

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-074-11

(UNFAIR LABOR PRACTICE)

BROOKINGS-HARBOR EDUCATION ASSOCIATION/OEA,)	
)	
Complainant,)	
)	
v.)	RULINGS,
)	FINDINGS OF FACT,
BROOKINGS-HARBOR SCHOOL DISTRICT 17C,)	CONCLUSIONS OF LAW,
)	AND ORDER
Respondent.)	
)	

No objections were filed to a recommended order issued on April 29, 2013 by Administrative Law Judge (ALJ) B. Carlton Grew, after hearings on September 26 and 27, 2012.¹ The record closed on November 9, 2012, following receipt of the parties' post-hearing briefs.

Barbara J. Diamond, Attorney at Law, Diamond Law, Portland, Oregon, represented Complainant.

Bruce A. Zagar, Attorney at Law, Garrett Hemann Robertson, P.C., Salem, Oregon, represented Respondent.

On November 4, 2011, Brookings-Harbor Education Association/OEA (Association) filed this Complaint alleging that Brookings-Harbor School District 17C (District) had violated ORS 243.672(1)(g) by failing to fully implement an arbitration award. The District filed a timely answer. On April 5, 2012, five days before the originally scheduled hearing, the Association filed a motion to amend the Complaint to add claims under ORS 243.672(1)(a) and (c). The ALJ granted the motion over the District's objection, and the Amended Complaint and Answer to the Amended Complaint were filed. The District alleged that the award required it to act unlawfully.

¹On May 9, 2013, we granted the parties' joint request to extend the time to file objections until June 13, 2013. On June 7, 2013, we were informed that the parties would not be filing objections, and that both parties were waiving oral argument.

The issues are:²

1. Did the District fail to comply with the Kucharski grievance Arbitration Award? If so, did the arbitrator exceed her authority or violate public policy, or did the District violate ORS 243.672(1)(g)?
2. Are the Association's claims under ORS 243.672(1)(a) and (c) untimely?
3. If the Association prevails, what is the appropriate remedy?

We conclude that the District violated ORS 243.672(1)(g) and that the remaining claims are untimely. As a remedy, the District shall cease and desist from refusing to implement the arbitration award and make Kucharski whole for any loss or injury that he suffered due to the District's failure to promptly implement the award. The District shall also sign and post copies of a notice, as set forth below.

RULINGS

The rulings of the Administrative Law Judge were reviewed and are correct.³

FINDINGS OF FACT

1. The Association is a labor organization as defined by ORS 243.650(13) and the exclusive representative of a bargaining unit of approximately 200 classified and unclassified employees employed by the District, a public employer as defined by ORS 243.650(20).

Background⁴

2. During the relevant time period, the parties were subject to a 2008-2011 collective bargaining agreement. That agreement includes dispute resolution provisions beginning with a grievance and ending with binding arbitration. The agreement also includes a layoff provision, which provides in part: "If the Board determines a layoff is necessary, then ORS 342.934 will determine the teachers to be retained." ORS 342.934 governs layoffs of licensed teachers from Oregon public schools. ORS 342.934(3) requires that teachers who are retained after a layoff must "hold proper licenses at the time of layoff to fill the remaining positions."

²The Association also sought a civil penalty, but its Amended Complaint fails to comply with the pleading requirements for such a claim set forth in OAR 115-035-0075(2). The District also sought a civil penalty, but because of our disposition of the parties' claims and defenses, we do not award a civil penalty to the District.

³The District objected to the filing of the Amended Complaint, but did not raise the issue in its post-hearing brief, and therefore we do not address this ruling separately.

⁴Findings of fact 2-9 are a slightly edited version of relevant sections of the Arbitrator's Analysis and Award.

3. ORS 342.934(7) describes the authority of an arbitrator hearing appeals from layoffs of licensed teachers:

“(7) An appeal from a decision on reduction in staff or recall under this section shall be by arbitration under the rules of the Employment Relations Board or by a procedure mutually agreed upon by the employee representatives and the employer. The results of the procedure shall be final and binding on the parties. Appeals from multiple reductions may be considered in a single arbitration. The arbitrator is authorized to reverse the staff reduction decision or the recall decision made by the district only if the district:

“(a) Exceeded its jurisdiction;

“(b) Failed to follow the procedure applicable to the matter before it;

“(c) Made a finding or order not supported by substantial evidence in the whole record; or

“(d) Improperly construed the applicable law.”

4. District teacher Kucharski had taught robotics in Advanced Industrial Engineering and Introduction to Technology courses. He had also taught several other classes involving architecture using 3-D computer modeling and computer-assisted drawing. Kucharski had been actively involved in the evolution of the District’s traditional industrial arts or shop programs to technology education.

5. Before the 2009-2010 school year, Kucharski taught technology and industrial arts courses at the District high school. The District eliminated those courses at the end of the 2008-2009 school year.

6. In the 2009-2010 school year, Kucharski taught wood shop and two technology classes in the District middle school.

7. In early 2010, the District, for financial reasons, decided to eliminate the middle school wood shop courses. On March 15, 2010, the District informed Kucharski that he would be laid off at the end of the school year. His layoff notice stated, “[t]his layoff does not preclude you from taking advantage of your seniority to bump into another position.” Kucharski was the only teacher laid off at this time.

8. Kucharski sought to bump two teachers with less seniority, including less senior District high school teacher Alan Chirinian, but the District did not permit this, contending that Kucharski was not licensed to teach either teacher’s courses.

9. The Association filed a grievance claiming that Kucharski should have been allowed to bump Chirinian. The District denied the grievance, and the Association requested arbitration. Arbitrator Jean Savage held the hearing on February 2 and 3, 2011, and then permitted

the submission of additional evidence and briefing after the hearing. The Arbitration Award was issued on June 27, 2011. The Arbitrator defined the issue before her as: “The arbitrator finds that the issues are: Whether the grievance [was timely]?^{5]} Whether the District violated Article 20, Layoff and Recall, when it retained a teacher less senior than the Grievant to teach certain technology courses. If so, what is the appropriate remedy?”

Teacher Licensing and Subject Matter Coding for Courses⁶

10. The Association argued in arbitration that Kucharski was licensed and qualified to teach the courses assigned to Chirinian in the 2010-2011 school year. Those courses included: Introduction to Computer Applications and Programming, No. 10152; 3-D Rapid Prototyping, No. 21010; and Advanced Robotic Sciences, No. 21009. The District contended that Kucharski was not licensed to teach these courses because they had elements of science curriculum embedded within them.

11. The number codes attached to each course were National Center for Education Statistics (NCES) codes related to the academic subjects of the courses, and defined the type and amount of academic credit students would obtain by passing the courses. The codes also determined the academic licensure and qualifications required of teachers for those courses.

