EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-67-03

(UNFAIR LABOR PRACTICE)

CHERYL MORGAN-TRAN, Complainant, v. AFSCME LOCAL 88 AND MULTNOMAH COUNTY, Respondent.	)	RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This Board heard oral argument on April 27, 2005 on Complainant's objections to a proposed order issued by Administrative Law Judge (ALJ) B. Carlton Grew on February 11, 2005, following a hearing on October 18, 2004, in Portland, Oregon. The record closed on December 1, 2004, with the receipt of the parties' post-hearing briefs.

Quan Tran, a non-attorney, 19426 N.E. Mattson Road, Brush Prairie, Washington 98606, represented Cheryl Morgan-Tran.

Allison Hassler, Legal Counsel, AFSCME Council 75, 688 Charnelton Street, Eugene, Oregon 97401, represented Respondent AFSCME.

Katie A. Lane, Assistant County Counsel, Multnomah County, 501 S.E. Hawthorne Boulevard, Suite 500, Portland, Oregon 97214, represented Respondent County at hearing. The County waived appearance at oral argument.

On December 3, 2003, Cheryl Morgan-Tran filed this unfair labor practice complaint, alleging that Oregon AFSCME Local 88 (Union) violated its duty of fair

representation under ORS 243.672(2)(a) by failing to process her grievance or negotiate a settlement of the grievance. Morgan-Tran also alleged that the Multnomah County (County) Department of County Human Services violated ORS 243.672(1)(g) and a collective bargaining agreement (CBA) by laying her off from a program development specialist (PDS) position and placing her in a case manager 2 (CM2) position instead of a case manager senior (CM Sr) position. Respondents filed timely answers, admitting and denying certain allegations and raising affirmative defenses.

The issues are: (1) Did the Union's representation of Morgan-Tran regarding her removal from a PDS position, and placement in a CM2 position, violate the Union's ORS 243.672(2)(a) duty of fair representation? (2) Did the County's removal of Morgan-Tran from a PDS position, and placement in a CM2 position, violate the CBA and ORS 243.672(1)(g)?

We will dismiss the complaint against the Union and, accordingly, will not consider the complaint against the County.

RULINGS

Prehearing letter—Complainant's Exhibits: Complainant failed to provide copies of her exhibits to Respondents prior to hearing. At hearing, the Union objected to introduction of Complainant's exhibits.

On March 12, 2004, the ALJ sent the parties a prehearing letter in the standard form used by Employment Relations Board ALJs. It states:

> "• By seven days prior to the hearing date, mail or deliver to each other all exhibits and exhibit lists regarding your cases-in-chief (exhibits offered at hearing that were not mailed or delivered seven days before hearing will be received only upon a showing of good cause under OAR 115-10-068(4)) * * *;
>
> "• Before the hearing, review the exhibits the other party intends to offer and be prepared to state in the prehearing conference what exhibits you do not object to;

"• Provide two copies of your exhibit list and two pre-marked copies of exhibits to me at the outset of the hearing;

"• Between yourselves, identify witnesses, arrange a schedule for witnesses to appear at hearing, and discuss any motion to exclude witnesses;

"* * * * *

"A party's failure to participate in a pre-hearing conference or comply with these directives may result in sanctions such as dismissal of a complaint, a recommendation that any eventual representation cost order be increased or decreased, and a recommendation that a motion for reimbursement of filing fees not be granted."

115-10-068 provides:

"(4) A party that fails to comply with prehearing requirements regarding an exhibit, witness or issue may be denied the right to offer such evidence or make argument regarding such matter at the hearing."

This Board has stated that the purposes of OAR 115-10-068 are to "streamline proceedings and eliminate undue surprise" and "facilitate discussion toward possible settlement of the issues." *Cascade Bargaining Council v. Crook County School District,* Case No. UP-83-94, 16 PECBR 231, 233 and n. 4 (1995). Also, "in reviewing representation cost awards, we shall consider a party's failure to comply in a timely manner with an ALJ's prehearing directives." *Crook County School District, supra,* 16 PECBR at 233, n. 4. The ALJ has the discretion to exclude evidence on the basis of noncompliance with a prehearing notice. *Oregon Public Employees Union, SEIU, Local 503 v. State of Oregon, Oregon State Hospital,* Case No. UC-37-96, 17 PECBR 434 (1997).

