

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-024-25

(UNFAIR LABOR PRACTICE)

NORTHWEST EDUCATION ASSOCIATION, ¹)	
)	
Complainant,)	
)	RECOMMENDED RULINGS,
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
NORTHWEST REGIONAL EDUCATION)	AND PROPOSED ORDER
SERVICE DISTRICT,)	
)	
Respondent.)	
_____)	

A hearing was held before Administrative Law Judge (ALJ) Jennifer D. Kaufman on September 11, 12, and 18, 2025, via videoconference. The record closed on November 3, 2025, following receipt of the parties’ post-hearing briefs.

Sarah Drescher and Evianna Colvin, Attorneys at Law, Tedesco Law Group, Portland, Oregon, represented the Complainant.

Erin M. Burris, Attorney at Law, Miller Nash LLP, Portland, Oregon, represented the Respondent.

On May 2, 2025, Northwest Education Association (the Association) filed an unfair labor practice complaint against Northwest Regional Education Service District (the District). On June 24, 2025, the District filed a timely answer. On July 28, 2025, the Association filed an amended complaint, and on August 7, 2025, the District timely filed an answer to the amended complaint.

¹Pursuant to an unopposed motion from the Complainant during the hearing in this matter, the amended complaint has been modified to correct the name of the Complainant.

The issues are:²

1. Did the District interfere with, restrain, or coerce employees in or because of the exercise of protected rights, in violation of ORS 243.672(1)(a), by:
 - a. Interfering with union representative ED's participation during a March 5, 2025, meeting about involuntary transfers?
 - b. Refusing to meet with ED to discuss her conduct during a meeting after ED requested to be accompanied by a union representative?
 - c. Issuing a letter of expectations to ED in connection with her conduct during a meeting?
2. By the conduct alleged above in paragraphs 1.a. through 1.c., did the District discriminate in regard to hiring, tenure, or any term of condition of employment for the purpose of discouraging union membership, in violation of ORS 243.672(1)(c)?
3. Did the District refuse to bargain in good faith with the Association, in violation of ORS 243.672(1)(e), by not filling vacant positions, implementing involuntary transfers of bargaining unit employees, and reallocating employee caseloads without bargaining with the Association over the impacts of those changes?
4. Should either the Association or the District be required to pay a civil penalty pursuant to ORS 243.676(4)?
5. Should the District be required to post a notice of any violations found and distribute that notice via email?

We conclude that the District violated ORS 243.672(1)(a) and (1)(e) but find it unnecessary to address the (1)(c) allegation, which would not affect the remedy. We order the District to cease and desist, to bargain in good faith with the Association over the impacts of its involuntary transfers, and to post a notice of the violations found and distribute the notice via email. We decline to assess a civil penalty against either party.

RULINGS

1. The rulings of the ALJ were reviewed and are correct.
2. The Association's exhibits identified as Exhibits C-1 through C-24; the District's exhibits identified as Exhibits R-2, R-4 through R-11, R-13, and R-14; and the joint exhibits

²On October 23, 2025, the ALJ granted a joint post-hearing motion requesting that the issue statement be amended to conform to the evidence presented at the hearing.

identified as Exhibits J-1 through J-8 were admitted into the hearing record. Exhibits C-25, C-26, and C-27 were withdrawn. Exhibits R-1, R-3, and R-12 were not offered into evidence.

FINDINGS OF FACT

The Parties

1. The Association is a labor organization as defined in ORS 243.650(13).
2. The Association represents a bargaining unit of all regular full-time and regular part-time licensed or professional employees of the District, excluding supervisors, managers, and confidential employees.
3. The Association has two co-presidents, Ginger Gamboa and Vanessa Hernandez; and two vice presidents at large, ED (an occupational therapist) and SD (an early intervention specialist). The Association also has a vice president in each county in which bargaining unit members are located. Daniel O'Donnell is the Oregon Education Association (OEA) UniServ Consultant for the Association.
4. The District is a public employer as defined in ORS 243.650(20).
5. The District operates an "Early Learning Program" that provides early intervention and special education services to eligible children from birth through the age of five who reside in Clatsop, Columbia, Tillamook, and Washington counties.
6. Deborah Simons was the Chief Human Resources (HR) Officer for the District at the time of the relevant events in this case.³ Jordan Ely is the Chief Financial Officer.
7. The parties' current collective bargaining agreement is effective from July 1, 2023, through June 30, 2026.