12. The course codes were ultimately chosen by District administrative staff, who had a variety of State and other resources available to assist them in selecting the appropriate codes.

13. ORS 342.934(3) requires that when a school district reduces its staff, “the school district shall * * * [d]etermine whether teachers to be retained hold proper licenses at the time of layoff to fill the remaining positions.” Teachers in Oregon are required to be licensed. In addition to a Standard Teaching License, a teacher may have one or more endorsements needed to teach certain subjects. An endorsement is “[t]he subject matter or specialty education field in which the individual is licensed to teach.” OAR 584-005-0005(16).

14. Kucharski is licensed to teach in the area of Manufacturing Technology and has an endorsement in Standard Technology Education. Chirinian is licensed to teach in the area of Standard Biology and has an endorsement in Standard Integrated Science.

15. The Teacher Standards and Practices Commission (TSPC), an independent licensing agency within the purview of the state, aligns a teacher’s endorsement with every course being taught. The Oregon Department of Education (ODE) has generic titles for each subject and within that subject there are specific NCES codes. School districts are required to assign NCES codes to every course and assign teachers with the proper endorsement area for a course as coded.

⁵The District contended that the date of Kucharski’s layoff notice controlled the grievance filing deadline; the Association argued that the date of the denial of bumping rights determined the appropriate deadline. The Arbitrator ruled in favor of the Association on this point, and this ruling is not disputed in this proceeding.

⁶The finding of facts in this section were made based on the Arbitrator’s Analysis and Award and from the evidence presented at the hearing in this case.

Each year, districts report the courses being taught and the teachers who are teaching those courses to ODE in compliance with ODE requirements.

16. The Association also argued that Kucharski was licensed to teach Introduction to Robotic Science, No. 21009; Intermediate Robotic Science, No. 21009M; Emerging Technologies Projects, No. 21053; and Digital Manufacturing Science, No. 21010M. The District did not deny that Kucharski was qualified to teach these courses.

17. The TSPC relies upon the District-chosen NCES codes and TSPC's records of teacher qualifications to determine that a teacher has the subject matter expertise to teach a course.

Arbitration Award: Framework and Scope of Decision

18. The Arbitrator defined the "Framework and Scope of Decision" of her Award as follows:

"This case arises under Article 20 of the parties' collective bargaining agreement[,] which incorporates Oregon's statutory requirements in ORS 342.934, the procedure for reduction of teacher staff due to funding or administrative decision.

"The District argues that it has complied with ORS 342.934(7). The arbitrator has examined the language of Section 7 and finds that it is not applicable. Section (7) states that '[t]he arbitrator is authorized to reverse the staff reduction decision or the recall decision made by a district only if the district failed to comply with one of four requirements.' [Emphasis in original.] In this case, it is not the District's decision to reduce its staff by one position that is at issue. It is undisputed that the District had the authority to make this decision. The decision that the Association disputes is the District's decision not to allow the Grievant to bump into the position occupied by Teacher C. [Chirinian] at the high school. The issue is whether the District violated the collective bargaining agreement when it retained a less senior teacher than the Grievant to teach certain technology courses and not whether the District could reduce its teaching staff.

"Further, the arbitrator finds that ORS 342.934(4) is inapplicable. That section provides that a district can retain a teacher with less seniority if the district determines that the teacher 'being retained has more competence or merit than the teacher with more seniority who is being released.' In its brief, the District does not argue that Teacher C., who has less seniority than the Grievant, has greater competence or merit (although the Superintendent made that argument in his grievance response). Rather, the District's argument is that certain technology courses have embedded science standards that require a teacher with an Integrated Science endorsement and that the Grievant does not have the proper endorsement to teach these technology courses."

19. The Arbitrator then addressed whether Kucharski is licensed to teach technology courses embedded with a science curriculum:

“The District’s position is that the Grievant, who has an endorsement in Standard Technology Education, is not licensed to teach certain technology courses that include an embedded science curriculum and are offered for science credit. Those courses, and the NCES codes that the District assigned to them, are:

“Introduction to Computer Applications and Programming, 10152;
“3-D Rapid Prototyping, 21010; and
“Advanced Robotic Sciences, 21009.

“The Association does not dispute the District’s right to add a science component to these courses nor does it dispute that the District did so.¹² The Association’s position is that the NCES codes that the District assigned show that the courses are technology courses that the Grievant is licensed to teach and that science credit is available for these courses if the Grievant teaches them.

“The District assigned Teacher C. to teach the three courses listed above in the 2010-2011 school year as well as Intermediate Robotic Science, 21009, and Introduction to Robotic Sciences, 21009. There is no dispute that the Grievant has more seniority than Teacher C; however the District retained Teacher C. rather than the Grievant because Teacher C has an Integrated Science endorsement.

“The issue is whether the District’s addition of a science component into certain technology courses, without changing the NCES codes, required that a teacher with an Integrated Science endorsement teach those courses for students to obtain science credit. This issue arises under Article 20, Layoff and Recall, which provides that when a teacher is to be laid off, ‘ORS 342.934 will determine the teachers to be retained.’

¹²Additional courses with embedded science standards that were not being taught in the first semester in 2010-2011 were Emerging Technologies Projects, 21053, and Digital Manufacturing Science, 21010M.” (Internal citations omitted.)

20. The Arbitrator determined the following regarding the District’s decision to embed technology courses with science standards:

“The District Superintendent testified that in the future Oregon students will be required to have three credits in science rather than the current two credits. As a result, the District decided to embed science standards in some of its technology courses. Ms. Pratt states in her affidavit that the change takes effect in 2012 and that ‘[a]ppplied and integrated courses aligned to the science content standards may meet this requirement.’

“According to the Principal’s testimony, Teacher C., who did not testify, did the actual work of embedding science standards in some of the technology courses in 2008 to 2009. In the record, the standards are referenced by number in the curriculum mappers (a month by month review of what is being taught) for three courses--Introduction to Robotics, Advanced Robotics, and 3-D Rapid Prototyping.

Association Exh. No. A-11 provides a description of the numbers. For example, A-7 is '[u]nderstanding about scientific inquiry.' Although the District's course catalog lists all the technology courses under 'Science,' District witnesses testified that Introduction to Robotic Science¹⁴ and Intermediate Robotic Science do not have embedded science standards.

"Although District witnesses repeatedly asserted that ODE has been awarding science credit for Advanced Robotics, 3-D Rapid Prototyping, Emerging Technologies Projects, and Digital Manufacturing Science for several years, there is nothing in the record to establish that fact. To the contrary, Ms. Ferrer submitted a copy of the 'most recent public record, which is from 2009-2010' of the District's annual report on Highly Qualified Teachers. That report shows 'one academic core science class being taught by [Teacher C.]' That class is listed as physical science.

