



CITY OF
PORTLAND, OREGON
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May 13, 2013

BY FACSIMILE AND FIRST CLASS MAIL

Employment Relations Board
Old Garfield School Building
528 Cottage St. NE, Suite 400
Salem, OR 97301-3807

Re: *Laborers International Union Local 483 v. City of Portland,*
Case No. UC-011-13

Dear Clerk:

Enclosed please find the City of Portland's Objections to Unit Clarification Petition for filing. Thank you and please let us know if you have any questions.

Sincerely,

Matthew V. Farley
Deputy City Attorney

MVF:lw
Enclosure
cc: Erica Askin
Anna Kanwit

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BEFORE THE EMPLOYMENT RELATIONS BOARD

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FOR THE STATE OF OREGON

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LABORERS' LOCAL 483,

Case No. UC-011-13

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Petitioner,

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v.

RESPONDENT CITY OF PORTLAND'S
OBJECTIONS TO UNIT CLARIFICATION
PETITION

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CITY OF PORTLAND,

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Respondent.

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Respondent respectfully objects to the above-referenced Unit Clarification Petition.

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Petitioner will not be able to demonstrate a community of interest between any of the petitioned for employees and the members of DCTU/Laborers Local 483. The employer's objections are focused on the relevant-factors of the community of interest that the Petitioner cannot demonstrate.

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There are three additional "wrinkles" to the foregoing analysis of the petition. First, eleven (11) of the petitioned employees are temporary and casual employees for whom the petitioner cannot demonstrate sufficient continuity and regularity of employment to include in DCTU/Laborers Local 483. Second, another DCTU union, AFSCME, Local 189, has attempted to organize these employees and has a pending grievance claiming AFSCME's exclusive right to specific duties of the 15 employees. Third, the fifteen petitioned employees do not constitute a logical group to separate and include into Laborers Local 483.

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Regardless of the resolution of these two additional issues, this Unit Clarification Petition otherwise must be denied. Petitioner is seeking to lump policing/security personnel with manual laborers and there is an insufficient community of interest. Respondent's objections are outlined below:

Page 1

– RESPONDENT CITY OF PORTLAND'S OBJECTIONS TO UNIT CLARIFICATION
PETITION

1 1. One (1) individual among those identified in the petition performs public
2 information and community involvement work such as designing print and media materials for
3 marketing, event planning and public relations purposes. The typical training required for the
4 classification includes a four-year college degree or equivalent training and experience in public
5 relations or communications. This individual is classified as a "Community Outreach and
6 Information Assistant" which is a city-wide, non-represented classification with no community of
7 interest with the DCTU/Laborers Local 483 unit. This particular Community Outreach and
8 Information Assistant position is a Limited Duration Appointment set to expire in July 2013. No
9 DCTU/Laborers Local 483 person has ever occupied this classification anywhere at the City.
10 The classification duties, skills, pay structure, and qualifications are not shared with
11 DCTU/Laborers Local 483 members.

12 2. Petitioner cannot demonstrate that the fifteen (15) employees identified in the
13 Petition share a Community of Interest with the DCTU/Laborers Local 483 members. OAR 115-
14 025-0050(2). The specific factors relevant to Respondent's objection include, but are not limited
15 to the following:

- 16 a) The general purpose, distinguishing characteristics, knowledge skills and abilities,
17 typical duties, special requirements and working conditions of the fifteen (15)
18 petitioned for employees are not shared with the DCTU/Laborers Local 483
19 members. The fifteen employees are Park Security employees as opposed to
20 Laborers.
- 21 b) The job qualifications for the employees identified in the petition are unlike any
22 that exist for any of the DCTU/Laborers Local 483 members. The security
23 training, CPR, defensive tactics and social services training do not match.
- 24 c) The job classifications for the employees in the petition are not shared by any
25 DCTU/Laborers Local 483 members. The recognition clause of the DCTU
26 contract does not contain any classifications held by the petitioned employees

1 because they are extremely dissimilar to the character of Local 483 work.

- 2 d) The job duties for the employees in the petition are not shared by any
3 DCTU/Laborers Local 483 members. Local 483 members do not perform security
4 or investigation functions.
- 5 e) The wage rates for the employees in the petition are not shared by any of the
6 DCTU/Laborers Local 483 members. There is no correlation between the
7 DCTC/Laborers 483 pay scale categories and the petitioned employees.
- 8 f) The petitioned for employees do not share the same work locations as the majority
9 of DCTU/Laborers Local 483 members and none of them work side by side. At
10 best, some Laborers Local 483 members work in Parks. Otherwise, there is no
11 interchange or transfer or connection between the employees.
- 12 g) As this is a Unit Clarification petition, the following factors are relevant to
13 Respondent's objection that eleven (11) of the petitioned employees do not have a
14 shared interest in bargaining with the DCTU/Laborers Local 483 members.
15 Specifically, eleven (11) of the employees in the petition are not eligible for
- 16 • Health insurance;
 - 17 • Paid vacation or other leave; and
 - 18 • Service credits
- 19 h) As this is a Unit Clarification petition, the following factors are relevant to
20 Respondent's objection that eleven (11) of the petitioned employees do not have a
21 shared interest in bargaining. Eleven (11) of the petitioned employees:
- 22 • Have no appeal rights upon demotion, suspension or termination from
23 employment;
 - 24 • Serve at-will; and
 - 25 • Do not accrue status in the class to which they have been appointed
- 26 i) There is no interchange or transfer of any of the fifteen (15) employees in the

1 petition with any members of DCTU/Laborers Local 483.

