

STATE OF OREGON, EMPLOYMENT RELATIONS BOARD

**UNFAIR LABOR PRACTICE COMPLAINT
AGAINST PUBLIC EMPLOYER**

ERB Case No. provided upon filing

File your complaint (with any attachments) and pay the \$300 filing fee on our online [Case Management System-CMS](#). Alternative filing options detailed in the instructions.

Case No.: _____
UP-007-24

If using our online CMS, you will be directed to a payment option to pay the required \$300 filing fee. At this time, only ACH payments (*i.e.*, those using a checking account) can be processed through our CMS—**credit card payments are not currently supported**. If you do not use our online payment system, you may also mail the \$300 filing fee, or make arrangements with an ERB staff member for in-person delivery. Your filing is not complete until the \$300 is paid. There is an additional \$25 fee to file a document by fax.

Date Filed: _____
2/20/24

1. COMPLAINANT

Name, address, phone number, and email address.

2. COMPLAINANT’S REPRESENTATIVE

Name, address, phone number, and email address.

3. RESPONDENT (EMPLOYER)

Name, address, phone number, and email address.

4. RESPONDENT’S REPRESENTATIVE

Name, address, phone number, and email address.

5. Complainant alleges that Respondent has violated the following section(s) of ORS chapter 243 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 243.806.

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 243.806.

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.

243.672(1)(j): Attempt to influence an employee to resign from or decline to obtain membership in a labor organization.

243.672(1)(k): Encourage an employee to revoke an authorization for the deductions described under ORS 243.806.

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: *Danielle S. Holmes*
Signature of Complainant or Complainant's Representative

Title

Date

ATTACHMENT TO UNFAIR LABOR PRACTICE COMPLAINT

The Parties

1. Portland Community College (the “College”) is a public employer as defined in ORS 243.650(20).
2. The Portland Community College Federation of Faculty and Academic Professionals (“FFAP”) and Portland Community College Federation of Classified Employees (“FCE”), collectively referred to as the “Federations,” are labor organization as defined in ORS 243.650(13).
3. FFAP is the exclusive representative of a bargaining unit of employees, including academic professionals and faculty, employed by the College.
4. FCE is the exclusive representative of a bargaining unit of classified employees employed by the College.
5. Frank Goulard is the President of FFAP, and he has held that position since 2012.
6. Jeff Grider is the President of FCE, and he has held that position since 2015.
7. Adrien Bennings is the President of the College. She has held that position since the summer of 2022.

The Federations’ Previous Presentations at In-Service

8. Every year during the third week of September, the College holds an in-service week for all employees. In-service is a “welcome back” event that consists of a week of district meetings, campus meetings, and staff meetings to assist employees in preparing for the upcoming academic year and serving students.
9. Since at least 1996, the Federations were given time to present at in-service to also assist employees in preparing for the upcoming academic year. The presentations welcome employees back for the school year, introduce leadership to bargaining unit members, inform bargaining unit members about the Federations’ priorities, announce upcoming membership meetings, and notify employees of the status of significant campaigns such as contract negotiations. Previously, both FFAP and FCE were given five minutes each to address employees, and typically, the presidents of the Federations spoke.
10. In 2022, FFAP President Frank Goulard was not able to attend in-service due to an accident. Since Goulard was not available, FFAP Organizing Officer Ben Cushing attended in-service in Goulard’s place and spoke to employees during the allotted five minutes on behalf of FFAP. FCE President Grider also spoke to employees for five minutes.

The College Refused to Allow the Federations to Speak at In-Service in 2023

11. On September 1, 2023, Grider and Goulard contacted Bennings about in-service for 2023. Grider and Goulard informed Bennings that they had learned that the College's current plan for the September 18 in-service program did not include the "traditional few minutes" for the Federations to address their members and invite them to union meetings. Grider and Goulard formally requested that the Federations be given their usual time to speak to their members, "as [they had] for decades." (Attachment C-1, pg. 2). They also offered to make themselves available to meet in person with Bennings to discuss the issue further.

12. Bennings responded that same day, stating that she appreciated Goulard's and Grider's dedication to addressing their members and their "desire to maintain a tradition of providing a platform for [Grider and Goulard] to speak." Bennings accepted the opportunity to meet with Grider and Goulard and provided her availability for a meeting. Bennings also informed them that an all-college email would be sent once the agenda for in-service was finalized, which would "provide everyone with a clear overview of the vision for the in-service program structure and content." (Attachment C-1, pg. 1).

