

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-36-05

(UNFAIR LABOR PRACTICE)

PORTLAND STATE UNIVERSITY)
CHAPTER OF THE AMERICAN)
ASSOCIATION OF)
UNIVERSITY PROFESSORS,)

Complainant,)

v.)

PORTLAND STATE UNIVERSITY,)

Respondent.)

ORDER ON COMPLAINANT'S
PETITION FOR RECONSIDERATION

On March 19, 2008, this Board issued an Order concluding that Portland State University (University) violated ORS 243.672(1)(g) when it refused to process the Lisa Wilson grievances, and ORS 243.672(1)(e) when it refused to provide the Affirmative Action investigation report (AA report) on the Wilson matter to the Portland State University Chapter of the American Association of University Professors (Association). 22 PECBR 302. We also dismissed the Association's ORS 243.672(1)(e) refusal-to-bargain allegation and denied the Association's request for a civil penalty based on the University's refusal to process the grievances.¹

On April 2, 2008, the Association filed a petition for reconsideration. The University responded to the petition on April 22, 2008. Because this Board decided this case without a recommended order, we grant reconsideration. *Oregon School Employees Association v. Cove School District #15*, Case No. UP-39-06, 22 PECBR 298 (2008).

¹The Association does not seek reconsideration of that decision.

The Association contends that we erred in denying the Association's request for a civil penalty based on the University's refusal to provide information. We may, but are not required to, award a civil penalty if we find that "the party committing an unfair labor practice did so repetitively, knowing that the action taken was an unfair labor practice and took such action disregarding that knowledge; or that the action constituting an unfair practice was egregious." *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-54-04, 21 PECBR 206, 221 (2005); and ORS 243.676(4).² In its petition, the Association notes that it first requested a copy of the AA report on October 5, 2004, and that the University waited until January 25, 2005, to inform the Association it would not provide the report because of confidentiality concerns.³ The Association asserts that the University's conduct was egregious.

Egregious means "conspicuously bad" or "flagrant." *East County Bargaining Council v. David Douglas School District*, Case No. UP-84-86, 9 PECBR 9184, 9194 (1986), *supplemental order* 9 PECBR 9354 (1987). An employer's actions may be egregious if it disregards well-established statutory and case law, *id.*, or if its conduct is far removed from the standard of good practice under the Public Employees Collective Bargaining Act (PECBA). *Hood River Employees Local Union No. 2503-2/AFSCME Council 75/AFL-CIO v. Hood River County*, Case No. UP-92-94, 16 PECBR 433 (1996), *AWOP* 146 Or App 777, 932 P2d 1216 (1997). The University's actions in this case do not meet these standards.

Although the case law regarding the duty to provide information is admittedly well-settled, this case raised an issue which, at the time of the employer's actions, was not well-settled.

The December 2004 AA report, which the Association sought and the University refused to provide, was prepared after the University investigated the sexual harassment charges. The University's refusal to give the report to the Association was primarily based on guidance issued by the Equal Employment Opportunity Commission

²ORS 243.676(4) provides that this Board "may award a civil penalty to any person as a result of an unfair labor practice complaint hearing, in the aggregate amount of up to \$1,000 per case" if the person has done so repetitively, knowing that the action taken was an unfair labor practice and took the action disregarding this knowledge, or that the action was egregious. (Emphasis added.)

³The Association fails to mention that the University had not completed its investigation or prepared the AA report until mid-December 2004. Although the University's delay of more than a month in responding to the Association's request might constitute an unfair labor practice, it is not egregious and therefore is not a basis for a civil penalty

(EEOC) which counsels employers to attempt to keep confidential those records relating to harassment complaints. On January 25, 2005, the date the University refused to give the Association the AA report, we had not yet determined the effect of EEOC guidance on an employer's duty to provide information under the PECBA. Subsequent to the University's actions, we considered this issue in *Beaverton Police Association v. City of Beaverton*, Case No. UP-60-03, 20 PECBR 924 (2005). In that case, we concluded that the EEOC guidance concerning confidentiality of records in an harassment investigation did not excuse an employer from providing information to a labor organization it was otherwise required to disclose under the PECBA. 20 PECBR at 933. However, our decision in *Beaverton Police Association v. City of Beaverton* was issued on April 29, 2005, two months *after* the University refused to provide the AA report to the Association. Thus, there was no settled law regarding the effect of the EEOC guidance.

Under these circumstances, the University's actions did not demonstrate a disregard of well-established legal precedent and were not egregious. Accordingly, we deny the Association's request for a civil penalty.

ORDER

Reconsideration is granted. We adhere to our Order of March 19, 2008, as clarified herein.

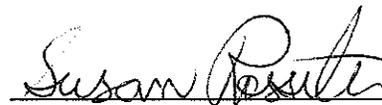
DATED this 12th day of May 2008.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.