended to strike in one day (on February 2, 2023), and so on. Our rule similarly provides that that the employer receive the notice “at least 10 ten days before the strike begins.” The strike began on February 2, 2023. 10 days before February 2, 2023 is January 23, 2023, which is when the City received actual written notice. Therefore, we conclude that under OAR 115-040-0018, the City received notice of LIUNA’s intent to strike at least ten days before the strike began (and precisely 10 days before the strike began).

We disagree with the City’s methodology for calculating days under our rule. Under the City’s methodology, a labor organization is required to file a strike notice, then starting the following day, wait ten full days before being permitted to strike on the eleventh day. But that is not what the statute or our rule provides. Had the legislature intended such a requirement, we would expect greater clarity or specificity that, after providing written notice of an intent to strike, a labor organization must wait ten days, then commence a strike only starting on the eleventh day (or specified day thereafter). Likewise, our rule emphasizes that the strike will not be declared unlawful so long as the notice is received 10 days before the strike commences (as it was in this case). Our rule does not impose a 10-waiting requirement, with the lawful strike only beginning on the eleventh day. Accordingly, we decline to declare LIUNA’s strike unlawful on this basis.

We turn to the City’s argument that LIUNA cannot avail itself of the 10-day actual notice provision of OAR 115-040-0018 because LIUNA could not reasonably expect that its certified letter sent on Friday, January 20, 2023, would arrive at the City by Monday, January 23, 2023. The petition provides no detailed facts or evidence on which we should reach such a conclusion. As the petition acknowledges, LIUNA sent its strike notice by USPS certified letter and USPS priority mail, and both of those letters were received by a USPS facility around 12:30 p.m. on Friday, January 20, 2023. LIUNA’s letter sent by USPS priority mail arrived at the City on January 21, 2023, the day after it was sent, while the certified letter did not arrive until four days after it was sent (Tuesday, January 24, 2023). The petition is not clear why LIUNA could not reasonably expect its certified letter to arrive by Monday, January 23, 2023, particularly given that the letter was mailed from Portland to another Portland address, and the priority letter arrived on January 21, 2023. We also note that this Board received LIUNA’s certified letter in Salem, on Monday, January 23, 2023. Therefore, under these circumstances, we decline to conclude that the petition establishes that LIUNA had no reasonable expectation that it’s January 20, 2023, certified letter would not be received by the City by January 23, 2023.

We now turn to the City’s argument on the substance of the notice—namely, that LIUNA’s notice did not “stat[e] the reasons for its intent to strike.” ORS 243.726(2)(c). LIUNA’s notice, in relevant part, stated:

“The decision to strike was not entered into lightly and is the result of over three hundred days of negotiation in which the City of Portland has failed to address our Union’s concerns about compensation, safety, and fair treatment in the workplace. These concerns have been broadly disregarded even considering rapid cost of living increases and the significant deterioration of working conditions. For these reasons we declare our intent to strike to secure a fair contract.”

The notice itself provides multiple reasons for LIUNA's intent to strike, including compensation, particularly in light of "rapid cost of living increases," as well as safety. The City's petition acknowledges that LIUNA's notice stated multiple reasons for its intent to strike, but asserts that these reasons are not sufficient because they are not detailed enough to "give the City, public, and Board sufficient information to know how to resolve the dispute." Neither the plain text of the statute nor our rules require a strike notice to give the public employer, the public generally, and the Board information about how to resolve a bargaining dispute. Rather, the statute requires that the labor organization "state the reasons for its intent to strike." ORS 243.726(2)(c). Likewise, OAR 115-040-0018 requires that the notice "state the reasons for the intent to strike including the unresolved bargaining issues." We understand, at a minimum, that the reasons and unresolved bargaining issues concern compensation and safety. Although the meaning of "fair treatment in the workplace" in light of "significant deterioration of working conditions" is not entirely clear to this Board, that phrasing on that issue does not invalidate the entire strike notice.

In arguing for a different conclusion, the City relies on *Redmond School District 2J v. Redmond Education Association*, Case No. C-154-77 at 7, 3 PECBR 1564, 1570 (1977). In that case, the Board determined that the strike notice was deficient because the notice stated only that the employer had "refused to agree to a satisfactory contract relating to 'employment relations,'" which is a term defined in ORS 243.650(7) that is merely synonymous with mandatory subjects of bargaining. *See Redmond*, C-154-77 at 7, 3 PECBR at 1570. Here, in contrast, LIUNA identified compensation and safety as unresolved bargaining issues that it intended to strike over. Those issues are more specific than the generalized term "employment relations" or just "mandatory subjects of bargaining." Had the notice only stated that LIUNA was striking over "fair treatment in the workplace," we would be more inclined to agree with the City that the notice did not provide a meaningful reason for the intent to strike. Compensation, however, is a well-understood (and quite common) unresolved bargaining issue on which a strike is based. Safety is likewise a common and increasingly important bargaining issue among public sector employers, public employees, and labor organizations representing those employees. Although the notice did not specify different proposals on those unresolved bargaining issues or identify LIUNA's "bottom line" on those issues, neither ORS 243.726(2)(c) nor OAR 115-040-0018 require as much.

Moreover, the petition does not set forth that, at the time that the notice was received (on January 23, 2023), or any time before filing this petition (on February 1, 2023), the City was somehow confused about the parties' unresolved bargaining issues set forth in the strike notice. Likewise, the petition does not set forth any attempt by the City to gain clarification on LIUNA's stated reasons for striking, or what LIUNA meant by compensation and safety, in the ten days after receiving the notice.<sup>1</sup> For all of the above reasons, we do not conclude that LIUNA's notice violated ORS 243.726(2)(c) or OAR 115-040-0018.

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<sup>1</sup>We further note that the petition also does not identify that the City ever objected to the timing of the notice and the strike until the filing of this petition, which was nine days after the City received the notice. Although neither the statute nor our rules regarding a petition to declare a strike unlawful *require* a public employer to object to the timing or substance of a notice *before* filing such a petition, we would expect that a public employer that was legitimately confused about the stated reasons for an intent to strike or legitimately concerned about the lack of sufficient notice would, at a minimum, attempt to *promptly* address that confusion or concern with either the labor organization or this Board. However, the Board was

(Continued \* \* \*)

ORDER

The petition fails to set forth adequate facts or reasons to declare LIUNA's strike unlawful. Therefore, we decline to do so, and we dismiss the petition.

DATED: February 2, 2023.



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Adam L. Rhynard, Chair



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Shirin Khosravi, Member

This Order may be appealed pursuant to ORS 183.482.

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(Continued \* \* \*)

first notified of the City's objections to the strike notice with the filing of this petition, which occurred at approximately 4:00 p.m. on February 1, 2023, nine days after the City received the notice and approximately eight hours before the commencement of the strike. If the City attempted to raise any concerns about the strike notice with LIUNA at an earlier time, the City did not include that information in its petition.