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RELATIONS BOARD

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

**LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA, LOCAL 483,**

**Case No. UC-011-13**

**Petitioner,**

**RESPONDENT CITY OF PORTLAND'S  
OBJECTIONS TO RECOMMENDED  
RULINGS, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
PROPOSED ORDER**

**v.**

**CITY OF PORTLAND,**

**Respondent.**

This matter came on for hearing on May 28 and 29, 2013, in Salem, Oregon. The parties submitted post-hearing briefs on June 24, 2013. The Record closed on July 8, 2013. On November 20, 2013, the parties received Administrative Law Judge Wendy Greenwald's Recommended Order via email. On December 4, 2013 Petitioner union filed objections to the Recommended Order. Accordingly, pursuant to OAR 115-10-0090, the Respondent files its written objections and seeks review of the ALJ's Recommended Order and Proposed Rulings on evidentiary matters, findings of fact and conclusions of law. OAR 115-10-0095. Oral argument is requested.

**Objections to Proposed Rulings on Evidentiary Matters**

Respondent Objects To The Recommended Rulings On Page 2:

Unit Clarification Petition hearings are non-adversarial proceedings in which the goal is to develop a full factual record for the Board. The ALJ improperly denied allowance of a full factual record to be considered by the Board. OAR 115-025-0045(3). The ALJ did not allow stipulated, reliable evidence into the record because it was not accompanied by a signed stipulation. In error, the ALJ instead accepted evidence which the ALJ had found to be not entirely accurate. (See attached July 1, 2013, ALJ letter.)

After the ALJ determined that exhibits submitted in the hearing were not accurate, the

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1 parties spent time in the weeks after the hearing reviewing records and jointly agreeing to the  
 2 accuracy of a mutually created chart of the start and end dates of employment for specified  
 3 employees. (See attached June 18, 2013, email stipulations and Chart of start and end dates.)  
 4 The subsequent records are the full and accurate record regarding employment dates. The ALJ  
 5 erroneously admitted evidence which she had determined to be inaccurate. The Respondent  
 6 requests that the Recommended Ruling be revised and the accurate data on start and end dates of  
 7 employment be allowed into the record.

### 8 **Objections to Findings of Facts**

9 **Finding of Fact No. 9:** This finding states:

10 9. Some Parks Bureau employees are represented by the City  
 11 of Portland Professional Employees Association, which is not  
 12 affiliated with DCTU. Independent of the DCTU, LIUNA is also  
 13 the exclusive bargaining representative of a bargaining unit of  
 14 Parks Bureau employees in the seasonal maintenance worker  
 15 classification and a bargaining unit of approximately 85 Parks  
 16 Bureau employees in the classifications of recreation leader and  
 17 coordinator. The LIUNA-represented recreations leaders and  
 18 coordinators work at recreation centers and sun schools. *The City  
 19 does not believe that park rangers are appropriately included in  
 20 LIUNA's recreation bargaining unit.*

21 The Finding of Fact notes the City's position with respect to the LIUNA's Recreation  
 22 Contract but omits any such finding with respect to whether the park rangers may appropriately  
 23 be included in LIUNA's Seasonal Maintenance Worker bargaining Unit. The selective factual  
 24 determination with respect to only one of the LIUNA contracts precludes a full factual  
 25 assessment of the Petition. Historically, the parties have separately contracted and bargained  
 26 seasonal employees. The seasonal employees' benefits and pay are contrary to year round regular  
 27 employees, and they have not previously been included in the DCTU contract. Those Park  
 28 Rangers who work seasonally are classified as Community Service Aids who, if unionized,  
 29 would appropriately be bargained under a seasonal contract.

