



Oregon

Kate Brown, Governor

Employment Relations Board

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Re: Rules Advisory Committee May 21, 2021 Recommendations

Employment Relations Board Members:

The Employment Relations Board's Rules Advisory Committee (RAC) consists of seven volunteer members representing management and seven volunteer members representing labor. Those volunteers debate, vote on, and then propose changes to the Board's administrative rules. The RAC also includes two neutral Board employees who facilitate the work of the RAC but do not vote on the group's proposals. That currently includes myself, who functions as the RAC Chair, and April Bathurst, who functions as the RAC Coordinator. The RAC is generally tasked with modernizing the Board's rules and making them more understandable for the public. Over the course of at least five months, the RAC debated possible changes concerning several subject areas. In the RAC's May 21, 2021 meeting, the RAC voted on two proposals. I submit those proposals here.

One of the RAC's goals was to update the Board's rules to reflect the Board's current practice of permitting electronic filing and to incorporate the Board's new online case management system. In the RAC's May 21, 2021 meeting, the RAC voted on certain changes related to that goal, with six members supporting and four opposed. In general, those who were opposed were against one element of the proposed changes that would allow electronic filing until 11:59 p.m. The Board's rules currently cut off all filing at 5 p.m. Those who supported this recommendation generally believe that moving the electronic filing deadline brings the Board in line with most other jurisdictions. Those who opposed this recommendation were largely concerned about having to wait for and respond to electronic filings outside of regular business hours. One member separately proposed adding additional language to ensure that electronic filings received by the Board after 5 p.m. via the case management system would not be shared with other parties until the next business day, but that alternative proposal was not voted on. Further, these particular changes were considered as early as the RAC's January 22, 2021 meeting. However, since that meeting, the RAC has replaced several of its volunteer members. This first group of proposed changes specifically affects OAR 115-010-0010, OAR 115-010-0033, and OAR 115-020-0000.

Another one of the RAC's goals was to update the Board's rules to reflect the results of *Janus v. AFSCME*, 585 U.S. ___, 138 S. Ct. 2448 (2018), which generally held that it is unconstitutional to withhold union agency fees from nonconsenting public sector employees. In the same May 21, 2021 meeting, the RAC also voted to accept certain proposed *Janus*-related changes, with two members opposed. One of those members who was opposed was concerned about the possibility of multi-year collective bargaining agreements that may still include fair share language. In essence, these proposed changes strike out Division 30, which addresses public employee deauthorization of a fair share agreement, and also include one minor, related change to OAR 115-010-0000.

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