2 j) There is no common supervision of any of the fifteen (15) employees in the
3 petition with any members of DCTU/Laborers Local 483.

4 k) There is no overlap or other connection of promotional ladders between the fifteen
5 (15) employees in the petition with any members of DCTU/Laborers Local 483.

6 **TEMPORARY AND CASUAL EMPLOYEES**

7 3. The Respondent further objects to the inclusion of eleven (11) of the fifteen (15)
8 employees identified in the petition as they are casual employees. The eleven (11) employees are
9 identified in the petition as those limited to 1,400 hours per year. Those individuals are members
10 of the "Community Service Aid" classification (CSA Classification). This is a classification of
11 casual employees who work in multiple bureaus across the City, including but not limited to the
12 Parks bureau.

13 a) The objections stated above to all fifteen (15) of the petitioned employees are
14 incorporated and applicable. *SEIU v. Marion County*, 10 PECBR 521, 554 (2011).

15 Additionally, the casual status of eleven (11) in the petition is a tenuous
16 employment relationship with the City, with different bargaining priorities than
17 those of DCTU/Laborers Local 483.

18 b) The casual employees do not have regularity and continuity in their work schedules
19 similar to the employment of the DCTU Local 483 personnel.

20 c) The casual employees are in non-budgeted positions.

21 d) The casual employees are only hired to perform seasonal and/or special projects
22 and extra work of a limited duration.

23 e) Eleven of the fifteen petitioned employees have no reasonable expectation of
24 permanent employment. As of the election and eligibility dates, these employees
25 have no reasonable expectation of permanent employment. Accordingly, these
26 employees are excluded from DCTU/Laborers Local 483.

1 f) Eleven of the fifteen petitioned employees know that their employment with the
2 City will end by December 31, 2013, as they are limited to 1,400 hours of
3 employment in a calendar year. Moreover, these employees are formally
4 terminated from employment and must reapply as a new hire in the future.
5 Accordingly, Respondent objects to the petition to include these temporary
6 employees to DCTU/Laborers Local 483.

7 4. Respondent objects because the fifteen petitioned employees do not compose a
8 logical, cohesive group amongst themselves to be added to DCTU/Laborers Local 483. They are
9 from three different classifications with three different sets of job duties and no common wages,
10 hours or benefits.

11 5. The Respondent objects to the petition because Petitioner cannot demonstrate a
12 sufficient community of interest between the petitioned employees and DCTU/Laborers Local
13 483. Respondent is aware that the ERB analysis of this issue may not require a determination of
14 the most appropriate bargaining. Rather, the Respondent's community of interest objection is
15 informed by analysis of all relevant facts. Accordingly, the fact that another DCTU union,
16 AFSCME, Local 189 has claimed specific duties of the petitioned employees in a grievance is
17 relevant, as is the attempt by AFSCME to organize these same employees. Analysis of the
18 qualifications, duties, skills and working conditions of the AFSCME "Water Security
19 Specialists" and "Parking Technicians" as a means of assessing the community of interest with
20 DCTU/Laborers Local 483 is a basis for Respondent's objection.

21 6. The Respondent objects to the lack of community of interest between the
22 petitioned employees and DCTU/Laborers Local 483 members within the Parks Bureau, but also
23 Citywide. Even if ERB decided it was appropriate to separate out the 15 employees from the rest
24 of the City employees, the fifteen (15) still do not share a community of interest with the
25 DCTU/Laborers Local 483 members within or outside of the Parks Bureau.

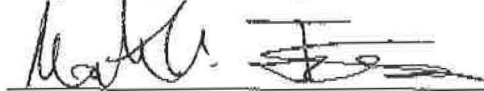
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CONCLUSION

Ultimately, the Unit Clarification petition seeking to add the 15 employees in the Parks Bureau to DCTU/Laborers Local 483 should be denied in its entirety for failure to establish a sufficient community of interest. Alternately, the petition is properly denied for eleven (11) of the 15 petitioned employees based on a lack of a community of interest generally and/or on the basis of their casual status as community service aids.

Dated this 13th day of May, 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

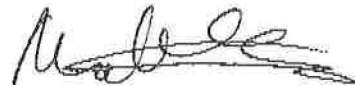
I hereby certify that I served the foregoing RESPONDENT CITY OF PORTLAND'S
OBJECTIONS TO UNIT CLARIFICATION PETITION on:

Erica B. Askin
Laborers' Local 483
1125 SE Madison, Suite 206
Portland, OR 97214

Representative for Petitioner

on May 13, 2013, by causing a full, true and correct copy thereof, addressed to the last-known
address (or fax number) of said attorney, to be sent by the following method(s):

- by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service in Portland, Oregon.
- by **hand delivery**.
- by **facsimile transmission**.



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