Morgan-Tran's explanation for not providing the documents to the other parties prior to hearing was that she and her representative, her husband, are laypersons who were ignorant of Board procedures. Most of the exhibits, C-1 through C-19, were attached to her original complaint. The Union and County made no showing of surprise or unfair prejudice as to the exhibits attached to the complaint. Under the circumstances, the ALJ acted properly within his discretion in ruling that he would admit

the exhibits that were supplied with the complaint, C-1 through C-19, and exclude the rest, C-20 through C-27.

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

FINDINGS OF FACT

1. The County is a public employer. The Union is a labor organization and the exclusive representative of a bargaining unit of County employees, including Morgan-Tran.

2. The County and Union were signatories to a CBA in effect from July 1, 2001 through June 30, 2004. The CBA provided that a unit employee's seniority was calculated by time in the job classification.

3. The CBA included the following provision regarding reassignment or bumping of employees during a layoff:

> "* * * Employees holding positions that perform functions to be discontinued will be subject to the following in order of seniority:
>
> "1. Reassignment to a position in the same classification, or if the employee does not have enough seniority, then
>
> "2. Reassignment to a position in a classification previously held at the employee's current level, or if the employee does not have enough seniority, then
>
> "3. Demotion to a position in a classification previously held, or if the employee does not have enough seniority, then
>
> "4. Change of status between full-time and part-time, or if the employee does not have enough seniority, then
>
> "5. Layoff."

4. The CBA also provided that employees who were to be laid off could bump the least senior employee in the affected classification in the department.

5. As of the date of hearing, Morgan-Tran had worked for the County for 17 years. She worked as a case manager 3 (CM3) for eight years, and then, in 2000, moved to a PDS position in the Department of County Human Services.

6. After Morgan-Tran left her CM3 position, but before 2003, the CM3 position was reclassified, renamed CM Sr, and given a pay increase. After the changes, the top step of the CM Sr position was $23.34 per hour. The top step of the PDS position paid $22.46, or 88 cents less per hour than the CM Sr position.

7. In the spring of 2003, the County experienced a budget crisis. It ultimately laid off 500 employees out of a work force of approximately 3000. In Morgan-Tran's department, 200 employees were laid off out of a department employing approximately 700 people.

8. In May 2003, Morgan-Tran learned that a position in her classification was to be eliminated. As the least senior PDS, Morgan-Tran could only bump into a position in a classification she had previously held. Because the CM Sr position now paid more than her current position, Morgan-Tran could not bump into that position despite her eight years of seniority as a CM3. Accordingly, the County planned to demote her to CM2, which would impose a significant pay cut. She also had less seniority in that position, making her more vulnerable to a future layoff.

9. If the CM3 position Morgan-Tran had held prior to her PDS position had not been reclassified as a CM Sr with an increase in pay, Morgan-Tran would have been able to bump into that position.

10. Morgan-Tran contacted the Union for assistance. On May 27, 2003, she exchanged several e-mails with Jim Foster, a County employee and steward for the Aging and Disabilities Division of the Department of County Human Services, as well as vice president and chief steward of the Union. On May 28, Morgan-Tran e-mailed Foster stating that she wanted to file a grievance.

11. Foster was initially supportive of a grievance for Morgan-Tran. However, after discussing the matter with AFSCME Staff Representative Gabriela Downey, and rereading the relevant contract language, Foster decided that the County's plans were consistent with the terms of the CBA. Foster responded to Morgan-Tran's May 28 e-mail on the same day, stating:

"Cheryl,

"Page 103 of the contract

"Article 21 III A 2 and 3 Specify the order of layoff.

"It calls for reassignment at current level and if not available, demotion. Since Case Manager 3 is now considered a promotion and not current level, the layoff procedure would be to demote to Case Manager 2.

"You still have 8 years seniority as a Case Manager 3. If PDS are recompensated at the same or higher than Case Manager 3 and you get recalled to PDS, you can then exercise it."

12. On May 29, Morgan-Tran got similar information via e-mail from the Department of County Human Services.

13. On May 30, Morgan-Tran was given her official notice of layoff, effective June 16. It provided that she was to be demoted to a CM2 position paying $21.37 per hour.

14. On June 4, Morgan-Tran hand-delivered a 1½ page handwritten letter to Downey and the Human Services office. The letter summarized her work history and layoff, and then stated the following:

"I want to file a grievance. My reason is that my employer failed to recognize seniority[1] in the lay off and bumping process, and that I have been refused seniority rights to bump back to a Case Manager, Senior."

