STATE OF OREGON

EMPLOYMENT RELATIONS BOARD

AFSCME LOCAL 1995,	)	
	)	
Complainant,	)	Case No. UP-52-07
	)	
v.	)	
	)	CONSENT ORDER
MULTNOMAH EDUCATION SERVICE DISTRICT,	)	
	)	
	)	
Respondent.	)	

STATEMENT OF THE CASE

On or about December 12, 2007, Complainant, AFSCME Local 1995 (Union) filed an unfair labor practice complaint against the Multnomah Education Service District (the District) alleging violations of ORS 243.672(1)(a)(b)(c)(e) (f) and (g) based upon events related to an ongoing strike. The Complaint was amended on April 29, 2008.

The District denied the allegations and the matter was set for hearing. Prior to a hearing being held, the parties agreed to settle the case by entering into a consent order.

Following voluntary mediation held before Federal Judge John Acosta to resolve pending federal and state court strike litigation, the parties agreed to the entry of this Consent Order, subject to Board approval. They also agreed to waive all further hearing on the merits before the Board as well as the right to judicial review of the order.

SETTLEMENT AGREEMENT

In lieu of a hearing on the issues raised by the petition, the parties agree and stipulate to the entry of the facts and conclusions set forth below.

PRELIMINARY MATTERS

This consent order is between AFSCME Local 1995 and the Multnomah Education Service District.

The Union agrees to dismiss all Claims One through Five of its amended complaint.

STIPULATED FACTS

1. Complainant AFSCME Local 1995 ("AFSCME" or "Union") is a labor organization within the meaning of ORS 243.650(13).

2. Respondent Multnomah Education Service District ("MESD" or "District") is a public employer within the meaning of ORS 243.650(20).

3. AFSCME is the exclusive bargaining representative of a bargaining unit of full-time and part-time employees of the MESD. AFSCME's bargaining unit includes a wide variety of positions that provide classroom services, clerical services, technical services and other support for education programs. The most recent collective bargaining agreement between AFSCME and MESD was effective for the period May 15, 2006 through June 30, 2007.

4. AFSCME's spokesperson for bargaining was Issa Simpson, a staff person employed by AFSCME Council 75. The other members of the AFSCME bargaining team were MESD employees Kate Baker, Dave Cramblett, Melissa Phong, Martha Ward, Denise Wood, J.J. Hanna, and Nanette Cooper.

5. The MESD's spokesperson for bargaining was Bruce Zagar, an attorney

in private practice. The other members of the MESD bargaining team were Superintendent Ron Hitchcock, Chief Program Officer Barbara Jorgensen, Human Resources Manager Kelly Schwartz, and Board Member Jean Haliski.

6. On December 15, 2007, the parties signed a final tentative agreement that included language directed at settling the strike.

7. The strike settlement provided that striking members of the bargaining unit would be returned to paid status on December 17, 2007 (subject to subsequent ratification of the contract) but that they would not return to work until their first regularly scheduled workday after January 1, 2008.

8. The tentative agreement was ratified by the AFSCME bargaining unit on December 27, 2007.

9. During the week of December 17, some MESD supervisors called formerly-striking employees back to work. The employees who were called did report to work, despite the language of the strike settlement agreement specifying that they would return after January 1.

10. On or about December 18, Issa Simpson and Kate Baker met with David Turner and Jane Ann Bailey about a variety of issues, including the MESD's decision to call employees back to work prematurely. Simpson insisted that striking employees who were called in to work during the week of December 17 should be paid double time for time worked because they were already entitled to full pay for the week without working.

11. In response to Simpson's request for double time pay, the District proposed that the parties sign a Memorandum of Understanding (MOU) under which non-striking employees would also be entitled to double time for hours work

during the week of December 17-21. Turner gave to Simpson a draft MOU that the Superintendent had already signed.

12. Simpson responded that she would submit the proposed MOU to a vote of the membership.

13. Sometime in early January 2008, the District sent an email to all AFSCME members who crossed the picket line to work during the strike. The email message announced that the District would pay them double time for hours worked during the week of December 17. The message claimed that the extra pay was a result of the District's belief in "equal treatment" of all bargaining unit members.

14. On or about January 14, 2008, HR Manager Kelly Schwartz sent an email to supervisors to let them know about the message that had been sent to non-striking employees. Schwartz announced that she had already changed the timesheets of the affected employees for the period 12/16/07 through 1/15/08 to ensure that they received the extra pay.

15. On or about January 18, AFSCME leaders submitted the District's proposed MOU to the membership for a vote. The membership voted against the MOU.

16. On or about January 31, 2008, the District issued January paychecks for the payroll period 12/16/07 through 1/15/08. In the January paychecks, striking employees who were called in to work during the week of December 17 were paid double time for their time worked, based on the request of the Union.

17. In the January paychecks, non-striking employees who worked during the week of December 17 were paid double time for their time worked, despite the Union's rejection of the MESD proposed MOU.

