

INSTRUCTIONS: File the original and three copies of the complaint and all attachments and the \$300 filing fee with the Board at:

528 Cottage St NE, Suite 400
Salem, Oregon 97301-3807
Phone 503-378-3807

STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

For Board Use Only

Case No. UP-029-16

UNFAIR LABOR PRACTICE
COMPLAINT
Public Employment

Date Filed 10/6/16

OCT 06 2016

<p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>IAFF Local 4262 c/o Haley Rosenthal Tedesco Law Group 12780 SE Stark St. Portland, OR 97233 866-697-6015 x 706 haley@miketlaw.com</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Haley Rosenthal Tedesco Law Group 12780 SE Stark St. Portland, OR 97233 866-697-6015 x 706 haley@miketlaw.com</p>
<p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>Jim Wilson Board Chair Sunriver Service District P.O. Box 2108 Sunriver, OR 97707 541-585-3720 jwilson@sunriversd.org</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Bruce Bischof 747 SW Mill View Way Bend, OR 97702 541-480-7560 laborlaw@managementlaw.net</p>

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)(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.

1.

Complainant Sunriver Career Firefighter Association, International Association of Fire Fighters Local 4264 ("Local") is a labor organization as defined in ORS 243.650(13). The Local is the exclusive representative for all regular full-time employees in the

classifications of Firefighter/Paramedic, Engineer/Paramedic, and Fire Captain/Paramedic.

2.

Respondent Sunriver Service District (“District”) is a public employer as defined in ORS 243.650(20).

3.

The Local and the District are parties to a collective bargaining agreement (“Agreement”) effective from July 1, 2013 through June 30, 2016. The Agreement is attached hereto as Exhibit A and incorporated herein.

4.

The parties are currently bargaining over a successor collective bargaining agreement. On or about February 24, 2016, the Local initiated the bargaining process by letter to the District’s Board of Directors. The letter is attached hereto as Exhibit B and incorporated herein.

5.

On or about April 12, 2016, the parties met for the first time to begin negotiations. Fire Chief Art Hatch attended for the District. President Ryan Rasmussen and Vice President Jared Jeffcott attended for the Local. At that meeting, the parties agreed to discuss the contract from beginning to end and began to do so on that day. The parties began going through the contract article by article and either agreed to continue the existing contract language in its current form or proposed changes to existing articles. Both the Local and the District offered proposed changes to the contract at the meeting on

April 12, 2016. In other words, each party received the other party's initial proposal that day.

6.

On or about May 18, 2016, the parties met for the second time and continued to work through the contract article by article, proposing changes to the contract and discussing each party's proposed changes.

7.

The parties met for a third time on or about May 25, 2016. At that bargaining session, Chief Hatch presented an economic proposal to the Local. That proposal is attached hereto as Exhibit C and incorporated herein.

8.

The parties met for a fourth time on or about June 10, 2016 and continued bargaining.

9.

The parties met for a fifth time on June 25, 2016 and continued bargaining.

10.

On or about June 30, 2016, Chief Hatch sent an email to Rasmussen and Jeffcott with "Negotiation Docs" in the subject line and two attached documents. One attachment titled "Contract Discussion Summary" summarized the status of contract changes negotiated by the parties over the five previous bargaining sessions. The email and attachments are attached hereto as Exhibit D and incorporated herein.

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11.

On or about July 11, 2016, Chief Hatch sent an email to Rasmussen with “District Offer” in the subject line. Chief Hatch wrote: “So, here’s what came back from the District. Let’s discuss it when you get time.” The email contained an attachment titled “July 11 Union Discussion Points.” The email and attachment are attached hereto as Exhibit E and incorporated herein.

12.

On or about July 14, 2016, Rasmussen sent a letter to the District’s Board of Directors accepting, in part, the District’s July 11 offer and offering a counterproposal on certain economic terms. The letter is attached hereto as Exhibit F and incorporated herein. The District rejected the Local’s July 14, 2016 counterproposal.

13.

On or about July 22, the Local’s legal representative Mike Tedesco after speaking with the District’s Counsel Bruce Bischof, notified the State Conciliator’s office that the Local and District wished to mutually request mediation services. The District’s counsel was copied on the correspondence and did not deny that the request was mutual. However a few days later, Mr. Bischof indicated that it was the District’s wish to exchange written proposals and not to move to mediation yet. That after receipt of these proposals the parties could determine the best course of action mutually. On July 28, 2016, the District notified the State Conciliator’s office and the Local that the District was not prepared to proceed with mediation at that time.