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[1]Morgan-Tran has consistently characterized the issue in her proposed grievances as the loss of eight years of seniority. She argued strenuously to the Union and the ALJ that the CBA does not provide for the removal of such seniority. The actual issue raised by her complaints, and addressed by the Union, was the threshold question of whether she had a contractual right to move into a prior position with a higher salary once her position was eliminated, even if such a position was vacant. The seniority issue would be relevant only *after* if it were established that she had the right to move to a higher-paid, prior position pursuant to being bumped *and* could do so only by bumping another employee.

15. On June 9, Morgan-Tran wrote to Foster stating that she had "dropped off a grievance" at the Union office and Human Services, and asking if she needed to give a copy to her immediate supervisor. Foster responded the same day, stating that Downey had not mentioned any grievance to him, and asked if Morgan-Tran had listed the article violated and the remedy in the grievance document.

16. On June 10, Foster e-mailed Morgan-Tran stating that he had seen her "request to file a grievance today." Foster wrote, in part:

> "* * * As I read it, your complaint is that DCHS didn't allow you to exercise seniority in the Case Manager 3 classification.
>
> "Because you are currently in a classification that is paid lower than the case Manager 3 classification, the contract gives you no right to bump or exercise seniority in the Case Manger 3 classification. It is an unintended consequence of the pay compensation pay changes.
>
> "It is my opinion that you have a complaint but not a contract violation that is grieve able [*sic*]."

17. On June 11, Foster told Morgan-Tran that he would raise the issue at that evening's labor-management committee meeting.

18. Morgan-Tran and Foster met on June 12. After their meeting, Foster sent an e-mail to Union President Marla Rosenberger, with copies to Morgan-Tran and Downey. Foster wrote as follows:

> "* * * [Morgan-Tran] is unable to use 8 years seniority as a Case manager Sr because that Classification now earns more than her current PDS position.
>
> "This type of problem is coming out of the classification comp adjustments including Case Manager 1/PDT, Case Manager Sr/PDS, OA2/CMA, and Medical Worker/OA Sr.

"The solution used for Medical Workers was to declare them equal to an OA Sr effective 7/1/[0]3 (after the layoff). This results in their getting on the OA Sr recall list.

"I suggest we ask that employees that are laid off can get on the recall list for any classification they have worked in, including higher pay levels, unless they were demoted."

19 On June 16, the County rescinded the elimination of Morgan-Tran's position.

20. Meanwhile, Foster had been exploring options for Morgan-Tran, and on June 18 he sent her an e-mail inquiring about her current status. Morgan-Tran responded as follows:

> "I'm still here in community access. I have been relieved of most of my duties however. I'm sorry to be flakey but, I did some serious soul searching and I think it would be better for my health, (my ms is acting up currently) to accept a cm2 position. This is a very stressful job and I don't think an intake position would be much better. I would even be ok with going to DD. Sorry to do a complete turn around. I decided, after two days of back spasms and head aches that its' [*sic*] time to look out for myself. Thanks Jim for all your help. * * *"

Based on this e-mail, Foster believed that Morgan-Tran no longer wished him to pursue a CM Sr position for her.

21. On June 23, the County issued a new bumping notice to Morgan-Tran. It stated that a PDS position in her department was being eliminated, effective July 7, and that the person whose position was eliminated would bump Morgan-Tran out of her position. The letter stated that Morgan-Tran would be demoted to a CM2 position and receive $21.37 per hour, with a class seniority date of March 10, 1998. This bumping and demotion was completed.

22. On June 24, after learning that Morgan-Tran was being sent to "Mid" and would prefer being sent to "DD," Foster wrote her to ask if she was interested in a vacant position in protective service

23. In late June, AFSCME Staff Representative Downey left her job with AFSCME. She was replaced by Claude Piller.

24. In early July, Morgan-Tran met with Piller at a Union meeting and asked about the status of her grievance. Piller told her that he was unaware of any grievance filed by her. He suggested that she fill out a grievance form and send it to him.

25. Morgan-Tran gave a copy of a completed grievance form to Shelly Immel, another Union steward, and spoke with her about her situation. Immel delivered the form to Piller on July 22.

26. Piller and Foster reviewed Morgan-Tran's grievance in late July 2003. Piller and Foster decided that the grievance had no merit and should not be filed. They did not file the grievance.