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1 **Finding of Fact No. 12 in relation to Footnote 4:** This finding provides:

2 12. LIUNA/DCTU-represented classifications in the Parks Bureau  
 3 include: arborist (high climber trainee, high climber, high climber  
 4 lead, tree inspector); automotive equipment operator (I, striper  
 5 operator, bus driver, II, sewer vacuum operator, street sweeper, and  
 6 tractor-trailer combination); carpenter (apprentice, carpenter, and  
 7 lead); construction equipment operator; facilities maintenance  
 8 technician (apprentice, technician, and lead); greenskeeper (I, II,  
 9 and III); horticulturist (apprentice, horticulturist, and lead);  
 10 maintenance mechanic (may require licenses/certifications such as  
 11 respirator certificate, backflow tester's certificate, playground  
 12 safety inspector's certificate, and aquatic facility operator's  
 13 certificate); maintenance worker; parks maintenance crew leader;  
 14 parks technician (technician and lead); storekeeper/acquisition  
 15 specialist (I, II, automotive parts specialist, III, and lead); turf  
 16 maintenance technician; utility worker (apprentice, I, and II); and  
 17 welder (apprentice, welder, and lead). Except for storekeepers, the  
 18 employees in these classifications primarily work outdoors and  
 19 travel to different locations within the park system to perform their  
 20 duties. Storekeepers work in the business/finance division of the  
 21 director's office/professional services section.<sup>4</sup> LIUNA/DCTU-  
 22 represented employees also work in some of these classifications in  
 23 other City bureaus.

24 <sup>4</sup> The City's contention that no LIUNA/DCTU-represented  
 25 employees currently work under the director's office/professional  
 26 services section is not supported by its own exhibit. (See Exh. R-19  
 at page 2.)

27 The fact and footnote confuse and misstate the organizational and administrative structure  
 28 of the Bureau as it relates to the DCTU Laborers and the Full Time Rangers and the Seasonal  
 29 Community Service Aid Rangers. As per Exhibit R-19 Page 2, there is no common supervision  
 30 until the office of the Assistant Director and Director of the entire Bureau. The criteria for  
 31 common supervision would be meaningless if it included anyone working under the Bureau  
 32 Director or Assistant Director. Everyone in the Bureau is under the Bureau Director and  
 33 Assistant Bureau director.

34 **Findings of Fact No. 21:**

35 21. **Park ranger classifications.** The City assigns park rangers to  
 36 three different classifications. Year-round Forest Park Ranger  
 Robert McCoy is classified as a community outreach and  
 information assistant. McCoy, who began work as a seasonal park  
 ranger in 2006, was placed into this classification when his year-

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1 round position was created in August 2010 because it was the most  
2 appropriate classification at the time. His position is currently  
3 funded through BES.<sup>6</sup> The general purpose of a community  
4 outreach and information assistant is to perform specific public  
5 information, awareness, and community involvement projects,  
6 including creating and developing materials and media for use in  
7 public and internal communications.

8 <sup>6</sup> Due to the position's funding, the City asserts that the Forest Park  
9 Ranger is in BES. However, this position is designated and treated  
10 as part of the Parks Bureau in all other respects. (See Exh. R-17.)

11 The City does not assign park rangers to three classifications or any classifications. It is  
12 the other way around.

- 13 • There are only three employees in the petition who are in the Park Ranger  
14 Classification. (Arden, Eyres, and Sachs).
- 15 • Robert McCoy is classified as a Community Outreach and Information Assistant.
- 16 • The remaining employees are Community Service Aids, a classification of  
17 unbudgeted casual appointments in all Bureaus encompassing any type of the  
18 work the particular bureau wishes to assign up to a maximum of 1400 hours.