"In her affidavit, Ms. Pratt explains that the appropriate course code for Advanced Robotics and 3-D Rapid Prototyping is in the science category using codes beginning with No. O3XXX. Specifically, she finds that the appropriate code is No. 03212, Scientific Research and Design, because 'the description specifically addresses the use of scientific inquiry, which is required to award science credit.'¹⁵ However, the course descriptions for Advanced Robotics and 3-D Rapid Prototyping did not change in the course catalog the District provides to students. Also, there is nothing in Ms. Pratt's affidavit that shows how she determined that science credit is being awarded, Ms. Pratt states 'the appropriate course code for both courses must be in the Science category since Science credit is being awarded[.]'

"Ms. Pratt notes the District's testimony that the NCES code numbers had not been updated but she does not address the effect of the District's failure to update the numbers. More importantly, Ms. Pratt's affidavit does not support a conclusion that science credit is unavailable for courses using non-science codes. While Ms. Pratt's affidavit states that Advanced Robotics and 3-D Rapid Prototyping should have been titled and coded as science courses, there is nothing in her affidavit to support the argument that science credit cannot be awarded for these courses as they are presently coded.

"The District admits that it has the responsibility to establish accurate NCES codes for courses taught in the high school. The Principal testified that the District is working to align its course codes with those of the state, that currently the numbers have no meaning, and that they are 'a work in progress.' The Principal also testified that a secretary at the District office inputs the NCES codes. Overall, the Principal's testimony revealed a lack of understanding of TSPC's function, the NCES codes, and how the codes are used. Despite approving the addition of science standards to some of the technology courses, the Principal did not research the appropriate codes. At first the Principal testified that he consulted only with the Superintendent; later he stated that he telephoned TSPC, but he could not identify the person with whom he spoke.

“Introduction to Computer Applications and Programming is the third course that the District assigned Teacher C. to teach the first semester of the 2010-2011 school year. The Principal testified that there is no science credit for that course. The Association argues that computer science classes do not require ‘any particular endorsement. ...The District made no assertion that the Grievant would be barred by any agency from teaching a computer class at the high school.’ However, the District asserted in its brief that the course requires an integrated science endorsement and restated in its supplemental brief that the course also had embedded science standards.”

¹⁴There is a conflict in the record concerning Introduction to Robotics. Association Exhibit No. 13 shows that national science standards are included in the course. However, the Principal testified that no science credit is awarded for that course.

¹⁵Ms. Pratt states that for science credit courses must be ‘inquiry-based,’ that is they must ‘provide students the opportunity to apply scientific reasoning and critical thinking to support conclusions or explanations with evidence from their investigations.’”

21. After reviewing the evidence before her, the Arbitrator reached the following conclusions:

“At the heart of this dispute are the NCES codes. They are a critical aspect of the Oregon state teacher licensing system which relies on the codes furnished by school districts. The codes, when matched with teachers’ licenses, enable TSPC, the licensing agency, to ensure that qualified teachers are teaching Oregon’s students. Correct NCES codes enable TSPC to fulfill its function. In addition, teachers and the Association must be able to rely on the submitted codes. Not only must teachers be licensed, but they must obtain particular endorsements to teach certain subjects and obtaining an endorsement can be critical to a teacher’s employment. Obtaining the appropriate endorsement is not a trivial matter; it can easily involve years of education. Knowing which endorsements are necessary depends on districts accurately coding courses.

“Although it is the District’s responsibility to submit correct NCES codes to TSPC, the record shows that the District took this responsibility lightly. While there are resources at the District’s disposal--individuals at ODE and documents providing guidance—to assist in this work, it appears that the District did not utilize them. The District’s lack of attention is particularly striking in the circumstances. At some point in time, the District must have become aware that it might be necessary to eliminate the middle school courses that the Grievant was teaching. That possibility would have led to a review of the Grievant’s endorsements and experience in teaching technology courses that were currently taught in the high school. In view of the potential for a teacher layoff, such a situation should naturally have resulted in a careful examination of all the possible ramifications, including course descriptions and NCES codes.

“Using the NCES codes that the District furnished and information on TSPC’s website, the documents show that the Grievant’s endorsement permits him to teach Computer Integrated Manufacturing, 21010; Emerging Technologies, 21053; and Robotics, 21009. Also, 3-D Rapid Prototyping and Digital Manufacturing Science are coded 21010 and, accordingly, the Grievant could teach those courses.¹⁶ The arbitrator also finds that Teacher C. is endorsed to teach the robotics courses; however, his endorsement does not permit him to teach 3-D Rapid Prototyping, 21010; Emerging Technologies Projects, 21053; or Digital Manufacturing Science, 21010M. There is no record that the District applied for a conditional teaching permit with regard to any of the technology courses at issue.

¹⁶The Principal testified that Computer Integrated Manufacturing includes 3-D Rapid Prototyping.

“The course titled Introduction to Computer Programming and Applications, 10152, can be taught by any licensed teacher, according to the information in the record. OAR 584-036-0083 provides that any standard teaching license is valid for ‘areas in which the Commission has no licensure endorsements, including but not limited to: (a) Computer education;...’ The NCES code for this course remained 10152 and, as such, a Standard Teaching License is sufficient to teach this course. Consequently, the arbitrator finds that either the Grievant or Teacher C. can teach the course.

“The fact that the District embedded science standards into some of the technology courses does not change this result. The ODE document, ‘Guidelines, Scenarios, and Resources for Offering Credit in Applied Academics,’ clarifies this issue. That document states that the Oregon State Board of Education endorsed the concept of meeting core math and science requirements by integrating math and science standards in applied courses. The ODE guidelines state that

“‘credit for core academic subjects...must be awarded by a highly qualified teacher....However, in many cases, applied academic courses can be taught by teachers who are not licensed in the core content areas. A teacher licensed to teach agriculture can teach an agriculture science class that meets graduation requirements for science.’

“The ODE guidelines also state that ‘[m]ost teachers with a CTE (Technology) license are qualified to teach courses that include academic content related to their endorsement.’ As the arbitrator understands this guideline, the Grievant is qualified to teach the technology courses that the District embedded with science standards.

“In summary, according to the NCES codes that the District submitted and based on the record, the arbitrator finds that the Grievant holds the technology endorsement necessary to teach all the courses which the District coded as

technology courses. Specifically, the Grievant holds the correct endorsement to teach the courses assigned to Teacher C. in the 2010-2011 school year:

“Introduction to Computer Applications and Programming, 10152;
“3-D Rapid Prototyping, 21010;
“Introduction to Robotic Science, 21009;
“Intermediate Robotic Science, 21009M; and
“Advanced Robotic Sciences, 21009V.

