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STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

UNFAIR LABOR PRACTICE COMPLAINT
Public Employment

For Board Use Only

Case No. UP-014-16

Date Filed 5/11/16

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<p>COMPLAINANT Name, address, phone number, and e-mail address OHSU Police Association Jeffery Haagenson, President P.O. box 8462 Portland, Oregon 97207 530-276-8198 jeffhaagenson@gmail.com</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable Daryl S. Garrettson Attorney at Law P.O. Box 8 Lafayette, OR 97127 503-687-1649 daryl@onlinenw.com</p>
<p>RESPONDENT Name, address, phone number, and e-mail address Department of Public Safety Mail Code PP22C 3181 SW Sam Jackson Park Rd. Portland, OR 97239 503-494-7744 pubsafe@ohsu.edu</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable Darryl D. Walker OHSU Legal Department 3181 SW Sam Jackson Park Rd. Portland, OR 97239 503-494-0687 walked@ohsu.edu</p>

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1) (a), (b), (c), and (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.)

See Attached

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

By: 
 Signature of Complainant or Complainant's Representative
 Daryl S. Garrettson
 Attorney for OHSU Police Assn.
 Title
 Date 5/9/2016

**BEFORE THE EMPLOYMENT RELATIONS BOARD
OF THE STATE OF OREGON**

OHSU)	
Police Association,)	
Complainant,)	Complaint For Unfair
v.)	Labor Practice
Oregon Health Sciences University)	
Respondent)	

Count I

1. At all times relevant hereto the OHSU Police Association is the exclusive representative as defined in ORS 243.650 (8), of those employees of Respondent in the classification of Police Officer.

2. At all times relevant hereto Oregon Health Sciences University is a public employer as defined in ORS 243.650 (20).

3. On or about May 11, 2015 the Complainant and Respondent signed a Memorandum of Understanding whereby Respondent voluntarily recognized the Complainant as the exclusive representative of the bargaining unit effective July 1, 2015. Previously the bargaining unit had been represented by the American Federation of State, County and Municipal Employees.

4. On or about July 7, 2015 the parties commenced negotiations for a collective bargaining agreement.

5. On or about December 29, 2015, the parties meet for negotiations which were particularly acrimonious, and on or about December 30, 2015 the Complainant filed for mediation.

6.. On or about December 31, 2015 the President of the OHSU Association requested paid time off for an Association meeting for himself, the Vice President

and the Secretary, so that they could hold an Association meeting to discuss bargaining on January 17, 2016 without interruption.

7. On or about January 12, 2016, the Respondent Department Director responded to the request by denying it. The response was via email addressed to the Association President and copied to the Association Vice President and Secretary. The Purported basis for denying time off was that it would bring the Department below minimum staffing. These minimum staffing guidelines have been, both before and after January 12, 2016, routinely waived by Respondent on numerous occasions.

8. The purported basis for the denial was a pretext and the actual reason was the purpose of the request, i.e. to hold an Association meeting.

9. The Respondent's denial stated in addition that there was no binding provision that allowed officers to attend union meetings on duty. Prior to this occasion officers had been allowed to attend union meetings both under AFSCME and the Association on duty, subject to call, including at least one meeting that was witnessed directly by Respondent's Department Director.

10. This Prohibition on Officers attending the Association meeting on duty was a direct and proximate result of the Complainant's request to move the bargaining process to mediation and the Complainant's refusal to accept Respondent's offer at the bargaining table.

11. The actions of Respondent above alleged violated ORS 243.672 (1)(a),(b),(c), and (e).

Count II

12. Complainant re-alleges Paragraphs 1 through 11 of Count I as if fully restated herein.

13. Officer Brian Tolman Complainant's Association Secretary attended the Association meeting on January 17, 2016, on duty, in uniform, monitoring his radio and subject to call. At no time did Officer Tolman neglect any calls for

service. This was consistent with the past practice of allowing officers to attend Union meetings on duty subject to call. Officer Tolman was not on notice that the Respondent was attempting to negate the past practice. Other officers attended the meeting on duty.

14. Both before and after January 17, 2016 Officers employed by Respondent have been allowed to engage in non-work activities so long as they were available to respond to calls for service. Officer Tolman remained on Campus and at all times was able to respond to calls for service. The only deference from other non-work activities was the subject matter, i.e. a union meeting.

15. Sometime after the meeting the Respondent launched an investigation into Officer Tolman's attendance.

16. On or about January 18, 2016, OHSU dispatch broadcast a call of a carjacking that was in progress. Officer Tolman was in the Emergency Department Office when the call was dispatched. Officer Tolman left the ED Office with his recruit to respond to the call. After leaving the building the on duty Sergeant called off the officers. Officer Tolman and another officer drove to the scene. They did not respond code with lights and sirens. A review of the video and audio establishes that when Officer Tolman was called off while he was outside of the ED Office. Officer Tolman's trainee on arrival at the scene, conducted traffic control. The sergeant was notified of this and at no time directed either officer to leave the scene and return to the ED.