The Early Learning Department

8. The District is contracted by the Oregon Department of Education to provide early intervention and special education services to young children with disabilities. The District provides those services through its Early Learning Department (the Department). The Department provides services through two programs: the early intervention program, which provides services for children from birth through three years of age; and the early childhood special education program, which provides services for children from three through five years of age (or until they enter kindergarten).
9. Stacy Rager is the Executive Director of Early Learning. Jennifer Vanderschuere is the Director. In Washington County, the Department operates service centers in Beaverton (the Beaverton Early Childhood Center), Hillsboro (the Hillsboro Early Childhood Center), and Tualatin (the Tualatin Early Childhood Center). In Columbia County, the District operates a

³As of the date of the hearing, Simons had retired.

service center in St. Helens (the Columbia Service Center). Each of those sites is supervised by a “Site Principal.”

10. The Department employs licensed specialists including special education teachers, speech language pathologists, physical therapists, occupational therapists, vision specialists, hearing specialists, and behavioral specialists. The specialists who work for the Department are generally referred to as “service providers.” Service providers provide both direct services (such as physical therapy), and consultative services (which can be provided remotely). Services may be provided in the child’s home, in a daycare setting, or in a preschool setting depending on the needs of the child. Service providers spend a significant amount of time commuting between appointments within the counties they serve.

11. The type of care that the Department provides to each eligible child is established in an Individual Family Service Plan (Service Plan) that documents the special needs of the child and identifies the services that the child should receive. Each Service Plan is managed by a service provider who acts as the “service coordinator” for the Service Plan. Service coordinators’ duties include completing necessary paperwork, scheduling visits, and being the primary point of contact for parents and other caregivers.

12. The Department strives to provide stability and consistency for service recipients, but it is common for cases to be transferred among service providers when new children are added or when staffing levels fluctuate. The Department typically adds new children to a service provider’s caseload⁴ each week. The workload associated with each child in a service provider’s caseload varies depending on the needs of the child and the amount of travel required to provide those services.

The 2024 Budget Shortfall and the District’s Response

13. The Oregon Department of Education allocates state and federal funds to the District in two-year cycles. During the 2023-2025 biennium the Department of Education reduced the District’s funding by approximately \$3.5 million. Consequently, the District reduced Department staffing levels at the end of the 2023-2024 school year.

14. At the beginning of the 2024-2025 school year the Department was struggling with caseload coverage for Columbia County. The site administrator and four licensed service providers had resigned from the St. Helen’s site and there were not enough service providers to cover the needs of eligible children in Columbia County.

15. The Department has historically had a difficult time recruiting and retaining staff in Columbia County, where service providers face challenges that are less frequent at the Department’s other sites. Because Columbia County covers a large rural area, service providers must make longer commutes between their appointments. Further, Columbia County has a greater

⁴The term “caseload” as used by Department employees refers to the number of children that a service provider is responsible for supporting. Department employees generally refer to the children they service as “students.”

underserved population and a higher poverty rate, such that children in Columbia County do not have access to the same resources and services as children in Washington County.

16. The District initially planned to fill the vacant positions created by the resignations in Columbia County. In November 2024, however, Chief Financial Officer Ely directed Executive Director Rager to make further staffing reductions.

17. On December 3, 2024, Executive Director Rager, Chief Financial Officer Ely, and Chief HR Officer Simons had a meeting to discuss budget and staffing issues. The group discussed closing vacant positions in Columbia County and addressing the staffing shortage there by involuntarily transferring staff from other locations. From Rager's perspective, involuntary transfers were necessary to meet the Department's legal obligation to serve Columbia County since the District did not have the budget to hire staff in Columbia County, and its Washington County operations were more fully staffed. That day, Simons informed Association representatives that budget reductions could result in the elimination of some open positions and that the reductions created the likelihood of staff transfers.

18. On December 5, 2024, Executive Director Rager sent a budget update email to Department staff. Rager explained that the budget shortfall meant that the Department would not fill four open positions, that up to four employees might be reassigned across county lines, and that other employees might have assignment shifts within the same county. Rager stated that affected employees would be notified no later than December 19, 2024, and that reassignments would go into effect on January 6, 2025. Rager also stated that the reassignments would necessitate caseload reallocations for some employees, and that all reassignment decisions would be made in accord with the collective bargaining agreement.

19. On December 6, 2024, Association Vice President SD emailed Chief HR Officer Simons to say that the District must follow Article 20 of the collective bargaining agreement concerning the transfer process. Simons responded that the District intended to comply with Article 20 of the contract and that she would set up a meeting with Association representatives to discuss the transfers.

