

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-27-08

(UNFAIR LABOR PRACTICE)

CHEMEKETA COMMUNITY COLLEGE)	
CLASSIFIED EMPLOYEES ASSOCIATION,)	
)	
Complainant,)	RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND ORDER
CHEMEKETA COMMUNITY COLLEGE,)	
)	
Respondent.)	
_____)	

On July 8, 2009, this Board heard oral argument on Respondent's objections to a Recommended Order issued by Administrative Law Judge (ALJ) B. Carlton Grew on April 9, 2009, after a hearing on November 10, 2008, in Salem, Oregon. The record closed on December 16, 2008, with the submission of the parties' post-hearing briefs.

Kevin Keaney, Attorney at Law, Portland, Oregon, represented Complainant.

Nancy J. Hungerford and Brian Hungerford, Attorneys at Law, The Hungerford Law Firm, Oregon City, Oregon, represented Respondent.

On August 26, 2008, the Chemeketa Community College Classified Employees Association (Association) filed this complaint against Chemeketa Community College (College). The Association alleges that the College violated ORS 243.672(1)(a) by telling Association officials that if the Association prevailed in a pending compensation grievance, the College would reclassify the affected individuals and reduce their salaries. The College filed a timely answer.

The issues in this case are:

1. Did the College executive dean tell the Association president that if the Association prevailed in its grievance regarding payment of a bilingual differential, the College would pay the differential but reduce the affected employees' salaries?
2. If so, did this conduct violate ORS 243.672(1)(a)?

RULINGS

The Association's complaint sought various remedies, including reimbursement of its filing fee and imposition of a civil penalty against the College. The Association's request for a civil penalty does not meet the pleading requirements of OAR 115-035-0075(2). That rule requires that a party "include a statement as to why a civil penalty is appropriate in the case" along with a statement of the facts supporting the civil penalty request. The Association's complaint does not include a statement explaining why such an award is justified and alleges no facts in support of its request. *Oregon AFSCME Council 75, Local #3943 v. State of Oregon, Department of Corrections, Santiam Correctional Institution*, Case No. UP-51-05, 22 PECBR 372, 403 (2008), citing *Lane County Peace Officers Association v. Lane County Sheriff's Office*, Case No. UP-32-02, 20 PECBR 444, 465 (2003). We will not consider the request for a civil penalty.

The answer includes an affirmative defense that the Association's complaint does not comply with OAR 115-035-0000. The College does not identify any specific defect of the complaint and offers no argument on this issue. Therefore, we do not consider it.

The remaining rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT

Parties and Key Individuals

1. The College is a public employer. The Association, a labor organization, represents a bargaining unit of approximately 420 classified public employees employed by the College.

2. Andrew Bone is the College's executive dean and ombudsman. Bone acts as the College president's "eyes and ears" regarding internal College affairs, including labor relations matters. Bone reports to the College president. Bone is a member of the College bargaining team and has a good working relationship with Association officers

and activists, including former Association president Mark Mallette. Bone frequently communicates with Association leaders on labor issues, including grievances.

3. Julie Huckestein is the College's chief administrative officer. Huckestein was a member of the College's bargaining team during negotiations for the current collective bargaining agreement. Huckestein participates in the day-to-day management of labor relations issues regarding the College and the Association. Huckestein reports to the College president.

4. Peggy Borjesson is the College human resources director. Borjesson's duties include oversight of employee benefits; employee recruitment, classification, and compensation; and interpretation, implementation, and management of the collective bargaining agreement between the College and the Association. Borjesson reports to Huckestein.

5. Nolan Cobb is the College's classification and compensation analyst. Cobb maintains the College band and grade salary schedule, which is explained below. Cobb is primarily responsible for reviewing all reclassification requests, whether made by an employee or a supervisor. Cobb reports to Borjesson.

6. Doug Tedrow is the current Association president. His first term began on July 1, 2008. Prior to becoming president, Tedrow had been a member of the Association's executive board for one year, and previously served as an Association "job area leader."

Collective Bargaining Agreement

7. The College and Association are parties to a collective bargaining agreement effective April 1, 2008 through June 30, 2010. The collective bargaining agreement contains a four-step grievance procedure; the fourth step in the procedure is "final and binding arbitration."