18 The MESD board ratified the tentative agreement at its regular meeting on March 18, 2008

STIPULATED CONCLUSIONS OF LAW

1. The Board has jurisdiction over these parties and this subject matter.

2 The District violated ORS 243 672(1)(a) when it paid non-striking workers double time for the week of December 17 despite the Union's rejection of the MESD-proposed MOU.

STIPULATED ORDER

1. The District shall sign and prominently post a copy of the attached notice in each location where AFSCME Local 1995 bargaining unit members work. The notice shall be posted within 5 days of the issuance of this order and will remain posted for 30 consecutive days.

2. The District shall distribute payment to all striking employees who are named on the list of employees for whom AFSCME paid insurance, plus those employees who had waived insurance, using December 14, 2007 as the cut-off date. The payment shall be a distribution of $75,000 divided among all eligible employees equally. The parties shall mutually agree upon the list or class of employees who shall receive payment.

3. The Union's claims one through five are dismissed.

FOR AFSCME LOCAL 1995:

Barbara J. Diamond, OSB #85039
Attorney for Complainant

Date: 12/18/08

FOR MESD:

Bruce A. Zagar, OSB #753975
Attorney for Respondent

Date: 12/18/08

This Consent Order is hereby approved and adopted.

DATED this 30th day of December, 2008.

Paul B. Gamson, Chair

Vickie Cowan, Board Member

Susan Rossiter, Board Member

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE STATE OF OREGON EMPLOYMENT RELATIONS BOARD

PURSUANT TO A STIPULATED ORDER of the Employment Relations Board in Case No. UP-52-07, *AFSCME Local 1995 v. Multnomah Education Service District,* and in order to effectuate the policies of the Public Employee Collective Bargaining Act, we hereby notify our employees that:

The Employment Relations Board has found that the following action on the part of the District violated the Public Employee Collective Bargaining Act (PECBA):

The District violated ORS 243.672(1)(a) when it paid non-striking workers double time for the week of December 17, 2007, despite the union's rejection of the MESD-proposed Memorandum of Understanding.

The Employment Relations Board has ordered the District to:

1 Post this notice in the locations listed in the attachments to this Notice.

2. Distribute payment to all striking employees who are named on a list of employees for whom AFSCME paid insurance, plus those employees who had waived insurance, using December 14, 2007, as the cutoff date. The payment shall be a distribution of $75,000.00 divided among all eligible employees equally. The union and the District will mutually agree upon the list or class of employees who shall receive payment.

The remainder of the union's charges were dismissed by the Board.

MULTNOMAH EDUCATION SERVICE DISTRICT

Dated _____, 2008

By _____
Employer Representative

_____

Title

Form ERB-18/Rev 12-95 Employer Compliance/Board Order

* * * * * * * *

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted 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 NE, Suite 400, Salem, Oregon 97301-3807, phone 378-3807.

ATTACHMENT TO NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

District-Operated Schools and Sites:

1. MESD
   11611 N.E. Ainsworth Circle
   Portland OR 97294

2. Alpha School
   876 N.E. 8th Street
   Grsham OR 97030

3. Arata Creek School
   2470 S.W Halsey Street
   Troutdale OR 97060

4. Cooperative Purchasing Warehouse
   Suite 500, Bldg B
   15009 N.E. Airport Way
   Portland OR 97230

5. Donald E. Long School
   1401 N.E. 68th Street
   Portland OR 97213

6. Helensview School
   8678 N.E. Sumner Street
   Portland OR 97220

7. Long Term Care (Wynne Watts) / Kerr Center
   930 N E 162nd
   Portland OR 97230

8. Multnomah Early Childhood Program
   14030 N.E. Sacramento Street
   Portland OR 97230

9. Multnomah Early Childhood Program
   1715 S.E. 32nd Place
   Portland OR 97214

10. Pathways Community School
    611 E. Powell
    Gresham OR 97030

Other Non-MESD Sites:

