

STATE OF OREGON, EMPLOYMENT RELATIONS BOARD

**UNFAIR LABOR PRACTICE COMPLAINT
AGAINST PUBLIC EMPLOYER**

For ERB Use Only Case

Case No. _____

Date Filed _____

Email, fax, mail, or deliver the complaint to: Employment Relations Board
528 Cottage St. NE, Suite 400, Salem, OR 97301
Email: ERB.Filings@oregon.gov
Fax: (503) 373-0021 (There is a \$25 fax filing fee.)
Phone: (503) 378-3807

Mail or deliver the **\$300 complaint filing fee**, payable to Employment Relations Board. The filing is not complete until the Board receives the \$300 filing fee. For more information, see the attached instructions.

1. COMPLAINANT

Name, address, phone number, and email address.
**AMERICAN FEDERATION OF STATE COUNTY AND
MUNICIPAL EMPLOYEES UNION, LOCAL 328,
OREGON AFSCME COUNCIL 75**

2. COMPLAINANT'S REPRESENTATIVE

Name, address, phone number, and email address.
ISELA M. RAMOS GONZALEZ
Council Attorney
6025 E. Burnside Street
Portland, OR 97215
(503) 239-9858
iramosgonzalez@oregonafscme.org

3. RESPONDENT (EMPLOYER)

Name, address, phone number, and email address.
OREGON HEALTH AND SCIENCE UNIVERSITY

4. RESPONDENT'S REPRESENTATIVE

Name, address, phone number, and email address.
Darryl Walker
OHSU Legal Counsel-Labor
OHSU
3181 Sam Jackson Park Road
Portland, OR 97239
walkeda@ohsu.edu

5. Complainant alleges that Respondent has violated the following subsection(s) of ORS 243.672(1) or ORS 243.752 of the Public Employee Collective Bargaining Act, which make it an unfair labor practice for a public employer or its designated representative to (check all that apply):

- 243.672(1)(a): Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.
- 243.672(1)(b): Dominate, interfere with or assist in the formation, existence or administration of any employee organization.
- 243.672(1)(c): Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization.
- 243.672(1)(d): Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.
- 243.672(1)(e): Refuse to bargain collectively in good faith with the exclusive representative.
- 243.672(1)(f): Refuse or fail to comply with any provision of ORS 243.650 to 243.782.
- 243.672(1)(g): Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.
- 243.672(1)(h): Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- 243.672(1)(i): Violate ORS 243.670(2), relating to the use of public funds to support actions to assist, promote or deter union organizing.
- 243.752: Refuse or fail to comply with any provision of a final and binding arbitration award.

6. This Complaint includes the following requests (check all that apply):

- A request that the Board award a civil penalty, pursuant to ORS 243.676(4) and OAR 115-035-0075.
- A request that the Board order reimbursement of the filing fee, pursuant to ORS 243.672(3) and OAR 115-035-0075.
- A request that the Board expedite all or part of this Complaint, pursuant to OAR 115-035-0060.

7. Statement of Claims

You must attach a statement of claims to this Complaint. The statement must provide the following information:

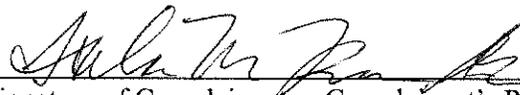
- A clear and concise statement of the facts involved in each alleged unfair labor practice (including relevant dates, names, places, and actions);
- A specific reference to each section and subsection of the law allegedly violated; and
- A brief description of the remedies Complainant is seeking.

If you refer to documents in the statement of claims, you may attach copies of those documents to the statement.

If you are requesting a civil penalty and/or filing-fee reimbursement, the statement of claims must also include an explanation of why you believe a civil penalty and/or filing-fee reimbursement is appropriate in your case, and a clear and concise statement of the facts alleged in support of the request(s). *See* OAR 115-035-0075.

If you are requesting expedited processing, you must also provide the affidavit required by the Board's rules. *See* OAR 115-035-0060.

I certify that the statements in this Complaint and the attached statement of claims are true to the best of my knowledge and information.

By: 
Signature of Complainant or Complainant's Representative

Attorney Title 8/8/19 Date

Oregon AFSCME
Council 75

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2 EMPLOYMENT RELATIONS BOARD

3 STATE OF OREGON

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5 AMERICAN FEDERATION OF STATE,
6 COUNTY, AND MUNICIPAL EMPLOYEES
7 UNION, LOCAL 328, OREGON AFSCME
8 COUNCIL 75,

9 Complainant,

10 vs.

11 OREGON HEALTH AND SCIENCE
12 UNIVERSITY,

13 Respondent.

Case No.:

COMPLAINT
UNFAIR LABOR PRACTICE

14 CLAIMS

15 FIRST CLAIM: Respondent violated 243.672(1)(a): Interfere with, restrain or
16 coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

17 SECOND CLAIM: Respondent violated 243.672(1)(b): Dominate, interfere with
18 or assist in the formation, existence, or administration of any employee organization.

19 THIRD CLAIM: Respondent violated 243.672(1)(c): Discriminate in regards to
20 hiring, tenure, or terms or condition of employment for the purpose of encouraging membership
21 in employee organization.

22 FOURTH CLAIM: Respondent violated 243.672(1)(e): Refuse to bargain
23 collectively in good faith with the exclusive representative.

