

INSTRUCTIONS: File the original and three copies of this complaint with the Board at 528 Cottage Street NE, Suite 400, Salem, Or 97301 Phone (503) 378-3807

**STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

For the Board Use Only

Case No. UP-006-16

Date Filed _____

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FEB 16 2016

**UNFAIR LABOR PRACTICE COMPLAINT
Public Employment**

**EMPLOYMENT
RELATIONS BOARD**

COMPLAINANT name/address: Oregon AFSCME Council 75 Local 189 1400 Tandem Avenue NE Salem, Oregon 97301	Name/address/phone of Complainant's representative: Jennifer K. Chapman, Legal Counsel 1400 Tandem Avenue NE Salem, OR 97301 503-370-2522
RESPONDENT name/address The City of Portland 1120 SW Fifth Ave. Rm 404 Portland, OR 97204	Name/address/phone of Respondent's representative: Catherine Riffe Chief Deputy City Attorney Portland Office of City Attorney 1221 SW 4 th Ave. # 430 Portland, OR 97204 503-823-4047

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)(e) of the Public Employee Collective Bargaining Act. The following is a clear and concise statement of the facts involved in each alleged violation, followed by a specific reference to the section and subsection of the law allegedly violated. (For each claim, specify dates, names, places and actions. Attach copies of main supporting documents referred to in the statement of claims.)

See Attached

I certify that the statements in this complaint are true to the best of my knowledge and information.

By 
Signature of Complainant or Complainant's Representative

Legal Counsel
Title

2/16/16
Date

**ATTACHMENT
TO
UNFAIR LABOR PRACTICE COMPLAINT**

The Parties

1. The City of Portland (“City”) is an employer within the meaning of ORS 243.650(20).
2. AFSCME Local 189 (“AFSCME” or the “Union”) is a labor organization within the meaning of ORS 243.650(13).
3. The District Council of Trade Unions (“DCTU”) is the exclusive bargaining representative of one of the bargaining units of employees of the City. AFSCME is one of several unions that are members of DCTU.
4. The City and DCTU are parties to a collective bargaining agreement that expires June 30, 2017. The Contract is attached as Exhibit 1.
5. AFSCME is responsible for administering the DCTU contract with respect to members of the DCTU bargaining unit who are within its jurisdiction. AFSCME’s jurisdiction includes police desk clerk, police record specialist, and police administrative support specialist positions.

Factual Background

6. On April 27, 2015, the City notified AFSCME by letter that the City Council had adopted a resolution establishing a \$15.00 hour minimum wage. A copy of the City’s letter is attached as Exhibit 2.
7. On May 7, 2015, AFSCME notified the City in writing that it wanted to bargain the impact the impact of the \$15.00 minimum wage. AFSCME also requested information in order to help it prepare for bargaining. A copy of the demand to bargain is attached as Exhibit 3.
8. On May 13, 2015, the City confirmed receipt of AFSCME’s demand to bargain. The City indicated that bargaining could be scheduled when the information AFSCME requested was ready for delivery. A copy of the City’s response is attached as Exhibit 4.
9. On May 26, 2015, the City emailed AFSCME documents responsive to AFSCME’s request for information, and asked AFSCME for dates that AFSCME would be available to meet. A copy of the City’s email, minus the attachments, is attached as Exhibit 5.
10. On June 16, 2015, AFSCME emailed the City to confirm who would be on AFSCME’s bargaining team. AFSCME’s email indicated that it would like to meet to bargain as soon as possible, noting just three dates that AFSCME would be available. A copy of AFSCME’s email is attached as Exhibit 6.