8. The parties' 2008-2010 collective bargaining agreement added the following provisions for payment of an \$80 per month "Bilingual Differential":

"[E]mployees whose job description indicates that bilingual skills are a required qualification shall receive a differential pay adjustment of eighty dollars (\$80) per month in addition to their regular salary."

9. Article 21 of the parties' collective bargaining agreement sets out a process for employees to request a review of their salary classification.¹ The process begins when an employee concludes that the "duties and responsibilities that he/she is performing have been substantially and permanently changed" such that their placement on the salary schedule should be reviewed. The College's executive dean makes the final decision in the process; the dean's decision is not subject to the general collective bargaining agreement dispute resolution process.

College Reclassification Policies

10. The 2008-2010 collective bargaining agreement does not address requests by College officials to reclassify bargaining unit positions. However, College policy allows a supervisor to initiate a review of an employee's position when the supervisor "believes that the employee's] duties have '*permanently and substantially*' changed." (Emphasis in original.) The process for a supervisor-initiated position review is almost identical to the salary classification review process in Article 21.

11. Supervisors have requested that bargaining unit positions be reclassified several times in recent years. The Association has never objected to the process of supervisor-initiated classification reviews.

College Salary Schedule: Band and Grade System

12. In order to achieve a comprehensive and equitable salary system, the College uses a band and grade method of placing positions on the salary schedule. The College has used this system for more than 20 years.

13. The College salary schedule has three bands: A, B, and C. Each position is placed on a band on the basis of the decision-making authority the position involves. Employees in positions on band A have little independent decision-making authority and receive most of their directions from a supervisor. Employees in positions on band B make some operational decisions and have some degree of independent decision-making authority. Employees in positions on band C have more discretionary authority and may coordinate the duties of other positions.

¹The collective bargaining agreement states: "Each position shall be assigned a classification on the basis of its authorities, responsibilities, and duties. The College shall maintain written job and classification descriptions for each position."

14. Positions are also assigned a grade of one through four. A position's grade depends on the number and complexity of the duties required by the position, the consequences of errors, the amount of technical or complex knowledge required for the position, and other factors.

15. The band, grade, and salary steps for each bargaining unit position are listed in appendices to the collective bargaining agreement.

16. The College is strongly committed to the band and grade system. College officials believe that in order for the band and grade method to achieve its goals, positions in the same band must have similar levels of responsibility, and positions in the same grade must have similar levels of complexity and the other qualities described above. Cobb believes an essential part of his job is to maintain equity in the band and grade system in order to avoid conflict and misunderstanding among employees.

17. In 2005, the College hired a private consultant, Bruce Lawson, to review its band and grade system. Lawson recommended, and the College implemented, a reduction in the number of classification titles assigned to the bands and grades.

18. The parties have never bargained over placement of a position in the band and grade system. The College has occasionally created new positions and placed them in bands and grades, and has reclassified existing positions and moved them to different bands and grades. Prior to the events at issue here, the Association never demanded to bargain over or objected to the College's placement of any position on a particular band or grade.

ASL Interpreters

19. The College employs three individuals as American Sign Language (ASL) interpreters. Their primary duty is to interpret for deaf and hearing-impaired College students, faculty, and staff. They are members of the classified bargaining unit, and are placed on band B and grade three of the salary schedule. The College considers ASL interpreters to be "stand alone," unique positions because of the specialized technical expertise required to perform ASL communication and interpretation.

20. On April 28, shortly after the parties completed bargaining the current collective bargaining agreement, the parties discussed whether the new bilingual differential would apply to the ASL interpreter positions. At an April 20, 2008 contract management meeting, Association attorney Kevin Keaney told College officials that he did not think that ASL interpreters qualified for the differential.

Association Grievance

21. On May 5, 2008, the Association filed a grievance on behalf of the three ASL interpreters. The grievance alleged that the College violated Article 32.3 by failing to pay them the bilingual differential.

