

**INSTRUCTIONS:** File the original and three copies of the complaint and all attachments and the \$300 filing fee with the Board at:

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-033-16

Date Filed 11/1/16

<p><b>COMPLAINANT</b></p> <p>Oregon AFSCME Council 75, Local 88 6025 E. Burnside Portland, OR 97215 503-730-2777 ggibson@oregonafscme.org</p>	<p><b>COMPLAINANT'S REPRESENTATIVE</b></p> <p>Giles Gibson, Legal Counsel Oregon AFSCME Council 75 6025 E. Burnside Street Portland, OR 97215 503-730-2777 ggibson@oregonafscme.org</p>
<p><b>RESPONDENT</b></p> <p>Multnomah County c/o Kathryn Short Assistant County Attorney, Sr. 501 SE Hawthorne Blvd., Ste. 500, Portland, OR 97204 kathryn.a.short@multco.us</p>	<p><b>RESPONDENT'S REPRESENTATIVE</b></p> <p>Kathryn Short Assistant County Attorney, Sr. 501 SE Hawthorne Blvd., Ste. 500, Portland, OR 97204 kathryn.a.short@multco.us</p>

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Complainant alleges that Respondent has committed unfair labor practices under ORS 243.672(1) (a) and (c) 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.)

**SEE FOLLOWING PAGES**

1. Complainant Oregon AFSCME Council 75, Local 88 (“AFSCME” or “the Union”) is a labor organization within the meaning of ORS 243.650(13).
2. Respondent Multnomah (“County”) is a public employer within the meaning of ORS 243.650(20)
3. AFSCME is the exclusive bargaining representative of the largest of the several bargaining units of County employees (hereafter, “the Local 88 unit”) *aka* the “general employees unit.” The Local 88 unit includes employees of the County’s Department of Human Services (“DCHS”), including its Aging, Disability, and Veterans Services Division and its Developmental Disabilities Services Division (“ADVSD” and “DDSD”, respectively).
4. At all times relevant, the Union and the County have been party to a collective bargaining agreement covering the Local 88 unit that is effective from July 1, 2014 through June 30, 2017 (“the Local 88 Agreement”). (Exhibit 1).
5. At all times relevant, the County has maintained a written Personnel Rule 3-65, Telework, that provides for County supervisors to enter into written “telework agreements” with individual employees when mutually agreeable, pursuant to which the County authorizes such employees to work at an alternate worksite – typically, the employee’s home -- on certain specified work days and/or times, rather than at the employee’s regular worksite. (Exhibit 2).
6. AFSCME-represented ADVSD employees work at its central office in the Lincoln building at 421 SW Oak Street in downtown Portland (the “Lincoln building”) and at five other ADVSD Branch offices in Portland and Gresham. AFSCME-represented DDSD employees work in offices in the Lincoln building and at another location in Gresham.
7. At all times relevant, Joe Easton (“Easton”) was and is ADVSD’s Long Term Care Manager, a supervisory employee within the meaning of ORS 243.650(23), an agent of the County, and acted on behalf of the County.
8. Easton’s office is located in the Lincoln building in downtown Portland. As Long Term Care Manager, Easton oversees each of ADVSD’s five branch offices and directly supervises the Program Managers who serve as the branch managers of each.
9. At all times relevant, Tawnya Baer (“Baer”) was and is the Program Manager serving as the branch manager of ADVSD’s East branch office in Gresham, a supervisory employee within the meaning of ORS 243.650(23), an agent of the County, and acted on behalf of the County.
10. As Program Manager of the East branch office, Baer reports directly to Easton; directly supervises the AFSCME-represented employees in the East branch’s intake unit and the non-represented Program Supervisors who supervise the East branch’s service, eligibility and business services units; and is the second level supervisor of the AFSCME-represented employees in the East branch’s service, eligibility and business services units.
11. At all times relevant, Cessa Diaz (“Diaz”) was and is a Labor Relations Manager in the County’s Central Human Resources department, an agent of the County, and acted on the County’s behalf.

