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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**

For Board Use Only

Case No. UP-025-16

Date Filed 8/17/16

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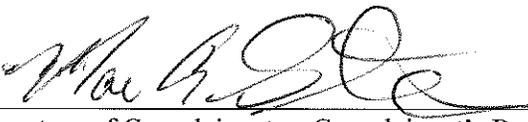
EMPLOYMENT
RELATIONS BOARD

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|--|---|
| COMPLAINANT Name, address, phone number, and e-mail address SEIU Local 503, OPEU 1730 Commercial Street SE Salem, OR 97302 503.581.1505 stefanm@seiu503.org | COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable <u>AUG 17 2016</u> Marc A. Stefan, Supervising Attorney SEIU Local 503, OPEU 1730 Commercial Street SE Salem, OR 97302 503.581.1505 stefanm@seiu503.org |
| RESPONDENT Name, address, phone number, and e-mail address Oregon Home Care Commission 676 Church Street NE Salem, OR 97301-2401 503.378.2733 cheryl.m.miller@state.or.us | RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable Cheryl Miller, Executive Director Oregon Home Care Commission 676 Church Street NE Salem, OR 97301-2401 503.378.2733 cheryl.m.miller@state.or.us |

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

Supervising Attorney
Title

8.17.16
Date

STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

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|---|---|-----------------------------|
| SERVICE EMPLOYEES INTERNATIONAL |) | |
| UNION LOCAL 503, OREGON PUBLIC |) | |
| EMPLOYEES UNION, |) | |
| |) | Case No. UP- <u>025</u> -16 |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | COMPLAINT |
| OREGON HOME CARE COMMISSION |) | |
| acting through the DEPARTMENT |) | |
| OF ADMINISTRATIVE SERVICES, |) | |
| |) | |
| Respondent. |) | |
| <hr style="width: 50%; margin-left: 0;"/> | | |

1.

Complainant, Service Employees International Union Local 503, Oregon Public Employees Union (the Union), is a labor organization as defined by ORS 243.650(13).

2.

Respondent, Oregon Home Care Commission (OHCC) and the Department of Human Services (DHS) are public employers as defined by ORS 243.650(20). For purposes of this Complaint these agencies shall be referred to as the "Employers".

3.

The Union and the Employer have been parties to a series of successive collective bargaining agreements. The current collective bargaining agreement (herein the CBA) is effective, by its terms, until June 30, 2019.

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4.

Article 8 of the CBA referred to in ¶ 3 above provides, in pertinent part, as follows:

Section 8 Lists and Information.

By the fifteenth (15th) calendar day of each month, the Union shall receive a list of all current HCWs [Home Care Workers] and PSWs [Personal Support Workers].

The list shall contain the following data:

1. Name
2. Address

9. Social Security number or a unique identifier number ...

(Exhibit 1, pp. 8 - 9)

5.

Section 9 of the CBA referred to in paragraph 3 above provides:

Section 9. New Provider List Information.

DHS agrees to provide the Union a list of all new HCW and PSWs each business day, on the day the HCW/PSW provider number is activated. This list will contain HCWs' and PSWs' ... Social Security Number or unique identification number and provider number.

(Exhibit 1, p. 9)

6.

During the past six months, and on a continuing basis, the Employers have failed and refused to provide the Union with social security numbers or unique identification numbers for all of the HCWs and PSWs represented by the Union pursuant to the obligations delineated in the provisions set out in paragraph 5 above.

7.

The Employers' failures and refusals described in paragraph 6 above have caused the Union and its members substantial damages including, but not limited to, the following: a substantial loss of dues revenue that has been uncollectable or delayed in collection; substantial damage to its electronic and other records as a result of the Employers providing the Union with incomplete and inaccurate data, and; expenditure of substantial time, efforts and resources devoted to trying to correct data bases and otherwise compensate for the Employers' failure to provide the data it is contractually required to provide in a timely manner.

8.

By the foregoing actions, particularly those set out in paragraphs 6 and 7 above, the Employers have and continue to violate the provisions of a written contract with respect to employment relations in violation of ORS 243.672(1)(g).

9.

The violations detailed above have been committed by the Employers repetitively and with full knowledge that it's actions were in violation of ORS 243.672(1)(g) and still were undertaken with disregard of that knowledge within the meaning of ORS 243.676(4)(a)(A), and therefore, merit imposition of a Civil Penalty.

10.