17. On or about January 26, 2016, Respondent's Director of Public Safety called Officer Tolman into his office and questioned him concerning his attendance at the Union meeting.

18. On or about January 27, 2016 Officer Tolman and two other Officers received investigatory interview notices. The notices stated that the Respondent was conducting an investigatory interview regarding the response to the incident on 01/18/2016, and attendance at the Association meeting on 1/17/2016, during his shift. One officer was interviewed on or around February 1, 2016. Officer
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Tolman and the other Officer were interviewed on February 2, 2016. There was a follow up interview of the first officer on February 8, 2016. The other two Officers did not hold positions within the Association. Neither of these officers received any discipline for either attendance at the Association meeting on duty or for their response to the incident on 1/18/2016.

19. On or about January 29, 2016 Officer Tolman was put on paid administrative leave.

20. On or about February 2, 2016 Officer Tolman was interviewed as part of the investigation into his attendance at the Association meeting and the car-jacking incident. Officer Tolman was given a *Garrity* statement to sign and was compelled to give true and accurate statements under threat of discipline before the interview. Previously, Respondent had refused to give *Garrity* protections to Association members and compel Officers to be truthful under threat of discipline. In no other investigation before or since has Respondent given this warning. *Garrity* was given in this case as part of the Respondent's predetermined plan to terminate Officer Tolman's employment for dishonesty.

21. On or about February 2, 2016 the Association President requested to combine his breaks in order to conduct an Association meeting. The Respondent denied the combining of breaks for the meeting, specifically because it was to conduct union business. Previously Officers including the President had been allowed to combine breaks.

22. On or about February 8, 2016 The Association Vice President was interviewed as part of the above alleged investigation. During the interview the investigator directed the Vice President to disclose the content of text messages between the Association President, Vice President and Secretary concerning the Association meeting. The Association objected. The respondent repeated the directive after consulting with an HR representative and ordered the Association Vice President respond.

23. On or about February 11, 2016 the Complainant notified emailed the Respondent that if it continued down this road it could be subject to Civil Penalties for their actions.

24. At all times relevant herein the status quo was defined by the prior AFSCME contract which provided that an investigation would normally be completed within 21 days. On or about February 18, 2016 Respondent notified the Association of the need to extend the investigation beyond the normal 21 days, due to the complexity of the cases. When asked for justification for the extension the Respondent's HR representative stated that the findings were being reviewed by Greg Moawad VP for Public Safety but then later corrected that statement and stated the findings were still under review and had not made it to the Director Heath Kula.

25. On or about February 25, 2016 the Association received a copy of the findings of the investigation. The investigator recommended Officer Tolman's termination for untruthfulness during the investigatory interview, insubordination and inappropriate use of work time. The recommendation also recommended the other two officers receive no formal discipline. After the Association conducted its own investigation, re-interviewing witnesses and reviewing the video evidence, it notified the Respondent that there were several discrepancies and inaccuracies in the investigation including reliance on inaccurate statements that were refuted by the video evidence and the omission of witness statements that were contrary to the conclusions of the investigation, including the omission of all of the statements of one key witness.

26. On or about March 4, 2016 the investigator completed her investigation sending her findings to the Department Director.

27. On March 9, 2016 OHSU and the OHSUPA engaged in mediation.

28. On or about March 17, 2016, the Department gave Officer Tolman a Notice of Pre-Dismissal/Mitigation Hearing scheduled for March 24, 2016. Officer Tolman was placed on unpaid administrative leave. The AFSCME contract only allowed for an employee to be placed on unpaid administrative leave for no more
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than 14 days. Even though the status quo required that Officer Tolman be placed back on paid administrative leave after 14 days, the Respondent failed to do so. Officer Tolman was never placed back on paid administrative leave. The Pre-termination Notice contained several factual errors as well as conclusions and opinions not supported by the evidence. In addition the Notice quoted statements by witnesses in an incomplete manner for the apparent purpose of supporting a conclusion, which when complete statement is examined is incorrect. The investigator had acquired no proof of deception. The Notice left out pertinent facts, stated half-truths and represented a deliberate attempt to sully the name and professionalism of Officer Tolman.

29. The investigation showed that at least two of the individuals who were interviewed gave inaccurate statements which have never been followed up on. Further, the investigator failed to secure and analyze relevant evidence and there was no adverse action against the investigator for competency despite the fact that these failures were brought Respondent's attention. The Respondent ignored the information provided by the Association and made a predetermined decision to punish Officer Tolman in and because of his Union activities.

30. On or about April 1, 2016, the pre-termination hearing was held.

31. On or about April 11, 2016, the Association voted to ratify the current collective bargaining agreement between OHSU and the OHSUPA.