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14.

On or about August 12, 2016, per the District's request, the parties exchanged more formal written proposals. The District's August 12 proposal, identified by the District as "District's Counter Proposal," is attached hereto as Exhibit G and incorporated herein. The Local's August 12 proposal is attached hereto as Exhibit H and incorporated herein.

15.

After reviewing the District's proposal, and after conferring with his client, Mr. Tedesco attempted to contact Mr. Bischof via telephone on a number of occasions but was not able to reach him. The purpose of this communication was that the Local believed the parties were too far apart on issues and that mediation would be required. Additionally, the Local sent to Mr. Bischof the case of *Portland Fire Fighters' Ass'n, IAFF Local 43 v. City of Portland*, UP-059-13, (2015) as its basis for asserting that the 150 bargaining period had elapsed wherein either party could unilaterally request mediation. Consequently, on or about September 13, 2016, the Local renewed its request for mediation by email to Oregon Employment Relations Board Mediator Sally La Joie.

16.

On or about September 21, 2016, the District notified Ms. La Joie and the Local that it was "refusing to mediate at this time as the request is premature."

17.

Under ORS 243.712(1), a party may request mediation after a 150-calendar-day period of good faith negotiations. "The 150 days of negotiation shall begin when the parties meet for the first bargaining session and each party has received the other party's initial proposal." ORS 243.712(1); *see also* OAR 115-040-0000(b).

18.

The parties met for the first bargaining session and each party received the other party's initial proposal on April 12, 2016. Therefore, the 150-calendar-day period of negotiations began on April 12, 2016 and concluded on September 9, 2016, at which time either party could unilaterally request mediation. The District incorrectly asserts that the five bargaining meetings and multiple exchanged proposals and counterproposals constitute "informal bargaining" and, therefore, do not count toward the 150-calendar-days of bargaining.

19.

In a recent decision, the Board noted: "[c]ollective bargaining' is a statutory term that means meeting and 'confer[ring] in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining.'" *Portland Fire Fighters' Ass'n, IAFF Local 43 v. City of Portland*, UP-059-13, p. 14 (2015) (citing ORS 243.650(4)). The Board went on to state that a course of conduct involving meeting and exchanging proposals "qualifies as collective bargaining, regardless of whether either party might attach a different label to those actions." *Id.*

20.

By refusing to continue negotiations into mediation after 150 days of collective bargaining, the District violated ORS 243.672(1)(e). *See International Association of Firefighters, Local 11817 v. City of Central Point*, Case No. UP-53-95, 16 PECBR 458 (1996) (refusal to continue negotiations into mediation constitutes bad faith bargaining in violation of ORS 243.672(1)(e)).

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21.

The District maintains email addresses for all Local members, and routinely uses its email system to communicate with Local members about job-related matters.

Communication through the e-mail system about the results of this proceeding would be more effective than any other type of communication.

22.

In accordance with the provisions of OAR 115-035-0075, the Local hereby requests that the Board award a civil penalty of \$1000.00 to the Local. A civil penalty is appropriate in this case because the parties have been engaged in bargaining for over 150 days, the District is well aware of the clear case law establishing that the course of conduct taken by the parties here qualifies as collective bargaining, regardless of whether either party might attach a different label to those actions, and the District knowingly disregarded that knowledge in committing an unfair labor practice by refusing to proceed to mediation.

WHEREFORE, the Local requests that the Board order the District to:

- A. Cease and desist its unlawful actions;
- B. Proceed to mediation pursuant to ORS 243.712;
- C. Post notices of its unlawful actions. This requirement for posting should include email notification to all Local members through the District's email system;
- D. Pay the Local's reasonable representation costs pursuant to OAR 115-035-0055;
- E. Pay the Local's filing fee pursuant to OAR 115-035-0075(3);

- F. Pay a civil penalty of \$1000.00 to the Local; and
- G. Order 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.

By: 
Signature of Complainant or Complainant's
Representative

Haley Rosenthal
Attorney for Complainant

October 4, 2016
Date