22. On May 19, 2008, Borjesson and Huckestein denied the Association's grievance, stating in part:

"It is understood that the language in this article is not as clear and specific as it needs to be. The bargained intent of the Bilingual Differential was to compensate those employees whose jobs require additional skills beyond the scope of the job skills necessary to perform their basic job duties. In the case of ASL Interpreters, ASL is an integral basic requirement for that classification as stated in the working title of the job. The position was reviewed and classified, and compensation has been set based upon those job responsibilities and duties. ASL Interpreters are not eligible for additional compensation in the form of a Bilingual Differential.

"The specifics of implementation were discussed at the April 20, 2008 contract management meeting. A copy of the handout used for management contract training was given to Kevin Keaney and was discussed. Also discussed was how article 32 would be implemented. Jim Eustrom stated that we had already received questions about the ASL interpreters and that the intent of the differential was to compensate for skills outside their basic job duties. ASL is required to interpret and this skill was used to determine appropriate band/grade and compensation. Jim stated that the differential is 'extra' beyond the job duties, so ASL interpreters would not qualify for the differential. There was discussion by the group and Kevin Keany [*sic*] stated and agreed at that time that the bilingual differential was not intended to be for ASL interpreters since compensation was already integrated into their classification and pay schedule."²

²We will not determine whether the College or Association would have prevailed on the grievance. Based on the plain language of the collective bargaining agreement and the College's actions, we conclude that College officials reasonably believed there was a substantial risk that the College would lose the grievance if it proceeded to arbitration.

23. On May 21, 2008, the parties agreed to place the grievance in abeyance until a scheduled June 18 meeting. They planned to seek additional information about the subject in the interim.

24. On May 28, 2008, Borjesson e-mailed consultant Lawson, seeking Lawson's position on whether ASL interpreters should receive the bilingual differential. Lawson replied,

"Your interpretation is the same as ours. If the skill is part of the basic class (and obviously ASL Interpretation would require ASL skill,) [sic] the market value or salary grade of the class factors that in. A premium would only apply if the skill was not a basic requirement for the job. That is how every other organization that we work with handles this."

25. On June 10, 2008, Keaney e-mailed College chief administrative officer Huckestein to ask that the College advance the grievance to the Step 3 hearing. On June 11, Huckestein agreed to move the matter to Step 3. On June 16, the Association formally submitted its Step 3 appeal.

26. On July 11, 2008, College chief financial officer Craig Smith held the Step 3 grievance hearing. At the hearing, the parties discussed the relationship between the bilingual differential and the ASL position's band and grade. The parties ended the hearing with the understanding that College officials would discuss the issue with College classification and compensation analyst Cobb, and then the parties would meet again.

27. On July 14, 2008, Huckestein e-mailed Cobb, stating:

"Please research the ASL interpreter position and determine if they would remain in the B-3 band/grade if the required skill were to be removed from the description."

Cobb understood the "required skill" to be the use of sign language.

28. On July 22, 2008, Cobb responded to Huckestein by e-mail. Cobb explained that the ASL interpreter position should be placed at band B, grade 2 of the salary schedule instead of at band B, grade 3 where it was currently placed because the position did not require the "same grade/level of decision making expected of a [grade 3 position]." Cobb believed that the position should be classified as B-2 if the technical expertise of interpreting was excluded from consideration in the band/grade formula.

29. On the morning of August 12, 2008, Keaney e-mailed Huckestein asking for the status of the College's response. Huckestein replied the same day, stating that she

would get back to him and asked whether the Association wanted to meet with Smith again before Smith made his decision regarding the grievance.

30. After receiving Keaney's e-mail, Huckestein e-mailed Cobb asking how his research on the ASL interpreters was going. Later that day, Cobb replied that the positions had been designated as B-3 before the most recent classification study, but that "when I look at only the duties of the positions, putting them at B3 classification would be a stretch." Cobb also explained that interpreting duties were "decisions and expectations" for positions placed in bands 1 and 2.

31. Huckestein believed that the Association leadership did not understand that if it prevailed on the grievance, the College would have to reclassify the ASL positions as B2 and thereby reduce the ASL interpreters' salaries. Huckestein and Bone decided that Bone should tell Association president Tedrow about this problem, because Bone had a good working relationship with Tedrow.

