

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**

**UNFAIR LABOR PRACTICE COMPLAINT
Public Employment**

For Board Use Only

Case No. UP-034-16

Date Filed 11/1/16

<p>COMPLAINANT</p> <p>SEIU Local 503, OPEU P.O. Box 12159 Salem, OR 97309-0159 503.581.1505 stefanm@seiu503.org</p>	<p>COMPLAINANT'S REPRESENTATIVE</p> <p>Marc A. Stefan, Supervising Attorney SEIU Local 503, OPEU P.O. Box 12159 Salem, OR 97309-0159 503.581.1505 stefanm@seiu503.org</p> <p align="right">RECEIVED NOV - 1 2016 EMPLOYMENT RELATIONS BOARD</p>
<p>RESPONDENT</p> <p>Oregon Health Authority/Oregon State Hospital 2600 Center Street NE Salem, OR 97301 503-945-2815</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Billy Martin Oregon Health Authority/Oregon State Hospital 2600 Center Street NE Salem, OR 97301 503-945-2815</p>

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

November 1, 2016
Date

STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

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NOV - 1 2016

EMPLOYMENT
RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL)
UNION LOCAL 503, OREGON)
PUBLIC EMPLOYEES UNION,)
)
)
Complainant,)
)
v.)
)
OREGON HEALTH AUTHORITY/)
OREGON STATE HOSPITAL,)
)
Respondent.)
_____)

Case No. UP-034 -16

COMPLAINT

1.

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

2.

Respondent, Oregon Health Authority/ Oregon State Hospital (herein OHA/OSH, the Employer or Respondent, is a public employer as defined by ORS 243.650(20). Medical and Allied Health Professionals Staff (MAHPS) is a component and agent of Respondent.

3.

The Employer and the Union have been parties to a series of collective bargaining agreements spanning many years. Those agreements have, for decades, contained a provision stating that the Employer cannot discipline employees without just cause and have also contained grievance/arbitration clause which permit the Union to file grievances on behalf of represented

employees and have those grievances decided in arbitration proceedings before a neutral arbitrator.

4.

The Union is Exclusive Representative for various employees of OHA/OSH within the meaning of ORS 243.650(8).

5.

Dr. Dan Smith (herein Dr. Smith) is an employee of Respondent and is represented for purposes of collective bargaining by the Union. Prior to the events detailed below, Dr. Smith worked as a Psychologist for OSH and performed Trial Competency Evaluations on Hospital patients.

6.

In or about October 2013, following a flawed investigation, MAHPS suspended Dr. Smith's Trial Competency Evaluation privileges at OSHA.

7.

As a result of the suspension of his privileges by MAHPS, Dr. Smith was transferred to a less desirable position at the hospital as a Unit Psychologist in which he was permitted only to perform more general psychologist work. The revocation of his privileges also carried potential adverse consequences for Dr. Smith in the conduct of his consulting business in which he performed trial competency evaluations for clients other than OSH.

8.

As a result of the actions detailed in paragraphs 6 and 7 above, a grievance was filed challenging the transfer as discipline without just cause and, in that connection, challenging the integrity, legitimacy of the MAHPS investigation, including the biased and conflict of interest

riddled “appeals” process that was afforded Dr. Smith in challenging the actions taken by MAHPS and OSH. That grievance was processed through the appropriate grievance steps set out in the collective bargaining agreement and was scheduled for arbitration before Arbitrator Sylvia Skratek.

9.

Prior to any arbitration hearing, Arbitrator Skratek assisted the parties in reaching a Settlement Agreement (SA) in the matter. That SA was reached on June 10, 2015 and is included herewith as Attachment 1. The SA was signed by OHA’s Human Resources Director, Cheryl Miller.

10.

The SA contained, among others, the following provisions/requirements:

5. References within Dr. Smith’s personnel file to his reassignment in 2013 shall be revised to reflect that he voluntarily transferred to the position of Unit Psychologist.

6. Any inquiries regarding Dr. Smith’s employment or credentials and/or privileges shall be referred to the Human Resources Director for OHA [Cheryl Miller] and/or the Credentialing Specialist as applicable. The Credentialing Specialists’ response to the inquiry is limited to “privileges had been denied but were restored.”

7. In the future, consistent with the [MAHPS] Bylaws, notification that an employee’s privileges may be affected and an opportunity to respond by the employee shall be provided in advance of a revocation, suspension, denial or any other restriction on the employee’s privileges to practice except in situations that require immediate action for the health and safety of patients. The State will review the current MAHPS Bylaws and will undertake necessary steps to ensure appropriate application.

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12.

Respondent has acted in violation of the signed SA in various manners including, but not limited to, the following:

A. Respondent did not make and continues not to make the revisions to Dr. Smith's personnel file called for in paragraph 5 of the SA;

B. During July 2016, Respondent supplied information in response to inquiries in violation of the restrictions and limitations set out in paragraph 6 of the SA;

C. The inquiries reflected above in subparagraph 6 were not handled by the individuals referred to in paragraph 6 of the SA and, therefore, was handled in breach of that provision of the SA;

D. Respondent revoked Dr. Smith's privileges regarding Criminal Responsibility Evaluation and Trial Competency Evaluations in violation of the terms of paragraph 7 of the SA by failing to give him notice of the need to renew and by revoking such privileges without the requisite notice and opportunity to be heard set out in paragraph 7 of the SA.

13.

By the acts described above Respondent OHA/OSH has violated the provisions of a written contract with respect to employment relations in violation of ORS 243.672(1)(g).

14.

In remedy for the violations of law detailed above, Respondent should be ordered to: a) cease and desist from its unlawful activities and any like or related activities; b) make all revisions called for by the SA in Dr. Smith's personnel records; c) take all steps necessary to ensure that disclosures in violation of the SA do not take place in the future; d) notify Dr. Smith and the Union, in writing, any time an inquiry covered by the SA is made regarding any

materials covered by the SA and show to Dr. Smith and the Union what response (including materials being supplied, if any) is to be made to the inquiry and afford Dr. Smith and the Union at least 10 business days to review and challenge any disclosures; e) pay a civil penalty for its unlawful actions taken in knowing and/or willful violation of the PECBA; f) post a notice at all locations in OSH where notices are customarily posted setting out the foregoing provisions of the Board's order.

DATED this 1st day of November, 2016.

Respectfully submitted,



Marc A. Stefan, OSB #086075
Supervising Attorney
SEIU Local 503, OPEU
P.O. Box 12159
Salem, Oregon 97309-0159
(503) 581-1505
stefanm@seiu503.org