20. Article 20 of the collective bargaining agreement distinguishes between member-initiated transfers and District-initiated transfers. Article 20, Section A, Subsection 4, defines a District-initiated transfer as a “[c]hange of assignment initiated by [the District] during the regular school year” or “[a]n assignment for the following year, made by May 1, from one program to another.” (Exh. J-1 at 38.) Article 20, Section E, sets forth the bargained procedures for District-initiated transfers, as follows:

- “1. ESD-initiated⁵ transfers may be required by changes in staffing needs for various reasons such as, but not limited to, program reconfiguration, staff realignment, changes in enrollment, and program requests from local school districts.

⁵“ESD” is a reference to the District.

- “2. ESD-Initiated transfers may be full or partial transfers, and they may be permanent or temporary. In the event the ESD is contemplating one or more ESD-initiated transfers and prior to any final decision, it will notify the Association President. This notification will include the number and FTE of the positions considered for transfer, the location(s) of the positions being considered for transfer (‘from’ and ‘to’), and a brief explanation of the need for the contemplated transfer. The ESD will meet with the Association upon request to consider the following: a. Alternatives to an ESD-initiated transfer; b. Who may be subject to the contemplated transfer; c. How the contemplated transfer will affect the workload of the staff to be transferred and for the staff remaining in the work unit; d. The duration of the contemplated transfer, if temporary; e. The effective date of the contemplated transfer; f. Any other such matter(s) deemed appropriate under the circumstances.
- “3. Notice of an ESD initiated transfer will be given to the Association President and affected member as soon as possible. The transfer will be completed only after a meeting between the member, an Association representative, the supervisor, and the Chief Human Resources Officer or designee, at which time the member will be notified of the reason for the transfer.
- “4. Member(s) being transferred will be informed of all appropriate vacancies known at the time the transfer discussion is occurring. The member’s desire to fill an appropriate vacancy shall be granted except in situations where layoff or district request has created a ‘hold’ on a position.
- “5. No member will be transferred to a position outside of the member’s licensure area.
- “6. Across County Transfers: Any member who has been subject to an ESD-initiated transfer across county lines in the past five (5) years will not be subject to another such ESD-initiated transfer.
- “7. If possible, the member being transferred will be given the opportunity to visit the new assignment prior to the start of the assignment.
- “8. When an ESD initiated transfer is necessary, a member’s length of service in the ESD; licensure; residence; area of competence or major or minor field of study will be considered.
- “9. A member will not be subject to an ESD initiated transfer more than two (2) times in five (5) years. During layoff situations, this may not be avoidable.

- “10. The ESD will provide moving assistance for the member when moving their classroom supplies/materials to the new assignment. Assistance may include providing an additional or trade day to complete moving activities.
- “11. The member will be given priority consideration for future vacant positions for which they qualify and apply.
- “12. In the event an ESD-initiated transfer is necessary due to staffing shortages after the start of the school year, the transfer shall be considered temporary for a period ending not later than the end of the school year. The ESD will continue recruiting efforts for the transferred position.”

(Exh. J-1 at 39-40.)

21. On December 13, 2024, Chief HR Officer Simons met with Association Co-President Ginger Gamboa and Association Vice-President ED to discuss the District’s plans for employee transfers. Simons advised Gamboa and ED that the District was finalizing which positions would need to be moved and that the District would schedule meetings and have the conversations that were required by the contract the following week. Gamboa responded that she was not very familiar with the transfer process, that the District’s process looked great, and that the Association would let the District know which Association representatives were available to attend the meetings.

22. Later that day, Chief HR Officer Simons provided formal written notice of the transfers to the Association pursuant to Article 20 of the collective bargaining agreement.⁶ Simons stated that the District would initiate transfers of some Department staff effective on or about January 6, 2025. Simons cited an anticipated \$500,000 shortfall in federal funding as the reason that the transfers were needed, and identified the targeted positions as: one .8 FTE⁷ occupational therapist and one .5 FTE occupational therapist to be transferred from the Tualatin Early Childhood Center to the Columbia Service Center, one FTE early childhood education specialist from the Beaverton Early Childhood Center to the Columbia County Service Center, and one FTE early childhood education specialist from the Beaverton Early Childhood Center to the Hillsboro Early Childhood Center.⁸ Simons stated that the transfers would be temporary through June 30, 2025, and that affected staff would be notified no later than December 16, 2024.