32. On August 12, College executive dean Bone talked with Tedrow about the grievance. Bone explained the College's position concerning the possible effects of the grievance, and Bone and Tedrow agreed that the College would wait to issue a Step 3 decision until the Association asked him to do so.

33. The conversation between Bone and Tedrow was professional, and Tedrow did not find Bone to be threatening, intimidating, or angry.

34. After their conversation, Bone sent Tedrow an e-mail which stated in part,

"This is to confirm our conversation regarding the bilingual differential grievance. Before the college issues a final decision on the appeal of this grievance, we agreed that it might be helpful to look at *the unintended consequence of a final decision.*

"If the final decision was in favor of the association, it would mean that the sign language interpreters would be paid for their bilingual duties as part of the differential. *This would trigger a removal of those functions from the 'essential functions' of their job description.* A review of their job descriptions *without these essential functions indicates that they would drop a band and grade. They would go from a B-3 to a B-2.*

"You and I agreed that the association may want to consider these *unintended consequences* of a decision. *Once a decision is submitted, we will not be in a position to revisit the issue.*

“I am working with Craig on the decision, and I will wait to hear back from you before issuing the decision.” (Emphasis added.)³

35. One ASL interpreter would be unaffected by any reclassification because her band and grade status depended in part upon administrative or supervisory work she also performed.⁴

36. On August 13, 2008, Keaney sent Bone an e-mail regarding Bone’s meeting with Tedrow. Keaney stated that the College had no authority under the collective bargaining agreement to change the ASL interpreter’s band or grade as proposed, asked that the College cite any authority permitting it to make the changes, and described the College position as an “abuse of the grievance process.” Keaney also said that Tedrow would contact Bone later in the week.

37. On August 15, 2008, Tedrow e-mailed Bone to explain that the Association executive board would discuss the grievance at its September 15 meeting. Tedrow stated that he would give Bone the Association’s response after that meeting.

38. The Association executive board decided not to pursue the grievance to the next level because of the negative consequences to the ASL interpreters described by Bone and other College representatives.

CONCLUSIONS OF LAW

I. This Board has jurisdiction over the parties and subject matter of this dispute.

³The College contends that Bone merely informed Tedrow of the possibility of a reclassification over which Bone had no control because of the College’s division of responsibilities. We conclude that Bone, as a representative of the College, told Tedrow, as representative of the Association, that the College would drop ASL interpreters a band and grade if the Association won the grievance.

⁴Although the College had reclassified employees downward in the past, it “red-lined” their salaries so that their compensation was not reduced. There is no evidence that the College ever told the Association that the ASL interpreters would be “red-lined” if the ASL positions were reclassified. Indeed, the apparent assumption behind both the College’s threat of reclassification and the Association’s response (to drop the grievance) was that if the Association prevailed, the College would reduce ASL interpreters’ salaries.

2. The College violated ORS 243.672(1)(a) when the College's executive dean told the Association president that if the Association prevailed in its grievance regarding payment of a bilingual differential, the College would reduce the affected employees' salaries.

ORS 243.672(1)(a) makes it an unfair labor practice for a public employer to "[i]nterfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662." The statute creates two violations. An employer violates the statute if it: (1) takes action "because of" employees' exercise of Public Employment Collective Bargaining Act (PECBA)-protected rights or, (2) takes action that interferes with employees "in * * * the exercise of" protected rights. *Oregon AFSCME Council 75, Local 3742 v. Umatilla County*, Case No. UP-18-03, 20 PECBR 733 (2004). When an employer allegedly violates the statute by making coercive or threatening statements and there is no accompanying adverse action, we generally analyze the violation under the "in the exercise of" prong of ORS 243.672(1)(a). *Dallas Police Employees Association v. City of Dallas*, Case No. UP-33-08, 23 PECBR 365, 376 (2009); *Lane County Public Works Association, Local 626 v. Lane County*, Case No. UP-15-03, 20 PECBR 596, 604 (2004); *Oregon Public Employees Union and Termine v. Malheur County*, Case No. UP-47-87, 10 PECBR 514, 521 (1988).

