



TEDESCO
LAW
GROUP

LAWYERS FOR ORGANIZED LABOR IN THE PACIFIC NORTHWEST

14100 WYLFORS CREST LANE
LAKE OSWEGO, OR 97035
TELEPHONE: 503-697-6015
FACSIMILE: 503-330-9847

MICHAEL J. TEDESCO
mtalton@mikedaw.com
SARAH A. EINESCHNIDLER, OF COUNSEL
sarah@mikedaw.com
ANIL S. KARIA, OF COUNSEL
anil@mikedaw.com
NADARI S. LOCK, OF COUNSEL
nadari@mikedaw.com
DARCY G. VAN DERZEE, OF COUNSEL
dandc@mikedaw.com

VIA EMAIL

March 7, 2011

Jon Hunt
President ATU 757

Re: The Right to Strike Under Current Law

Dear Jon:

I know that questions are coming to you from the membership regarding ATU's right to strike during the current labor dispute with Tri-Met. You have asked that I clarify the law in this respect for ATU members.

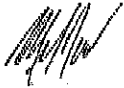
Transit workers are employees of a public employer by the law's definition provided in ORS 243.650(20). The ability to strike is specifically addressed by ORS 243.738(1) which states, "It is unlawful for any employee of a mass transit district, transportation district or municipal bus system to strike or recognize a picket line of a labor organization while in the performance of official duties." Consequently, without question, it is unlawful for any ATU bargaining unit member working for Tri-Met to strike. In place of this right to strike, the law provides for binding arbitration (often referred to as "interest arbitration" or "compulsory arbitration") through ORS 243.742: "Binding arbitration when strike prohibited. (1) It is the public policy of the State of Oregon that where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liberally construed." Other strike-prohibited units, like police and fire, find that binding arbitration has a much better net financial impact on their members than if they had struck.

Thus it is absolutely clear by statute that the law requires the dispute between ATU and Tri-Met to ultimately be resolved by interest arbitration if bargaining is not successful. I would further point out that the difficulty that ATU has incurred in finishing this process has been caused by Tri-Met's submission of a last best offer that is far worse for ATU members than any offer that they had submitted in bargaining up to the point of interest arbitration.

TriMet then compounded this egregious error by implementing terms of their proposal that have changed the status quo in bargaining which are in violation of ORS 243.756 and ORS 243.672 (1)(e). The former statute requires that the status quo be maintained during the pendency of the arbitration proceedings and the latter statute makes it a "bad faith" unfair labor practice to change the status quo while the parties are in the bargaining/interest arbitration process.

I hope this answers the pending questions. Please let me know if there is anything else that I can do to help.

Sincerely,



Michael J. Tedesco

Enclosures

Copy: Susan Stoner, Anil Karia