27. On July 29, Immel and Foster exchanged e-mails about Morgan-Tran's situation. Foster wrote the following:

> "The grievance from Cheryl was for not being able to exercise her seniority as a CM Sr. I talked to Cheryl about this and declined to file it because it isn't a contract violation. Cheryl indicated that she agreed at a later date.
>
> "Local 88 has asked for the right to bump any position held that you weren't demoted out of if you don't have enough seniority in your current classification in the MOU. This was specifically to deal with issues like Cheryl's. I hope your e-mail doesn't confuse that I didn't file her grievance."

28. On July 30, Immel and Foster exchanged e-mails about Morgan-Tran. Immel expressed confusion about the issue. Foster replied as follows:

> "Shelly, Article 21, III, Layoff rules lists 5 steps in the layoff process.
>
> "1. Reassignment in the same classification
>
> "2. Reassignment to a position previously held at the current level.

"3. Demotion to a position in a classification previously held.

"4. Change of status between full time to part time.

"5. Layoff.

"The rules do not allow assignment to a classification at a 'higher' level. Higher level is defined as a classification that's top step pays more than the top step of current classification.

"In my view, Cheryl has a complaint but not a grievance because it is not a contract violation."

29. In the same e-mail, Foster noted that the County was producing a classification study of the PDS position, and that it was possible that Morgan-Tran could attain equal or greater status to the CM Sr position in this fashion.[2] The County was also "putting laid off employees on the recall list to previously held classifications." Foster added, "To submit the it as [*sic*] a grievance now would not be timely."

30. Several other County employees were prevented from bumping into their previous positions because of salary and other changes. As a result, the Union met with the County to discuss a resolution of the problems.

31. The Union and County reached a memorandum of agreement about the bumping issue. The agreement would permit an employee to bump into a prior position even if that position now paid more as the result of a reclassification study. The parties did not, however, make the agreement retroactive. This was because the number of employees affected would cause serious logistical problems and start a chain of consequences that would affect the jobs of hundreds of County employees.

32. Union members voted on the memorandum of agreement at a general membership meeting on August 20, 2003. Morgan-Tran spoke with Foster as she placed her ballot in the ballot box. She understood him to tell her that, if the agreement was ratified, she would have her seniority restored and would be able to move into a CM Sr position. In fact, Foster was referring to her future opportunities, not a retroactive change in her current situation.

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[2]The record does not reveal whether this study was completed.

33. The membership approved the memorandum of agreement, and it was subsequently approved by the County Board of Commissioners.

34. A group of unit medical workers were similarly affected by reclassification of a commonly held prior position, OA Sr. The solution adopted in their situation was to declare their last position of medical worker equal to that of an OA Sr. effective after their layoff, so that they could be placed on the OA Sr. recall list.

35. One unit employee working as a PDT prior to her layoff was unable to do the work in the lower classification she was bumped into. Her inability to do the work was due to a disability. The County's solution to this issue was to shift the employee to a higher position, case manager 1.

36. On September 6, Morgan-Tran wrote Piller. She summarized her situation, set out her arguments to proceed with the grievance, and demanded that the Union represent her in doing so.

37. On September 30, Foster wrote an e-mail to Morgan-Tran stating, "[t]he new Seniority agreement gives you the right to bump a CM Sr if you get bumped again."

38. On October 13, Morgan-Tran wrote Piller. She requested that she be informed in writing as to the status of her grievance. She also stated, "[i]f I do not hear from you in writing, within five days from receipt of this letter, I will assume that the Union has not or is not processing my grievance as requested."

CONCLUSIONS OF LAW

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

2. The Union's representation of Morgan-Tran in connection with her layoff and bumping did not violate ORS 243.672(2)(a).

ORS 243.672(2)(a) prohibits a labor organization from interfering with, restraining, or coercing any employee in or because of the exercise of rights guaranteed by the Public Employee Collective Bargaining Act (PECBA). The statute imposes a duty on a labor organization to fairly represent those employees for whom it is the exclusive representative.

