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528 Cottage St NE, Suite 400  
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STATE OF OREGON  
EMPLOYMENT RELATIONS BOARD

UNFAIR LABOR PRACTICE COMPLAINT  
Public Employment

For Board Use Only

Case No. UP-032-16

Date Filed 10/24/16

<p>COMPLAINANT Name, address, and phone number</p> <p>Port of Portland 7200 NE Airport Way Portland, Oregon 97203 (503) 415-6000</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, and phone number</p> <p>Kathy Peck, Attorney Peck, Rubanoff &amp; Hatfield 5285 Meadows Road, Ste. 140 Lake Oswego, Oregon 97035 (503) 303-7238</p>
<p>RESPONDENT Name, address, and phone number</p> <p>Aaron Whitman ILWU, Local 28 2435 NW Front Avenue Portland, OR 97209 (503) 227-5299</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, and phone number, if applicable</p> <p>Unknown</p>

Complainant alleges that Respondent, Aaron Whitman, has committed an unfair labor practice under ORS 243.672(2) (b) of the Public Employee Collective Bargaining Act. The following is a clear and concise statement of the facts involved in the alleged violation.

1. Complainant Port of Portland ("the Port") is a public employer within the meaning of ORS 243.650 (20).
2. ILWU, Local 28 ("Local 28") is a labor organization within the meaning of ORS 243.650 (13).
3. Local 28 represents the Marine Security Officers employed by the Port.
3. Respondent, Aaron Whitman is the president of Local 28 and is a public employee within the meaning of ORS 243.650 (19).
4. The Port and Local 28 are parties to a Collective Bargaining Agreement effective July 1, 2011 through June 30, 2015 ("Agreement"). See attached **Exhibit A**.
5. During the initial stage of the negotiations process for a successor agreement to that Agreement, the Port and Local 28 reached agreement on the terms of the Ground Rules governing the procedures for contract negotiations. The Ground Rules were memorialized in writing and signed by representatives of the parties on March 16, 2015. See attached **Exhibit B**.
6. As part of the Ground Rules, the parties agreed that the Port and Local 28 would each be represented by a negotiations team. The designated members of Local 28's negotiations team included

Angie Dahlgren, as chief spokesperson, Dan Hardisty, Phil Clark and Devon Lingo. Local 28's president, Aaron Whitman was not a designated member of the Local 28 negotiations team.

7. The parties' Ground Rules further specified that all tentative agreements "are subject to ratification by the membership of the Union employed as Security Officers at the marine terminals, and subject to approval by Port management and the Commission for the Port." The Ground Rules did not place any further conditions on the parties to reduce the tentative agreements to a final agreement for signature.

8. The negotiations teams for the Port and Local 28 reached a tentative agreement during a mediation session conducted by Janet Gillman on September 15, 2016.

7. Blaise Lamphier, Labor Relations Manager for the Port, was advised by Local 28's negotiations team that it would take approximately thirty (30) days for Local 28 to complete the ratification process.

8. Mr. Lamphier was also advised by Local 28's negotiations team that the votes would be conducted through paper ballots, which would be mailed to Local 28's office.

9. During this thirty (30) day period, Mr. Lamphier began receiving information that Mr. Whitman and Local 28 Steward, Dan Mekelburg, were opposed to the tentative agreement reached by the negotiations teams for the Port and Local 28 on September 15, 2016.

10. Mr. Lamphier also received information from the Local 28 bargaining team that the ballots would be counted in an internal union meeting rescheduled from noon to 3:00 p.m. on October 20, 2016. Local 28 agreed to inform the Port of the outcome of the vote immediately after the ballots were counted.