“In addition, the Grievant is endorsed to teach the two courses that the District did not offer the first semester of 2010-2011--Emerging Technologies Projects, 21053, and Digital Manufacturing Science, 21010M.

“In reaching this decision, the arbitrator also finds that as required in ORS 342.934(2)(a), the District did not ‘make every reasonable effort to: (a) Transfer teachers of courses scheduled for discontinuation to other teaching positions for which they are licensed and qualified.’ Further, the District did not ‘[d]etermine whether teachers to be retained hold proper licenses at the time of layoff to fill the remaining positions’ as required in ORS 342.934(3)(a).”

22. The Arbitrator’s Award stated:

“Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievance met the filing requirements in Article 13 of the parties’ collective bargaining agreement and that the District violated Article 20, Layoff and Recall, when it retained a teacher less senior than the Grievant to teach certain technology courses. Therefore, as required in ORS 342.934(2)(a), the District did not ‘make every reasonable effort to: (a) Transfer teachers of courses scheduled for discontinuation to other teaching positions for which they are licensed and qualified’ nor did the District correctly ‘[d]etermine whether teachers to be retained hold proper licenses at the time of layoff to fill the remaining positions,’ as required in ORS 342.934(3)(a).

“The grievance is sustained.”

23. The Arbitrator’s Remedy was as follows:

“The District is ordered to reinstate the Grievant to a teaching position in the Brookings-Harbor School District 17C and make him whole. Specifically, the District must pay the Grievant full back pay and benefits.

“The arbitrator retains jurisdiction for 60 days solely to resolve any disputes that may arise in connection with implementation of the remedy.”

24. The Award was issued June 27, 2011.

Arbitrator's Clarification of Remedy

25. On June 30, 2011, counsel for the District, Bruce Zagar, e-mailed counsel for the Association, Barbara Diamond, and stated:

"I have met with the Brookings-Harbor School Board and I need to inform you that the Board is giving serious consideration to refusing to implement the arbitrator's award. Not to argue the point, but to clarify the basis for this consideration, the District would cite you to the fact that the arbitrator exceeded her jurisdiction by ruling [that] ORS 342.934(4) is not applicable to this case. Furthermore, her award violates public policy regarding the placement of a teacher into a position for which he is not properly licensed or endorsed.

"I also want to point out to you that the District has changed all the applicable NCES numbers for the science embedded technology courses. They are all now starting with the first two digits of '03---.' Both you and the arbitrator agree that if the NCES number was correctly in the science area ('03'), then Mr. Kucharski is not licensed. That is the case now.

"Kucharski * * * does not have the seniority or the licensure to teach in any of the remaining positions."

26. On July 14, 2011, Diamond sent a document request to the District regarding the changed NCES numbers, ODE filings, and course catalog. On July 20, Zagar faxed Diamond the 2011-2012 Curriculum Planning Guide, which included course descriptions for the technology courses 3-D Rapid Prototyping, Emerging Technologies Projects Science, Introduction to Robotics, Intermediate Robotics, and Advanced Robotics. Each course was coded 03.

27. Also on July 20, the School Board met and, as reported by Zagar, (1) "voted to reinstate Mr. Kucharski and to make him whole in accordance with the decision of the arbitrator," and (2) voted to "place Stephen Kucharski on layoff for the 2011-2012 school year as a result of his lack of licensure to teach remaining courses and/or because of his lack of seniority to displace any teacher."

28. On July 22, Diamond e-mailed Arbitrator Savage.⁷ Diamond stated,

"I am enclosing the letter which shows that the District is refusing to place Kucharski into a teaching position with the District. I have in my possession the school catalog for the District which shows that robotics and other technology classes are being offered. Mr. Chirinian is apparently going to be continuing in the position he was in last year. I therefore believe we have a dispute about your order."

⁷In her Clarification of Remedy, the Arbitrator noted that the parties had agreed that she would retain jurisdiction over the matter for 90 days, notwithstanding the 60-day reference in the Award.

29. On August 19, the Association filed a formal motion to clarify the Award.⁸ The Association asked the Arbitrator “to clarify whether, in awarding Grievant reinstatement, she intended to permit the District to place Grievant in an actual teaching position or whether the duty to reinstate could be satisfied by placing Grievant on layoff.” The Association also stated that the District had recoded the technology courses as “IB physics courses.” In support of the motion, the Association submitted the records the District had submitted to ODE for 2011, which indicated that the District had not reported any of the robotics or technology courses in dispute to ODE as qualifying for NCES science credit. This was contrary to the District’s contentions during the arbitration.

30. On August 26, the District filed a formal response to the motion. The District submitted a Course Schedule dated August 23. In that document, the recoded IB Physics course numbers had been recoded again, this time to 03 numbers for 3D Rapid Prototyping, Emerging Technologies Projects, and Intermediate and Advanced Robotics. Introduction to Robotics was no longer in the catalog. On September 2, the Association filed a reply brief.

31. On September 13, 2011, the arbitrator issued a “Clarification of Remedy.” In that decision, the Arbitrator summarized the Association’s position as follows:

“The Association seeks a clarification that ‘reinstatement means placing the Grievant in position he would have had if the District had given him [Teacher C.’s] position.’

“The Association argues that the District’s conduct was ‘arbitrary, capricious, and discriminatory when it intentionally reclassified the robotics position to avoid reinstating the Grievant.’ Although the District recoded the technology courses after the award was issued, the Association argues that this action could have been taken earlier. In these circumstances, the Association asserts that the arbitrator ‘has the power to determine that when a party fails to raise a defense regarding the remedy that was available at the time of arbitration, it should not be entitled to deny the right to reinstatement after the hearing is complete and the award issued.’ The Association also asserts that ‘every contract contains an implied covenant of good faith and fair dealing.’ Citing several cases, the Association adds that ‘Oregon arbitration awards and ERB cases demonstrate that employers may not exercise their discretion so as to deprive employees of their vested contract rights.’

“In addition the Association argues that the District’s conduct in this case has been ‘misleading and unreasonable.’ The Association asserts that initially the District changed codes for the technology courses to a category appropriate for IB (International Baccalaureate) Physics, NCES course code 03157. These courses, the Association asserts, ‘could not rationally be viewed as IB Physics classes.’ Further, the Association points out that the District does not have an IB Physics program and even if it did exist, such classes would require a certified physics

⁸There is no dispute that the District complied with the retrospective/make whole portion of the Arbitration Award.

teacher---not a license held by Teacher C. Although the Association requested course codes for the 2011-12 school year, the Association asserts that District sent codes for the prior year, the same codes at issue in the arbitration. The Association also argues that there is no evidence that new codes for technology courses which were ‘developed during the pendency of this motion’ were submitted to the Oregon Department of Education (ODE) or that any of ‘the robotics or technology classes had been submitted to ODE as qualifying for NCLB (No Child Left Behind) science credit.’ Finally, the Association asserts that the District could have used the same codes used in the 2010-11 school year because ‘there are overlapping credentials which allow teachers with technology licenses to teach classes for science credit.’