13. On September 7, Grider and Goulard met with Bennings in person in Bennings' office at 3:30 p.m. Three College administrators were also present for the meeting – Eric Blumenthal, Executive Vice President of Administration and Finance; Steven Nakana, Vice President of People Strategy, Equity, and Culture; and Kurt Simonds, Vice President of Strategy, Policy, and Integrated Planning. The meeting lasted about thirty minutes.

14. During the meeting, Bennings informed Grider and Goulard that she had made her mind up in February of 2023 that they would not be permitted to speak during in-service on behalf of their respective Federations. Bennings brought up the 2022 in-service and claimed that, up to the moment Cushing spoke on behalf of FFAP, in-service was a positive meeting. She stated that when Cushing spoke, the tone turned negative, and it was no longer about the "collective college." Goulard told Bennings that his statements during his in-service presentations are positive and student-centered, and that he explains activities that are coming up for the bargaining unit members. Despite Goulard's protest and explanation, Bennings would not permit the Federations to speak, stating, "We may disagree, but it's at the President's discretion." Bennings made clear that because she did not appreciate the tone and content of Cushing's statements at in-service in 2022, she would not allow Grider or Goulard to speak at in-service in 2023.

15. Shortly after the meeting, Bennings sent Goulard an email with information she referenced in the meeting. (Attachment C-2). The email contained information about in-service, including the topics to be discussed and speakers. The Federations were not included in any of the information about in-service.

16. The first day of in-service for the 2023-2024 school year took place on September 18, 2023. The College refused to provide the Federations their usual time to speak at in-service.

Bennings informed employees that FFAP would be hosting a lunch, but she did not require any academic professionals or faculty to attend.

17. The College has repeatedly interfered with and restrained Federation members when those members engaged in protected union activity. (*See* UP-059-23). The College called public safety officers to unlawfully remove bargaining unit members from an administrative suite while those members were engaging in protected activity. The College then later threatened disciplinary and legal action if bargaining unit members engaged in similar protected conduct.

First and Second Claims for Relief:

The College's Decision to Forbade the Federations from Speaking at In-Service in 2023 Violated ORS 243.672(1)(a) and (1)(c)

18. ORS 243.672(1)(a) prohibits an employer from interfering with, restraining, or coercing public employees in or because of the exercise of activities protected by the PECBA. ORS 243.672(1)(c) prohibits an employer from discriminating in regard to hiring, tenure, or any terms or conditions of employment for the purpose of encouraging or discouraging membership in an employee organization.

19. The College prohibited the Federations' Presidents from speaking at in-service in 2023 because Cushing engaged in union activity during in-service in 2022 that upset or offended College President Bennings. This decision was tied directly to the perceived tone and content of legally protected statements from a Federation representative who was speaking in their official union capacity. The College interfered with and restrained President Goulard's and President Grider's ability to speak to bargaining unit members on behalf of FFAP and FCE because of another union leaders' protected activity. As a result, the College violated the "because of" prong of ORS 243.672(1)(a).

20. Additionally, the College also violated the "in the exercise of" prong of ORS 243.672(1)(a) because its actions, viewed under the totality of the circumstances, will have the natural and probable consequences of chilling bargaining unit members in their willingness to participate in union activity.

21. Further, as a result of the conduct described above relating to the (1)(a) violation, the College committed a related violation of ORS 243.672(1)(c).

Request for Civil Penalty, Reimbursement of Filing Fee, and Posting of Notice

22. The College has shown repeated retaliatory behavior against the Federations for their members' engagement in union activity. (*See* UP-059-23). The actions described above and in light of the College's repeated retaliatory behavior are sufficiently repetitive, flagrant, and egregious to justify a civil penalty under ORS 243.767(4)(a). As such, the Federations request a civil penalty of \$1,000.00.

23. The Federations request reimbursement of their filing fee under ORS 243.672(6).

24. Because the College's conduct was flagrant, impacted the entire bargaining units' ability to receive important union information for each Federation, and was directed at protected activities, a posting of notice of the violation is warranted. The College maintains an email system that it uses to communicate with Federation members about job-related matters. As such, the notice should be distributed to all bargaining members electronically.

