



## UNFAIR LABOR PRACTICE COMPLAINT

### RELEVANT FACTS

1. The Amalgamated Transit Union Local 757 (“ATU” or the “Union”) is a labor organization within the meaning of ORS 243.650(13).
2. Tri-County Metropolitan Transportation District of Oregon (“TriMet”) is a public employer within the meaning of ORS 243.650(20).
3. TriMet and ATU 757 are parties to a collective bargaining agreement covering the period from December 1, 2012 to November 30, 2016. **Exhibit 1.**

#### A. Grievance #9069

4. Article 2, Section 1, Paragraph 9 of the collective bargaining agreement states in part:

**Par. 9. Other Provisions**

a. All vehicles on the lines of the District shall be run by Operators should they be operated; and any other type of transportation service with the exception of elderly and disabled (paratransit) service; vehicles traveling between offices, shops, or garages of the District; supply and service trucks of the Maintenance, Facilities Maintenance, and Stores Departments, and delivery trips and necessary pull-ins.

5. Article 2, Section 7, Paragraph 6 of the collective bargaining agreement states in part:

**Par. 6.** Inherent in the desire of both the District and the Union to increase ridership is the accompanying requirement of flexibility in the operation of Alternative Transportation Service (ATS). This may include mini-run Operators bidding different hours each day during the week but with two (2) scheduled days off, the transfer of service between shuttle and big bus, and run hours as required (within the 30-hour weekly maximum for mini-run). Full-time Operator runs may also include ATS work. In the event of any dispute between the parties with respect to the interpretation or implementation of this Paragraph, the dispute will be resolved pursuant to the dispute resolution procedure of the Agreement set forth in Article 1, Section 3.

6. On or about November 9, 2015, TriMet entered into a partnership with the City of Hillsboro, Oregon, to create a new bus service line. However, the work of running these bus lines was not given to ATU 757 members, in violation of the collective bargaining agreement.

7. ATU 757 filed grievance #9069 on November 18, 2015. A copy of the grievance, grievance responses, and related correspondence appears in **Exhibit 2**.

8. On November 19, 2015, ATU 757 requested documents supporting TriMet's decision. **Ex. 2, p. 2**. To date, TriMet has not provided the requested documents.

9. On April 7, 2016, and April 12, 2016, TriMet refused to process the grievance, and refused to engage in the process for selecting an arbitrator. **Ex. 2, pp. 7-8**.

10. TriMet has refused to meet with officers of ATU 757 to discuss or adjust this grievance.

#### B. Grievance #9134

11. Article 1, Section 13 of the Collective Bargaining Agreement states:

##### **Section 13—Seniority Provisions**

**Par. 1.** Any employee promoted to a clerical, supervisory, or other official position by the District shall retain seniority in the last position or classification worked prior to promotion. Any employee promoted to a non-union position shall retain said seniority for five (5) years from the date of their promotion.

**Par. 2.** Any employee who, after fifteen (15) years of continuous service as defined in Section 12, is laid off on account of inability to perform available work, shall be carried on the seniority list until they are placed on retirement as provided in Section 10 of this Agreement; provided, however, that such employee will be eligible for such retirement within five (5) years from the date of layoff, unless otherwise agreed upon by the District and the Union.

12. Mark Nelson is a former ATU 757 member who was promoted out of the bargaining unit to a supervisory position with TriMet. On or about November 19, 2015, TriMet

terminated Mark Nelson from his supervisory position for performance reasons. **Ex. 3, p. 1.** At that point he had more than 15 years of continuous service with TriMet.

13. On December 15, 2015, Mark Nelson sent a letter to TriMet requesting reinstatement to a bargaining unit position under Article 1, Section 13 of the contract. **Ex. 3, pp. 2-3.**

14. TriMet sent a response in mid-January 2016, refusing to allow Mark Nelson to return to a bargaining unit position. **Ex. 3, pp. 4-5.**

15. On February 16, 2016, ATU 757 filed grievance # 9134 against TriMet over the refusal to rehire Mark Nelson into a bargaining unit position. **Ex. 3, p. 6.** ATU 757 also requested all documentation that formed the basis of TriMet's decision. **Ex. 3, p. 7.**

16. To date, TriMet has not provided the requested documents.

17. On February 23, 2016, TriMet refused to hear grievance #9134, and has since refused to engage in the process for selecting an arbitrator. **Ex. 3, p. 8.**

18. TriMet has refused to meet with officers of ATU 757 to discuss or adjust the grievance.

### **VIOLATION OF PROVISIONS OF WRITTEN CONTRACT**

#### **ORS 243.672(1)(g)**

19. ORS 243.672(1)(g) provides that it is an unfair labor practice for a public employer or its designated representative to “[v]iolate the provisions of any written contract with respect to employment relations including an agreement to arbitrate.

