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**STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

**Unfair Labor Practice Complaint
Public Employment**

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Case No. JUN 29 2016 VP-020-16

EMPLOYMENT RELATIONS BOARD
Date Filed 6/29/16

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| <p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>Tri-County Metropolitan Transportation District of Oregon c/o Randy Stedman 1800 SW First Ave., Ste. 300 Portland, OR 97201 503.962.2470 stedmanr@trimet.org</p> | <p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Britney Colton 1800 SW First Ave., Ste. 300 Portland, OR 97201 503.962.2470 coltonb@trimet.org</p> |
| <p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>Amalgamated Transit Union Division 757 Schoppert Hall 1801 NE Couch St. Portland, OR 97232-3054 503.232.9144</p> | <p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> |

Complainant Tri-County Metropolitan Transportation District of Oregon (“TriMet”) alleges that Respondent Amalgamated Transit Union Division 757 (“ATU”) has committed unfair labor practices under ORS 243.672(2)(b) and (d). 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.

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

1.

Complainant TriMet is a public employer as defined in ORS 243.650(20).

2.

Respondent ATU is a labor organization as defined in ORS 243.650(13). ATU is the exclusive representative of certain employees of TriMet pursuant to ORS 243.650(8).

3.

TriMet and ATU are parties to a collective bargaining agreement (CBA) effective December 1, 2012, through November 30, 2016. A copy of the CBA is enclosed as Exhibit 1. Article 3, Section 1, Paragraph 10 reads: "Notwithstanding any other provision of this Agreement, the District shall have the right to hire up to five (5) *journey workers* annually from outside the District to fill positions in any apprenticeship discipline within the District." (emphasis added). Article 3, Section 2, Paragraph 4 reads in relevant part: "Seniority in classification shall not begin until the employee has bid for and qualified in a regularly posted position in that classification."

4.

Conversely, Article 3, Section 21, Paragraph 2 reads: "Notwithstanding any other provision of this Agreement, the District shall have the right to hire from the outside up to 1/2 of all *apprentices* annually in each apprentice program within the District." (emphasis added). Paragraph 4 reads: "Any *apprentice* hired from the outside will establish seniority *behind* any apprentices currently in the respective apprenticeship program as of the date such apprentice is hired." (emphasis added).

5.

Article 3, Section 1, Paragraph 10, and Article 3, Section 21 were newly negotiated contract provisions in the 2012-16 CBA. Article 3, Section 2, Paragraph 4 was an existing provision that has been in every contract since at least the 1976-'79

contract. Exhibit 2, Declaration of Randy Stedman, Paras. 4-7. During the course of negotiation, although the parties agreed to new language in Article 3, Section 21 regarding seniority placement of outside apprentice hires, as stated above, neither party introduced new language to change the longstanding provision in Article 3, Section 2, Paragraph 4 that classification seniority is based upon the date the employee is qualified for the classification. *Id.* at Para. 8. Specifically, the seniority placement for outside journey workers is established once they have “bid for and [are] qualified in a regularly posted position in that classification.” Exhibit 1. Therefore, unlike outside apprentice hires, outside journey worker hires do not have seniority placement behind apprentices in the program. Exhibit 2, Stedman Dec., Para. 8.

6.

Shortly after the CBA was ratified in 2014, the ATU requested to meet with TriMet regarding Article 3, Section 1, Paragraph 10 and discuss terms of a Memorandum of Agreement. The parties met multiple times in late 2014 and early 2015. TriMet drafted an MOA based on the parties’ agreement, and presented it as a “compromise package.” Exhibit 2, Stedman Dec., Para 9; Exhibit 3. After learning that the ATU intended to reject the MOA, Executive Director of Maintenance Sam Marra sent a letter to the ATU, dated May 28, 2015, stating:

The District believes Article 3, Section 2, Paragraph 4 of the contract is quite clear that seniority begins when an employee is qualified for the position. This language has been in the contract for years. Notwithstanding this language, we offered a compromise whereby seniority for these outside journey worker hires would be set after the seniority of apprentices in the program at the time outside journey workers are hired even though such apprentices are not yet qualified for journey worker status.

Mr. Marra concluded: “[I]f we are not able to reach agreement on an MOA by June 4, 2015, TriMet intends to move forward with hiring candidates in reliance on the current contract language. We have left qualified candidates hanging on for far too long. Furthermore, the delay in hiring experienced journey workers is interfering with our services to the public.” Exhibit 3.

The ATU rejected the MOA and did not offer a new proposal. Exhibit 2, Stedman Dec., Para 9.

7.