32. On or about April 22, 2016, Respondent terminated Officer Tolman's employment after being on unpaid administrative leave since March 17, 2016. Officer Tolman was terminated without just cause and in retaliation for his protected union activities.

33. On or about April 25, 2016, Respondent presented the completed contract for signatures.

34. On or about April 26, 2016, the new collective bargaining agreement was signed by the parties.

35. The Actions of Respondent in terminating the employment of Officer Tolman violate ORS 243.672 (1)(a),(b) and (c).

Count III

36. Complainant re-alleges Paragraphs 1 through 35 as if fully restated herein.

37. On or about March 18, 2016, the Complainant made the following request:

“The OHSUPA would like to request copies of the all the materials that constitute the full and complete investigation including: all interview notes, interview questions, investigator notes, and communications/emails that are part of the investigation. Additionally the OHSUPA would like to request all emails/communications/notes of and between OHSU staff that relate to the Tolman investigation and/or the OHSUPA meeting that took place on January 17, 2016 and/or the car-jacking incident that took place on January 18, 2016 (even if they are not part of the official investigation file). Electronic copies are fine. The OHSUPA requests to have these materials with enough time to review them before the meeting set for March 24, 2016. This request is made pursuant to the Public Employees Collective Bargaining Act.”

38. On or about March 21, 2016 the Employer responded that it was unable to send all of the information by the March 23rd and asked if the Association would be willing to postpone the Pre-Dismissal/Mitigation Hearing if it could not send all of the information beforehand. The Association responded that the Association would be willing to postpone the meeting if the Respondent was not able to fulfill the request in time. Later that day the Respondent requested one more day and asked if the Association could attend the Hearing on March 25, 2016. The Association responded that March 25th was acceptable.

39. On or about March 22, 2016, the Respondent notified the Association that it was going to postpone the meeting until April 1, 2016 in light of the volume of data in the request for information

40. On or about March 29, 2016 the Respondent notified the Association that it had concluded its response to the request for information. No recordings of any of the investigation interviews were provided. The only interview notes provided were notes taken by the OHSU HR representative during Officer Tolman's interview. The Respondent, after being asked, stated that all other notes were shredded after being incorporated into memos made by the investigator. No memo of Officer Tolman's interview was provided. Memos of other Officer statements were eventually provided after several email exchanges. Interview notices that had been provided before the request were provided again. Questions that were asked of the Officers as part of the investigation were provided but not the answers except for in memo form. The list of questions asked of Officer Tolman, that the Association already possessed before the information request, had been altered when provided as part of the request for information. Respondent provided no internal texts, emails or other written documents about the events of concern or the investigation, claiming that all other materials were attorney-client privileged. Additionally, Respondent used the information request as an opportunity to again request the protected Association text communications between the Association President, Vice President and Secretary.

Conclusion

41. The actions of Respondent as alleged in Counts 1, 2 and 3 violate ORS 243.672 (1)(a) in that they interfere, restrain and coerce employees in and because of the exercise of rights guaranteed by the Public Employees Collective Bargaining Agreement.

42. The actions of Respondent as alleged in Counts 1, 2 and 3, constitute an effort to dominate and interfere with the existence and administration of Complainant in violation of ORS 243.672 (1)(b).

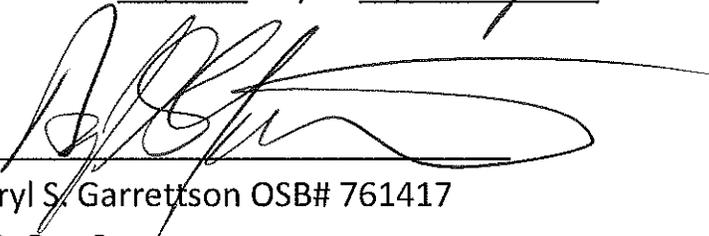
43. The actions of Respondent as alleged in Counts 1, 2 and 3, constitute discrimination in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization in violation of ORS 243.672 (1)(c).

44. The actions of Respondent as alleged in Counts 1, 2 and 3, constitute bad faith negotiations in violation of ORS 243.672 (1)(e).

Wherefore, the Complainant requests the Board for its order as follows:

- (1) Finding Respondent in violation of ORS 243.672 (1)(a),(b),(c) and (e);
- (2) Requiring Respondent to pay Complainant's representation costs;
- (3) Re-instating Officer Tolman's employment with full back pay and benefits (including any overtime Officer Tolman would have otherwise worked), plus interest;
- (4) Quashing the investigation of Officer Tolman and requiring the Respondent to purge all negative documents;
- (5) Assessing Civil Penalties against Respondent for the continuous and egregious violations of the PECBA alleged above;
- (6) Directing the Respondent to cease and desist from further violations of the Public Employees Collective Bargaining Act;
- (7) For such other relief as will make Complainant whole in all particulars.

Dated this 9th day of May 2016



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Attorney for Complainant