

STATE OF OREGON, EMPLOYMENT RELATIONS BOARD

**UNFAIR LABOR PRACTICE COMPLAINT
AGAINST PUBLIC EMPLOYER**

For ERB Use Only

Case No. **UP-005-19**

Date Filed **03/06/19**

Email, fax, mail, or deliver the complaint to: Employment Relations Board
528 Cottage St. NE, Suite 400, Salem, OR 97301
Email: ERB.Filings@oregon.gov
Fax: (503) 373-0021 (There is a \$25 fax filing fee.)
Phone: (503) 378-3807

Mail or deliver the **\$300 complaint filing fee**, payable to Employment Relations Board. The filing is not complete until the Board receives the \$300 filing fee. For more information, see the attached instructions.

1. COMPLAINANT

Name, address, phone number, and email address.
Salem Keizer Education Association
2540 Coral Avenue, NE
Salem, OR 97305
503.364.6987
SKEAPresident@oregoned.org

2. COMPLAINANT'S REPRESENTATIVE

Name, address, phone number, and email address.
Margaret O'neil, Bennett Hartman LLP
210 SW Morrison, Suite 500
Portland, OR 97204
503.546.9634
margaret@bennethartman.com

3. RESPONDENT (EMPLOYER)

Name, address, phone number, and email address.
Salem-Keizer School District
2450 Lancaster Drive NE
Salem, OR 97305
503.399.3000

4. RESPONDENT'S REPRESENTATIVE

Name, address, phone number, and email address.
Paul Dakopolos, Garrett Hemann Robertson, P.C.
1011 Commercial st, NE #210
Salem, OR 97301
503.581.1501
pdakopolos@ghrlawyers.com

5. Complainant alleges that Respondent has violated the following subsection(s) of ORS 243.672(1) or ORS 243.752 of the Public Employee Collective Bargaining Act, which make it an unfair labor practice for a public employer or its designated representative to (check all that apply):

- 243.672(1)(a): Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.
- 243.672(1)(b): Dominate, interfere with or assist in the formation, existence or administration of any employee organization.
- 243.672(1)(c): Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization.
- 243.672(1)(d): Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.
- 243.672(1)(e): Refuse to bargain collectively in good faith with the exclusive representative.
- 243.672(1)(f): Refuse or fail to comply with any provision of ORS 243.650 to 243.782.
- 243.672(1)(g): Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.
- 243.672(1)(h): Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- 243.672(1)(i): Violate ORS 243.670(2), relating to the use of public funds to support actions to assist, promote or deter union organizing.
- 243.752: Refuse or fail to comply with any provision of a final and binding arbitration award.

6. This Complaint includes the following requests (check all that apply):

- A request that the Board award a civil penalty, pursuant to ORS 243.676(4) and OAR 115-035-0075.
- A request that the Board order reimbursement of the filing fee, pursuant to ORS 243.672(3) and OAR 115-035-0075.
- A request that the Board expedite all or part of this Complaint, pursuant to OAR 115-035-0060.

7. Statement of Claims

You must attach a statement of claims to this Complaint. The statement must provide the following information:

- A clear and concise statement of the facts involved in each alleged unfair labor practice (including relevant dates, names, places, and actions);
- A specific reference to each section and subsection of the law allegedly violated; and
- A brief description of the remedies Complainant is seeking.

If you refer to documents in the statement of claims, you may attach copies of those documents to the statement.

If you are requesting a civil penalty and/or filing-fee reimbursement, the statement of claims must also include an explanation of why you believe a civil penalty and/or filing-fee reimbursement is appropriate in your case, and a clear and concise statement of the facts alleged in support of the request(s). *See* OAR 115-035-0075.

If you are requesting expedited processing, you must also provide the affidavit required by the Board's rules. *See* OAR 115-035-0060.

I certify that the statements in this Complaint and the attached statement of claims are true to the best of my knowledge and information.