Subsequently, TriMet has hired six outside journey workers. Each of these journey workers has established seniority based on when they “bid for and qualified in a regularly posted position in that classification.” Article 3, Section 2, Paragraph 4. That means his/her established seniority is above any apprentice still in the apprenticeship program. Exhibit 2, Stedman Dec., Para 10. The first of these six to establish seniority did so in September 2015. *Id.*

8.

On or about May 9, 2016, ATU Vice President Jon Hunt sent a letter to Director of Bus Maintenance Bob Seeley. In it, Mr. Hunt erroneously stated: “TriMet and the Union have a long-standing practice that Journey Level Mechanics who have either graduated or been promoted to Journey Level status, are inserted behind the current apprenticeship in seniority.” Exhibit 4.

9.

On or about June 13, 2016, Executive Director of Labor Relations & Human Resources Randy Stedman responded. In his letter, Mr. Stedman summarized the history of the bargaining negotiations, stating: “[C]lassification seniority for Journey

workers hired from the outside begins once they have passed their qualification testing and begin working as a Journey worker. They are not, as Mr. Hunt states, inserted at the bottom of the seniority list behind all apprentices in the training program who have yet to qualify as Journey level employees.” Exhibit 5.

Mr. Stedman directly addressed Mr. Hunt’s allegation about a longstanding practice, stating: “TriMet’s right to hire Journey workers directly from the outside is brand new language; there is no past practice. Second, there is a longstanding and unambiguous provision within the collective bargaining agreement that deals specifically with when classification seniority begins, so the alleged past practice is irrelevant.” *Id.*

10.

On or about June 21, 2016, ATU President Shirley Block responded. In her letter, in which she spent considerable time mocking Mr. Stedman, Ms. Block claimed that (a) the ATU had filed a grievance over Article 3, Section 1, Paragraph 10, (b) Paragraph 10 was not negotiated language, and (c) the membership had not approved the language. Exhibit 6. TriMet is unaware of any such grievance alleging violation of Article 3, Section 1, Paragraph 10. Further, Paragraph 10 was negotiated language in the 2012-16 CBA, which the ATU members overwhelmingly approved by a ratification vote. Exhibit 2, Stedman Dec., Para 11.

COUNT ONE

11.

ATU’s refusal to abide by the terms of the negotiated CBA, specifically Article 3, Section 1, Paragraph 10, and Article 3, Section 2, Paragraph 4 constitutes an unfair labor practice under ORS 243.672(2)(b).

COUNT TWO

12.

TriMet realleges paragraphs 1 through 10 above.

13.

ATU's refusal to abide by the terms of the negotiated CBA, specifically Article 3, Section 1, Paragraph 10, and Article 3, Section 2, Paragraph 4 constitutes an unfair labor practice under ORS 243.672(2)(d).

WHEREFORE, TriMet requests that the Board order as follows:

- A. That ATU cease and desist its unlawful action;
- B. That ATU comply with all of the terms of the existing CBA;
- C. That ATU send letters to its members and post notices on its bulletin boards and website informing its members of its unlawful actions;
- D. That ATU pay TriMet's reasonable representation costs pursuant to OAR 115-035-0055; and
- E. Any additional relief that the Board deems just and equitable.

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

DATED: June 28, 2016.

By *Britney Colton* 971931 for
Britney Colton
Attorney for Complainant,
Tri-County Metropolitan Transportation
District of Oregon

1800 SW First Ave., Ste. 300
Portland, OR 97201
503-962-2470/Telephone

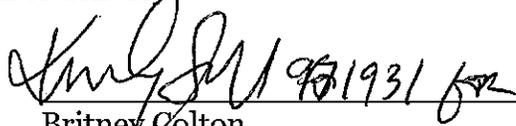
CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2016, I served the foregoing **UNFAIR**

LABOR PRACTICE COMPLAINT on:

Shirley Block, President
Amalgamated Transit Union Division 757
Schoppert Hall
1801 NE Couch St.
Portland, OR 97232-3054
Facsimile: (503) 230-2589

- by **mailing** a true and correct copy to the last known address of each person listed. It was contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with the U.S. Postal Service in Portland, Oregon.
- by causing a true and correct copy to be **hand-delivered** to the last known address of each person listed. It was contained in a sealed envelope and addressed as stated above.
- by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- by **faxing** a true and correct copy to the last known facsimile number of each person listed, with confirmation of delivery. It was addressed as stated above.
- by **emailing** a true and correct copy to the last known email address of each person listed, with confirmation of delivery.



Britney Colton
Attorney for Complainant,
Tri-County Metropolitan
Transportation District of Oregon