19 **Findings of Fact No. 37:**

20 37. Eight of the 11 seasonal park rangers who were working at the  
21 time the petition was filed (Cardis Beny, Travis Bonneau, Michael  
22 Gaither, Alex Gastille, Katie Gribbon, Vicente Hanison, Dustin  
23 Meyer, and Jonathan Wilkins) began working in the summer or fall  
24 of 2012 and were still working in May 2013, without a break in  
25 service. These eight employees could work as long as August or  
26 September 2013, which is approximately when their 1400 hours  
would be exhausted. The majority of these employees were hired in  
August 2012, although a few were hired in June or July 2012. One  
of the 11 seasonal park rangers (Nathan Hepp) worked in the 2012  
season through September and then returned to work in January  
2013. Another of the 11 seasonal park rangers (Josh Larsen), began  
in October 2012 and was working in May 2013, but took a break in  
service during that time when he had a child. The remaining  
seasonal park ranger (Nicholas McAfee) was hired in January  
2013. Three of the 11 employees (Beny, Hepp, and Meyer) also  
worked as seasonal park rangers before the 2012 season.<sup>8</sup> The  
employees hired to fill the 12 new seasonal park ranger positions in  
May 2013 included one employee (Karras Kalivas) who previously  
worked as a park ranger for the City.

1                   <sup>8</sup> Due to the parties' failure to reach a stipulation, there is limited  
2 evidence regarding rehiring of seasonal workers other than the  
3 employees working at the time the petition was filed.

4                   This statement of fact is too vague to support an objectively reasonable conclusion  
5 regarding the determination of the status of the petitioned for employees as either "Temporary"  
6 or "Seasonal." The statement is based upon exhibits that the ALJ determined were not entirely  
7 accurate. The information in the chart of employee start and end dates, which was excluded in  
8 error by the ALJ, should be admitted as the statement of fact. If not, the inaccurate record does  
9 not support the conclusions in the Recommended Order.

9 **Findings of Fact No. 40:**

10                   The fact omits essential bargaining history between the parties. Specifically, the DCTU  
11 contract has never included seasonal employees under the PECBA or NLRB definitions.  
12 Historically, seasonal employees with different benefits, no just cause protection and different  
13 pay scales are represented, if at all, under a separate, seasonal collective bargaining agreement.  
14 This history avoids internal conflict and labor strife between the groups.

15 **Finding of Fact 46:**

16                   The fact misstates the job duties of AFSCME Security Specialists. Water Security  
17 Specialists duties are to provide security and patrol functions to protect and ensure the safety of  
18 the buildings, employees, facilities and grounds in and around water resources. The finding of  
19 fact erroneously describes their primary position and duties as "water system maintenance and  
20 emergencies." In fact, the Security specialists and Park Rangers are similarly required to hold the  
21 same DPSST Certifications and provide security functions. The finding of fact concludes that  
22 park rangers did not have a duty to patrol Water Bureau properties, which is debatable since  
23 Water Bureau properties may be located in Portland Parks, such as Mt. Tabor.

24                   **Objections To Conclusions Of Law**

25                   On page 14 of the Recommended Order, the ALJ states that "There is no evidence that  
26

1 the park rangers have similar commonalities with employees in other DCTU or non-DCTU  
2 bargaining units. This conclusions is incorrect. The Park Rangers' primary commonality is with  
3 AFSCME Water Security Specialists who similarly require DPSST certifications and perform  
4 patrol, surveillance, and security work. R-26. Another commonality exists with respect to  
5 AFSCME Parking Enforcement Technicians. R-23. The Rangers and the Parking Enforcement  
6 technicians share the common duty and authority of enforcement of laws and rules.

7 Moreover, the record simply does not support a community of interest between the Park  
8 Rangers and the DCTU Local 483 employees. The ALJ argues on page 13 of the Recommended  
9 Order that a community of interest exists because the Rangers and other employees work outside  
10 of buildings and fall under the supervision of the Assistant Director and Director of the Bureau.  
11 This is insufficient to establish a community of interest. The record is clear that the following  
12 community of interest factors do not exist to justify inclusion in LIUNA/DCTU: wages, hours,  
13 similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders,  
14 and common supervision.

