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STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

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UNFAIR LABOR PRACTICE COMPLAINT
Public Employment

Case No. UP-028-16

RECEIVED
Date Filed 09/30/16
SEP 30 2016

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| <p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>SEIU Local 503, OPEU 1730 Commercial Street SE Salem, OR 97302 503.581.1505 stefanm@seiu503.org</p> | <p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Marc A. Stefan, Supervising Attorney 1730 Commercial Street SE Salem, OR 97302 503.581.1505 x178 stefanm@seiu503.org</p> |
| <p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>Jackson County 10 South Oakdale Ave. Medford, OR 97501 541.774.6035</p> | <p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Brett Baumann, Sr. Asst. County Counsel Jackson County 10 South Oakdale Ave. Medford, OR 97501 541.774.6160 baumanba@jacksoncounty.org</p> |

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)(e) and (g) 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, specific dates, names, places, and actions. Attach copies of main supporting documents referred to in the statement of claims.)

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

Please see attached

By: 
Signature of Complainant or Complainant's Representative

Supervising Attorney
Title

September 30, 2016
Date

4.

The Union and the Employer have been parties to a series of successive collective bargaining agreements. The most recent collective bargaining agreement (the Expired CBA) was effective, by its terms, from July 1, 2013, to June 30, 2016. (A copy of that CBA is Attached as Exhibit C-1) The parties are engaged in bargaining to reach a successor agreement to the Expired CBA, and that process currently is in the Mediation stage of bargaining under ORS 243.712(1).

5.

As detailed below, during the course of bargaining for a successor agreement, JCO has engaged in and continued to engage in a number of unfair labor practices and an overall course and conduct of bad faith bargaining aimed at thwarting the parties reaching an agreement.

Count I

(Violation of Collective Bargaining Agreement; Bad Faith Bargaining Through Effort To Evade Contractual Grievance Process; Away From the Table Conduct As Indicia of Overall Bad Faith Bargaining)

6.

Paragraphs 1 through 5 above are hereby incorporated by reference as if set forth in full.

7.

On or about June 3, 2016, JCO's Program Manager II, Destry Stoner, met with JCO employee Eva Albert concerning actions by Ms. Albert that took place on June 2, 2016. (Exh. C-2)

8.

On or about June 9, 2016, Ms. Stoner conducted an “investigatory meeting” with Ms. Albert concerning the June 2, 2016, incident, and at that meeting, gathered all of the information needed to permit JCO to determine whether discipline of Ms. Albert was appropriate. (Exh. C-2)

9.

During June and July 2016, the parties were engaged in collective bargaining for a successor agreement.

10.

Despite having all of the information it needed to decide whether it had just cause to discipline Ms. Albert, JCO intentionally waited until July 8, 2016, to issue discipline against Ms. Albert and, when the union filed a grievance over the matter, informed the Union (mistakenly) that it could not grieve the matter because the grievance had been filed after the expiration of the then extant CBA. (Exhs. C-3 and C-4) Thereafter, and continuing to the date of service herein, Respondent has failed and refused to process the grievance (Exh. C-5)

11.

Based on the facts set out in paragraphs 7 through 10 above, JCO has: a) violated Article 22 of the expired CBA (Exh. 1) by failing and refusing to process a grievance that arose under the expired CBA on June 30, 2016, in violation of ORS 243.672(1)(g); b) acted to thwart and frustrate the contractual grievance process by failing and refusing to act on discipline of Ms. Albert until after the CBA had expired in violation of ORS 243.672(e), and; c) engaged in “away from the table” conduct that was unlawful and otherwise an indicium of a course and conduct of bad faith bargaining in violation of ORS 243.672(e).

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Count II

(Unilateral Change In Mandatory Term and Condition of Employment)

12.

Paragraphs 1 through 11 above are hereby incorporated by reference as if set forth in full.

13.

The expired contract in this matter contains a just cause requirement for Employer imposition of discipline (Exh. 1, Art.14, Section 2) and such provision is a mandatory term and condition of employment (employment relations).

14.

On or about July 8, 2016, Respondent disciplined Eva Albert without just cause.

