

**BEFORE THE EMPLOYMENT RELATIONS BOARD
OF THE STATE OF OREGON**

**KLAMATH FALLS ASSOCIATION OF
CLASSIFIED EMPLOYEES,
Complainant**

v.

**KLAMATH FALLS CITY SCHOOLS
Respondent**

Case No. UP-039-21

**AMICUS BRIEF OF OREGON SCHOOL
EMPLOYEES ASSOCIATION (OSEA)**

INTRODUCTION

The Oregon School Employees Association (OSEA) files this brief as *amicus curae* in support of Complainant Klamath Falls Association of School Employees (KFACE). OSEA is a labor union that represents more than 22,000 employees in public schools, community colleges, libraries, parks and Head Start programs across Oregon. OSEA is one of the largest public employee labor organizations in the State.

The Board has invited amicus briefs on whether an email sent by a designated representative of school employees, using the employer’s email system and endorsing a candidate for school board, relates to a “matter[] involving the governance or business of the labor organization” within the meaning of ORS 243.804(5)(c). As discussed below, school board elections are vital and essential business matters for labor organizations representing K-12 school employees in Oregon. Similarly, elections to fire district boards, city councils, county commissions, and other public bodies are essential business matters for the labor organizations representing employees of those public bodies. It is critical that labor organizations communicate with their membership about these business matters – and in many cases, communication through an employer’s email system is the only practicable way for a labor organization to do so. OSEA urges the Board to rule accordingly.

I. Electing school board members who support organized labor is at the core of union business for Oregon’s K-12 education labor unions.

The elected officials that oversee public entities exert a great deal of influence on the workers those entities employ, and on the labor organizations that represent those workers. Labor unions are under constant attack by pro-business, anti-worker organizations like the Freedom Foundation and the National Right to Work Committee. One of the strongest lines of attack available to those organizations is to elect anti-labor candidates to limit the rights of labor organizations.

A recent Oregon Supreme Court case, *AFSCME Council 75 v. City of Lebanon*, 360 Or 809, 388 P 3d 1028 (2017), provides a particularly instructive and troubling illustration of this dynamic. In that case, a city council member wrote a widely-publicized letter to the local newspaper disparaging unions and calling for city employees to “decertify [their] union captors.” *Id.* at 811-12. Importantly, the Oregon Supreme Court held that the city counselor could be considered a “designated representative” of the city-as-public-employer, for the purpose of determining whether the counselor’s acts constituted an unfair labor practice. *Id.* at 834-35. Among other things, the Court noted that the counselor’s general policy-making authority could lead city employees to believe that the counselor’s statements to the media were made on behalf of the city. *Id.* at 834-35. This case underscores the power and influence that public officials can exert on public labor organizations and their members. It also shows that there is no clear line between “public-entity-as-body-politic” and “public-entity-as-employer.”

The relationship between a school board and the labor organization that represents school employees further shows how elected members of the school board play a crucial management-side role in labor relations: first, and most obviously, the elected members of a school board vote

to ratify every collective bargaining agreement negotiated between OSEA and a school district. The school board members are the source of authority for the District's negotiation team and the final decision-maker on employment contracts that bind the employer. In this way, members on a school board exert the most influence on the wages, benefits, and terms of employment for OSEA's members.

School boards also typically play a pivotal role in deciding violations of the collective bargaining agreement. Dozens of OSEA chapters have a grievance procedure that requires a contract violation to be presented to the school board for a decision. Grievances can range from dismissal of a single employee to a wage dispute affecting compensation for the entire bargaining unit. In those districts where the school board is a required step in the grievance process, the school board members are decision-makers in the most consequential matters of OSEA business.

Given the impact that board members have over the bargaining and grievance processes, it is critically important for labor organizations to ensure that anti-labor groups do not install anti-labor individuals onto these boards. Board members that are actively hostile to organized labor (like the council member in *City of Lebanon*) are, for obvious reasons, much more likely to vote against contract ratification, deny grievances, and find other ways to use their considerable influence to hinder labor organizations. Simply put, when faced with a hostile school board, a school employee union will have a difficult time accomplishing *any* union business of real significance. It is crucial for labor organizations to ensure this does not happen.