23. On December 16, 2024, the District issued written transfer notices to three employees: RC, MR, and JPN. The District notified education specialists RC and MR that they would be temporarily transferred from the Beaverton Early Childhood Center to the Columbia

⁶The Association filed a grievance over the District’s alleged failure to adequately comply with Article 20 of the collective bargaining agreement. The issue of whether the District violated the collective bargaining agreement is not before us.

⁷“FTE” is the common abbreviation for full-time equivalent.

⁸The District did not end up transferring a .8 FTE occupational therapist position.

Service Center and the Hillsboro Early Childhood Center, respectively. The District notified occupational therapist JPN that she would be temporarily transferred from the Hillsboro Early Childhood Center to the Columbia Service Center on a .5 FTE basis. All three employees were notified that the transfer would be effective on January 6, 2025, and that they would be transferred back to their existing locations at the end of the school year.

24. On December 17, 2024, OEA representative O'Donnell sent an email to Chief HR Officer Simons and other District managers demanding to bargain over the planned transfers. Specifically, O'Donnell stated: "The [Association] employees demand to bargain before transfers take place and workloads and schedules are reassigned and case[]loads potentially increased" and "demand to bargain alternatives to address budget concerns." (Exhs. C-2 at 3, R-2 at 3.) The District did not provide a written response to the Association's December 17, 2024, demand to bargain.

25. That same day, District and Association representatives attended a labor management meeting. The meeting became heated when the subject of the transfers came up.⁹ OEA Representative O'Donnell stated that the District was required to bargain over its decision to implement involuntary transfers instead of filling vacancies and the resulting workload impacts. O'Donnell stated that the District was required to bargain before transfers could move forward. Chief HR Officer Simons stated that she disagreed with the Association's position that the District was required to bargain the transfers, but that the District would be willing to meet with the Association. Simons offered to meet during the winter break or the first day back from winter break, January 6, 2025 (the effective date of the transfers).

26. The Association did not respond, formally or informally, to Chief HR Officer Simons' offer to meet. The parties did not meet during the winter break.

Implementation of Transfers and Case Reallocations and Meetings with Affected Employees

27. On January 9, 2025, Director Vanderschuere met with occupational therapist JPN, who had been transferred from Washington County to Columbia County on a .5 FTE basis. The purpose of the meeting was to discuss the logistics of JPN's transfer, including the impacts to her caseload and schedule.

28. Pursuant to JPN's request, the meeting was attended by Association representative ED. JPN sent an email to Director Vanderschuere the night before the meeting stating that she wanted to be accompanied by a union representative. Vanderschuere did not see the email before she arrived at the meeting the next morning and she was not expecting ED's presence, but she did not ask ED to leave the meeting.

29. ED attended the meeting to ensure that the collective bargaining agreement was being followed and to act as an advocate for JPN about impacts to her workload. ED generally believes that members have a right under the collective bargaining agreement to be represented

⁹On January 8, 2025, Chief HR Officer Simons filed a complaint with the OEA regarding O'Donnell's behavior during the December 17, 2024, meeting. The allegations about O'Donnell's behavior during that meeting are not directly relevant to the allegations of this case, and we do not address them here.

during meetings with management about workload. ED has never been asked to establish a contractual right to attend a meeting when an employee has requested her presence, and Director Vanderschuere did not ask ED to do so at the January 9, 2025, meeting.

30. During the meeting, ED expressed concern that the Department had previously allocated two FTE occupational therapist positions to serve Columbia County, and that it was not possible for JPN to cover those services on a .5 FTE basis. ED also raised concerns that JPN's license might be impacted if there were parent complaints due to missed appointments. Vanderschuere stated that the District was working on a plan to get more support for occupational therapy services in Columbia County, and ED pressed Vanderschuere for details of that plan. ED raised concerns about the driving time required for JPN to get to and from Columbia County and between her appointments, which would impact the number of children that JPN could see during her workday. Vanderschuere acknowledged that driving time was an issue.

31. JPN stated that she was planning to work in Columbia County two days per week, to work in Washington County two days per week, and to have one flexible day for paperwork and virtual visits. Vanderschuere agreed with JPN's plan. Vanderschuere stated that a new administrator would be starting at the Columbia Service Center in February. ED questioned Vanderschuere about that person's qualifications, and expressed concerns about the District hiring a person who was unable to fulfill the functions of the job and who did not have an adequate understanding of legal Service Plan requirements. Vanderschuere felt criticized by ED's comments because she had been the acting administrator for the Columbia Service Center while the District was seeking a replacement.