WHEREFORE, the Federations request an order granting the following relief:

- A. Finding that the College violated ORS 243.672(1)(a) and (1)(c) as described above;
- B. Requiring the College to cease and desist with its actions that violate ORS 243.672(1)(a) and (1)(c);
- C. Requiring the College to provide the Federations time to speak to members during paid work hours within 60 days of the Board's decision, as well as the opportunity to speak at future in-service weeks;
- D. Requiring Bennings to attend training on the rights of the College's employees under PECBA;
- E. Requiring the College to reimburse the Federations' filing fee under OAR 115-035-0075(3);
- F. Requiring the College to distribute notices of violations by email to both Federations' members via its email system;
- G. Requiring the College to pay a civil penalty of \$1,000.00 to the Federations because its violations were repetitive, egregious, and flagrant;
- H. Awarding the Federations their reasonable representation costs and attorney fees under ORS 243.676(2)(d) and OAR 115-035-0055;
- I. Awarding any other relief deemed just and equitable by the Board.

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

By: /s/ Danielle S. Holmes
Danielle S. Holmes
Attorney for Complainant
Tedesco Law Group

February 19, 2024
Date

BEFORE THE EMPLOYMENT RELATIONS BOARD
OF THE
STATE OF OREGON

PCC FEDERATION OF FACULTY AND
ACADEMIC PROFESSIONALS AND PCC
FEDERATION OF CLASSIFIED
EMPLOYEES,

Complainants,

v.

PORTLAND COMMUNITY COLLEGE,

Respondent.

Case No. UP-007-24

RESPONDENT'S ANSWER AND
AFFIRMATIVE DEFENSES

Portland Community College ("Respondent" or the "College"), by undersigned counsel and pursuant to OAR 115-035-0035(1), hereby files this Answer and Affirmative Defenses ("Answer") to the unfair labor practice complaint ("Complaint") filed by the PCC Federation of Faculty and Academic Professionals and the Portland Community College Federation of Classified Employees ("Complainants" or "Unions"), and states as follows:

GENERAL DENIAL

Except as otherwise expressly admitted herein, and without limitation, the College denies each and every allegation contained in the Complaint and specifically denies that it violated the Public Employee Collective Bargaining Act, as amended ("PECBA" or the "Act"), as alleged in the Complaint. The College reserves the right to amend its Answer as may be necessary.

RESPONSE TO COMPLAINT ALLEGATIONS

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.

8. The College admits that it holds an in-service week each September and that it is a College-sponsored and organized event. Except as expressly admitted, the College denies the allegations in paragraph 8 of the Complaint.

9. The College admits that representatives of the Portland Community College Federation of Faculty and Academic Professionals (“FFAP”) and Portland Community College Federation of Classified Employees (“FCE”) have been allowed to speak to groups of employees during in-service weeks in the past. Except as expressly admitted, the College denies the allegations in paragraph 9 of the Complaint.

10. The College admits that representatives of FFAP and FCE were allowed to speak to employees during the in-service week in September 2022. Except as expressly admitted, the College denies the allegations in paragraph 10 of the Complaint.

11. The College admits that Frank Goulard and Jeff Grider contacted Dr. Adrien Bennings (“Dr. Bennings”) about speaking to employees during in-service week in September 2023. Except as expressly admitted, the College denies the allegations in paragraph

11 of the Complaint.

12. The College admits that Dr. Bennings responded to Mr. Goulard and Mr. Grider via email and offered to meet with both. Except as expressly admitted, the College denies the allegations in paragraph 12 of the Complaint.

13. The College admits that Mr. Goulard and Mr. Grider met with Dr. Bennings to discuss the agenda for the September 2023 in-service week. The College lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 13 of the Complaint, and therefore must deny the same.

14. Deny.

15. The College admits that Dr. Bennings sent an email to Mr. Goulard on September 7, 2023, with information about the agenda for the 2023 in-service week. Except as expressly admitted, the College denies the allegations in paragraph 15 of the Complaint.

16. The College admits that it allowed representatives of FFAP and FCE to be present during the September 2023 in-service week and to communicate with their members during breaks in the formal program including during lunch breaks. Except as expressly admitted, the College denies the allegations in paragraph 16 of the Complaint.

17. Deny.

First and Second Claim for Relief

The College's Decision to Forbade the Federations from Speaking at In-Service in 2023 Violated ORS 243.672(1)(a) and (1)(c)

18. Paragraph 18 consists of legal conclusions to which no answer is required. To the extent an answer is required, the College denies the allegations in paragraph 18 of the Complaint.