This Board has previously discussed the duty of fair representation:

> "* * * A union's deliberate actions in processing or refusing a grievance may violate the duty of fair representation if the union acted *arbitrarily* or in *bad faith*. To be processed to hearing, a duty of fair representation unfair labor practice complaint must allege facts to support a claim that the union acted arbitrarily or in bad faith; a complaint which does not allege any such facts will be dismissed without a hearing. *See Moustachetti v. AFSCME, Local 1246*, Case No. UP-42-90, 12 PECBR 174 (1990). A union *may* also breach its duty of fair representation by *unintentional acts or omissions*. We have held that a union's negligent and unexcused failure to timely file a grievance was an action so perfunctory that it violated its duty to fairly represent its members. *Ralphs v. OPEU and Oregon Executive Department*, Case No. UP-68/69-91, 14 PECBR 409 (1993)." *Balch v. Oregon Public Employees Union,* Case No. UP-6-96, 16 PECBR 478, 480 (1996), emphasis added and in original.

The Union's decision about "whether to file or how far to pursue a grievance is entitled to substantial deference." *Conger v. Jackson County and Oregon Public Employees Union,* Case No. UP-22-98, 18 PECBR 79, 88 (1999), citing *Bjornsen, et al. v. Jackson County Sheriffs' Officers Association and Jackson County*, Case Nos. C-130/131/132/133/134/135-83, 8 PECBR 6783 (1985).

To establish that a union breached its duty of fair representation by refusing to process a grievance, a complainant "must present facts which, if proven, would establish that the labor organization had a hostile motive, acted dishonestly, or made its decision not to pursue the grievance without any basis." *Jackson County, supra*, 18 PECBR at 88, citing *Coan and Goar v. City of Portland and Municipal Employees Local 483*, Case Nos. UP-23/24/25/26-86, 10 PECBR 342 (1987), *adhered to on reconsid* 10 PECBR 438, *AWOP* 93 Or App 780, 764 P2d 625 (1988).

Duty of fair representation cases usually arise in one of two ways: (1) complaints about a union's discretionary decision-making, or (2) complaints about a union's unintentional acts or omissions (negligence). *Ralphs v. OPEU and State of Oregon, Executive Department*, Case Nos. UP-68/69-91, 14 PECBR 409, 422-23 (1993). Morgan-Tran alleges that the Union engaged in the first category: intentional, wrongful conduct. Morgan-Tran argues that the Union violated its duty to fairly represent her by:

(1) failing to pursue her bumping grievance, and (2) failing to negotiate a memorandum of agreement that retroactively allowed her to bump into the CM Sr position.

Morgan-Tran has not proven that Union officials had a hostile motive, acted dishonestly, or made their decision not to pursue her grievance without any basis. The Union's interpretation of the CBA to bar Morgan-Tran's bumping into her prior position was a reasonable one. It was reached through review of the contract language, discussions with Complainant and others to ascertain the facts,[3] at least two discussions with AFSCME professional staff, and was followed by a decision to enter negotiation with the County on the issue.[4] We need not decide whether the Union's interpretation of the contract is correct, and we will not substitute our judgment for that of the Union. If it acts in good faith, a union need not pursue even a potentially meritorious grievance. *Ekstrom and Bedortha v. OSEA,* Case No. UP-54-93, 14 PECBR 565, 567 (1993).

The Union's decision to enter a memorandum of agreement which was not retroactive was also reasonable. Against the background of 500 layoffs in a workforce of approximately 3000 employees, it was reasonable for the Union and County to avoid further upheaval by choosing a remedy which would not recall employees already laid off to bump other employees, and would not move employees who had already bumped into other positions.

Foster told Morgan-Tran almost immediately after she raised the issue for the first time that the increased CM Sr salary prevented her from moving from her PDS position into a CM Sr position. Morgan-Tran was not satisfied with that response, and proceeded to make repeated attempts to induce the Union to file a grievance on her behalf, or assist her in proceeding with the grievance on her own. Morgan-Tran's belief that she was treated unfairly in the layoff process, the lack of response from Downey and Piller, and her view that Union officials provided her with incomplete or unsatisfactory explanations of both the contract and the memorandum of agreement, understandably

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[3]The Union investigated the first layoff notice Morgan-Tran received. The County ultimately withdrew this notice, but then reissued it a week later. At oral argument, Morgan-Tran argued that the Union violated its duty of fair representation when it failed to conduct a new investigation based on the second notice. We disagree. Morgan-Tran conceded there were no new facts other than the date on the notice, so the Union had no reason to repeat its investigation.

[4]Morgan-Tran also argues that the Union had an obligation under the PECBA to assist her in moving forward with her grievance on her own, or to provide her with clear instructions regarding how to appeal the Union's decision not to process the grievance. Under the circumstances, we disagree.

frustrated Morgan-Tran. However, the central fact remains that Morgan-Tran was repeatedly told, from late May through September, that the CBA prevented her from bumping into a CM Sr position. Meanwhile, the Union negotiated a partial, prospective solution to the problem for all affected employees.