32. The meeting was contentious. ED was direct and raised her voice at times.¹⁰ Although the meeting lasted about 90 minutes, which was longer than Director Vanderschuere had planned, she was unable to cover all of the information that she wanted to discuss with JPN related to the transfer.

33. After the meeting Director Vanderschuere told her supervisor, Executive Director Rager, that the meeting had gone poorly. Vanderschuere told Rager that ED had interrupted her and asked irrelevant questions about the budget and about Vanderschuere's job qualifications. Neither Rager nor Vanderschuere took any steps in connection with ED's behavior during the meeting at that time.

34. After the January 9, 2025, meeting, Vanderschuere offered to gather additional information and hold a second meeting with JPN. JPN did not request union representation for the second meeting.

¹⁰Director Vanderschuere testified that ED interrupted her and questioned her job qualifications, and that because of ED's interference the focus of the meeting was on the District rather than JPN. Vanderschuere also testified that the meeting was unlike any meeting she had ever had with a union representative during her career. Vanderschuere's testimony was inconsistent with the testimony of JPN, who testified that she was not uncomfortable during the meeting and that she was able to get her questions answered. Furthermore, ED did not receive any criticism about her behavior either during or shortly after the meeting.

35. JPN began performing work in Columbia County around the second week of January 2025. JPN experienced a significant increase in workload during her temporary transfer. The workload that service providers experience per assigned student in Columbia County is generally higher than that per assigned student in Washington County because of the distances between appointments and because students do not have access to the same services.¹¹ The District authorized five hours of extra duty pay per week for JPN to cover her additional workload in Columbia County.

36. Employees also experienced impacts to their workloads because of the involuntary transfers of two special education teachers out of the Beaverton Early Childhood Center. One of those teachers, MR, saw her caseload increase by about 10 students when she was transferred from the Beaverton site to the Hillsboro site. As a result, MR was required to schedule additional appointments and to spend more time traveling between appointments. The special education teachers who remained at the Beaverton site also experienced an increase in workload because they were required to absorb the caseloads of the teachers who had transferred. Special education teacher SB acquired three additional students, which required her to learn the needs of additional students and manage their curriculum plans, and to complete additional paperwork.

37. In late January or early February 2025, the Department offered voluntary transfers to two occupational therapists to help cover the service needs in Columbia County. Both employees declined the transfers. Consequently, the District decided to assign the unstaffed Columbia County cases to occupational therapists across all the Department's sites.

38. Early Intervention Coordinator Ricki Schley, a supervisor, reviewed the service minutes of unstaffed children in Columbia County and determined that assigning the services would result in about 60 to 75 minutes per month of additional workload for each occupational therapist assigned to a case. The Department assigned between one and five cases to each site, depending on the number of full-time occupational therapists working at the site.

39. On March 3, 2025, Supervisor Schley emailed occupational therapists on her team to acknowledge that the Department had faced challenges covering the occupational therapy needs of Columbia County. Schley stated that the District had exhausted its options to "secure additional support," and that "In lieu of involuntarily transferring any more [occupational therapists], we have made the difficult decision to ask all teams to absorb some of the students needing [occupational therapy] consultation services. These services will be provided virtually, and sub pay will be available for the time spent covering." (Exh. R-5 at 1.) Schley stated that she intended to schedule a meeting to discuss the assignment of students on her team. Other supervisors sent similar emails to their team members announcing the reallocation of occupational therapy services and scheduling meetings about student assignments.

40. On the evening of March 3, 2025, ED responded to Supervisor Schley's email to ask if the caseload reallocation would be voluntary. ED stated that if the reallocations were not

¹¹JPN testified that before her transfer she had a caseload of approximately 50 students as a full-time occupational therapist in Washington County, while the two full-time occupational therapists who resigned from Columbia County had a shared caseload of approximately 53 students.

voluntary, then the District must follow the appropriate process under the collective bargaining agreement. The next day, Schley responded to ED stating:

“To confirm, no one is being transferred or reassigned as part of this process. The approach we are taking aligns with substitution rather than reassignment.

“If there are specific parts of the contract you are referencing regarding required processes, please let me know. Based on our review, the relevant section falls under Working Conditions, which outlines compensation and process when a member is asked to substitute for an absent colleague or when an absence results in caseload redistribution (specifically 6 and 7). We want to ensure alignment with these provisions.

“If you have additional questions regarding the contract or the request after we meet today to review the kids our team will cover, please let me know.”

(Exh. C-14 at 1; Exh. R-5 at 4-5.)

