Arbitration victory sets contracting out precedent for OPEU

OPEU/SEIU Local 503 won a major victory recently when an arbitrator ruled that the State of Oregon violated its contract with OPEU by failing to obtain alternative employment for six employees of the Salem Rehabilitation Facility who lost their jobs when the Oregon Rehabilitation Division closed the sheltered workshop and contracted out to private contractors the work formerly done by the grievants.

From 1965 through 1992, SRF, located on the grounds of the Oregon State Hospital in Salem, provided vocational training and a variety of other services to disabled clients from all over Oregon. In July 1992, Voc Rehab closed SRF, after a long fight with the Union, and shifted the services historically provided by SRF employees to private "community-based" providers.

ONE ISSUE UNRESOLVED - However, one key issue remained unresolved. Article 13 of the contract requires that the agency secure alternative employment for workers displaced as a result of contracting out, either with the contractor or with the state. Six of the affected workers — Dormitory Counselor **Greg Finke**, Manual Arts Instructors **Marlo Hall** and **Robert Elliott**, and Cooks **Charles Alewine**, **Pat Gilliland**, and **Dan Tweedie** — had not been provided with alternative employment and suffered periods of unemployment ranging from three months to 21 months as a result.

The Union filed a grievance on behalf of these six employees alleging that Voc Rehab had violated the agreement. The agency conceded that it had not taken any action to provide alternative employment for any of the grievants, arguing that its actions closing SRF did not constitute contracting out and therefore Article 13 did not apply. However, Arbitrator Jane Wilkinson firmly rejected the state's arguments, agreeing with the Union's broader definition of contracting out as "having a particular job or type of work done by outsiders under contract."

FIRST CLEAR DEFINITION - The arbitrator's ruling, the first to establish a clear definition of contracting out under the OPEU contract, sets an important precedent clearly establishing that agency plans to shift state services from an institutional setting to a community-based setting through contracts with private providers constitute contracting out under Article 13. This decision was particularly significant in light of the state's current plan to shift services for adult psychiatric patients from Dammasch State Hospital to community-based settings, and the increasing push to privatize state services.

There is a limitation to Wilkinson's ruling, however. Some of the work that the grievants used to perform was not contracted out, she found, but rather was discontinued, leading her to conclude that there was only a "partial" violation of the contract with respect to five of the six grievants, and therefore, only a "partial remedy" is called for. This means that instead of receiving full back pay, the grievants may only end up receiving partial back pay. This also means that in future cases where agencies contract out, it may be necessary to evaluate the duties of each employee displaced as a result of contracting out in order to determine the extent of the employee's entitlement to alternative employment.

The arbitrator's decision leaves the specific details of the remedy to be worked out by the parties, with the right to go back to the arbitrator if they are not able to reach agreement.

Kitzhaber: Labor's candidate for Governor

• OPEU's delegation to the AFL-CIO Convention are shown here with Democratic candidate for Governor, John Kitzhaber, center, who is endorsed both by OPEU and the AFL-CIO. From the left are Political Director **Mari Anne Gest**, OPEU Vice President **Chris Parks**, WOW Local 461 member **Karla Spence**, Executive Director **Alice Dale**, WOW Local 461 activist **Pete Petry**, Kitzhaber, District 5 Director **Jim Wuehler**, OPEU Secretary-Treasurer **Don Patch**, District 6 Director **Tracy Pierce**, Political Director **Rich Peppers**, Department of Consumer and Business Services Local 440 activist **Judy Sugnet**, and OPEU Organizer **Tony Corcoran**.

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