To determine whether an employer violated the "in the exercise" portion of subsection (1)(a), we examine the effects of the employer's actions.⁵ The motive for the employer's conduct is irrelevant, and a complainant need not prove any actual interference with employees' protected activity. Instead, we examine the natural and probable effect of the employer's actions. If the employer's conduct, when viewed objectively, would deter employees from engaging in protected activity, we conclude that the employer violated subsection (1)(a). *Teamsters Local 206 v. City of Coquille*, Case No. UP-66-03, 20 PECBR 767, 776 (2004); *Milwaukie Police Employees Association v. City of Milwaukie*, Case No. UP-63-05, 22 PECBR 168, 186 (2007), *AWOP*, 229 Or App 96, 211 P3d 381(2009) (citing *Portland Association of Teachers and Poole v. Multnomah County School District No. 1*, 171 Or App 616, 624, 16 P3d 1189 (2000)). However, an employer does not violate subsection (1)(a) if it announces its intent to exercise lawful options. *ATU v. Rogue River Valley Transit District*, Case No. UP-80-95, 16 PECBR 559, 590, *recons*, 16 PECBR 707 (1996); *Oregon Public Employees Union v. Jefferson County*, Case No.

⁵A violation of the "in the exercise" prong of subsection (1)(a) may be either derivative or independent. An employer that violates the "because of" portion of subsection (1)(a) also violates the "in the exercise" part of the statute. We do not consider whether the College's conduct violated the "because of" portion of subsection (1)(a), so we do not consider any derivative violation. We consider only whether the College's actions independently violated the "in the exercise" prong of subsection (1)(a).

UP-55-98, 18 PECBR 109, 126, *recons*, 18 PECBR 199 (1999); *Lane County Public Works Association, Local 626 v. Lane County*, 20 PECBR 596, 605.

Here, the Association engaged in PECBA-protected activity when it filed a grievance concerning the ASL interpreters' entitlement to a newly-negotiated bilingual differential. *Grants Pass Association of Classified Employees/OEA/NEA and Bullington v. Grants Pass School District No. 7*, Case No. UP-5-07, 22 PECBR 806, 840-41 (2008); *Central Education Association and Vilches v. Central School District 13J*, Case No. UP-74-95, 17 PECBR 54 (1996), *order modified on recons*, 17 PECBR 93 (1997), *aff'd*, 155 Or App 92, 962 P2d 763 (1998); *Portland Association of Teachers and Bailey v. Multnomah County School District #1*, Case No. C-68-84, 9 PECBR 8635, 8651 (1986). During discussions about the grievance, the College executive dean told the Association president that if the Association won the grievance, the College would change the ASL interpreters' job descriptions, place them on a lower band and grade on the salary schedule, and reduce their salaries. The natural and probable effect of the executive dean's statements would be to discourage bargaining unit members from filing or pursuing grievances. Bargaining unit members would understandably be hesitant to do so, fearing that the College might reduce their salaries if they won their grievances.

The College, however, contends that it had both the right and the obligation to reclassify the ASL interpreters under its salary band and grade system. According to the College, it is entitled to reclassify employees at will. In addition, the College contends that if the Association prevailed in its grievance and obtained the bilingual differential for the ASL interpreters, such reclassification would be needed to maintain the integrity of its salary band and grade system. The College argues that Bone's statements "merely communicat[ed] a likely response that it was legally entitled to take in a non-threatening manner * * *." (Respondent's Brief at 11.) We disagree.

The College's threat to reduce ASL interpreters' salary was not an action the College was "legally entitled to take." The parties' 2008-2010 collective bargaining agreement specifies the salary for ASL interpreters; if the College were to reduce their salaries, it would violate the terms of this agreement. Nor was the College's threatened action a valid reclassification under the terms of either the collective bargaining agreement or established College policy. Article 21 of the collective bargaining agreement specifies the process an *employee* utilizes to initiate a reclassification of the employee's position, if the employee believes his or her duties have changed. The contract provision does not permit reclassification here because no employee requested it and because there was no change in duties.