As a result of the unlawful actions detailed above, the Union respectfully urges the Board to issue an Order directing the Employers to:

- a. Cease and desist from their unlawful activities;

b. Make the Union whole for any dues, fees and political contributions it has lost as a result of their unlawful actions, with interest;

c. Make the Union whole for any damages and losses it has suffered as outlined in paragraph 7 above, with interest.

d. Pay a civil penalty pursuant to ORS 243.676.

e. Mail to all HCWs and PSWs a notice authorized by the Board explaining the unlawful actions committed by the Employers and explaining the remedy being imposed on the Employers for that unlawful conduct.

f. Any other remedy deemed just and proper by the Board.

DATED this 17th day of August, 2016.

Respectfully submitted,



Marc A. Stefan, Supervising Attorney
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This package proposal is conditioned on full and complete agreement on the following:

Article 7 – Union Rights – Union Proposal 8/12/15 12am

NEW ARTICLE - HOMECARE AND PERSONAL SUPPORT WORKER NEW

WORKER ORIENTATION, APD ONBOARDING SESSIONS, and ODDS eXPRS

ORIENTATION-- Union Proposal 8/12/15 12am

Article 7.1 Union Rights - Delete

Article 7.2 Union Rights - Delete

7
VACB

The State reserves the right to retain past positions on proposals if the above package is not accepted in full.



1 NEW ARTICLE

2 HEMOCARE AND PERSONAL SUPPORT WORKER

3 NEW WORKER ORIENTATION, APD ONBOARDING SESSIONS, eXPRS TRAINING
4 ORIENTATION, AND ONLINE ORIENTATIONS

5
6 The New Worker Orientation process will be fully implemented on or before the
7 end of this agreement. The current New Homecare Worker Orientation process,
8 including the twenty (20) minutes of union time, will stay in effect until the APD
9 Onboarding Session and Online New Worker Orientation is implemented. The
10 eXPRS Orientations will begin October 1, 2015.

11
12 Section 1. New Worker Orientation Requirements.

13 All new Homecare and Personal Support Workers must complete a New Worker
14 Orientation.

15 a) Homecare and Personal Support Workers must complete the New Member
16 Orientation within 90 days of receiving a provider number.

17 b) If a Homecare or Personal Support worker does not complete an
18 orientation within 90 days of receipt of their provider number their provider
19 number will be inactivated and the worker will not be authorized or paid to
20 work until their provider number is reactivated.

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Section 2. APD Local Onboarding Session

To complete the process to become a homecare worker an individual must attend an in-person Local Onboarding Session at the DHS/OHA Local Service Delivery System Office to complete employment documents and other related documentation required by DHS/OHA. When a Local Onboarding Session of five or more is held the Union will be allowed to make a twenty (20) minute presentation at a mutually agreeable time about the organization, representational status, and union benefits and to distribute and collect membership applications.

Section 3. New Worker Orientation Options.

The Oregon Home Care Commission will provide Online, Regional Quarterly In-Person Homecare and Personal Support Worker New Worker, and Recruitment Event Orientations.

Section 4. Regional Quarterly In-Person New Worker Orientation.

A Regional Quarterly In-Person New Worker Orientation will be held when 10 or more registrants are scheduled for the orientation.

1 **Section 5. New Worker Orientation Registration**

2 a) **Homecare and personal support workers must register for online**
3 **orientations through the Oregon Home Care Commission online training**
4 **site.**

5 b) **Homecare and personal support workers must self-register for Regional**
6 **Quarterly In-Person New Worker Orientations *online* through the Registry *or***
7 ***if necessary, by calling the OHCC.***

8
9 **Section 6. Union Presentation – Regional Quarterly In-Person New Worker**
10 **Orientation**

11 **When the Oregon Home Care Commission holds a Regional Quarterly In-Person**
12 **New Worker Orientation the Union will be allowed to make a twenty (20) minute**
13 **presentation at a mutually agreeable time about the organization,**
14 **representational status, and Union benefits and to distribute and collect**
15 **membership applications.**

16
17 **Section 7. Union Presentation – HCW/PSW Recruitment Event Orientation**

18 **When the Oregon Home Care Commission holds a HCW/PSW Recruitment Event**
19 **the Union will be allowed to make a twenty (20) minute presentation at a mutually**
20 **agreeable time about the organization, representational status, and Union**
21 **benefits and to distribute and collect membership applications.**

