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EMPLOYMENT
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Case No. UP-030-16

Date Filed 10/14/16

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**STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

**UNFAIR LABOR PRACTICE
COMPLAINT
Public Employment**

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

<p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>Oregon School Employees Association c/o Sarah K. Drescher Tedesco Law Group 3021 NE Broadway Portland, OR 97232 866-697-6015 x702 sarah@miketlaw.com</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Sarah K. Drescher Tedesco Law Group 3021 NE Broadway Portland, OR 97232 866-697-6015 x702 sarah@miketlaw.com</p>
<p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>Canby School District 1130 S Ivy St. Canby, OR 97013</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Paul A Dakopolos Garrett Hemann Robertson PC 1011 Commercial St NE Salem, OR 97301 503-581-1501</p>

Complainant alleges that Respondent has committed unfair labor practices 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, followed by a specific reference to the section and subsection of the law allegedly violated.

1.

Complainant Oregon School Employees Association (“OSEA” or “the Association”) is a labor organization as defined in ORS 243.650(13). OSEA is the exclusive representative of classified school employees employed by Respondent.

2.

Respondent Canby School District (“the District”) is a public employer as defined in ORS 243.650(20).

3.

The parties are signatory to a collective bargaining agreement (CBA).

4.

Victor Davidson was employed by the District as a Network Specialist from approximately May 2, 2016 until he voluntarily resigned from his position with the District on September 30, 2016. During that time, Mr. Davidson was a member of the bargaining unit represented by OSEA.

5.

During the first week of April, 2016, Mr. Davidson was offered the Network Specialist position with the District. The offer came directly from Sheryl Lipski, the District’s Director of Teaching and Learning. Ms. Lipski participated in the selection and hiring process for the Network Specialist position. Ms. Lipski was responsible for communicating on behalf of the District with Mr. Davidson regarding the offer of employment.

6.

The initial offer of employment came from Ms. Lipski to Mr. Davidson in the first week of April, 2016. The initial offer was consistent with the salary and benefit package provided in the collective bargaining agreement between OSEA and the District.

7.

On approximately April 7, 2016, Mr. Davidson informed Ms. Lipski via electronic mail that the District's initial offer of employment was simply too low for him to accept. Mr. Davidson explained that, at that time, he had a job with the Hillsboro School District that paid him more than the District's initial offer of employment.

8.

Shortly after Mr. Davidson rejected the District's initial offer of employment, Ms. Lipski called Mr. Davidson and made a revised offer of employment that exceeded the salary and benefit package provided in the collective bargaining agreement between OSEA and the District. Ms. Lipski did not include a representative from OSEA in this negotiation. Instead, Ms. Lipski negotiated this increased salary and benefit package directly with Mr. Davidson without ever informing a representative of OSEA.

9.

Mr. Davidson accepted the revised salary and benefit package offered by Ms. Lipski. In reliance on Ms. Lipski's revised offer of employment, Mr. Davidson quit his job with Hillsboro School District and began working for the Canby School District on approximately May 2, 2016.

10.

On approximately September 27, 2016, OSEA discovered that the District had negotiated a salary and benefit package directly with Mr. Davidson that exceeded the salary and benefit package provided in the collective bargaining agreement. On that date, Mr. Davidson contacted OSEA field representative Hal Meyerdierk and disclosed that Ms. Lipski had offered Mr. Davidson a salary and benefit package that exceeded the one provided in the collective bargaining agreement. Mr. Davidson further disclosed that the District had not paid him all of the money that the District had promised to him in the revised salary and benefit package. This was the very first time that OSEA discovered that Ms. Lipski had negotiated a salary and benefit package directly with Mr. Davidson, in contravention of the salary and benefits negotiated in the collective bargaining agreement.

Count 1

1(e) Bad faith bargaining by negotiating a salary and benefit package directly with Victor Davidson

11.

Paragraphs 1-10 are re-alleged as if fully set forth herein.

12.

Under the Public Employees Collective Bargaining Act (PECBA), it is unlawful for a public employer to “[r]efuse to bargain collectively in good faith” with the union that is the exclusive representative of its employees. ORS 243.672(1)(e). The Board has interpreted subsection (1)(e) to prohibit an employer from bypassing the union to negotiate directly with union members. *Amalgamated Transit Union v. Rogue Valley Transportation District*, Case No. UP-80-95, 16 PECBR 559, 576, *adh'd to on recons*, 16 PECBR 707 (1996); *Dallas Police*

Employees Ass'n v. City of Dallas, ERB Case No. UP-33-08, at 17, 23 PECBR 365, 382 (Oct 13, 2009).

13.

By negotiating a salary and benefit package directly with bargaining unit member Victor Davidson the District has refused to bargain collectively in good faith, in violation of ORS 243.672(1)(e).

The District maintains e-mail addresses for all Association members and routinely uses its e-mail system to communicate with members about job-related matters.

WHEREFORE, the Association requests an order:

- A. Finding that the District violated ORS 243.672(1)(e).
- B. Requiring the District to cease and desist from bypassing OSEA and bargaining directly with bargaining unit members, and requiring further that the District bargain in good faith with OSEA over any salary and benefits now owed to Victor Davidson.
- C. Requiring the District to post notices for a reasonable period of time and in noticeable places in the District stating that the District has been found in violation of the PECBA and requiring the District to cease and desist from such conduct in the future. This requirement for posting should include e-mail notification to all Association members through the District's e-mail system;
- D. Requiring the District to make employees whole for any losses sustained as a result of the District's unlawful conduct;
- E. Reimbursing the Association's filing fee under OAR 115-035-0075(3);
- F. Awarding the Association its reasonable representation costs and attorney fees under ORS 243.676(2)(d) and OAR 115-035-0055; and

G. Awarding any other relief deemed just and equitable by the Board.

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

By: Sarah K Drescher
Sarah K. Drescher, Tedesco Law Group

Attorney for Complainant 10/11/16
Title Date