“The Association argues that the arbitrator ‘should order the District to actually reinstate Grievant to the position he would have had if the District had followed the contract and acted in good faith.’”

32. The Arbitrator summarized the District’s position as follows:

“The District argues that the District reinstated the Grievant as the award required. Further, the District asserts that the Award did not give the Grievant ‘any protected status, or classification, after reinstatement and being made whole, so the District could lay off the Grievant.’ The District asserts that the Grievant is ‘not licensed to teach the courses he formerly taught because of the embedding of the science curriculum and, now, because they are properly coded with the correct NCES number.’ According to the District, ‘[m]isassigning a teacher outside of the teacher’s area of licensure does violate state law and subjects the District to economic penalties.’

“In addition, the District argues that the new layoff of the Grievant is ‘clearly an issue that was not before the arbitrator in the original case.’ Citing various cases, the District asserts that the arbitrator has no jurisdiction over this new issue.

“The District also asserts that the arbitrator’s determination that ORS 342.934(7) is limited to the District’s reduction in force decision and not to the layoff or recall decisions ‘is wrong as a matter of law’ and therefore the arbitrator exceeded her jurisdiction. In support, the District cites Cascade Bargaining Council v. Bend-Lapine School District No. 1, 17 PECBR 558 (1998). The District also argues that under Willamina Education Association 30J and Barbara Crowell Lucanio v. Willamina School District No. 30-44-63J, 5 PECBR 4086 (1980), the Award ‘violates established public policy by either ordering a school board to assign an improperly licensed teacher to teach adopted science curriculum or which forces a duly elected school board to reverse a policy decision to embed certain technology courses with science curriculum.’” (Emphasis in original.)

33. The Arbitrator then set out her reasoning as follows:

“With the parties’ agreement, the arbitrator retained jurisdiction in this dispute ‘solely to resolve any disputes that may arise in connection with implementation of the remedy.’ As a remedy for the District’s contract violation, the arbitrator ordered the District ‘to reinstate the Grievant to a teaching position in the Brookings-Harbor School District 17C and make him whole.’ The dispute raised in the Association’s Motion is whether the District’s layoff of the Grievant for the 2011-12 school year is consistent with the Remedy.

“This issue arises directly from the remedy---instead of reinstating the Grievant to a teaching position as the Award requires, the District placed the Grievant on layoff. Moreover, the ‘lay off’ for the 2011-12 school year is based on essentially the same action that the arbitrator found was inconsistent with the parties’ agreement and the requirements of ORS 342.934(2)(a), which is incorporated into the agreement. Furthermore, an email in the record plainly states the District’s intent to reject the arbitration Award. In that email, the District’s counsel writes

“I have met with the Brookings-Harbor School Board and I need to inform you that the Board is giving serious consideration to refusing to implement the arbitrator’s award. ... I am willing to recommend to the District, in the alternative, that the District (sic) back pay [the Grievant] minus any appropriate offsets for income earned in the interim, but place him back on layoff again, for up to 27 months.’

“The parties specifically agreed in Article 13 of their agreement that arbitration awards shall be final and binding. That article states ‘[t]he decision of the arbitrator shall be submitted to the Board and the Association and shall be final and binding upon the parties.’

“The arbitrator’s Decision and Award is that the Grievant be placed in ‘a teaching position in the Brookings-Harbor School District 17C.’ The arbitrator did not further define ‘a teaching position’ because there was no evidence in the record as to specific classes that would be offered in the 2011-12 school year. Further, the arbitrator did not award the grievant a teaching position to include all the courses taught by Teacher C. in the 2010-11 school year because the evidence did not show that those courses would be repeated in the 2011-12 school year. In addition, it is possible that the District would add courses, redesign courses, and/or reassign courses in the process of assigning the Grievant to a teaching position. Furthermore, to the extent that embedded science requirements are relevant, the Decision and Award found that one, or possibly two of the technology courses, did not even include embedded science. Further, the award found that ‘Computer Programming and Applications, 10152, can be taught by any licensed teacher.’ Taking all these factors into consideration, the arbitrator designed a Remedy to give the District maximum flexibility in returning the Grievant to ‘a teaching position,’ a position to be determined by the District. Finally, nothing in the Remedy requires an illegal

action by the District, including an action not in compliance with state teacher licensing requirements.

“The arbitrator has reviewed the District’s arguments that the arbitrator’s determination concerning ORS 342.934(7) is wrong as a matter of law and that her award violates public policy and finds that a response would not be within her limited jurisdiction.” (Internal citations omitted.)

34. The Arbitrator’s decision on the motion was:

“The Association’s Motion asked the arbitrator ‘to clarify whether, in awarding Grievant reinstatement, she intended to permit the District to place Grievant in an actual teaching position or whether the duty to reinstate could be satisfied by placing Grievant on layoff.’ The arbitrator finds that placing the Grievant on layoff does not satisfy the Award which specifically ordered that the Grievant be placed ‘in a teaching position in the Brookings-Harbor School District 17C.’” (Citations omitted.)

Related and Subsequent Events

35. As of July 22, 2011, the Association did not have a copy of the master teaching schedule for the upcoming 2011-2012 school year, but was aware that the District course catalog listed all of the previously discussed technology courses.

36. During August 2011, Kucharski documented the following:

“ARBITRATION AWARD TO REHIRE INTO A TEACHING POSITION:

“The district plan is to hire me then PROMPTLY lay me off! This seems like fraud and a violation of the award since:

“As of this late date:

The district does not have me on a schedule

Does not have a class scheduled for me to teach

Does not have students scheduled to a class

Does not have a physical room for me to return to a teaching position.

“I believe I should either receive compensation for this arbitrated award or the window for reinstatement should be 12-13 school year giving the district time to address this award with in [sic] offering an actual contract. I would prefer some compensation. I am under contract.”

37. Before the start of the 2011-2012 school year, the District made additional staff reductions, including the layoff of a science teacher from the high school. The District also changed Chirinian’s assigned courses to an equal number of physics and technology classes. The technology classes were 3D Rapid Prototyping/Emerging Technologies Projects, Intermediate

Robotics, and Advanced Robotics. In addition, as he had the previous school year, Chirinian was awarded a \$4,801 extra duty contract for serving as the high school robotics coach.