20. Article 1, Section 3 of the collective bargaining agreement between TriMet and ATU 757 provides procedures for adjustment of grievances, culminating in binding arbitration, for “all grievances relating to any alleged violation of any provision of this Agreement or

concerning the suspension, discharge, or other discipline of any employee covered by this Agreement (except during the employee's probationary period)."

21. Grievance #9069 and grievance #9134 have been properly presented to TriMet for grievance processing. Both grievances allege violations of provisions of the collective bargaining agreement between TriMet and ATU 757. Grievance #9134 concerns the discharge of an employee covered by Article 1, Section 13 of the agreement.

22. TriMet's refusals to process these grievances, and the refusals to meet with officers of ATU 757 to discuss or adjust the grievances, violates ORS 243.672(1)(g).

#### **BAD FAITH REFUSAL TO PROVIDE INFORMATION**

(ORS 243.672(1)(e) AND ORS 243.698)

23. ORS 243.672(1)(e) requires a public employer and the exclusive representative of its employees to bargain in good faith over changes to the terms and conditions of employment for bargaining unit members and over the impact of such changes on other terms and conditions of employment for bargaining unit members. This duty to bargain in good faith includes the duty to supply information relevant to administration of contract grievances.

24. TriMet's refusal to provide information relevant to the processing of grievance #9069 and grievance #9134 violates ORS 243.672(1)(e).

#### **CIVIL PENALTY ALLEGATIONS**

25. TriMet's refusal to process grievances has been deliberate, repetitive, and egregious. Its responses to the grievances were perfunctory and routine. It has failed and refused to engage in any discussion of the grievances. Its failure to respond to information requests is without any good faith basis.

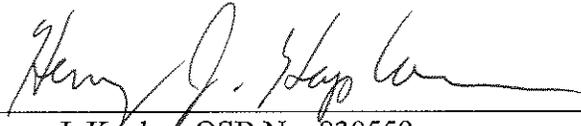
WHEREFORE, the Association requests the following relief:

1. An order finding that TriMet violated ORS 243.672(1)(g) when it refused, on or about February 23, 2016, April 7, 2016, and April 12, 2016, to process the above-described grievances filed by ATU 757;
2. An order finding that TriMet violated ORS 243.672(1)(e) when it failed to respond to the information requests made by ATU 757 on or about November 19, 2015 and February 16, 2016;
3. An order requiring TriMet to cease and desist from refusing to process grievance #9069 and grievance #9134 filed by ATU 757;
4. An order requiring TriMet to supply the information requested relevant to its decisions in grievance #9069 and grievance #9134;
5. An order requiring TriMet to post notice for a reasonable period of time and in a noticeable place at its facilities stating that TriMet was found in violation of ORS 243.672(1)(e) and ORS 243.672(1)(g) and is ordered to cease and desist from such conduct in the future;
6. An order awarding civil penalty in the amount of \$1,000.00;
7. An order awarding reimbursement of the Association's filing fee;
8. An order awarding all reasonable representation costs to the Association pursuant to ORS 243.676(2)(d) and OAR 115-035-0055;
9. An order deferring any of the foregoing remedies the Board deems appropriate pending arbitration of the grievances the City has refused to process; and

10. Any other relief deemed just and equitable by the Employment Relations Board.

DATED this 28 day of July, 2016.

BENNETT, HARTMAN, MORRIS & KAPLAN LLP

A handwritten signature in cursive script, appearing to read "Henry J. Kaplan", written over a horizontal line.

Henry J. Kaplan, OSB No. 830559  
Of Attorneys for Complainant ATU 757