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STATE OF OREGON  
EMPLOYMENT RELATIONS BOARD

For the Board Use Only

Case No. UP-015-16

Date Filed 5/18/16

MAY 17 2016

UNFAIR LABOR PRACTICE COMPLAINT  
Public Employment

EMPLOYMENT  
RELATIONS BOARD

COMPLAINANT name/address:  Oregon AFSCME Council 75 Local 405 1400 Tandem Avenue NE Salem, Oregon 97301	Name/address/phone of Complainant's representative:  Jennifer K. Chapman, Legal Counsel 1400 Tandem Avenue NE Salem, Oregon 97301 (503) 370-2522
RESPONDENT name/address  State of Oregon, Department of Corrections 155 Cottage Street NE U-180 Salem, Oregon 97310	Name/address/phone of Respondent's representative:  Craig Cowan, Labor Relations Manager Department of Administrative Services 155 Cottage Street NE, U80 Salem, Oregon 97301 (503) 378-3141

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, specify 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

Legal Counsel  
Title

5/16/16  
Date

## ATTACHMENT TO UNFAIR LABOR PRACTICE COMPLAINT

1. The State of Oregon, Department of Corrections ("DOC") is a public employer under ORS 243.650(20).
2. The American Federation of State, County and Municipal Employees, Local 405 ("AFSCME") represents the Correctional Officers, Corporals and Sergeants who work at Coffee Creek Correctional Facility ("Coffee Creek"). AFSCME is a labor organization under ORS 243.650(13).
3. At all relevant times, AFSCME and DOC have been, and are, parties to a collective bargaining agreement. The contract for the 2015-2017 period is attached as Exhibit 1.
4. At all relevant times, Amanda Rasmussen ("Rasmussen") was employed by DOC as a Captain.
5. At all relevant times, Dennis Caswell ("Caswell") was employed by DOC as the Assistant Superintendent of Security.
6. At all relevant times, Jack Stone ("Stone") was employed by DOC as a corporal. Jack Stone was and is the president of AFSCME Local 405.
7. The actions of Rasmussen and Caswell, as described herein, were done in the course and scope of their employment in management/ supervisory roles at DOC.
8. In February 2016, a dispute arose between AFSCME and DOC about how DOC would handle previously-approved time trades when DOC chose to modify the schedule of one of the impacted employees. One of the disputes involved a time trade involving employee Taj D. Shivvers ("Shivvers"), a Correctional Officer. Stone assisted Shivvers in resolving this dispute.
9. On February 24, 2016, Shivvers was directed to report to Rasmussen's office. When he arrived, both Rasmussen and Shivvers were in the room. Shivvers was directed to have a seat in a chair in the middle of Rasmussen and Caswell.
10. The February 24, 2016 meeting lasted approximately 15 minutes. The meeting was devoted entirely to a discussion of the dispute that had arisen with the time trade. During the meeting:
  - a. Caswell began by asking Shivvers, "So what happened with your trade?" Shivvers immediately requested a union representative. Caswell responded that a union representative was not necessary because the meeting was not disciplinary, and they were "just trying to find out what went wrong."

- b. Rasmussen and Caswell asked additional questions about the nature of the time trade dispute and what had happened. Shivvers responded that the email correspondence pretty well outlined what had happened, and again requested a union representative.
- c. In response to Shivvers' second request for a union representative, Caswell told Shivvers that Rasmussen used to be union president, and that he (Caswell) had also previously served as union president. Shivvers again asserted that he did not feel comfortable talking about the issue without a union representative.
- d. Even after Shivvers made the third request for a union representative, the questions and comments from Rasmussen and Caswell continued. They questioned why Shivvers had gone to the union and not to management, repeatedly asking for information about what steps Shivvers had taken prior to involving AFSCME. The tone used by Rasmussen and Caswell was often accusatory or sarcastic, and many of the questions were rapid-fire, leaving little time for response in between.
- e. At one point in the conversation, Caswell said, "Shivvers, when Stone gets involved he takes it to me or to my boss. In the future, contact Captain Rasmussen or myself if you don't receive a reply next time."

11. The actions of Rasmussen and Caswell on February 24, 2016:

- a. Falsely implied that represented employees only have the right to union representation if management intends for the meeting to be disciplinary;
- b. Falsely implied that the AFSCME does not need to be involved in discussions involving contractual disputes;
- c. Falsely implied that the prior union roles held by Rasmussen and Caswell were relevant to whether Shivvers needed union representation;
- d. Falsely implied that the prior union roles held by Rasmussen and Caswell were relevant to whether Shivvers' request for union representation was reasonable;
- e. Improperly encouraged Shivvers to contact management and not AFSCME about future issues;
- f. Improperly left Shivvers with the impression that he was being punished for contacting Stone about the time trade dispute, and that he could be punished if he contacted AFSCME about other issues in the future.
- g. Improperly suggested that involving Stone was a bad idea, therefore

causing potential harm to Stone's reputation with Shivvers and other employees who heard about the incident;

- h. Were particularly egregious, in that Shivvers was a new employee who had not yet completed his probation, and who could therefore be fired at any time for almost any reason.
12. Upon learning about what happened during Shivvers' meeting with Rasmussen and Caswell on February 24, 2016, AFSCME requested a meeting and reported the incident to higher-ranked officials within DOC, including Rob Persson. To date, DOC has failed to take sufficient actions to disavow the conduct by Rasmussen and Caswell and ensure that similar conduct is not repeated.
  13. The actions of DOC as described in paragraphs 9-12 above:
    - a. Violated ORS 243.672(1)(a), in that DOC interfered with and restrained Shivvers and Stone "because of" the exercise of their protected union activities;
    - b. Violated ORS 243.672(1)(b), in that DOC interfered with the existence and administration of AFSCME, including by engaging in attempted direct dealing;
    - c. Violated ORS 243.672(1)(b), in that DOC interfered with and restrained Shivvers and Stone "in the exercise of" their protected union activities;
    - d. Violated ORS 243.672(1)(c), in that its actions constituted an attempt to discourage union membership, by attempting to influence how a represented employee viewed AFSCME;
    - e. Violated ORS 243.672(1)(e), in that DOC attempted to engage in direct dealing with Shivvers and work out an arrangement on how future disputes involving the time trades would be handled;
  14. DOC's conduct as alleged in paragraphs 9-13 was egregious and warrants the imposition of a civil penalty.

WHEREFORE, Complainant requests the following relief:

- a. An order declaring that DOC has committed the unfair labor practices as alleged herein;
- b. An order declaring that DOC cease and desist in its unfair labor practices;
- c. An order that DOC pay AFSCME its reasonable representation cost, including

filing fees, expended in prosecuting this matter at hearing and on appeal;

- d. An order that DOC pay a civil penalty;
- e. An order that DOC post a written notice of the violation at the workplace;
- f. Any other further relief deemed necessary to do justice under the PECBA.

Dated this 16 day of May 2016.

Respectfully Submitted:



Jennifer K. Chapman  
Legal Counsel, Oregon AFSCME