1
2 **Section 8. Union Presentation - Online New Worker Orientation.**

3 **When the Oregon Home Care Commission develops a New Worker Orientation**
4 **online, the Union will be allowed to provide the Oregon Home Care Commission**
5 **with a twenty (20) minute electronic media presentation and with materials about**
6 **the organization, representational status, Union benefits, and membership**
7 **applications that will be included in the online presentation.**

8
9 **Section 9. Union Electronic Media and Materials.**

10 a) **The Union's electronic media presentation and materials must be provided**
11 **in a format compatible with the Oregon Home Care Commission's online**
12 **training site.**

13
14 b) **The Union's electronic media presentation and materials must be provided**
15 **to the Oregon Home Care Commission by the date requested to ensure it is**
16 **included in the online presentation.**

17
18 **Section 10. New Worker Orientation Shared Information.**

19 **The Oregon Home Care Commission will provide the Union with a list of all**
20 **orientation participants. The list will include the following:**

- 21 a) **Date of the orientation**
22 b) **Participant first and last name**
23 c) **Provider number (if available)**

1 d) Phone number

2 e) Email address (if available)

3
4 Section 11. eXPRS Training Orientation

5 New Personal Support Workers must attend an in-person eXPRS Training

6 Orientation within 420 90 days of receiving their provider number. Existing

7 Personal Support Workers must attend an in-person eXPRS Training Orientation

8 within six (6) months of the ratification of this agreement. Any PSW who

9 previously attended an in-person eXPRS training will be exempted from this

10 requirement. The eXPRS Training Orientation will be available through the Oregon

11 Home Care Commission. The Union will be allowed to make a twenty (20) minute

12 presentation at a mutually agreeable time about the organization,

13 representational status, and union benefits and to distribute and collect

14 membership applications.

15 The Union shall be granted twenty (20) minutes before the start of the scheduled

16 eXPRS Training or after the scheduled eXPRS training for Union business. Union

17 presentations held before the scheduled eXPRS Training shall not cause a delay

18 in the scheduled start time of the training. The Union commits to making a good

19 faith effort to make a presentation at trainings scheduled by the Employer.

20

1 **Section 4 5. Employer Indemnity.**

2 The Union shall indemnify and hold the Employer or designee harmless against claims,
3 demands, suits, or other forms of liability which may arise out of action taken by the
4 Employer or designee for the purpose of complying with the provisions of this Article.

5
6 **Section 5 6. Service Period and Deductions.**

7 "Service period" is defined as the calendar month in which services are authorized and
8 provided. All Union dues and Issues Fund assessments shall be based on a service
9 period and taken from all checks for the service period in question, provided sufficient
10 funds are available. All other current Union deductions, including but not limited to
11 Citizen Action for Political Education (CAPE) contributions shall be based on a service
12 period and shall be deducted from the first check issued for the service period in
13 question provided sufficient funds are available.

14
15 The service period deduction method shall not have any effect on tax deductions, which
16 shall continue to be on a payment date basis (that is, date payment is issued).

17
18 **Section 6 7. List of Representatives.**

19 The Union shall provide the Employer with a list of the names of authorized Union staff
20 representatives and elected officers, and shall update those lists as necessary.

21
22 **Section 7 8. List and Information.**

23 By the *fifteenth (15th)* calendar day of each month, the Union shall receive a list of all
24 current HCWs' and PSWs (*except PSW ICP as outlined in Section Article 7.2- Union*
25 *Rights, Section 2- Personal Support Workers in the Independent Choices*
26 *Program (ICP).*

27 **The list shall contain the following data:**

- 28 1. **Name name**
29 2. **Address address**
30 3. **Telephone number-telephone**

- 1 4. Email address (if available)-e-mail
- 2 5. Program name and code-program
- 3 6. Provider specialty code (e.g., Enhanced HCW or Enhanced PSW)-provider
- 4 7. Base hourly pay rate-base
- 5 8. Language preference (if available), language
- 6 9. Social security number or a unique identification number
- 7 10. Date of Birth (DOB)
- 8 11. Provider number provider
- 9 12. Hours worked hours
- 10 13. Gross pay gross
- 11 14. Union dues and other deductions for the previous month's activity. union
- 12 15. Gender (if collected)
- 13 16. Race/Ethnicity (if available)
- 14 17. Sexual Orientation (if available)

15
16 The list will be provided in an agreed-upon format and transmitted electronically.