19. Paragraph 19 consists of legal conclusions to which no answer is required.

To the extent an answer is required, the College denies the allegations in paragraph 19 of the Complaint.

20. Paragraph 20 consists of legal conclusions to which no answer is required.

To the extent an answer is required, the College denies the allegations in paragraph 20 of the Complaint.

21. Paragraph 21 consists of legal conclusions to which no answer is required.

To the extent an answer is required, the College denies the allegations in paragraph 21 of the Complaint.

Request for Civil Penalty, Reimbursement of Filing Fee, and Posting of Notice

22. Paragraph 22 consists of legal conclusions to which no answer is required.

To the extent an answer is required, the College denies the allegations in paragraph 22 of the Complaint. The College denies that the Unions are entitled to a civil penalty.

23. The College denies that the Unions are entitled to reimbursement of the filing fee.

24. Paragraph 24 consists of legal conclusions to which no answer is required.

To the extent an answer is required, the College denies the allegations in paragraph 24 of the Complaint.

PRAYER FOR RELIEF

Except as expressly admitted herein, the College denies each and every allegation contained in the Complaint and the whole thereof, and further denies that Complainants are entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

By pleading the following as affirmative defenses, the College does not concede that each of the matters covered by the numbered defenses are to be proved by it, and reserves its position that Complainants retain the burden of proof on all matters necessary to state the claims asserted in the Complaint. The College expressly reserves the right to amend this answer and to assert additional affirmative defenses upon discovery of additional or more definitive facts.

First Affirmative Defense

(Failure to State a Claim)

1. The Complaints fails to state a claim upon which relief can be granted under ORS 243.672(1)(a) and (c).

Second Affirmative Defense

(Statute of Limitations)

2. Some or all of Complainants' claims are barred by the applicable statute of limitations.

Third Affirmative Defense

(Good Faith/Legitimate Business Motives)

3. The College's actions with respect to the subject matter alleged in the Complaint were undertaken in good faith and justified by legitimate business motives, purposes, and reasons, with the absence of intent to injure Complainants, and constituted lawful, proper, and justified activities.

Fourth Affirmative Defense

(Lack of Entitlement to Fees, Costs, Expenses, or Civil Penalty)

4. Complainants are not entitled to attorney fees, costs, or expenses under ORS 243.676(2)(d), or a civil penalty under ORS 243.676(4)(a) because the College's actions were at all times lawful and made in good faith.

Fifth Affirmative Defense

(Reservation of Rights)

5. The College reserves the right to allege additional affirmative defenses and to add counterclaims should they become apparent prior to the hearing.

PRAYER FOR RELIEF

WHEREFORE, Respondent prays for a judgment as follows:

1. That Complainants be denied the relief requested in the Complaint;
2. That the Complaint be dismissed in its entirety and with prejudice;
3. That the College be awarded its reasonable attorney fees, costs, and disbursements incurred in connection with defending the Complaint under ORS 243.676(3)(b);

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4. That the Board grant the College such other relief as it may deem just and equitable.

DATED this 16th day of April, 2024.

MILLER NASH LLP

s/Trevor R. Caldwell

Trevor R. Caldwell, OSB No. 153198

trevor.caldwell@millernash.com

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Phone: 503.224.5858

Fax: 503.224.0155

Attorney for Respondent

Portland Community College

CERTIFICATE OF SERVICE

I hereby certify that I served Respondent's Answer and Affirmative Defenses on:

Danielle Holmes
Tedesco Law Group
1316 NE Broadway, Ste A
Portland, OR 97232
Email: danielle@tlglabor.com

*Attorney for Complainants PCC Federation of
Faculty and Academic Professionals and PCC
Federation of Classified Employees*

by the following indicated method or methods:

- by **mailing** a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- by transmitting a full, true, and correct copy thereof by **electronic means** to the attorney at the attorney's last-known email address listed above on the date set forth below.
- by sending a full, true, and correct copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.
- by causing a full, true, and correct copy thereof to be **hand-delivered** to the attorney at the attorney's last-known office address listed above on the date set forth below.

DATED this 16th day of April, 2024.

s/Trevor R. Caldwell

Trevor R. Caldwell, OSB No. 153198

*Of Attorney for Respondent
Portland Community College*