12. At all times relevant, Eben Pullman (“Pullman”) was and is an AFSCME Council Representative assigned to Local 88, an agent of the Union, and acted on the Union’s behalf.
13. At all times relevant, Brian Scazzafavo (“Scazzafavo”) is and was an AFSCME-represented Case Manager Senior in the intake unit at ADVSD’s East Branch office and an AFSCME shop steward.
14. At all times relevant, Melissa Fogel (“Fogel”) is and was an AFSCME-represented Case Manager Senior in in the intake unit at ADVSD’s East Branch office.
15. In October 2014, the County and Fogel entered into a written Telework agreement which authorized Fogel to work at her home one day each week. Fogel, Baer and Easton all signed the Fogel telework agreement, and a copy of it was placed in Fogel’s County personnel file.
16. At all times relevant, Mona McCarthy (“McCarthy”) is and was an AFSCME-represented DCHS employee. In 2015 and early 2016, McCarthy held a regular position as a Case Manager 2 in the DDS office at the Lincoln building, but from September 2015 through February 2016, McCarthy worked in a 6-month “out of class” assignment as a Case Manager Senior in the intake unit at ADVSD’s East Branch office.
17. In March 2016, McCarthy applied for a lateral transfer opportunity to a Case Manager 2 position in the service unit at ADVSD’s East Branch office, and the County determined her to be eligible for that transfer. Baer was the hiring manager for the transfer position.
18. On March 31, 2016, McCarthy and other eligible applicants for the transfer were interviewed by an interview panel comprised of Baer and two other County employees.
19. On April 5, 2016, Baer phoned McCarthy and told her that she (Baer) was not able to choose McCarthy for the lateral transfer position, and thus that another applicant would get the position. Baer told McCarthy that Easton would not allow Baer to select McCarthy for the position due to McCarthy’s pattern of prior sick leave usage.
20. On or about April 7, 2016, McCarthy began consulting Fogel in her role as shop steward regarding the County’s denial of her lateral transfer application and possibly filing a grievance regarding that denial.
21. On April 7, 2016, Fogel, acting on McCarthy’s behalf as shop steward, asked Baer why McCarthy had been denied the transfer. Baer confirmed in response that she had been instructed by email not to select McCarthy based solely on McCarthy’s prior sick leave usage.
22. In or about mid-April, two other ADVSD Case Manager 2 lateral transfer opportunities were announced, one at ADVSD’s Mid-County branch office and the other at the East Branch office, and McCarthy applied for both of them.
23. From April 7 through April 20, 2016, Fogel continued consulting with McCarthy in her role as a shop steward. Fogel consulted Pullman and Scazzafavo about McCarthy’s case as well, and together with Scazzafavo, prepared a grievance challenging the denial of McCarthy’s March transfer application.

24. On April 20, 2016, Scazzafavo submitted the McCarthy grievance to Easton by email. It consisted of a 1-page grievance form and twenty (20) pages of supporting documents. (Exhibit 3). It alleged that the County had violated the Local 88 Agreement by denying McCarthy's transfer based solely on her sick leave usage, and requested as a remedy that McCarthy be allowed to transfer to the East branch office as a Case Manager 2. (*Id.* at p. 1). The supporting documents included emails which reflected Fogel's role as an AFSCME steward in investigating and preparing the grievance. (*See, e.g. Id.* at pp. 8, 19, and 21).
25. On or before April 25, 2016, Diaz proposed to Pullman that the Union agree to extend the timeline for the County's response to the McCarthy grievance to May 13, and Pullman agreed.
26. On or before May 6, 2016 Diaz contacted Pullman and inquired whether McCarthy and the Union would continue prosecuting the McCarthy grievance if the County were to offer McCarthy one of the then-pending lateral transfer opportunities she had applied for in mid-April.
27. On May 11, 2016, Pullman notified Diaz by email that McCarthy would strongly prefer to transfer to the East branch office, but would not further pursue her grievance if she were offered either of the then-pending lateral transfer opportunities.
28. Also on May 11, 2016, Baer met with Fogel and notified her that Easton had met with Baer at the East branch office after hours the day before, on May 10, and had expressed concerns to her about Fogel's work performance, among other things. Baer informed Fogel that Easton had reviewed the intake cases that Fogel had been processing in February 2016, and had identified specific questions and/or concerns about Fogel's work on fourteen (14) of those cases. Baer provided Fogel a list of the questions and concerns Easton had identified regarding the cases and asked Fogel to prepare responses to them. Baer also told Fogel that Easton had concluded from his review of Fogel's work that Fogel needed additional supervisory "oversight" and "coaching"; that Fogel was "not a candidate" for telework; that Fogel should *not* be teleworking, and thus, in sum, that Fogel was no longer authorized to telework.
29. On May 11 or 12, 2016, Fogel provided Baer written responses to Easton's questions and concerns by email.
30. On May 12 or 13, Baer emailed Easton responses to the questions and concerns he had raised with her regarding Fogel's cases.
31. The review that that Easton told Baer he had conducted of Fogel's casework on May 10 was a highly unusual deviation from ADVSD's normal operating procedures.
32. The questions and concerns Easton raised with Baer regarding Fogel's casework on May 10 were unwarranted, meritless and/or insubstantial.
33. After Fogel provided Baer her responses to Easton's questions and concerns, neither Easton nor Baer took any action to counsel or reprimand Fogel regarding those questions or concerns or to make any related corrections to her casework.
34. During the week of May 16 to May 20, 2016, DCHS offered McCarthy the then-pending lateral transfer position at ADVSD's East Branch office, and McCarthy accepted it.