11. Late on the evening of October 17, 2016, Mr. Lamphier received a letter from Thomas Doyle, an attorney in the law firm representing Local 28. In that letter, which was dated October 17, 2016, Mr. Doyle stated:

"... recent changes to the Local's Constitution ..., all written agreements between the Port of Portland and ILWU Local 28 must be approved by its Executive Board and signed by the Secretary-Treasurers, or other titled officer as designate internally by the Secretary-Treasurer. Please be advised that any agreements that are not in compliance with these provisions will not bind the Local." *See attached Exhibit C*

12. A review of the current Local 28 Constitution on record with the United States Department of Labor does not reveal the "recent changes" referenced in Mr. Doyle's letter. *See attached Exhibits D & E.*

13. At 6:06 a.m. on October 20, 2016, Mr. Lamphier received an email from Mr. Mekelburg stating:

"Regretfully, I have to inform you that ILWU 28 –Portland has encountered an internal issue related to the ratification of the TA's (*sic*) presented to the membership. We seem to be back on track and working diligently in responding to the Port of Portland's offer. Thank you for understanding." *See attached Exhibit F*

14. Mr. Lamphier did not receive the promised information regarding the outcome of the ballot count following the announced October 20, 2016 internal union meeting. Instead, he was informed by a member of the Local 28 negotiations team that Mr. Whitman had physically removed the ballot box containing the bargaining unit members' votes on the tentative agreement reached by the negotiations teams on September 15, 2016. The whereabouts of the ballot box are unknown to the Port at this time.

#### **INTERFERENCE "IN" THE EXERCISE OF RIGHTS GUARANTEED BY PECBA**

15. It is an unfair labor practice for a public employee to interfere with, restrain or coerce any employee *in* the exercise of rights guaranteed under ORS 243.650 to 243.782. ORS 243.672 (2) (a).

16. The right of bargaining unit employees to vote on tentative agreements reached by the negotiating teams designated to act on behalf of a union and employer is a right protected by PECBA.

17. When viewed objectively, the action of a public employee in physically removing a ballot box containing bargaining unit employees' votes on a tentative agreement, thereby preventing those votes from being counted, has the natural and probative effect of interfering with PECBA rights.

18. Mr. Whitman's actions in absconding with the ballot box containing the votes of the bargaining unit members of Local 28, thereby preventing those votes from being counted, interfered with the rights of Local 28's bargaining unit employees to engage *in* PECBA protected activity in violation of ORS 243.672 (2) (a).

#### **INTERFERENCE "BECAUSE" THE EXERCISE OF RIGHTS GUARANTEED BY PECBA**

19. It is an unfair labor practice for a public employee to interfere with, restrain or coerce any employee *because of* the exercise of rights guaranteed under ORS 243.650 to 243.782. ORS 243.672 (2) (a).

20. On information and belief, Mr. Whitman absconded with the ballot box containing the votes of Local 28's bargaining unit members on the tentative agreement reached by the Port and Local 28's own negotiations team, because he objected to the tentative agreement and was concerned that the tentative agreement would be ratified by Local 28's bargaining unit members.

21. Mr. Whitman's action in absconding with the ballot box was motivated by a desire to deter the rights of Local 28 bargaining unit members to ratify a tentative agreement he individually opposed.

22. Mr. Whitman violated ORS 243.672 (2) (a) by interfering with the rights of Local 28 bargaining unit members *because of* their exercise of the right to vote.

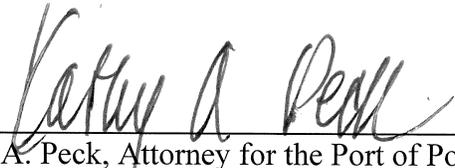
**WHEREFORE**, the Port requests the following relief:

1. An order finding that Mr. Whitman violated the "*in*" prong of ORS 243.672 (2) (a).
2. An order finding that Mr. Whitman violated the "*because*" prong of ORS 243.672 (2) (a).

3. An order requiring Mr. Whitman to return the ballot box containing the Local 28 bargaining unit members votes, *without alteration*, to the members of the Local 28 bargaining team.
4. An order requiring Mr. Whitman to cease and desist from any and all violations of ORS 243.672(2);
5. An order awarding reasonable representation costs to the Port pursuant to OAR 115-035-0055;
6. An order awarding a penalty of up to \$1,000 for an egregious violation of ORS 243.672 (2) (a) pursuant to ORS 243.676 (4) (a); and
7. An order for any additional relief that the Board deems just and equitable.

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

By: \_\_\_\_\_

  
Kathy A. Peck, Attorney for the Port of Portland

Date: October 21, 2016