The fact that school board members are elected through a democratic process does not (and cannot) negate their status as crucial business partners in labor relations. Put another way: when a member of the community at large votes to elect a member of the local school board, that

vote may be a straightforward political act. But when a member of a school employee union votes in the same election, it is more akin to a shareholder of a publicly-held company voting on who becomes a board member of the company.

The same dynamic is true in other public employee settings. A labor organization in a fire district has a similar business interest in electing pro-labor candidates to the district's board of directors; a labor organization representing a bargaining unit of city employees shares the same interest in electing pro-labor candidates to city council; and a labor organization representing a bargaining unit of county employees has an interest in electing pro-labor candidates to the county's commission or board. Labor unions are the representatives of public employees, while elected public officials—such as school board members—are representatives of the government that employs them. The PECBA strives to “foster harmonious relations between labor and management and avoid labor strife,” a goal enshrined in ORS 243.656(2). The elected officials that ratify contracts and decide grievances cannot, and should not, be artificially separated out of the labor-management equation. To do so would undermine the spirit and purpose of ORS 243.656(2).

The election of public officials is not the only democratic process that has widespread impacts on union business. Local school levies and bonds can directly affect wages, staffing, workload, and on-the-job safety of school employees—all mandatory subjects of bargaining for the union. . The public funds generated when a levy or bond is passed directly impacts the bargaining process; they increase the funding for bargaining wages, benefits, and expenditures that improve working conditions. OSEA, like virtually all public unions, routinely urges its membership to vote on such matters – not as an act of civic altruism, but as a shrewd business practice (both for the union and for the individual members).

The democratic processes involved in the passage of ballot measures does not negate their status as “business matters” for the union. The Board should not indulge any legal fiction to the contrary.

II. Unions must be permitted to communicate with members about *all* union business—including elections and ballot measures—through the employer’s email system.

There is also an important practical reason, with special relevance to Oregon’s public school employee unions, that unions must be permitted to use employer’s email system to communicate with members about the union business discussed above. Classified public school employees are y among the lowest-paid public employees across the State and tend to have relatively low access to technology. Many OSEA members do not have personal computers or personal email addresses. Consequently, the only form of electronic communication they use is the district’s email system on which they are trained.

Indeed, the *Amended Recommended Order* in this case acknowledges some of these dynamics, noting:

“District employees in KFACE’s bargaining unit regularly use their District email accounts to communicate with one another about ‘union business,’ and UniServ Consultant Olds frequently advises KFACE’s members to do so. One reason for that is because KFACE knows every bargaining unit employee’s District email address, but only has the majority of the employees’ personal email addresses on file. In addition, many ‘classified’ employees do not have personal emails addresses. Furthermore, KFACE does not know how often employees check their personal email accounts, but presumes that employees generally do check their District email accounts.”

Amended Recommended Order, Page 13, Paragraph 44

OSEA urges the Board to give appropriate consideration to that finding and its practical implications when deciding this case. Email is one of the most effective and efficient ways for

labor organizations to communicate with their members – provided, of course, that their members have reliable access to email. But as the record in this case shows, the members in this case only have reliable access to their employer-provided work email. If the Board were to hold that unions can only engage in email communication about certain subjects by using their members’ personal email addresses, that holding would be functionally equivalent to saying that many unions cannot reliably use email to communicate with their membership about those subjects at all. That would be a major blow to many public labor organizations, including OSEA.

The Board should accord appropriate weight to these practical issues and the consequences that would flow from a decision that forces public labor organizations to rely on the personal email addresses of their members.

CONCLUSION

For these reasons, the email sent in this case, using the employer’s email system and endorsing a candidate for school board, is a “matter[] involving the governance or business of the labor organization” under ORS 243.804(5)(c). A holding to the contrary would require giving credence to an unrealistic legal fiction (that “business matters” and “political matters” are mutually exclusive categories), would hamstring labor organizations, and would ultimately make it more difficult to “foster harmonious relations between labor and management and avoid labor strife.” OSEA accordingly urges the Board to rule in the Union’s favor.

Dated: September 1, 2023

/s/ Luke Kuzava

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CERTIFICATE OF SERVICE

I, Luke Kuzava, certify that on September 1, 2023, I served the *Amicus Brief of OSEA* to which this certificate of service is attached electronically (via email) to the parties' counsel in Case UP-039-21, listed below:

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Dated: September 1, 2023

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