41. On the evening of March 4, 2025, Director Vanderschuere sent an email to supervisors at the three Washington County sites providing guidance about discussing case reallocations with their occupational therapy teams. Vanderschuere also instructed supervisors about the role of Association representatives at these meetings as follows:

“If requested, **a union rep may be present**. The rep’s role is to:

- **Take notes**
- **Ensure the member understands their rights**
- **Ask the member if they have any questions**

“The **rep is not to negotiate or intervene**—this is a **courtesy meeting** to ensure the process is clear and fair.”

(Exh. C-15 at 1, emphasis in original.) Vanderschuere stated that Article 6, Section B, subsections 6 and 7, of the collective bargaining agreement applied to the case reallocations.

42. Article 6, Section B, of the collective bargaining agreement contains the parties’ collectively bargained procedures governing “Planning and Preparation Time.” Section B, Subsection 6, states:

“If a member is asked to teach a class for an absent member, they will be additionally compensated for time spent teaching the class at the hourly substitute rate. In the event a member is on an extended leave, reasonable efforts will be made to get a long term substitute for the position. When a member is asked to substitute for a colleague’s class for two weeks or greater, then the member will be additionally paid for actual time spent teaching the class at the long-term hourly substitute rate. The rate of pay for the long term substitute assignment will begin on the first day of the long term assignment.”

Section B, Subsection 7, states: “In the event the absence of a member results in the distribution of the absent member’s students or caseload, the member receiving the additional workload shall meet with their supervisor and discuss possible solutions.” (Exh. J-1 at 16.)

43. On March 4, 2025, ED attended a meeting with Supervisor Schley and occupational therapists at the Hillsboro Early Childhood Center to discuss the reallocation of Columbia County caseloads. During the meeting, ED asked about the voluntariness of the assignments. ED contended that the reallocations of services were involuntary and therefore qualified as District-initiated transfers that were subject to the provisions of Article 20. Schley felt that the meeting was a little tense and told her team that they did not have to make a final decision about the distribution of cases during that meeting. Ultimately, the matter was resolved when one of the occupational therapists from the Hillsboro site voluntarily agreed to accept the work.

44. On March 5, 2025, ED attended a meeting at the Tualatin Early Childhood Center with three occupational therapists and a site principal. ED again advocated that the reallocations of caseloads amounted to involuntary, District-initiated transfers and that the provisions of Article 20 should be followed.

45. ED did not receive any complaints about her behavior during the March 4 or 5, 2025, meetings at the Hillsboro or Tualatin sites.

46. On March 5, 2025, ED attended a meeting at the Beaverton Early Childhood Center with Site Principal Scott Ryan and occupational therapists AC, CB, and SH. The members asked ED to attend because they were concerned about potential impacts on their workload. Ryan told the members that the Department needed to reassign four or five occupational therapy cases from Columbia County to staff at the Beaverton site, that some of the services were consultative and could be handled virtually, and that they would be compensated for mileage if they were required to drive to Columbia County.

47. The meeting quickly became contentious. ED attempted to ask questions about whether the reallocations were involuntary, and to assert that the reallocations of caseloads amounted to District-initiated transfers and that Article 20 of the contract should be followed. Ryan told ED that she was only present at the meeting as a courtesy because the meeting was not disciplinary, and that it was not his role to negotiate the contract language with her. Each time ED attempted to speak, Ryan interjected and told ED that she was only there to take notes, that she was out of line, or that she was overstepping.¹² Case reassignments were not made during the meeting.

48. After the meeting with Site Principal Ryan, CB stepped into the office of her supervisor, Schley, and told her that it was the worst meeting she had ever attended in a workplace. That same day, AC, SH, and ED exchanged text messages. AC sent a text message stating, “That

¹²Site Principal Ryan testified that ED was combative, was argumentative, and that she consistently interrupted him during the meeting. Ryan’s testimony was contradicted by CB, and as discussed below, by the text messages that ED received after the meeting, and the reports that Director Vanderschuere received during her individual meetings with the occupational therapists who attended the meeting.

was horrible. I'm sorry [Ryan] treated you like that, [ED]." SH sent a text message stating, "I am so sorry that happened [ED], I am really upset how that went down and kind of in disbelief[.]" (Exh. C-19 at 1-2.)

49. After the meeting, Site Principal Ryan called Director Vanderschuere to report that the meeting had not gone well. Vanderschuere also received a report that the meeting had not gone well from Supervisor Schley, who told Vanderschuere that the occupational therapists had been upset by the meeting with Ryan.