15 To support a conclusion regarding a community of interest in the absence of meeting the  
16 criteria, the ALJ argues on page 14 of the Recommended Order that LIUNA/DCTU-represented  
17 employees perform a variety of duties besides manual labor. Respondent understands that a  
18 variety of types of employees fall under the LIUNA/DCTU contract, but that misses the point  
19 entirely because within that collection the required commonality (which the Rangers do not have)  
20 is the use of tools to build or clean in relation to physical projects. The Rangers duties are  
21 focused on people, interpersonal safety, and enforcement and education around laws, specifically  
22 with respect to the general public. No such commonality exists among the LIUNA/DCTU  
23 employees. The ALJ goes on to site the following examples: collection system video inspector,  
24 equestrian trainer, laboratory analyst and parking collection technician. Each of these examples  
25 only makes the City's point that LIUNA/DCTU employees all perform task and project-specific

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1 work as opposed to specific legal enforcement and public engagement. The Rangers simply do  
2 not fit within the collection of LIUNA/DCTU classifications. Their inclusion will ultimately be  
3 detrimental to their interests and in bargaining and cause labor strife.

4 "Temporary," "Casual" and "Seasonal" Employees.

5 The ALJ raises an interesting question regarding the appropriate standard for evaluating  
6 "Temporary," "Seasonal" and "Casual" employees. See Recommended Order page 17, Footnote  
7 11.

8 Based on the evidence in the record, there is an insufficient basis to conclude that the  
9 1400 hour Community Service Aids performing seasonal park ranger work have either a  
10 "reasonable expectation of reemployment in the foreseeable future" and/or a "reasonable  
11 expectation of permanent employment." In other words, under any test hte 1400 CSA Rangers  
12 do not meet hte criteria to be included in this bargaining unit. There record only shows that the  
13 petitioned for employees working 1400 hours were hired in 2012. That is an insufficient record  
14 upon which to conclude that these employees can reasonably expect to be employed again,  
15 permanently or otherwise. If the Board denies the City's Objections to the ALJ's refusal to admit  
16 the chart of employee start and end dates of employment, the remaining record is insufficient to  
17 include the 1400 hour employees into the regular bargaining unit.

18 Assuming the Board did allow the Respondent's Objection on the chart of start and end  
19 dates of employment, the result is the same. The 1400 hour employees should be excluded from  
20 the LIUNA/DCTU contract for regular employees. There have been a total of 79 Parks' employees  
21 hired to perform duties falling within the current class specification of Park Ranger since 2009. 38,  
22 or 48%; worked just one (1) season/year and were not ever employed again. 28, or 35%, worked just  
23 two years and never again. In other words, 66 out of 79 employees, or 83.5%, worked just 1-2 years  
24 and were not reemployed ever again. The facts simply do not support an objectively reasonable  
25 conclusion that the 1400 hour employees could expect reemployment or permanent employment in  
26

RESPONDENT CITY OF PORTLAND'S OBJECTIONS TO RECOMMENDED  
RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED  
ORDER

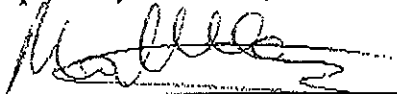
1 the future. Given the size of the Portland Metropolitan area, there is a vast labor pool to draw from  
2 for the seasonal work. With the ever fluctuating budget restrictions at the City, and the Parks Bureau  
3 in particular, employment from season to season is a yearly mystery, particularly since these are  
4 unbudgeted positions. The ALJ simply made an incorrect legal conclusion based on the record.

5 The Recommended Order also failed to address the fact that the bargaining history at the  
6 City has separated seasonal and regular employees in the interest of labor peace. The DCTU  
7 contract has never included seasonal employees under the ERB or NLRB definitions. This has  
8 precluded internal labor conflict between seasonal employees and regular employees who have  
9 differing bargaining priorities with respect to Just Cause, Benefits, and Wages. Apart from the  
10 DCTU contract, LIUNA has successfully negotiated terms for seasonal employees. For example, the  
11 LIUNA Seasonal Maintenance Worker contract contains specific benefit, wage, and all other  
12 employment terms. If the 1400 hour employees petitioned for herein are brought into the DCTU  
13 contract, the history and labor relationship will be upended and disrupted between groups of seasonal  
14 employees, as well as between them and full-time employees.