11. After AFSCME's June 16 email, the parties scheduled a time to meet and bargain.
12. On June 21 and 22, 2015, the City expressed the opinion that negotiations could not occur unless AFSCME and the Laborers Union met in the same room at the same time, due to the nature of the shared classification under the DCTU contract. The City insisted that the separate meetings scheduled with each representative be cancelled, and indicated that the City would await proposed dates and times from the unions. A copy of an email conversation between the parties on June 22, 2015 is attached as Exhibit 7.
13. On June 25, 2015, AFSCME and the City agreed to meet to begin bargaining on July 7, 2015. An email confirming the date set for bargaining is attached as Exhibit 8.
14. The parties subsequently postponed the bargaining session to July 8, 2015.
15. On July 8, 2015, parties met and AFSCME submitted a proposal to the City. The City was not prepared to, and did not, make any type of proposal or counter proposal.
16. On July 28, 2015, AFSCME emailed the City to follow up on the interim bargaining that had begun on July 8, 2015. AFSCME asked whether the City was ready to schedule meetings to discuss bargaining. A copy of the email conversation between the parties is attached as Exhibit 9.
17. On July 31, 2015, AFSCME proposed meeting dates. The City responded to the email and agreed to meet on August 12, 2015. A copy of the email conversation is attached as Exhibit 10.
18. The August 12, 2015 meeting was subsequently postponed to August 17, 2015. A copy of the email conversation related to the rescheduling is attached as Exhibit 11.
19. On August 17, 2015, AFSCME's representative, Rob Wheaton, emailed the City to let it know that he would not be available to attend that afternoon's meeting as a result of illness. He asked if the City would be willing to give its counterproposal to the Laborer's representative or email the counterproposal. He also asked if the City would prefer to reschedule the meeting. The City responded that it would prefer to reschedule. A copy of the email conversation is attached as Exhibit 12.
20. On August 24, 2015, AFSCME emailed the City requesting dates that the City was available to meet to bargain. The parties subsequently agreed to meet and bargain on September 1, 2015. A copy of the email conversation is attached as Exhibit 13.
21. On September 1, 2015, the parties met. The City did not have a counter-proposal to the proposal submitted by AFSCME on July 8. The City also claimed that it did not have sufficient information to provide a counter-proposal, provide any response, or engage in any thoughtful conversation.
22. On September 2, 2015, in response to a complaint by Rob Wheaton, the City's Human

Resources Director apologized that the City had not been more prepared for the September 1 meeting. She indicated that the City would get back to AFSCME by the end of the week with a date by which the City would have more information. A copy of the email conversation is attached as Exhibit 14.

23. On September 4, 2015, the City proposed a follow up meeting to discuss the classifications at issue. The parties subsequently agreed to meet to bargain on September 24, 2015. A copy of the email conversation is attached as Exhibit 15.
24. On September 24, 2015, the parties met and the City made what it called a "counter proposal." However, the City announced that it was not prepared to negotiate the proposal, and that it intended to implement the proposal.
25. On September 28, 2015, the City sent a letter confirming that it was going to implement the proposal it gave AFSCME on September 24, 2015. A copy of the City's proposal is attached as Exhibit 16, and a copy of the City's September 28 letter is attached as Exhibit 17.

Specific PECBA Violations

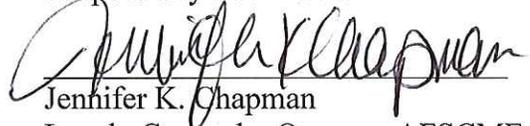
25. AFSCME re-alleges paragraphs 1-25, above.
26. The City violated ORS 243.672(1)(e) by failing to negotiate with AFSCME in good faith. Evidence of the City's bad faith during negotiations includes:
 - a) Failing to make any proposals to AFSCME during the July 8 bargaining session;
 - b) Failing to make any proposals to AFSCME during the September 1 meeting;
 - c) Failing to make any proposals to AFSCME after AFSCME demanded to bargain, until after the 90 days allotted by ORS 243.698 had already lapsed;
 - d) Attending the July 8 and September 1 meetings unprepared to discuss or bargain about the issues;
 - e) Failing to prepare for, or engage in, meaningful conversation with AFSCME about the bargaining issues at any time prior to the time it announced its decision to implement its September 24, 2015 proposal;
 - f) Making a first proposal in response to AFSCME's demand to bargain in conjunction with a notice of implementation, therefore avoiding any effective bargaining or discussion about the competing proposals.

WHEREFORE, Complainant requests the following relief:

- a. An order declaring that the City has committed the unfair labor practices as alleged herein;
- b. An order declaring that the City cease and desist from committing unfair labor practices;
- c. An order that the City return to the bargaining table with AFSCME in good faith to discuss the competing proposals regarding the impact of the \$15 minimum wage ordinance;
- d. An order that the City pay AFSCME its reasonable representation cost, including filing fees, expended in prosecuting this matter at hearing and on appeal;
- e. Any other further relief deemed necessary to do justice under the PECBA.

Dated this 16 day of February 2016.

Respectfully Submitted:


Jennifer K. Chapman
Legal Counsel, Oregon AFSCME