17
18 **New Section 8 9. New Provider List Information.**

19 The State DHS agrees to provide the Union a list each business day of all new HCW and PSWs
20 each business day, on the day the HCW/PSW provider number is activated who had their HCW
21 and/or PSW provider number activated that day. This list will contain HCWs' and PSW's name,
22 address, telephone number, e-mail address (if available), date of birth, program name and code,
23 Social Security Number or unique identification number and provider number .
24 This list shall be provided in an agreed-upon format and in an agreed-upon electronic
25 transmission process.

26
27
28 **Section 9-8 10. Dues Deduction.**

- 29 a) Upon written, *electronic or recorded telephonic message authorization* from the
30 HCW/PSW, monthly Union dues, plus any additional voluntary Union deductions,
31 shall be deducted from the HCW's/PSW's salary and remitted to the Union.

1 Additionally, upon written notice from the Union, authorized increases in dues in the
2 form of special assessments shall be deducted from the HCW's/PSW's salary and
3 remitted to the Union according to this Section. Such notice shall include the
4 amount and duration of the authorized special assessment(s). All *written*
5 applications for Union membership *and authorizations for dues and/or other*
6 *deductions* which the Employer receives, shall be promptly forwarded to the Union.
7 *The Union shall provide to the Employer an electronic file listing all HCW/PSWs who*
8 *have authorized dues and/or other deductions. The Union will maintain the written,*
9 *electronic or recorded telephonic message authorization records and will provide*
10 *copies to the Employer upon request.*

11 *b) Dues deduction authorizations submitted in writing, electronically or recorded*
12 *telephonic message that contain the following provision will cease only upon*
13 *compliance by the HCW/PSW with the stated conditions as follow:*

14
15 This authorization is irrevocable for a period of one (1) year from the date of
16 execution and from year to year thereafter unless not less than thirty (30) and not
17 more than forty-five (45) days prior to the end of any annual period or the
18 termination of the contract between my Employer and the Union, whichever
19 occurs first, I notify the Union and my Employer in writing, with my ~~vaile~~ valid
20 signature of my desire to revoke this authorization.

21
22 *c) Upon return from any break in service, reinstatement of the dues deduction shall*
23 *occur for those workers who were having dues deducted immediately prior to*
24 *said break in service.*

25 *d) Dues deduction shall only occur after all mandatory and priority deductions are*
26 *made in any pay period.*

27
28 **Section 10. Associated Costs.**

29 The Union agrees to pay reasonable costs associated with dues deduction
30 administration and/or system changes to accommodate dues deduction.

1 **Section 11. Other Deductions.**

2 Voluntary payroll deductions made to the Union for HCW/PSW benefits shall be
3 submitted at the same time as regular dues deductions.

4
5 No later than the tenth (10th) calendar day of each month, the Union shall receive a
6 benefit register for each benefit listing each HCW/PSW, the amount deducted, and the
7 purpose of the deduction.

8
9 **Section 12. Service Period and Deductions.**

10 HCWs/PSWs who authorized Citizen Action for Political Education (CAPE) contributions
11 prior to February 6, 2010, shall continue to have these deductions based on the hourly
12 deduction system in effect when their authorizations for the deductions were signed.

13
14 **Section 13. Personal Support Workers are in the Independent Choices Program**
15 **(ICP).**

16 In January and July of each year, the State shall provide the name, address, and any
17 other available contact information such as telephone number or e-mail address for
18 PSWs in the Independent Choices Program.

19
20 Participants in the Independent Choices Program shall not be subject to this Article 7,
21 Sections 6 through 12.

22
23 **Section 13. Independent Choices Program.**

24 ~~Participants in the Independent Choices Program shall not be subject to this Article 7,~~
25 ~~Sections five (5) through twelve (12).~~

26
27 **Section 13 14. Paycheck Remittance Advice. DHS agrees to ensure the Union is**
28 **provided the opportunity to relay written information four (4) six (46) times per**
29 **year statewide on the remittance advice.**

1 ~~**Section 14. Independent Choices Program.**~~

2 ~~Participants in the Independent Choices Program shall not be subject to this Article 7,~~
3 ~~Sections 5 through 13.~~

4

5 ~~**Section 15. Collection of Race/Ethnicity and Sexual Orientation Data.**~~

6 ~~No later than January 1, 2016, all agency forms filled out by bargaining unit Providers,~~
7 ~~will ask for voluntary self reporting of race/ethnicity and voluntary self reporting of~~
8 ~~sexual orientation.~~

9

10