By: Margaret S. O'S
Signature of Complainant or Complainant's Representative

Att 2/28/2019
Title Date

UNFAIR LABOR PRACTICE COMPLAINT

Statement of Facts

1. The Salem Keizer Education Association//OEA/NEA (“SKEA” or the “Association”) is a labor organization within the meaning of ORS 243.650(13).
2. The Salem-Keizer School District (District) is a public employer within the meaning of ORS 243.650(20).
3. The following individuals are employees of the District. Christy Perry (“Perry”) is the Superintendent. Jon Beight (“Beight”) is the Executive Director of Human Resources. Kathryn Nove (“Nove”) is the Director of Employee Relations. Olga Cobb (“Cobb”) is the Director of Elementary Education. Bonney Dietrich (“Dietrich”) is the Principal of Richmond Elementary School.
4. Eric Schutz (“Schutz”) is the Oregon Education Association (“OEA”) UniServ Consultant assigned to serve the SKEA.
5. Mindy Merritt (“Meritt”) is the President of the SKEA. She has held this position since March 2016.
6. The parties are currently covered by a collective bargaining agreement that expires June 30, 2021. A copy of that agreement is attached as Ex. A.
7. Morgan McGlynn (“McGlynn”) is a third year employee of the District. She worked for two years at Richmond Elementary (teaching 4th and 5th grade, respectively) until September 2018, when she was involuntarily transferred.
8. McGlynn was also active in the Association. During the 2017-18 school year, she was an informal leader and in August 30, 2018, she was elected by her colleagues to serve as Building Representative. When McGlynn raised contractual issues with Dietrich, such as Association time during staff meetings, Dietrich seemed unaware or uninterested in the applicable contract provisions, and generally resistant to McGlynn’s advocacy.
9. On the morning of September 4, 2018 during a planning session, Principal Dietrich announced that she needed to transfer one staff member to Sumpter Elementary School to teach second grade. When asked what her criteria would be for determining who to transfer, Dietrich indicated that she would consider grade level experience and also consider her desire to retain staff at Richmond who are effective at addressing student’s behavioral issues. Dietrich asked for volunteers.

10. Also on September 4, 2018, McGlynn became concerned about Dietrich's claim that staff could not take time off in hour increments. McGlynn called Association Vice President Tyler Scialo-Lakeberg ("Scialo-Lakeberg"), who then called the Richmond office manager, Nancy Dickerman ("Dickerman") to check on the issue. Dickerman confirmed that Principal Dietrich understood the correct rule and claimed that McGlynn was mistaken.
11. Later on the afternoon of September 4, 2018, Dietrich told McGlynn that she was being transferred to Sumpter Elementary, with no explanation and minimal direction or support for the move. McGlynn was shocked. She had no experience teaching second grade and had been commended for her classroom management skills, so she did not believe she would be considered for the transfer given the criteria Dietrich had articulated earlier that day. McGlynn subsequently learned that a second grade teacher at Richmond had volunteered for the transfer.
12. Association leaders discussed this involuntary transfer at a labor-management meeting on September 5, 2018. The District explained that McGlynn was selected because of performance concerns and a feeling that she would be "more successful" in a different setting. There are no performance concerns identified in McGlynn's file, nor had Principal Dietrich expressed any such concerns verbally. In addition, District administrators routinely assert that they will not transfer employees with performance issues, which made this explanation particularly suspect. Finally, McGlynn had good relationships with others at Richmond.
13. In addition to the extraordinary workload caused by transferring schools and grade levels after the school year started, McGlynn's new assignment is not in a Title I school which means that she is no longer eligible for student loan forgiveness. McGlynn also had taken all of the classes necessary to become a reading specialist, but needed to complete a practicum which, in the District, is only available in Title I schools. McGlynn thus risks not being able to complete her Reading Specialist endorsement, a huge waste of her time and money.
14. After McGlynn's involuntary transfer, Principal Dietrich continued to disparage the Association, making statements to staff along the lines of "the Association does not represents all staff." In addition, as a result of McGlynn's transfer, staff were reluctant to be involved with the Association.
15. The Association has a long-standing practice of having Association leaders and/or the UniServ Consultant drop by buildings at least once a year before classes begin or after

school to introduce themselves to staff. In the morning, they bring donuts; in the afternoon cookies. They may set up in the staff room, or drop by teachers' rooms. At the beginning of the year, the Association might confirm membership information. The interactions are short, and do not occur during student contact time. There is nothing clandestine about this activity. The Association representatives check in and out of the building. If they are in the building after classes begin, it is because they are packing up, avoiding getting in the way of students, talking with administrators or otherwise engaged in official business. They are not interrupting student contact time.