15 For the reasons stated above, the City objects to the Recommended Rulings, Findings Of  
16 Fact, Conclusions Of Law And Proposed Order.

17 Dated this 4<sup>th</sup> day of December, 2013.

18 Respectfully submitted,

19 

20 Matthew V. Farley, OSB # 975408

21 Deputy City Attorney

22 Email: [Matthew.Farley@portlandoregon.gov](mailto:Matthew.Farley@portlandoregon.gov)

23 Fax: (503) 823-3089

24 Of Attorneys for Respondent City of Portland

25  
26  
Page 8 - RESPONDENT CITY OF PORTLAND'S OBJECTIONS TO RECOMMENDED  
RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED  
ORDER



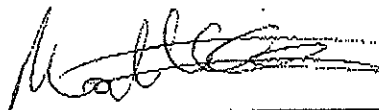
**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing RESPONDENT CITY OF PORTLAND'S  
OBJECTIONS TO RECOMMENDED RULINGS, FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND PROPOSED ORDER on:

Erika B. Askin  
Laborers' International Union of North America, Local 483  
1125 SE Madison, #206  
Portland OR 97214  
*Staff Representative for Petitioner LIUNA Local 483*

on December 4, 2013, by causing a full, true and correct copy thereof, addressed to the last-  
known address (or fax number) of said staff representative, 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.



Matthew V. Farley, OSB # 975408  
Deputy City Attorney  
Email: [Matthew.Farley@portlandoregon.gov](mailto:Matthew.Farley@portlandoregon.gov)  
Fax: (503) 823-3089  
Of Attorneys for Respondent City of Portland



# Oregon

John A. Kitzhaber, MD, Governor

## Employment Relations Board

Old Garfield School Building  
528 Cottage Street NE Ste 400  
Salem, OR 97301-3807  
Phone: 503-378-3807  
Fax: 503-373-0021

e-mail: EmpRel.Board@state.or.us

http://www.oregon.gov/ERB

July 1, 2013

Matthew V. Farley  
Deputy City Attorney  
Office of the City Attorney  
503-823-3089

Erica B. Askin  
Staff Representative  
LIUNA Local 483  
503-239-5741

**SENT VIA FAX ONLY**

**This fax (1 page) is intended for delivery only to the named addressees. If you have received this fax in error, please call the Employment Relations Board at 1-503-378-3807.**

Re: Laborers; International Union of North America Local 483 v. City of Portland, Case No. UC-11-13

Mr. Farley and Ms. Askin:

I suggested that the parties attempt to stipulate to the start/end dates and hours of the employees at issue in this matter after it became clear that the exhibits presented by the parties regarding this information were not entirely accurate. However, it appears from the correspondence I have received that the parties were not able to reach agreement regarding this information. Therefore, I propose to proceed with the information that would have been in the record at the end of the hearing held on May 28 and 29. To that end, the parties may re-offer Exhibits P-48 and R-24 into the record. I believe these are the exhibits the parties withdrew with the expectation the parties would be able to reach a stipulation. If offered, these exhibits will be received into the record.

I left the record open to receive addition information by stipulation of the parties only. Therefore, I will not receive the attachments to Respondent's brief into the record of the hearing. Although Respondent asserts that Petitioner stipulated to the start and end dates, I was not presented with a signed stipulation. Respondent admits that Petitioner did not agree with the hours. I also will not allow a motion to allow Petitioner to obtain access to the personnel records. A need for such information should have been identified and sought prior to the hearing.

The parties have until Monday, July 8, to re-offer their exhibits. In the alternative, should the parties enter into a signed stipulation within that time frame, they may submit that stipulation.