College policy and past practice allows a supervisor to request reclassification of an employee if the employee's actual duties change. If the reclassification resulted in lower salaries, the College "red-lined" employees' salaries. These practices and policies do not permit a reclassification here because there was no change in the ASL interpreters' actual duties. Instead, the College proposed to eliminate essential duties from the ASL interpreter job descriptions even though the interpreters would continue to perform these duties. The College then proposed to put the interpreters on a lower band and grade level appropriate for their new job description and thereby reduce their salaries. In addition, Bone's communications to Tedrow indicate that the College did not plan to "red-line" the ASL interpreters' salaries.

We conclude that the College's warning of salary reductions through a putative reclassification was a threat to implement the College's interpretation of the collective bargaining agreement even if an arbitrator ruled against the College. By this means, the College could repair its error in agreeing to language in the collective bargaining agreement which could be interpreted to pay ASL interpreters more than the College believed was appropriate under its band and grade analysis. The College chose this option rather than pursue its defenses to the Association's interpretation through the grievance process, accept the consequences of its bargaining error, or repair its error through additional bargaining. In choosing this option, the College was not asserting an independent right to reclassify employees based on an equitable, objective process, but the right to manipulate its band and grade system to erase an award of increased compensation obtained through the grievance process.

The College's threat to reduce employees' salaries was not a reclassification it was entitled to make under the collective bargaining agreement or established College policy. The College offers no other rationale to support its actions. The College has provided no evidence of an existing policy which would require or permit the threatened reduction in the ASL interpreters' salaries. The College's warning of "unintended consequences" was nothing more than a threat to arbitrarily reduce employees' salaries if the Association won their grievance. The threat of reduced salary would naturally and probably deter employees from exercising their PECBA-protected rights to file and pursue grievances.

The College argues that its conduct was similar to conduct held lawful by this Board in *Lane County* and *Jefferson County*. In *Lane County*, bargaining unit employees threatened to protest the employer's use of volunteers by refusing to work with them. A manager e-mailed the union president to explain that although employees were free to grieve actions to which they objected, individuals who refused to perform assigned work risked disciplinary action for insubordination. We concluded that the manager's statements were a correct statement of employees' obligation to "work now, grieve later,"

and held that the manager's statements did not violate subsection (1)(a). 20 PECBR at 604-05. In *Jefferson County*, managers told employees that the employer intended to exercise its legal right to hire replacement workers if the employees went on strike. We held that the managers' statements accurately described the employer's legal rights and did not violate subsection (1)(a). 18 PECBR at 116-17.

The circumstances here are quite different because the College was not entitled to take the actions it threatened. Bone told Tedrow that the College would reduce the ASL interpreters' salaries if they prevailed in their grievance. The salary reductions would be contrary to the terms of the collective bargaining agreement, and would be achieved through the College's use of a new procedure which did not comply with the reclassification procedures in the parties' agreement or the College policies. The new procedure would eliminate any benefits that the Association would achieve if it prevailed in its grievance on behalf of the ASL interpreters. The College's actions here were not the exercise of its lawful rights, and the reasoning in *Lane County* and *Jefferson County* does not protect the College's conduct.

We have repeatedly held that a public employer violates the "in the exercise" prong of subsection (1)(a) if it threatens bargaining unit members with adverse action if they exercise their PECBA-protected rights to pursue a grievance. In *Josephine County Education Association v. Josephine County School District*, Case No. UP-94-85, 9 PECBR 8724, 8729 (1986), we concluded that a principal violated subsection (1)(a) when he told teachers at a faculty meeting that "positive aspects" of the relationship between teachers and administrators would suffer if the union filed a grievance. In *Sandy Education Association and Davey v. Sandy Union High School District No. 2*, Case No. UP-42-87, 10 PECBR 389, 400 (1988), we held that a principal violated subsection (1)(a) when he suggested to a teacher that she withdraw her grievance and also said that she was one of four employees subject to layoff, impliedly threatening termination if the teacher did not withdraw her grievance. In *Oregon AFSCME Council 75, Local 3742 v. Umatilla County*, Case No. UP-02-08, 23 PECBR 108, 125 (2009), we concluded that a supervisor violated subsection (1)(a) when he threatened to take away employees' assigned duties and compensation for these duties if the union won a grievance. In each of these cases, this Board determined that the employer's conduct was unlawful because the natural and probable result was to dissuade employees from exercising their PECBA rights to use the dispute resolution processes in their collective bargaining agreement.