16. District administrators are aware of this long-standing practice. Before the 2017-18 school year, the only time it was questioned was when former SKEA president Eric Miller stayed talking with a member (who did not have a class at the time) after the student contact day started. Miller apologized and that was the end of the discussion.
17. During the 2017-18 school year, Employee Relations Director Nove for the first time suggested that Association leaders could not visit buildings except as expressly allowed in the contract. The Association objected. In that conversation, Superintendent Perry was more broadly accepting of the practice so long as the Association did not interfere with instruction. This was not a problem as the Association is well aware of the demands on teacher time, and also has vigorously defended protected preparation time.
18. The Association continued doing drop-in visits in buildings without further objection until the beginning of the 2018-2019 school year. On or around August 15, 2018, the District and the Association began having discussions relating to implementing *Janus v. American Federation of State, County, and Municipal Employees*, 138 S Ct 2448 (2018), as well as Association access to members. At that time, the District provided the Association a copy of a draft memorandum to administrators setting out the District's position about the Association's access to members. Notwithstanding long-standing past practice, the District asserted that Association leaders only had the right to come to the building for pre-arranged 15 minutes during staff meetings. . A copy of the draft memorandum is attached as Exhibit B.
19. Both UniServ Schutz and SKEA President Merritt objected to the memorandum, stating that it was a departure from the long-standing past practice that was unnecessary and that unlawfully interfered with Association activities. Schutz and Merritt also expressed concern that the changed practice was being proposed at the same time as the parties were having discussions relating to *Janus* and appeared designed to undermine the Association's ability to communicate with, sign up, and maintain members.

20. In response to Association's concerns, the District agreed not to send the memorandum. The Association consistently asserted its right to conduct drop-by visits during non-student contact time, and continued to do so as school started.
21. At the September 12, 2018 labor-management meeting, Employee Relations Director Nove once again asserted her view that Association representatives were not allowed in school buildings to conduct union business, except during approved Association meeting times. UniServ Schutz again objected, and the Superintendent and SKEA President Merritt agreed that the District's counsel (Paul Dakapolis) would call the Association counsel (Margaret Olney). A copy of the email communication reflecting this exchange is attached as Ex. C.
22. On or around September 25, 2018, Association counsel Olney sent an email to District counsel Dakopolos setting out additional information regarding the Association's union activities and position. Dakopolos never responded substantively, and the Association continued to conduct drop-ins, consistent with past practice. A copy of that email communication is attached as Ex. D.
23. Article I(D)(2) of the parties' collective bargaining agreement authorizes the Association to meet with staff for fifteen minutes once per month. Those meetings typically occur before or after a regular staff meeting. The clear and consistent past practice is for administrators to step out of the room during the Association meeting time, unless invited to stay.
24. For the first time any Association leader can remember, some building principals have insisted that they stay in the room during the Association meeting, based on advice from Nove. This occurred on or around October 25, 2018 at Hammond Elementary School, a difficult work-site, when SKEA President Merritt wanted to meet with staff to discuss their concerns. After the tense interaction, SKEA President Merritt call Supt. Perry who confirmed that was the direction given by the District. Merritt explained that was a departure from past practice.
25. As a result of the direction from Nove, some administrators insist on being present in Association meetings, others do not. The administrators who insist on being present are often in buildings with heightened labor-management tensions. Those with a collaborative relationship with their staff do not generally ask or insist on staying in the room.

26. On or around February 20, 2019, HR Director Beight sent a letter to Merritt threatening to file a ULP against the Association for violating the contract by visiting schools during non-student contact time and for sending emails without “proper notification.” In that letter, the District also demands that the Association send an email admitting those violations and telling members that the Association leaders could not visit school outside of the outside of the contractually permitted 15 minutes and, even then, only with the administrator’s permission. A copy of the District’s letter is attached as Ex. E.
27. The District’s February 20, 2019 demand letter includes examples of school visits the District deems out of compliance with Article 1.D., as well as allegations related to emails without “proper notification.” The letter makes clear that the District intentionally searched its records to track Association activities and communications in its effort to identify so-called violations. No evidence was presented of the Association visits interfering with instruction or the educational environment. No effort was made to discuss any of the specific concerns identified in the letter in a timely manner.
28. The District allows vendors (such as American Fidelity) to come into the building to meet with members before and after the student contact day and during teacher preparation periods.
29. The District’s efforts to restrict Association access to members is in response to greater Association advocacy and member empowerment over the last three years, both District-wide and in specific buildings. For example, three of the violations alleged in the letter occur in buildings where the Association and its leaders have intervened to advocate for staff with the administration (Hammond, Richmond and McKay). The vast majority of administrators in highly functioning buildings welcome the Association.

FIRST CLAIM FOR RELIEF (Union Discrimination/McGlynn)

29. The District actions described in paragraphs 7 to 14 violate ORS 243.672(1)(a) and (c) “because of” protected activity. It is unlawful for an employer to take action “because of” the employee’s protected activity. Here, Principal Dietrich chose to involuntarily transfer Morgan McGlynn out of Richmond Elementary because of McGlynn’s Association leadership role and actions to protect the contract, which is unlawful.
30. The District actions described in paragraph 7 to 14 violate ORS 243.672(1)(a) “in the exercise of” protected activity. This violation occurs when the employer’s conduct has the natural and probable effect of deterring employees from engaging in protected activity. Principal Dietrich’s decision to involuntarily transfer McGlynn right after she

was elected to serve as Building Representative and after she challenged Dietrich's violation of the contract (including getting Association leaders involved) has the natural and probable effect of discouraging protected activity and is therefore unlawful.