15.

By the actions set forth in paragraphs 13 and 14 above, JCO engaged in a unilateral change in terms and conditions of employment (employment relations) in violation of ORS 243.672(e). *See, Wy'East Education Association/East County Bargaining Council v. Oregon Trail School District No 46*, 22 PECBR 108, 139 – 145 (2007).

Count III

(Introducing New Issue Into Bargaining At The Mediation Stage Of Bargaining and Regressive Bargaining Based On False Premises and Bad Faith)

16.

Paragraphs 1 through 15 above are hereby incorporated by reference as if set forth in full.

17.

Ongoing bargaining for a successor agreement between the parties commenced on or about February 24, 2016, and the parties entered into the mediation stage of the bargaining process on or about September 7, 2016.

18.

Over several successive contracts, the parties have dealt with employee health insurance in the manner set forth in Article 16 of the expired contract. (Exh. 1, Art. 16) See also, *Jackson County v. Jackson County Employees Assn., SEIU Local 503*, 26 PECBR 501 (2015). Under that structure JCO contributes, on an annual basis, a set amount of money for each insurance eligible unit employee and the Union then shops for the best coverage available that also covers administration of the health plan.

19.

In the ongoing negotiations, JCO's proposals have included, consistent with the longstanding structure referenced above, fixed dollar contributions per employee for each year of the successor agreement.

20.

For the first time, however, JCO proposed that it would administer the health care plan. That proposal was made during the 150 day period of bargaining.

21.

Also during the 150 day segment of bargaining, each side made proposals regarding cost of living adjustments (COLAs). (See Exh. C-6) At no point in the negotiations prior to mediation was there ever any linkage between and among the Employer's insurance proposals and its (or the Union's) COLA proposal.

22.

During the mediation stage of bargaining, JCO withdrew its proposal (see paragraph 20 above) that it would pay handle the administration of the health insurance plan selected by the Union.

23.

Also after entering the mediation phase of the bargaining, JCO, for the first time, introduced a proposal that linked the amount of COLAs it was willing to provide to cost savings it claims it anticipated by taking on administration of the employee health plan. Notably, it made no proposals to modify, or even mention, the amounts it would be contributing to provide an employee health care plan selected by the Union. (See paragraph 19 above.)

24.

By the actions set out in paragraphs 18 through 23 above, Respondent introduced a “new issue” at the mediation stage of bargaining within the meaning of *Blue Mountain Faculty Association/Oregon Education Association/NEA and John Lamiman v. Blue Mountain Community College*, 21 PECBR 673, 754-61 (2007) in violation of ORS 243.672 (1)(e).

25.

By the actions set out in paragraphs 18 through 23 above, Respondent additionally and/or alternatively engaged in bad faith bargaining by engaging in regressive bargaining that was predicated on false premises in violation of ORS 243.672(1)(e).

Remedy

In remedy of the various unlawful acts and omissions set forth above, Complainant respectfully urges that the Board take the following actions:

- A. Order Respondent to cease and desist from failing and refusing to process grievances that arose under the expired contract;
- B. Order Respondent to cease and desist from acting in bad faith intent to seek to prevent the Union from filing a grievance by delaying the formal imposition of discipline;
- C. Order Respondent to cease and desist from making unilateral changes in mandatory terms and conditions of employment;
- D. Order Respondent to cease and desist from introducing new issues at the mediation stage of the bargaining process;
- E. Order Respondent to cease and desist from making regressive proposals that are predicated on premises Respondent knows to be false;
- F. Order Respondent to cease desist from bargaining and otherwise conducting itself in bad faith;
- G. Order Respondent to withdraw its proposal calling for a reduction in COLAs;
- H. Order Respondent to post a Notice at all of its facilities that employ unit employees and send each such employee a copy of said Notice on the Respondent's e-mail system and by direct mail to unit employees who do not have access to the e-mail system setting out all for the above and containing a ledge that Respondent will not commit like or related acts in the future.

I. Any other relief the Board finds just and proper.

DATED this 30th of September 30, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marc A. Stefan", written over a horizontal line.

Marc A. Stefan
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