

Mechanic Law

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Via Facsimile

December 22, 2016

Randy Stedman
Executive Director, Labor Relations & Human Resources
TriMet
1800 SW 21st Street, Suite 300
Portland, Oregon 97201

Re: Bargaining Regarding LRV Wrapping

Dear Randy:

I write in response to your December 16, 2016 letter to ATU regarding LRV wrapping and TriMet's posting for a new position of Light Rail Vehicle Body and Paint Technician. ***ATU requests that you immediately remove the job posting for the Light Rail Vehicle Body and Paint Technician until the parties have negotiated regarding this issue.***

Your letter to ATU is incorrect on several counts. First, you wrongly state that Tri-Met's proposal regarding light rail wrapping is mid-term bargaining subject to the expedited bargaining process in ORS § 243.698. ORS § 243.698 applies only in narrow exceptions to where "special circumstances" such as a proposed mid-term change that "concerns a condition of employment that is mandatory subject of bargaining not covered by the existing agreement." *See In the Matter of the Joint Petition for Declaratory Ruling Filed by Medford School District 549C*, DR-2-04, 2004 WL 5573469 (July 14, 2014). Here no such situation exists because the subject of negotiation (including the contracting out of work, the scope of work, and the salary and benefits of bargaining unit members) are covered by the existing contract.

Second, ORS § 243.698 does not apply because ATU and TriMet were already engaged in reopener and successor negotiations. You first provided notice of TriMet's proposal on November 28, 2016, just two days before the current contract expired. At that time, the parties had already reopened the contract and agreed on the first date for successor negotiations. Additionally, by the time period in which ATU could demand to bargain pursuant to ORS § 243.698, the contract had expired. In fact, you unilaterally implemented the change by posting the job notice after the contract had expired, thus showing that this is not appropriate for mid-term bargaining. Further, although the parties have not met to exchange initial proposals, this is not determinative where the contract expired prior to implementation and the parties have engaged in reopener negotiations. Significantly, the expedited process applies when "*no other avenue exists for resolving the dispute.*" *AFSCME Local 2831 v. Lane*, Case No. UP-38-09, 2010 WL 1841034, *14 (April 20, 2010). That is simply not the case here where the parties are scheduled to engage in successor contract negotiations.

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Finally, you also wrongly state that ATU has refused to bargain regarding this issue. To the contrary, on December 1 and again on December 2, ATU requested to bargain regarding your proposal. ATU, however, explained that the appropriate forum for bargaining is in successor bargaining and not through separate bargaining. Although the parties debate the appropriate forum, at no time has ATU refused to bargain entirely regarding this issue. Therefore, even if ORS 243.698 does apply (which it does not), Tri-Met's posting of the position prior to bargaining is a violation of PECBA.

For all of these reasons, TriMet was obligated to maintain the status quo and not unilaterally implement its proposal by posting the job position. Consequently, ATU requests that you immediately withdraw the job posting until the parties have negotiated. If you refuse to negotiate and continue to unilaterally implement this proposal, ATU will file an unfair labor practice charge.

Very truly yours,

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Whitney Stark

cc: Shirley Block, ATU President – Business Representative
Jonathan Hunt, ATU Vice President – Assistant Business Representative
Mary Longoria, ATU 757 Financial Secretary Treasurer