Post-Meeting Communications Between Vanderschuere and ED

50. On March 11, 2025, ED sent an email to Site Principal Ryan, Director Vanderschuere, and Chief HR Officer Simons to follow up regarding the March 5, 2025, meeting with Ryan. ED stated, "I want to address significant concerns about the conduct during this meeting, adherence to our [collective bargaining agreement], and the protection of employees' rights." (Exh. C-20 at 1-2; Exh. R-8 at 1-2.) ED stated that it was appropriate for a union representative to attend the meeting because the meeting resulted in a change in working conditions. ED also argued that the collective bargaining agreement had not been followed, stating, in part:

"OTs¹³ were told they are considered 'substitutes' and will be compensated under 'long term sub pay' outlined in Article 6 Working Conditions. Per our CBA, long term sub pay is specific to substitutes covering a classroom NOT absorbing caseloads. Additionally, an OT's absence has never initiated a request for a substitute * * * *. Therefore extra duty pay is appropriate compensation for OTs willing to support Columbia County[.]

"There is nothing yet in writing from HR outlining expectations and protections for OTs such as timeline limits caseload caps mileage reimbursement protections from future involuntary transfers etc."

ED went on to state that despite the reasons for union representation, it was made clear that her attendance was not welcome, and that she had been told that her attendance was a courtesy because the meeting was not disciplinary. ED stated:

"I was constantly and consistently interrupted and prevented from speaking during the meeting being told, 'You are overstepping,' 'You are out of line,' 'You are only here to take notes,' 'Stay in your lane,' and 'That question isn't relevant.' Such limitations undermine the role of a union representative and violate established rights. Union representatives have the right to make comments and ask questions."

(Exh. C-20 at 1-2; Exh. R-8 at 1-2.) ED concluded by stating that denying union representation or silencing a union representative were serious matters that could result in unfair labor practice charges, and that the Association was available to discuss the situation.

¹³"OT" is a common reference to occupational therapist.

51. On March 12, 2025, Director Vanderschuere and ED exchanged several emails about ED's role as a union representative. Vanderschuere began the exchange with an email to ED stating that she knew ED had attended some difficult meetings lately, and that she appreciated ED's efforts in supporting the staff. Vanderschuere went on to state:

“I wanted to follow up on **our** meeting a couple of months ago regarding a staff member's .5 transfer. I always welcome and respect staff choosing to have union representation, and I want to make sure we have a shared understanding of how we can work together effectively in these settings.

“In my experience union representation in meetings has always been clear—**my role is to facilitate a collaborative discussion with the staff member ensuring they have the opportunity to express their needs while the union representative provides support as needed.** However, in our last meeting, **what was intended as a 20-30 minute information-sharing conversation extended significantly.**

“In future meetings, **it would be helpful to have advance notice of union participation** so we can ensure the discussion is structured productively. I also want to ensure that these conversations remain **employee-centered**, with space for the staff member to speak first and meetings staying within a reasonable timeframe.”

(Exh. J-8 at 3, emphasis in original.)

52. Later that morning, Vanderschuere requested ED to send her an invitation for a time that would work, and stated, “It is important for us to connect soon.” ED responded that she agreed it was important to address the roles of union representatives during meetings, and that she would like OEA UniServe Consultant O'Donnell to be present at the meeting to “ensure there is a mutual understanding of union presence during meetings with staff.” ED copied O'Donnell on the email and provided her availability to meet. (Exh. J-8 at 2-3.)

53. That afternoon, Director Vanderschuere responded, in pertinent part:

“Fostering collegial relationships has always been a priority for me, and my intention for this meeting was to have a **direct and collaborative conversation** to ensure meetings remain **structured, employee-centered, and productive.** Given that this discussion is **not disciplinary in nature**, bringing in someone I do not know and who was not part of our original conversation seems **counterproductive** to that goal.

“For that reason, I will **not be scheduling a meeting with both you and Daniel O'Donnell.** However, I do want to ensure that we have a shared understanding of my expectations for you as the union representative in meetings:

- “• **Advance Notice** – While employees have the right to union representation advance notice allows for proper planning and structure

This request applies consistently across our department for all administrators

- “• **Employee-Centered Discussion** – The employee should have the first opportunity to express their concerns. Union representatives are welcome to ask clarifying questions, and any additional information not immediately available will be provided in a timely manner
- “• **Supportive, Not Directive Role** – As a union representative, your role is to support the employee not to lead the conversation on their behalf.
- “• **Time Management** – Meetings should stay within the scheduled time frame; if additional time is needed, we can schedule a follow-up instead of extending the meeting unexpectedly.”¹⁴

Vanderschuere concluded, “If you are open to a **one-on-one conversation**, I would welcome the opportunity to meet with you to align on these expectations Please let me know if you are willing to schedule that.” (Exh. J-8 at 2, emphasis in original.) ED declined to have a one-on-one meeting with Vanderschuere.