35. On May 24, 2016, Pullman sent an email to Diaz through which he acknowledged that McCarthy had been offered and accepted the transfer position at the East Branch office and withdrew the McCarthy grievance.

**First Claim For Relief**  
**(“[B]ecause of” Violation of ORS 243.672(1)(a))**

36. AFSCME realleges paragraphs 1-35 above.
37. The County interfered with, restrained, and coerced Fogel “because of” her exercise of rights guaranteed in ORS 243.662, and thus violated ORS 243.671(1)(a), by each of the following:
- a. Easton’s actions in conducting the review of Fogel’s casework that he reported to Baer on May 10;
  - b. Easton’s actions in raising the specific questions and concerns regarding Fogel’s work that he reported to Baer on May 10;
  - c. Easton’s actions in telling Baer on May 10 that Fogel needed further supervisory oversight and coaching;
  - d. Easton’s actions in telling Baer on May 10 that Fogel was “not a candidate” for teleworking;
  - e. Easton’s actions in telling Baer on May 10 that Fogel should *not* be teleworking, and thus, in sum, that Fogel was no longer authorized to telework;
  - f. Baer’s actions in conveying to Fogel on May 11 each of Easton’s foregoing actions.

**Second Claim For Relief**  
**(“[I]n . . . the exercise of” Violation of ORS 243.672(1)(a))**

38. AFSCME realleges paragraphs 1-37 above.
39. The County interfered with, restrained, and coerced Fogel “in . . . the exercise” of rights guaranteed in ORS 243.662, and thus violated ORS 243.671(1)(a) by each of its actions described above in paragraph 37 and subparagraphs (a) through (f) thereof.

**Third Claim For Relief**  
**(Violation of ORS 243.672(1)(c))**

40. AFSCME realleges paragraphs 1-37 above.
41. The County discriminated against Fogel in regard to the terms or condition of her employment in violation of ORS 243.672(1)(c) by each of its actions described above in paragraph 37 and subparagraphs (a) through (f) thereof.

WHEREFORE, Complainant AFSCME requests the following relief:

- a. An order declaring that the County has committed the unfair labor practices alleged herein;
- b. An order directing the County to cease and desist from evaluating and critiquing the work performance of employees in a manner that discriminates against those engaged in protected union activity;
- c. An order directing the County to cease and desist from terminating or withholding telework agreements in a manner that discriminates against those engaged in protected union activity;
- d. An order requiring the County to post a written notice of its violations herein in all County workplaces;
- e. An order requiring the County to pay AFSCME its reasonable representation costs, including filing fees, expended in prosecuting this matter at hearing and on appeal; and
- f. Any other further relief deemed necessary to do justice under the PECBA.

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

DATED: This 31st day of October, 2016

By



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