31. The District's actions described in paragraph 7 to 14 violate ORS 243.672(1)(b). By transferring a strong Association leader out of the building, remaining staff grew more fearful of challenging the Principal and the Association's ability to represent its members was adversely impacted.

SECOND CLAIM FOR RELIEF (Union Discrimination/Access)

32. The District's actions described in paragraphs 15-29 violate ORS 243.672(1)(a) and (c) "because of" protected activity. The District's decision to abandon clear and consistent past practice allowing Association leaders access to buildings for drop-in visits with members during non-student contact time is "because of" those Association leaders' protected activity relating to improving membership engagement and advocacy. Similarly, the District's decision to tell administrators that they can observe Association meetings is based on the Association leaders' protected activities. Finally, the District's threat to file a ULP for engaging in protected activity and its demand that the Association notify members that it does not have the ability to conduct building visits without administrator permission is in response to Association leaders' protected activity.
33. The District's actions described in paragraphs 15-29 violate ORS 243.672(1)(a) "in the exercise of" protected activity. The natural and probable effect of limiting Association leaders' access to members, monitoring Association meetings and demanding that the Association leaders communicate with members that they have violated the contract and can no longer visit buildings without their principal's permission is to discourage protected activity.
34. The District's actions described in paragraph 15-29 violate ORS 243.672(1)(b). It is unlawful for an employer to interfere with the formation, existence or administration of the Association. While Association leaders have resisted the District's actions, the change in District position has negatively impacted the ability of the SKEA President and other leaders to fulfill their duties to their members around communication and advocacy. The decision to tell administrators that they have the right to stay in contractually guaranteed Association meetings, interferes with the Association's ability to engage in full and frank discussions with members. The threat to file a ULP for

engaging in protected activities along with the demand that the Association tell its members that it has violated the contract and has no right to meet with members at the worksite without administrator consent, undermines member confidence in the Association, empowers administrators who many members are already fearful of, and discourages participation in Association activities.

THIRD CLAIM FOR RELIEF (Unilateral Change/Access)

35. The District's decision to unilaterally change its practices regarding Association access to members at worksites and to allow administrators to observe Association meetings violates ORS 243.672(1)(e). Association access to members is a mandatory subject of bargaining which cannot be changed without bargaining. Here, because the parties' collective bargaining agreement is silent regarding these subjects, the parties' current practices establish the status quo. The District's conduct described above unilaterally changes that status quo. That is, the District has announced the change, rather than notifying the Association of its intent to make a change and inviting bargaining. This is unlawful.

CLAIM FOR CIVIL PENALTY

36. The District's actions described above constitute a knowing and egregious violation of the law, Starting with the involuntary transfer of a member because of her union activity, continuing to the practice of allowing administrators to observe Association meetings, and then extending to the most recent demand that the Association post a notice stating that it has violated the contract and promising not to meet with members at worksites except when the administrator approves, the District's actions constitute a flagrant violation of the law. Simply put, the District's actions are intended to weaken the Association at a time when the Association has been more effectively organizing members and advocating on their behalf. This undermines the core policies and purposes of the PECBA. A civil penalty is appropriate.

WHEREFORE, the Association requests the following relief:

1. An order finding that the District violated ORS 243.672(1)(a), (b), (c) and (e) as alleged;
2. An order requiring the District to cease and desist from further similar violations and to return to the status quo;

3. An order requiring the District to post notices, both physically and electronically to all bargaining unit members, stating that the District has committed these unfair labor practices and been ordered to cease and desist from such conduct in the future;
4. An order requiring the District to assign Morgan McGlynn to a Title I building, if she so requests, in order to allow her to complete her Reading Specialist endorsement and to qualify for student loan forgiveness.
5. An order awarding a civil penalty of \$1000 for the District's knowing and egregious violation of the law;
6. An order awarded the Association its filing fee pursuant to ORS 243.676;
7. An order awarding the Association its full representation costs, pursuant to ORS 243.676;
8. Any other relief deemed necessary to further the policies and purposes of the PECBA.

Dated, February 28, 2019

BENNETT HARTMAN, LLP



Margaret S. Olney, OSB# 881359
Attorneys for Complainant