Sincerely,

Wendy L. Greenwald  
Administrative Law Judge  
Hearings Division  
503-378-6472  
wendy.greenwald@state.or.us



**From:** Erica Askin [Erica@Liuna483.org]  
**Sent:** Tuesday, June 18, 2013 11:21 AM  
**To:** Farley, Matthew  
**Subject:** Ranger info  
**Attachments:** Ranger Info fr 2009 through May 22 2013.xls

Hi Matt,

Attached is a list of start and end dates that I can stipulate to. I made some changes which I'm highlighting below. Before I can stipulate to hours worked in 2013, I would like to see a direct print out from SAP. If that's not possible then we can delete that column:

- I added a key showing color designations for the employees who signed authorization cards that were submitted in the ERB showing of interest, employees who returned in April 2013 from previous years, and the employees who were newly hired in May 2013.
- For column End Date 2013, I only included end dates that have already occurred.
- I deleted all columns showing hours in 2019 through 2012. The accuracy of the information you sent me from 2009 through 2012 is still highly questionable; for example, in the chart you submitted in R-16, Ryan Fitzpatrick was listed as having 1232 hours but here he was listed as having 833; Travis Bonneau was listed in the R-16 chart as having 1070 hours in 2012 but here he was listed as having 757. There are other instances like that. The Judge only asked us to stipulate to start and end dates, though, so I am fine deleting that information for 2009 through 2012. Would you show me the print out from SAP for hours worked in 2013? (I'm still slightly concerned about the listed hours for 2013, as I'm pretty sure Semaj Harris has worked some hours this year. He is highlighted in red).
- Cannot stipulate to the below employee. Adriana formerly was a Park Ranger but now does not work in the field or perform any of the duties as a Park Ranger. She does office support. Her correct classification is unclear to me and was not introduced at the hearing.

Hays, Adriana	-	-	-	-	-	-	4/2/2012
---------------	---	---	---	---	---	---	----------

- Cannot stipulate to the below employee. Brian Tierney is currently an administrator who is working on the 13<sup>th</sup> floor and who is working on creating the dog enforcement program. His correct classification is unclear to me, and was not introduced at the hearing.

Tierney, Brian (administrator/management)	1/17/2013	-	606.00	1150.00	0.00
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**Erica B. Askin**  
**Laborers' Local 483**  
**1125 SE Madison St. Ste 206, Portland, OR 97214**  
**[Erica@liuna483.org](mailto:Erica@liuna483.org)**  
**office: 503-239-5676 ext. 4 | mobile: 971-322-8747**  
 Received Time Dec. 4. 2013 4:50PM No. 4329



1 - STIPULATED DATES OF HIRE AND  
END DATES OF EMPLOYMENT

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Cooper, Paul				6/7/2010	7/4/2010															0.00
Creagh, Merrill																				0.00
D'Agnosa, Kelley																				0.00
Davis, Michael																				0.00
D'ezzo, Joseph																				0.00
Eckhardt, Jason																				0.00
Fort, Chris																				0.00
Gary, Christopher																				0.00
Gillen, Frank																				0.00
Hacker, Sarah																				0.00
Higuera, Franklin																				0.00
Holder, Sarah																				0.00
Horsfield, Betsy																				0.00
Ide, Chuck/Annemiek																				0.00
La Beck, Lawrence																				0.00
Latta, Elise																				0.00
Looney, James																				0.00
Madhies, David																				0.00
Martinson, Sara																				0.00
Mitchell, William																				0.00
Mosher, Scott																				0.00
Neilson, Jennifer																				0.00
Nichols, Theodor																				0.00
Rosley, Rebecca																				0.00
Randall, Nathan																				0.00
Randall, Claire																				0.00
Rock, Daniel																				0.00
Rodriguez, Leroy																				0.00
Schilling, Joseph																				0.00
Schwartz, Thomas																				0.00
Slantobuski, Linda																				0.00
Stephens, Christopher																				0.00
Thiel, Thai																				0.00
West, Tyler																				0.00
Wicks, Tracy																				0.00
Witke, Tyone																				0.00
Whitl, Arden																				0.00

PAGE 2 - STIPULATED DATES OF HIRE AND  
END DATES OF EMPLOYMENT

Received Time: Dec. 4, 2013 4:50PM No. 4329