

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

**STATE OF OREGON
 EMPLOYMENT RELATIONS BOARD**

**UNFAIR LABOR PRACTICE COMPLAINT
 Public Employment**

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 For Board Use Only

APR 22 2016
 Case No. UP-013-16
 Date Filed
 EMPLOYMENT RELATIONS BOARD

<p>COMPLAINANT Name, address, and phone number</p> <p>Service Employees International Union Local 503, Oregon Public Employees Union P.O. Box 12159 Salem, Oregon 97309-0159 503.581.1505</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, and phone number, if applicable</p> <p>Shirin Khosravi, Staff Attorney SEIU Local 503, OPEU P.O. Box 12159 Salem, Oregon 97309-0159 503.581.1505, x135 khosravis@seiu503.org</p>
<p>RESPONDENT Name, address and phone number</p> <p>Portland Public Schools, School District No. 1, Multnomah County, Oregon 501 N. Dixon Street Portland, OR 97227 503.916.2000</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, and phone number, if applicable</p> <p>Sean Murray, Human Resources Director Portland Public Schools, School District No. 1, Multnomah County, Oregon P.O. Box 3107 Portland, OR 97208-3107 503.916.2000 smurray@pps.net</p>

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)(g) 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 _____ April 22, 2016
 Title _____ Date

STATE OF OREGON

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EMPLOYMENT RELATIONS BOARD

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

Complainant,)

v.)

PORTLAND PUBLIC SCHOOLS,)
SCHOOL DISTRICT NO. 1,)
MULTNOMAH COUNTY, OREGON,)

Respondent.)

Case No. UP-013-16

COMPLAINT

1.

Complainant, Service Employees International Union Local 503, Oregon Public Employees Union ("SEIU" or the "Union"), is a labor organization within the meaning of ORS 243.650(13), representing a group of employees of the Respondent, Portland Public Schools, School District No. 1, Multnomah County, Oregon, ("District"), a public employer, within the meaning of ORS 243.650(20).

2.

The Union and the District have been parties to a series of collective bargaining agreements (CBAs), the most recent of which is effective, by its terms from July 1, 2014, through June 30, 2017. (A copy of that Agreement is included herewith as Attachment 1)

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3.

Under the CBAs referenced in paragraph 2 above, the Union is the exclusive collective bargaining representative for various employees of the District (unit employees) and the CBAs set out various terms and conditions of employment applicable to the unit employees.

4.

On or about December 11, 2014, the Union filed a grievance on behalf of all District custodians (custodians) that alleged the District violated Article 23 of the CBA when it instructed custodians not to work during a closure of all District schools and offices due to inclement weather on November 13, 2014, and required the custodians to use leave for the missed day of work.

5.

During the grievance process, the parties agreed to a settlement of the grievance. In October 2015, the parties signed a settlement agreement termed the Inclement Weather Grievance Settlement Agreement and Release (“Settlement Agreement”). (A copy of the Settlement Agreement is included herewith as Attachment 2). A settlement agreement is a “contract with respect to employment relations,” within the meaning of subsection (1)(g). *Oregon Public Employees Union, SEIU Local 503 v. Wallowa County (SEIU v. Wallowa County)*, Case No. UP-77-96, 17 PECBR 451, 462 (1997), *adhered to on recons*, 17 PECBR 536 (1998).

6.

Section 4 of the Settlement Agreement states:

“For the 2015-2016 school year, each custodian will receive up to one paid ‘Inclement Weather Closure Day.’ This paid day may only be used when there is an all-District closure and the District does not allow custodians to report to work or requires them to end

their shifts early. If there is more than one all-District closure during the 2015-2016 school year, custodians will be required to use vacation, emergency personal/business leave, or unpaid status for each of the additional all-District closure days.”

Attachment 2, p. 2.

7.

On or about November 20, 2015, an email was sent out to District employees explaining the practices for weather-related delays and closures. (Attachment 3). The email states that in the event that schools are closed but offices are open, “[c]ustodians report to schools on time unless specifically asked to report earlier”, and in the event that schools and offices are closed, “[s]chool and office staff, including custodians, do not report.” *Id.* In the prior year, 2014, an email was sent out to custodians stating that they were expected to report when schools and offices were closed. (Attachment 4).

8.

On or about Sunday, January 3, 2016 at 7:20 PM district employees were notified via email that schools and district offices were going to be closed Monday, January 4, 2016, due to weather conditions. (Attachment 5).

9.

On or about Monday, January 4, 2016, some custodians reported to work either because they were asked to work by management despite the closure, or because they did not know they were not required to report to work. At least seven of the custodians worked their shift because they were unaware that they were not to report to work. These employees included: Thang Nguyen, Michael Grindle, Doug Warner, John Bryant, Bill Tandy, John Morrison, and Duane Hill. (See Attachment 6). At least four custodians who worked on January 4, were directed by management to work their shift despite the closure. These employees included: Selim Masic,

Refik Hodzik, Rasema Hodzik, and Craig Gintz. *Id.* The hours worked varied for each of the impacted custodians.

10.

A second all-District closure took place on January 5, 2016. (Attachment 7). The custodians who worked on January 4, 2016, were informed that they would not be able to use their paid “Inclement Weather Closure Day” for January 5, 2016. Rather, they were informed that January 4, 2016, counted as their “Inclement Weather Closure Day”, despite the fact that they worked that day. The district informed the custodians that they would be required to use vacation, emergency personal/business leave, or unpaid status for the day of January 5, 2016. (See Attachment 8).

11.

Pursuant to the Settlement Agreement, “each custodian will receive up to one paid ‘Inclement Weather Closure Day’” which “may only be used when there is an all-District closure and the District does not allow custodians to report to work or requires them to end their shifts early.” (Attachment 2, p.2). Because the “Inclement Weather Closure Day” may only be used when custodians do not report to work or when they end their shift early, the District should have paid the custodians who worked on January 4, 2016 for their hours worked, and granted them an “Inclement Weather Day” on January 5, 2016.

12.

By its actions set forth above, and in particular, those outlined in ¶ 10 and 11, the District violated ORS 243.672(1)(g) when it violated the Settlement Agreement (Attachment 2) by requiring custodians who worked January 4, 2016, to use their “Inclement Weather Closure Day” on that day as opposed to paying them for the time worked. The District further violated the

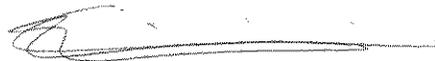
settlement agreement by refusing to grant the custodians who worked January 4, 2016, an “Inclement Weather Closure Day” on January 5, 2016. The named custodians and all similarly situated are required to be paid for hours worked on January 4, 2016, not via leave type, and granted an “Inclement Weather Closure Day” on January 5, 2016. The compensatory amount will vary depending on each employee’s pay and how many hours each employee worked.

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

- A. That the Board find the Employer to have violated ORS 243.672(1)(g);
- B. That the Board order the Employer to make whole each of the affected employees, as well as all similarly situated persons, for all economic losses they suffered as a result of the violation of the Settlement Agreement;
- C. That the Board issue a cease and desist order;
- D. That the Board order an appropriate notice be posted throughout the Employer’s facilities;
- E. Ordering any other relief and remedy this Board deems just and proper.

DATED this 22nd day of April, 2016.

Respectfully submitted,



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