38. The Association assumed, in the absence of any notice from the District, that the courses assigned to Chirinian would not be changed. The District did not inform the Association directly of any changes in Chirinian's courses up to and including the final arbitration clarification submission on August 26.

39. On September 19, Diamond e-mailed Zagar regarding "Calculations in Kucharski." Diamond asked, "I would like to know the status of this. We have limited jurisdiction for the arbitrator to resolve disputes. Please let's wrap this up. Also, is the District going to offer Steve a position or not? It would be helpful if you would communicate the status of compliance on both issues." Zagar responded, "I expect to have an answer on the back pay issues today or tomorrow from the District. I am meeting with the Board tonight re: the Clarified decision. I should have an answer on the second issue tomorrow."

40. On September 21, 2011, the District Board responded to the Arbitrator's clarification order. The Board decided that it would "not change any decisions or actions we have taken in the case of reinstatement and lay off of the teacher." The Board's decision was based on its view that Kucharski could not teach technology courses for science credit, and the District would not create new courses for Kucharski or have him teach technology courses without science credit.

Courses Taught by Chirinian

41. At the time of the September 2012 hearing in this case, the 2012-2013 school year had begun. Chirinian had returned to a schedule of six technology courses: Digital Manufacturing, two Introduction to Robotics classes, Emerging Technology Projects, 3-D Rapid Prototyping, and Advanced Robotics.

42. Over the course of this unfair labor practice litigation, the District provided the Association with documents regarding the assignment of NCES numbers to courses taught by Chirinian and curriculum maps for 3-D Rapid Prototyping, Emerging Technologies Projects, and all three robotics courses. The course syllabi for Intermediate Robotics, Advanced Robotics Science, 3D Rapid Prototyping/Digital Manufacturing, and the six-week curriculum document for Introduction to Robotics did not list science standards.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. In issuing the Kucharski grievance Arbitration Award, the Arbitrator did not exceed her authority or violate public policy, and the District violated ORS 243.672(1)(g) by refusing to accept that Award.

The Association alleges that the District failed to comply with the Arbitrator's Award and subsequent Clarification, in violation of ORS 243.672(1)(g). The District contends that it complied with the Arbitrator's orders to the extent permitted by law.

Standards for Decision

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 or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them."

Under the Public Employee Collective Bargaining Act (PECBA), arbitration is favored as a means for labor organizations and public employers to resolve their disputes. In this case, the Association alleges that the District violated ORS 243.672(1)(g) by refusing to accept and implement the terms of a grievance arbitration award. The District concedes that it refused to accept part of the award but contends its refusal is justified because the arbitrator exceeded her authority under the collective bargaining agreement and the statute it incorporated, ORS 342.934(7).

In evaluating a refusal to accept or implement an arbitration award, this Board applies the standard explained in *Willamina Education Association 3J and Lucanio v. Willamina School District* No 30-44-633, Case No. C-253-79, 5 PECBR 4086 (1980) ("*Willamina II*") and approved by the Court of Appeals in *Willamina Ed. Assoc. v. Willamina Sch. Dist.*, 50 Or App 195, 623 P2d 658 (1981), *rem'd*, 4 PECBR 2571 (1980) ("*Willamina I*"). Under that standard, arbitration awards will be enforced unless it is clearly shown that either: "(1) The parties did not, in a written contract, agree to accept such an award as final and binding upon them * * *; or, (2) Enforcement of the award would be contrary to public policy * * *." 5 PECBR at 4100. *See also Cascade Bargaining Council v. Bend-Lapine School District No. 1*, Case No. UP-33-97, 17 PECBR 558 (1998), *recons*, 17 PECBR 609 (1998).

In this case, both the contract and ORS 342.934(7) provide that arbitration will be final and binding. Nevertheless, the District argues that the award is not one that it agreed to accept as final and binding because the arbitrator exceeded the contractual limits on her authority imposed by: (1) the collective bargaining agreement, which states, "[i]f the Board determines a layoff is necessary, then ORS 342.934 will determine the teachers to be retained;" and (2) the incorporated provision of ORS 342.934(7), which provides in part that an arbitrator is authorized to reverse a staff reduction decision only if the district "(a) [e]xceeded its jurisdiction; (b) [f]ailed to follow the procedure applicable to the matter before it; (c) [m]ade a finding or order not supported by substantial evidence in the whole record; or (d) [i]mproperly construed the applicable law." (Finding of Fact 3.)

Arbitrator's Reasoning

The District argues that, in ruling that ORS 342.934(7) was inapplicable to the issue before her, the Arbitrator was “wrong as a matter of law” and exceeded her jurisdiction. (Respondent’s post-hearing brief at 4, 8.) As this Board stated in *Bend-Lapine*,

“The crux of the District’s argument is that the arbitrator determined that the District ‘improperly construed the applicable law,’ as prohibited by ORS 342.934(7)(d), by incorrectly interpreting and applying ‘competence.’ In the District’s view, the arbitrator’s ‘interpretation of ORS 342.934(8)(a) is clearly wrong,’ and that his faulty interpretation of ‘competence’ was the basis for his entire decision. In short, the District contends that it did not misconstrue the law and that therefore the arbitrator exceeded the contractual and statutory limitations on his jurisdiction by concluding that it did. Said another way, what the District is contending is that, because its interpretation of competence is ‘right’ and the arbitrator’s interpretation is ‘wrong,’ the award is not enforceable.

“In essence, the District is asking this Board to review the merits of the grievance. In adopting the *Willamina II* standard of review, we stated that ‘the policies of the PECBA will be better effectuated’ if review of arbitration awards was restricted to the standards used by courts. The concept of limited review of arbitration awards by this Board was approved by the Court of Appeals in *Willamina I*, stating that ‘[w]hether the arbitrator correctly interpreted the contract is the very question that neither ERB nor this court can[]consider on review.’ *Willamina School District v. Willamina Education Association*, 60 Or App 629, 636, 655 P2d 189 (1982).

“Consistent with that limited review, this Board has consistently refused to engage in a right/wrong review of arbitration awards. In *Chenowith Education Association v. Chenowith School District*, Case No. UP-104-94, 16 PECBR 26, 40 (1995), *aff’d*, 141 Or App 422, 918 P2d 854 (1996), we described our review process:

“‘We have not and will not act as an appellate body to remedy arbitrators’ wrong interpretations of collective bargaining agreements. When parties bargain for arbitration of their contract disputes, and agree to be bound thereby, they must abide both ‘right’ and ‘wrong’ decisions made within the arbitrator’s jurisdiction and the rule of *Willamina*.’

