

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-43-07

(UNFAIR LABOR PRACTICE)

EAST COUNTY BARGAINING)	
COUNCIL,)	
)	
Complainant,)	
)	RULING AND ORDER ON
v.)	REQUEST FOR
)	PROTECTIVE ORDER
DAVID DOUGLAS SCHOOL)	
DISTRICT,)	
)	
Respondent.)	
_____)	

On September 15, 2009, this Board issued an Order concluding that the David Douglas School District (District) violated ORS 243.672(1)(e) and (1)(g) when it refused to give the East County Bargaining Council (Council) the names, addresses, and telephone numbers of student witnesses it interviewed regarding an incident involving Council bargaining unit member Jose Montebalco. 23 PECBR 333 (2009). As a remedy, we ordered the District to give the Council the information within seven days of the date of the Order. We specified, however, that either party could request postponement of disclosure of the information so they could discuss a protective order to limit access to the information given to the Council. Should the parties fail to agree, each party could submit its proposed protective order to this Board and we would select one. The parties were unable to agree fully to the terms of a protective order, and submitted their proposals and rationale to us.

The parties' proposed protective orders are identical, with one exception concerning the method by which the Council will contact the students. The Council proposes that "[i]f the Council intends to communicate with any student, the Council will initiate such contact with the student or the student's parent." The District proposes that if the Council wishes to contact a student, "the Council will initiate such communication with the student's parent or guardian."

The District contends that the Council should be required to contact a student's parents before interviewing a student because the students are minors "who are unlikely to understand why they are being contacted and any rights that they might have." In addition, the District asserts that it has "the welfare of the students and their families in mind in seeking to have communication initiated through the parent or guardian." We do not find these District arguments persuasive.

We explained in our original Order that under the PECBA, the Council has a right to have access to the student witnesses and this right "is not subject to parents' or an arbitrators' discretion." 23 PECBR at 354. The District's proposed protective order is contrary to this principle because it would make Council access to the students subject to the parents' discretion.

In regard to the welfare of the students and their families, the District has provided no specific evidence or argument to demonstrate how students (or their families) could be harmed if contacted by Council representatives and asked to talk about the Monteblanco incident. Nor has the District cited any "student rights" that might be violated by these interviews.¹ We have no reason to believe that the Council will not treat students and their families with respect and courtesy, and provide students with an age-appropriate explanation of the interviews and the reasons for them.

In addition, we note that the protective orders proposed by the Council and District both identically provide that the District "may notify each student's parent or guardian that it must provide the Council with the information and that the Council will treat the information as subject to a protective order in accordance with law." We believe that this provision, which gives the District the opportunity to notify parents in advance that the Council may be contacting their children, offers adequate protection for the rights and interests of student witnesses and their parents.

We adopt the Council's protective order, with one change. Both parties propose that the District provide the Council with the names, addresses, and telephone numbers of student witnesses to the Monteblanco incident by November 15, 2009. We will modify the date and order the District to give the Council student witnesses' names,

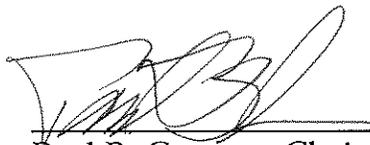
¹In our original Order, we rejected a similar District argument. We concluded that the District "presented no evidence or argument that students or their families will be harmed by disclosure of the names, addresses, and telephone numbers sought by the Council. Accordingly, there is no evidence of legitimate confidentiality concerns that outweigh the Council's obligation to represent its bargaining unit members under the PECBA." 23 PECBR at 353, 354.

addresses, and telephone numbers within seven days of the date on which the parties execute the protective order.

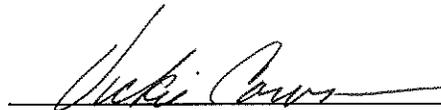
ORDER

Within (7) seven days of the date of this Order, the parties shall execute the Council's proposed protective order, with the following modification: within (7) seven days of the date the parties execute this protective order, the District will provide the Council with the names, addresses, and telephone numbers of student witnesses to the November 29, 2006, incident involving Jose Monteblanco.

DATED this 9th day of November 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.