1. Barlow High School
   5105 SE 302nd Avenue
   Gresham OR 97080

2 Centennial High School
   3505 SE 182nd
   Gresham OR 97030

3. Cleveland High School
   3400 SE 26th Avenue
   Portland OR 97202

4. David Douglas High School
   1500 SE 130th Avenue
   Portland OR 97233

5 Davis Elementary
19501 NE Davis Street
Portland OR 97230

6. Dexter McCarty
1400 SE 5th Street
Gresham OR 97080

7. Gresham High School
1200 N Main Avenue
Gresham OR 97030

8. Harold Oliver Intermediate
15840 SE Taylor Street
Portland OR 97233

9. Kelly Creek Elementary
2400 SE Baker Way
Gresham OR 97080

10. Madison High School
2735 NE 82nd Avenue
Portland OR 97220

11. Reynolds Middle School
1200 NE 201st Avenue
Fairview OR 97024

12. Ventura Park Elementary
145 SE 117th Avenue
Portland OR 97216

13. Woodland Elementary
21607 NE Glisan Street
Fairview OR 97024

14. Doernbecher Children's Hospital
3181 Sam Jackson Park Road
Portland OR 97239

15. Legacy Emanuel Hospital
2801 N. Gantenbein Street
Portland OR 97227

16. AHS Benjamin Priestly
6841 N Interstate
Portland OR

17 AHS Carlton Court
5249 NE Killingsworth
Portland OR

18. AHS Charlotte Lewis
4919 NE 17th
Portland OR

19. AHS Dekum Court
2513 NE Saratoga
Portland OR

20. AHS Garlington
4514 SE Flavel
Portland OR

21. AHS Hughes
111 NE Falling
Portland OR

22 AHS Lexington Court
7858 SE 72nd Avenue
Portland OR

23. AHS Lutheran
4219 NE MLK Blvd.
Portland OR

24. AHS Maya Angelou
4010 N Borthwick
Portland OR

25. AHS McCormick
6930 N Kerby
Portland OR

26 AHS McKinley Burt
4919 NE 17th
Portland OR

27. AHS Richard Brown
605 NE Ivy
Portland OR

28. AHS Rosa Young
4206 NE Garfield
Portland OR

29. AHS Salvation Army
5335 N Williams
Portland OR

30. AHS Tina Clegg
1425 NE Dekum
Portland OR

31. Albina Early Head Start
Portland OR

32. Beach
1710 N Humbolt
Portland OR 97217

33. Boise-Eliot
620 N Fremont
Portland OR 97227

34 Bridlemile Elementary
4300 SW 47th Avenue
Portland OR 97221

35. Stephenson Elementary
2627 SW Stephenson Street
Portland OR 97219

36. Troutdale Elementary
648 SE Harlow Street
Troutdale OR 97060

37 Woodmere Elementary
7900 SE Duke
Portland OR 97206

38. Woodstock Elementary
5601 SE 50th Avenue
Portland OR 97206

39. Thompson
14030 NE Sacramento
Portland OR 97230

40. David Douglas DD Preschool
1400 SE 135th Avenue
Portland OR 97233

41. Portland Christian
11845 SE Market Street
Portland OR 97216

42. Greater Christian Academy
17800 SE Main Street
Portland OR 97233

43. Kindercare
2180 NE Division Street
Gresham OR 97030

44 Children's Learning Center
2793 E Powell Blvd.
Gresham OR 97080

45. Helen Gordon @ PSU
1609 SW 12th Avenue
Portland OR 97201

46. Vermont Hills Family Life Ctr.
3710 SW US Veterans Hosp Rd
Portland OR 97239

47. City Kids & Portland Bldg.
1120 SW 5th
Portland OR 97204

48 St Clares
1809 SW Freeman Street
Portland OR 97219

49. Neveh Shalom
2200 SW Peaceful Lane
Portland OR 97239

50. Fruit & Flower
2378 NW Irving
Portland OR 97210

51. Friendly House Preschool
2617 SW Savier Street
Portland OR 97210

52. Hilltop Christian School
5700 SW Dosch Road
Portland OR 97239

53 Hillside
653 NW Culpepper Terrace
Portland OR 97210

54 Community Arts
368 S State Street
Lake Oswego OR 97034

55. St. Vincent YMCA Preschool
9205 SW Barnes Road
Portland OR 97225

56. Kindercare
16915 SE Naegeli
Portland OR 97236

57. Children's World
840 NE 181st Avenue
Portland OR 97230

58. Learning Tree
4400 SW 11th Street
Gresham OR 97080

59. Gym Stars
21739 SE Stark
Gresham OR 97030

60. Lads & Lassies
3409 SE 164th Avenue
Portland OR 97236

61. Golden Montessori
166 SW Wallula
Gresham OR 97030

62. Little Panda Preschool
4334 NE 80th Avenue
Portland OR 97218

63. Joyful Noise Preschool
39400 Pioneer Road
Sandy OR 97055

64. Belmont Academy
3841 SE Belmont Street
Portland OR 97214

65. Wee Works
3918 NE Hancock Street
Portland OR 97212

66. Wee Works Annex
3930 NE Hancock Street
Portland OR 97212

67 Woodlawn Nursing
908 NE Columbia Blvd.
Portland OR 97211

68 Peninsula Childcare
8125 N Emerald Avenue
Portland OR 97217

69. Neighborhood House
7780 SW Capitol Hwy.
Portland OR 97219

70. Barnes-Miller Child Dev Ctr
7345 SW Barnes
Portland OR 97225

71. Montessori Childsview School
4729 SE Taylor Ferry Road
Portland OR 97219

72. West Hills Early Childhood Ctr.
7339 SW Capitol Hwy
Portland OR 97219

73. Montessori-Alameda
3515 NE 14th
Portland OR 97219

74. Montessori-Providence
4911 NE Couch Street
Portland OR 97213