“As applied in this case, our standard of review leads us to conclude that the award must be enforced. The contract provides that arbitration will be final and binding. By reference, the agreement incorporates certain express limitations, listed in ORS 342.934(7), on an arbitrator’s authority to reverse layoff and recall decisions. One of those limitations is that a layoff/recall decision can be reversed if the arbitrator finds that a district failed to follow the applicable procedures. Here the arbitrator found that the District did not follow the procedures set out in Article IX because it failed to transfer the grievants to available positions for which they were

certified and subsequently failed to recall them to vacancies for which they were certified. In reaching his conclusion, the arbitrator relied on his interpretations of various provisions of the parties' contract. The conclusion he reached—that the District failed to follow the required procedures—was one which authorized him to reverse the layoff and recall decision. He thus did not exceed any limitation on his authority.” 17 PECBR at 567-9 (footnotes omitted).

Although the District argues that the Arbitrator in this case held that subsection (7) of ORS 342.934 did not apply, it does not attempt to argue that the arbitrator *actually violated that statute*, or that any portion of the Award is *inconsistent with the statute*. The District simply argues that, because the Arbitrator denied the applicability of subsection (7), her Award by definition exceeded her authority. We conclude that the Arbitrator's statement about the applicable standards is not sufficient to support a conclusion that the Arbitrator violated the applicable standards, even if such an examination were not subject to the prohibition against a “right/wrong” review. Put another way, the record does not reveal that the Arbitrator “exceeded any express limitations on [her] authority—in this case, the limitations set out in ORS 342.934(7).” *Id.* at 569.

The District also argues that the Arbitrator had no jurisdiction to issue the Clarification of Award. However, there is no dispute that the Arbitrator retained jurisdiction over the matter during the relevant time period, and that the Grievant made a timely request that the Arbitrator clarify her Award in light of the District's response. Responding to the Grievant, the District presented the Arbitrator with its objections to both the original Award and the request for clarification. The District now argues that the Arbitrator was wrong as a matter of law regarding her jurisdiction to clarify the Award. However, the prohibition of a “right/wrong” review applies equally to this arbitral decision, and we do not substitute our judgment for that of the Arbitrator.

The District argues that, by issuing the Clarification, the Arbitrator violated the common law rule of *functus officio* (office performed). That rule provides that “an arbitrator's jurisdiction ends when a final award is issued.” *Elkouri & Elkouri: How Arbitration Works, Seventh Edition*, at 7-37. However, an attempt to clarify the ambiguity of an arbitral remedy during a period of retained arbitral jurisdiction is an established exception to that rule. In this case, even if the Award were not ambiguous upon issuance, its application to the subsequent school year and revised course coding rendered it so. The circumstances of this case are, in fact, an example of the reason for the practice of arbitral retention of jurisdiction. *See How Arbitration Works, Seventh Edition*, at 7-46 to 7-51. Finally, it would defeat the purposes and policies of the PECBA and the labor arbitration process it supports to require a new dispute resolution process to begin simply because the losing party in the arbitration implements its intransigence in the guise of a new decision.

Arbitrator's Remedy

Finally, the District also argues that the Award and its Clarification require the District to either violate the law or public policy. This Board has held that the “public policy” exception is “exceedingly narrow.” *In the Matter of the Arbitration Between State of Oregon, Department of Corrections v. AFSCME Council 75, Local 2623*, Case No. AR-1-92, 13 PECBR 846, 855 (1992). In order to prevail, the District must “clearly show” that the award requires it to commit an unlawful act. (*Willamina I and II*.) We do not consider the general public policies that the statute may express. *Department of Corrections*, 13 PECBR at 855. *See also Lincoln County Education Association v. Lincoln County School District*, Case No. UP-56-04, 21 PECBR 206, 218 (2005).

The District states,

“[[t]hus, the arbitrator’s initial award would require the District to violate the law by assigning a teacher to teach courses for which he is not licensed. However, in the alternative, the District could have assigned Mr. Kucharski to teach the Technology courses, but it would have had to strip those courses of the Science curriculum because he could not teach it, nor could credit be given for it because he is not licensed to teach Science. That would violate public policy * * *.

“* * * * *

“The arbitrator’s second ‘Clarification’ Award would again force the District to either place Mr. Kucharski into teaching positions for which he was not licensed or it would force the District to discontinue awarding Science credit for the Technology/Robotics courses. Thus, it would either require the District to violate the law by improperly assigning an unlicensed teacher or it would violate public policy by forcing a school district to change its adopted curriculum.” (Respondent’s post-hearing brief at 9, 12) (emphasis in original).

We note first that the District’s argument rests on disputed factual determinations of what types of classes were within the scope of Kucharski’s license and endorsement, what licenses were required to teach the courses at issue, and how and why the District assigned codes to the courses at issue. There is ample evidence in the record to support the conclusion that Kucharski could teach these classes and that the students could still receive Science credit for them. In fact, the District concedes as much, but contends that the procedures for doing so were cumbersome and not generally used by the District. These were all matters decided by the Arbitrator, which are not subject to a “right/wrong” review.

Second, and most importantly, despite litigating this matter in two separate forums, the District has yet to point to a specific statutory provision or any clearly defined public policy that the Arbitration Award and Clarification require it to violate. We conclude that the District has failed to establish that the Arbitrator’s Award and Clarification violate law or public policy.

We conclude review of this issue, as we did in *Portland Police Association v. City of Portland (Frashour)*, Case No. UP-023-12, 25 PECBR 94, 112 (2012), with a discussion of the purpose of the arbitration process.

“The United States Supreme Court has explained why the courts have such a limited role in reviewing labor arbitration awards under federal law:

“Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than a judge, it is the arbitrator’s view of the facts and the meaning of the contract they have agreed to accept. * * * To resolve disputes about the application of a collective-bargaining agreement, an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them. The same is true of the arbitrator’s interpretation of the

contract. * * * [T]he parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground the arbitrator misread the contract.” *United Paperworkers Int’l Union v. Misco, Inc.*, 484 US 29, 37-38, 108 S. Ct. 364, 98 L.Ed. 2d 286, (1987) (citing *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 US 593, 599 (1960)).”

In this matter, the District and Association agreed, through collective bargaining, that layoff decisions could be processed through the contractual grievance procedure, which culminates in arbitration. They also agreed that the arbitrator’s decision shall be “final and binding.” *Clackamas County Employees Association v. Clackamas County*, Case No. UP-4-08, 22 PECBR 404, 410 (2008), *AWOP*, 228 Or App 368, 208 P3d 1057 (2009) (when parties agree to grievance arbitration, they have agreed to accept the arbitrator’s interpretation of their contract). We have been told by the courts not to engage in a “right-wrong” analysis, but rather to ensure that the parties got what they bargained for—a binding decision by an arbitrator. *Clatsop Community College Faculty Association v. Clatsop Community College*, Case No. UP-139-85, 9 PECBR 8746, 8761-62 (1986).