Morgan-Tran argues that other employees were treated differently. She points to one employee, whom the limited evidence in the record suggests was unable to perform the work in the position she was bumped into because of a disability and was assigned another, higher position. However, Morgan-Tran has the burden of proof in this case, and she has failed to prove that the contract or applicable law was applied differently as to that individual (who may have been entitled to a reasonable accommodation by the County under federal and state handicap discrimination law). Nor has she proven that she was similarly situated to that person; there is no evidence that Morgan-Tran could not perform the work in the CM2 position.[5]

Morgan-Tran also claims that a group of medical workers received more favorable treatment than she did. However, resolution of the medical worker issue was the same as the resolution applied to Morgan-Tran. The medical workers were not transferred to positions that paid more, even though they had once held those positions under a lower salary schedule. Instead, *after they were demoted* to lesser positions, the medical workers were provided with the ability to bump "up," but only if they were bumped out of their new positions. This is the same remedy provided to Morgan-Tran under the memorandum of agreement.

Despite less than ideal communication between Union officials and Morgan-Tran, the facts demonstrate that the decisions of the Union not to process Morgan-Tran's grievance and not to negotiate a retroactive application of the memorandum of agreement were reasonable, based on a careful examination of the issues and made in good faith in the midst of difficult circumstances.[6] We conclude that

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[5]Morgan-Tran argues that the County and Union are responsible for her inability to prove that she was treated less favorably than other similarly situated employees. She argues that the County and Union ignored her requests for information on this subject, and she did not obtain a subpoena. These assertions are not proven by facts in the record. We cannot base our decision on documents in the agency case file that were not made part of the record. *Arlington Ed. Assn. v. Arlington Sch. Dist. No. 3,* 177 Or App 658, 34 P3d 1197 (2001),*rev den* 333 Or 399, 42 P3d 1243, 1244 (2002).

[6]We are not unsympathetic to Complainant's perception that it seems unfair to deny her the right to bump into her old position solely because that position was reclassified upward. The County and Union do not appear to disagree, judging by the fact that they entered a prospective

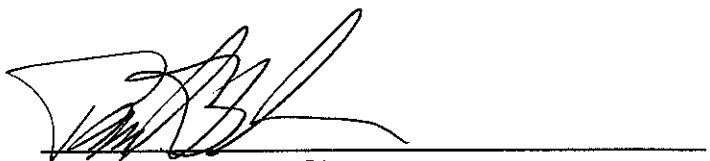
Morgan-Tran has failed to establish her claim for breach of the duty of fair representation. We will dismiss the claim against the Union.

Morgan-Tran must prevail against the Union in order to litigate her subsection (1)(g) claim against the County.[7] Because she has not prevailed against the Union, we will dismiss the complaint against the County.

ORDER

The complaint is dismissed.

DATED this 27th day of May 2005.



Paul B. Gamson, Chair

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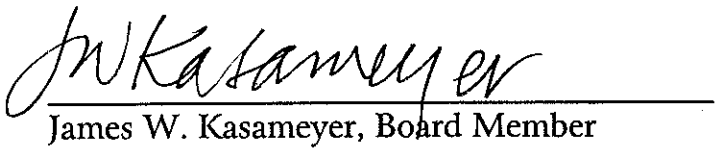
Rita E. Thomas, Board Member



James W. Kasameyer, Board Member

*Member Thomas concurs with this Order but was absent on the date of signing.

This Order may be appealed pursuant to ORS 183.482.

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agreement to make sure this will not happen again in the future. Any unfairness, however, was not the result of arbitrary or bad-faith actions by the Union, and it therefore does not violate the duty of fair representation.

[7] *Bjornsen, et al. v. Jackson County Sheriffs' Officers Association and Jackson County*, Case Nos. C-130/131/132/133/134/135-83, 8 PECBR 6783, 6795 (1985); *Mengucci v. Fairview Training Center and Teamsters Local 223*, Case Nos. C-187/188-83, 8 PECBR 6722, 6730 (1984); and *Putvinskas v. Southwestern Oregon Community College Classified Federation, Local 3972, AFT, AFL-CIO, and Southwestern Oregon Community College*, Case No. UP-71-99, 18 PECBR 882, 899 (2000).