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STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

APR 18 2016
Case No. UP-012-16

INSTRUCTIONS: File the original and three copies of the complaint and all attachments and the \$300 filing fee with the Board at:

528 Cottage St NE, Suite 400
Salem, Oregon 97301-3807
Phone 503-378-3807

UNFAIR LABOR PRACTICE COMPLAINT
Public Employment

EMPLOYMENT RELATIONS BOARD
Date Filed 4/18/16

<p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>SEIU Local 503, OPEU 1730 Commercial Street SE Salem, OR 97302 503.581.1505 khosravis@seiu503.org</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Shirin Khosravi, Staff Attorney SEIU Local 503, OPEU 1730 Commercial Street SE Salem, OR 97302 503.581.1505 khosravis@seiu503.org</p>
<p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>Oregon Home Care Commission acting through the Department of Administrative Services 676 Church Street NE Salem, OR 97301-2401 503.378.2733 cheryl.m.miller@state.or.us</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Cheryl Miller, Executive Director Oregon Home Care Commission 676 Church Street NE Salem, OR 97301-2401 503.378.2733 cheryl.m.miller@state.or.us</p>

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)(e) of the Public Employee Collective Bargaining Act. The following is a clear and concise statement of the facts involved in each alleged violation, followed by a specific reference to the section and subsection of the law allegedly violated. (For each claim, specific dates, names, places, and actions. Attach copies of main supporting documents referred to in the statement of claims.)

I certify that the statements in this complaint are true to the best of my knowledge and information.

Please see attached.

By: 
Signature of Complainant or Complainant's Representative

Staff Attorney
Title

April 18, 2016
Date

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APR 18 2016

EMPLOYMENT RELATIONS BOARD

EMPLOYMENT
RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL)
UNION LOCAL 503, OREGON PUBLIC)
EMPLOYEES UNION,)

Complainant,)

v.)

HOME CARE COMMISSION, STATE OF)
OREGON (DEPARTMENT OF)
ADMINISTRATIVE SERVICES))

Respondent.)

Case No. UP-012 -16

COMPLAINT

1.

Complainant, Service Employees International Union Local 503, Oregon Public Employees Union (the Union), is a labor organization as defined by ORS 243.650(13).

2.

The Oregon Home Care Commission (OHCC) herein the Employer or Respondent, acting through Respondent Department of Administrative Services (DAS), is a public employer as defined by ORS 243.650(20).

3.

The Union and the Employer have been parties to a series of collective bargaining agreements covering Homecare Workers and Personal Support Workers collectively referred to as Home Care Workers (HCWs). This matter arose under the collective bargaining agreement ("CBA") that was effective, by its terms, from July 1, 2013 to June 30, 2015.

4.

Under 243.672(1)(e), the duty to bargain in good faith requires parties to provide requested information relevant to a grievance or other contract administrative issue.

5.

On or about August 18, 2015, Gabriel Holguin a Union organizer with the Member Resource Center emailed Suzanne Huffman, Respondent's designated representative, regarding Respondent's failure to pay HCW Marlinda Romero for 89.5 hours she worked from July 16, 2015, to July 31, 2015. (Union's Exhibit 1). Holguin explained that Romero had been denied payment "due to discrepancies between who was supposed to provide care for the client" and that although the client signed a voucher affirming that Romero worked the 89.5 hours, the client was now claiming his son had worked the disputed hours. *Id.*

6.

On or about August 18, 2015, Huffman responded to Holguin via email, and stated that Respondent's position was Romero did not work the disputed hours. *Id.* Huffman explained that the Medicaid Fraud Unit has been involved in the matter, and the APD Central Office made the determination that Ms. Romero will not be paid for the disputed hours. *Id.*

7.

On or about September 1, 2015, Holguin submitted an information request to Huffman by email, requesting "any and all information that was used in the state reaching its decision for Marlinda Romero's pay issue." (Union's Exhibit 2).

8.

On September 10, 2015, the Union filed a grievance over the State's refusal to pay HCW Marlinda Romero for 89.5 hours for the period of July 16, 2015, to July 31, 2015. (A copy of the grievance is attached hereto as Union's Exhibit 3).

9.

On or about September 30, 2015, Huffman contacted Holguin via email regarding the request for information sent on or about September 1, 2015. (Union's Exhibit 4). Huffman explained that a draft of her response to the Union's request was being reviewed by the Information Security and Privacy Office in order to assure that the Respondent complied with all state and federal privacy statutes and rules. *Id.*

10.

On or about October 21, 2015, Huffman emailed Holguin stating that the Romero grievance "had no merit" and that the facts Huffman relied on in determining whether the decision to deny payment for the disputed hours was correct were contained in a protected client file. (Union's Exhibit 5). Huffman further explained that the employee who was to review Huffman's response to the Union's request for information was out of the office, but would, "as a courtesy", disclose to the Union what state and federal privacy laws permit upon her receipt of a response from the Information Security and Privacy Office. *Id.*

11.

On or about November 10, 2015, Holguin sent Huffman a second information request regarding the Romero grievance, requesting "all information that was used in

the state reaching its decision to deny payment for services in July 2015.” (Union’s Exhibit 6).

12.

On or about November 19, 2015, Cheryl Miller, Executive Director of the OHCC emailed Lisa Siegel, Coordinator for the Union’s Member Resource Center, regarding the Romero grievance. (Union’s Exhibit 7). Miller denied the Union’s information request stating that “a request to release information from the consumer-employer’s electronic file is prohibited and denied.” *Id.* at 2.

13.

By the foregoing actions and inactions, particularly those set out in ¶12 above, Respondent Employer has acted in violation of ORS 243.672(1)(e).

WHEREFORE, Complainant requests an Order from this Board as follows:

- A. Finding that Respondent, acted in violation of ORS 243.672 (1)(e) as detailed above;
- B. Ordering Respondent cease and desist from such unlawful activities;
- C. Ordering Respondent to post notices provided by this Board at all of its buildings and facilities where unit employees are employed which outline the violations committed and contain pledges by Respondent to cease and desist from any like or related violations in the future;
- D. Ordering any other relief and remedy this Board deems just and proper.

Dated this 18th day of April 2016.

Respectfully submitted,



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