In this case, the arbitrator determined that the District improperly laid Kucharski off and ordered the District to restore him to a teaching position. The District does not have a lawful reason for refusing to implement the Award. Therefore, the District’s failure to implement it violates ORS 243.672(1)(g).

3. The Association’s Claims Under ORS 243.672(a) and (c) Are Untimely

Unfair labor practice complaints are subject to a 180-day statute of limitations. ORS 243.672(3) provides that “[a]n injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice.” The Court of Appeals has held that the statute “incorporates a discovery rule, which means that the limitation period begins to run when a public employee, labor organization, or public employer knows or reasonably should know that an unfair labor practice has occurred.” *Rogue River Education Assoc. v. Rogue River School*, 244 Or App 181, 189, 260 P3d 619 (2011). The request for leave to file an Amended Complaint in this case was filed on April 5, 2012. Therefore, the additional claims are timely only if the Association did not know, or reasonably should not have known, the facts underlying the relevant causes of action until October 8, 2011.

In its Amended Complaint, the Association alleges that the “District’s actions in changing the technology position to a technology/science position in order to disqualify Grievant constitute restraint, interference and coercion in violation of [ORS 243.672](1)(a).” (Amended Complaint at 8.) We conclude that the Association knew, or reasonably should have known, that the District had changed codes for the relevant classes no later than the start of the 2011-2012 school year in September 2011. The District informed Association counsel of changes to science codes on June 30, 2011. In addition, in August 2011, Kucharski documented that there were no classes on the schedule for him to teach. Whether the Association and Kucharski knew of all the coding changes by the start of the limitations period, they were in possession of the critical facts to the cause of action (that the District would not reinstate him to a teaching position because it deemed him unqualified to teach those classes) before October 8, 2011. Therefore, this claim is untimely and we will dismiss it.

In its Amended Complaint, Complainant alleges that the “District’s actions in purporting to lay off Grievant on several occasions after he was reinstated by the Arbitrator constitute discrimination in violation of ORS 243.672(1)(c).” (Amended Complaint at 8.) We conclude that the Association knew, or reasonably should have known, of the District’s two decisions to layoff, or retain Kucharski on layoff status, on the dates those decisions were communicated to the Association’s counsel, namely July 21, 2011 and September 22, 2011. These were the critical facts to the cause of action. Therefore, this claim is untimely and we will dismiss it.

4. The appropriate remedy is that the District cease and desist from refusing to implement the Arbitrator’s Award and its Clarification and post a notice of its wrongdoing.

We will order the District to cease and desist from refusing to implement the Arbitrator’s Award dated June 27, 2011, and its Clarification dated September 13, 2011, and make Kucharski whole for any loss or injury he suffered due to the District’s failure to promptly implement the Arbitration Award and its Clarification.

Posting a Notice

We will order the District to post notices of its violation. We order such a posting if we determine a party’s violation of the PECBA was:

“(1) ‘calculated or flagrant’; (2) part of a ‘continuing course of illegal conduct’; (3) committed by a significant number of the [violating party’s] personnel; (4) affected a significant number of bargaining unit members; (5) significantly (or potentially) impacted the designated bargaining representative’s functioning; or (6) involved a strike, lockout, or discharge.” *Amalgamated Transit Union, Division 757 v. TriCounty Metropolitan Transportation District of Oregon*, Case No. UP-016-11, 24 PECBR 412, 452 (2011), citing *Oregon School Employees Association, Chapter 35 v. Fern Ridge School District 28J*, Case No. C-19-82, 6 PECBR 5590, 5601, *AWOP*, 65 Or App 568, 671 P2d 1210 (1983), *rev den*, 296 Or 536, 678 P2d 738 (1984).

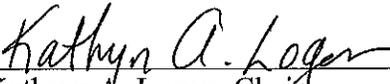
Not all of these criteria need be satisfied to warrant posting a notice. *Oregon Nurses Association v. Oregon Health & Science University*, Case No. UP-3-02, 19 PECBR 684, 685 (2002). In this case, the District’s actions were calculated and repetitive. The District’s action also affected the Association’s ability to function as a bargaining representative, because a refusal to implement an arbitrator’s award frustrates enforcement of the collective bargaining agreement. *Frashour*, 25 PECBR at 113-114.

ORDER

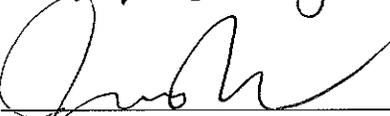
1. The City shall cease and desist from refusing to implement the Arbitrator’s Award dated June 27, 2011, and its Clarification dated September 13, 2011, and make Kucharski whole for any loss or injury he suffered due to the District’s failure to promptly implement the Arbitration Award and its Clarification.

2. Within 30 days of the date of the final Order, the City shall sign and post copies of the attached notice in prominent places in the District work places and administrative offices. The notice shall remain posted for at least 30 days. The District Superintendent shall sign the notice.

DATED this 26 day of June 2013.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.

NOTICE TO EMPLOYEES



POSTED BY ORDER OF THE STATE OF OREGON EMPLOYMENT RELATIONS BOARD

PURSUANT TO AN ORDER of the Employment Relations Board in Case No. UP-074-11, Brookings-Harbor Education Association/OEA v. Brookings-Harbor School District 17C, and in order to effectuate the policies of the Public Employee Collective Bargaining Act (PECBA), we hereby notify our employees that:

The Employment Relations Board has found that the Brookings-Harbor School District 17C violated the PECBA by refusing to implement an arbitration award in violation of ORS 243.672(1)(g). The violation occurred when the District refused to reinstate Stephen Kucharski and make him whole as ordered by the arbitrator.

To remedy this violation, the Employment Relations Board ordered the District to:

1. Cease and desist from violating ORS 243.672(1)(g).
2. Cease and desist from refusing to implement the Arbitrator's Award dated June 27, 2011, and its Clarification dated September 13, 2011, and make Mr. Kucharski whole for any loss or injury he suffered due to the District's failure to promptly implement the Arbitration Award.
3. Post this notice in prominent places in the District.

EMPLOYER

Dated _____, 2013

By _____
District Superintendent

Title

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted in each employer facility in which bargaining unit personnel are employed for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other materials. Any questions concerning this notice or compliance with its provisions may be directed to the Employment Relations Board, 528 Cottage Street N.E., Suite 400, Salem, Oregon, 97301-3807, phone 503-378-3807.