24 FIFTH CLAIM: Respondent violated 243.672(1)(i): Violate ORS 243.670(2),
25 relating to the use of public funds to support actions to assist, promote or deter union organizing.
26

STATEMENT OF FACTS

1. American Federation of State, County, and Municipal Employees Union (“AFSCME” or “Union”) Local 328, Oregon AFSCME Council 75 is a public employee labor organization under ORS 243.650(13).
2. Oregon Health and Science University (“OHSU” or “Employer”) is public employer within the definition of ORS 243.650(20).
3. OHSU and AFSCME are parties to a Collective Bargaining Agreement in effect from July 19, 2015 to June 30, 2019.
4. The parties are currently in contract bargaining negotiations.
5. The contract bargaining negotiations are being mediated by State Conciliator Janet F. Gillman.
6. AFSCME Local 328 maintains a public blog on its website to communicate about contract negotiations and other Union matters with represented employees.
7. AFSCME Local 328 maintain a public Twitter account to communicate about contract negotiations and other Union matters with represented employees.
8. AFSCME Local 328 maintains a public Facebook page to communicate about contract negotiations and other Union matters with represented employees.
9. OHSU maintains OHSU Now, an internal blog, Twitter account @OHSUNews and has sent emails regarding the Union and contract bargaining negotiations.
10. AFSCME Local 328 represented employees engaged in protected concerted activity during all relevant times and within the last 180 days.

1 11. Daniel Forbes, Vice President of Human Resources and Patrick Frengle, Financial
2 Manager, are agents of the Employer who represented management at the contract
3 bargaining table during all relevant times and within the last 180 days.

4
5 12. Members of OHSU's management bargaining team, including Daniel Forbes and
6 Patrick Frengle, maintained personal and/or professional Twitter and Facebook
7 accounts during all relevant times and within the last 180 days.

8 13. Members of OHSU's management bargaining team, including Daniel Forbes and
9 Patrick Frengle, utilized personal and/or professional Twitter and Facebook accounts
10 to pose as represented employees and undermine the contract bargaining process, the
11 Union, and represented employees protected concerted activity at all relevant times
12 and within the last 180 days. Including but not limited to Tweets and Facebook posts
13 posing as represented employees and criticized the Union's bargaining proposals and
14 positions, the Union's bargaining team and bargaining process, and made negative
15 and inaccurate comments about Union dues within the last 180 days.

16
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18 14. OHSU has admitted to the public and the Union that the management bargaining
19 team member, Patrick Frengle, engaged in the above described conduct.

20 15. Members of OHSU's management bargaining team, including Daniel Forbes and
21 Patrick Frengle, utilized public resources, including staff time and equipment, to deter
22 union organizing.
23

24 REMEDIES

25 1. Order OHSU cease and desist from engaging in unfair labor practices named
26 above and order affirmative action, including, but not limited to:
27
28

- 1 a. Order OHSU to cease all utilizing social media, email, and internal employee
2 communications to communicate to represented employees about the Union,
3 contract bargaining, and employee protected concerted activity for the
4 duration of contracting bargaining and 6 months following ratification.
5
6 b. Order OHSU to cease posing as represented employees and posting on
7 AFSCME Local 328's Twitter, Facebook page, and any other method the
8 Union communicates with represented employees.
9
10 c. Order OHSU to publish physical postings in all employee breakrooms stating
11 it violated PECBA and assurances of future compliance. In addition, order
12 OHSU's President to electronically publish the above posting on AFSCME
13 Local 328's Twitter and Facebook page. This is necessary because OHSU is a
14 large and decentralized organization and because the egregious conduct
15 occurred on Twitter and Facebook. Furthermore, order OHSU to utilize
16 electronic posting because the conduct was calculated, flagrant, perpetuated
17 by high ranking personnel sitting on the management bargaining team,
18 affected a significant portion of the bargaining unit, utilized a powerful
19 medium; social media, and had significant potential and actual impact on the
20 functioning bargaining representative as the representative because it occurred
21 in the middle of contract bargaining negotiations at impasse.
22
23 d. Order the OHSU to read a public statement (to be livestreamed because
24 OHSU is a large decentralized organization) stating that it violated the above
25 cited statutes by engaging in the above described conduct and assurances it
26 will comply with PECBA in the future.
27
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- 1 e. Order OHSU to bargain in good faith; Order that ERB will officially monitor
2 OHSU's conduct during contract bargaining with AFSCME and its affiliates
3 because of the lack of transparency and deception illustrated by the above
4 described conduct, Order that ERB establish procedures to ensure OHSU's
5 future compliance of PECBA.
6
7 f. Order OHSU to compensate represented employees who are members of the
8 bargaining team for their time spent in bargaining sessions that were
9 undermined by the bad faith bargaining.
10
11 g. Order OHSU to conduct mandatory management trainings on the above-
12 named PECBA statutes.

13 2. Award Civil Penalties because OHSU's above name conduct is egregious under
14 ORS 243.676(4)(a). The above described conduct is egregious because high
15 ranking management were involved, because those involved were members of the
16 management bargaining team and negotiations, because of the number of
17 represented employees impacted, because it hindered the function of AFSCME as
18 the exclusive representative at a crucial time; contract negotiations, which is
19 currently at impasse.
20

21 3. Award a Civil Penalty of Triple the Amount of the Public Funds expended to
22 deter union organizing under ORS 243.676(4)(b) because high ranking Director
23 of Human Resources and Financial Manager, who are management bargaining
24 team members utilized work time, their status and professional roles, and/or
25 public resources to deter union organizing.
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Dated this 8th of August, 2019.



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