We reach the same result here. The natural and probable result of the College's threat to cut the grievants' salaries if they won their grievance was to interfere with and to restrain employees in their use of the grievance procedure. Such a threat would deter a reasonable employee and labor organization from filing and pursuing grievances. That

was, in fact, the actual result of the College's actions. We conclude that the College violated ORS 243.672(1)(a).

Remedy

We will order the College to cease and desist from threatening employees with a salary reduction if they pursue the grievance concerning the ASL interpreters' entitlement to the bilingual differential. ORS 243.676(2)(b).

We also conclude it is appropriate to order other affirmative relief in order to restore the circumstances that existed before the employer's unlawful actions. ORS 243.676(2)(c); *Central Education Association and Vilches v. Central School District 13J*, Case No. UP-74-95, 17 PECBR 54, *order modified on recons*, 17 PECBR 93, 94, *motion to stay*, 17 PECBR 250 (1997), *aff'd* 155 Or App 92 (1998), *compliance order* 17 PECBR 792 (1998). Here, the Association withdrew its grievance on behalf of the ASL interpreters after the College threatened to reduce the interpreters' salaries if the Association prevailed. If the Association re-files its grievance now that the threat is eliminated, an arbitrator may find the grievance untimely or might limit a back pay award based on the re-filing date. To avoid such results, which would unfairly penalize the Association for the College's unlawful conduct, we will order the parties to give an initial filing date of May 5, 2008, to any Association grievance concerning payment of the bilingual differential to the ASL interpreters so long as the Association files the grievance within 30 days of the date of this Order.

The Association also asks that we order the College to reimburse the Association's filing fee. OAR 115-035-0075(3) permits us to order reimbursement of the filing fee to the prevailing party "in any case in which the complaint or answer is found to have been frivolous or filed in bad faith." A pleading is frivolous only if every argument asserted in it is one which a reasonable lawyer would know is not well-grounded in fact or supported by existing law or by a reasonable argument for extending the law. *Northwest Education Association/OEA/NEA v. Northwest Regional Education Service District*, Case No. UP-23-06, 22 PECBR 247, 258 (2008). The record in this case does not demonstrate that the College's answer was frivolous or filed in bad faith. The arguments asserted by the College were ones which had a basis in the facts and were supported by existing law or presented a reasonable argument for extending the law. We will not order reimbursement of the Association's filing fee.

Finally, the Association asks that we require the College to post a notice of its wrongdoing. We consider the following factors in deciding whether to require that an employer post a notice:

“This Board generally requires the posting of an official notice in situations in which the violation: (1) was calculated or flagrant; (2) was part of a continuing course of illegal conduct; (3) was perpetrated by a significant number of a Respondent’s personnel; (4) affected a significant portion of bargaining unit employees; (5) had a significant potential or actual impact on the functioning of the designated bargaining representative as the representative; or (6) involved a strike, lockout, or discharge.”

Grants Pass Association of Classified Employees/OEA/NEA and Bullington v. Grants Pass School District No. 7, Case No. UP-5-07, 22 PECBR 806, 845 (2008), quoting *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 (1984).

Not all of these factors must be met for us to order an employer to post a notice. *Laborers’ Local 483 v. City of Portland*, Case No. UP-15-05, 21 PECBR 891, 907-08 (2007) (citing *Oregon Nurses Association v. Oregon Health & Science University*, Case No. UP-3-02, 19 PECBR 684, 685 (2002), and *Blue Mountain Faculty Association/Oregon Education Association/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 673, 782 (2007)). We conclude that the College’s conduct, while unlawful, does not meet the standard for requiring the posting of a notice.

ORDER

1. The College shall cease and desist from violating ORS 243.672(1)(a).
2. The parties will give an initial filing date of May 5, 2008, to any Association grievance concerning the ASL interpreters’ entitlement to a bilingual differential that is filed within 30 days of this Order.

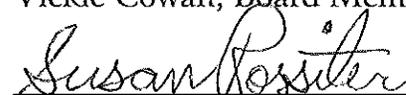
SIGNED AND ISSUED this 10 day of March, 2010.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.