54. On March 19, 2025, Executive Director Vanderschuere met individually with AC, CB, and SH regarding their March 5, 2025, meeting with Site Principal Ryan. Each of them stated that they were uncomfortable with the way that Ryan had talked to ED. CB told Vanderschuere that ED was unable to say more than three words. SH stated that she had a positive working relationship with Ryan, had not seen him act that way before, and was surprised by how he treated ED. AC stated that she had previously had positive experiences with Ryan, but that Ryan would not let ED talk during the meeting and it was uncomfortable when Ryan told ED to “stay in her lane.” (Exh. J-6 at 3.)

55. On March 21, 2025, ED sent an email to Director Vanderschuere to express concerns about the way Vanderschuere had handled the conflict between her and Ryan. ED stated that occupational therapists had a right to union representation because the meeting involved a change in their working conditions.¹⁵ ED further stated, in part:

“I was there to ensure that any changes to member’s caseloads were in line with our licensed contract. To that end, I attempted to speak up to clarify what the contract stated. Scott repeatedly interrupted me and spoke to me in a way that was berating. He silenced me every time I tried to speak using terms such as ‘Stay in

¹⁴In its post-hearing brief, the Association characterizes this email as a “Letter of Expectations.” To the extent the Association contends that the email was a formal disciplinary action, we find insufficient support in the record to reach that conclusion.

¹⁵ED also asserted that members had a right to representation at the meeting because of their “Weingarten rights.” During the hearing, ED testified that her statement in the email was based on her understanding of members’ legal rights at that time. A bargaining unit member’s right to representation at disciplinary meetings is often referred to as a “Weingarten right” because it is analogous to the private sector right identified in *NLRB v. J. Weingarten, Inc.*, 420 US 251 (1975). The Association does not allege that the March 5, 2025, meeting was a “Weingarten” meeting.

your lane,’ ‘You are overstepping,’ and ‘You are only here to take notes.’ Scott’s threatening body language and tone made all staff feel uncomfortable and unsafe.

“In response to my email, you wrote back with concerns about my conduct as a union rep in a meeting that occurred over two months ago. I am unclear as to how that situation is relevant to my concerns regarding what happened in the meeting with Scott and why you felt compelled to address this after over two months have passed?

“You sent a calendar invitation to meet with only 4 hours’ notice, and denied my request to have a union representative present. I cannot help but feel that these actions are retaliatory.”

(Exh. C-24.) ED also stated that it is not a requirement for a meeting to be disciplinary for staff to have a right to union representation, and that the issues had come up during labor management meetings but had not been resolved.

56. The District did not respond to ED regarding her complaints to Director Vanderschuere about Site Principal Ryan.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matter of this dispute.

2. The District violated ORS 243.672(1)(a) by interfering with ED’s participation during the March 5, 2025, meeting, and by sending ED an email communicating expectations for her conduct as a union representative.¹⁶

ORS 243.672(1)(a) makes it an unfair labor practice for a public employer or its designated representative to “[i]nterfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.” ORS 243.662 provides public employees “the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.” Subsection (1)(a) has two prongs, one which prohibits interference, restraint, or coercion of employees “because of” the exercise of protected rights, and the other which prohibits interference, restraint, or coercion “in” the exercise of protected rights. The Association contends that the District’s actions violated both prongs of the statute.

To determine if an employer violated the “because of” prong of subsection (1)(a), we examine the employer's reasons for the disputed action. If the employer acted “because of” an employee's exercise of rights protected by the Public Employee Collective Bargaining Act (PECBA), the employer's actions are unlawful. *Portland Assn. of Teachers v. Mult. Sch. Dist. No. 1*, 171 Or App 616, 623, 16 P3d 1189 (2000). It is unnecessary to demonstrate that an employer acted with hostility or union animus; a complainant need only show that the employer took the

¹⁶The Association claimed that the District’s conduct also violated ORS 243.672(1)(c). We find it unnecessary to consider that claim, which is cumulative and would not impact the remedy.

disputed action because an employee exercised a protected right. We determine the employer's reason for acting by examining the record as a whole. *Id.* at 626.

When we analyze whether an employer's actions violated the "in" the exercise prong of subsection (1)(a), "the employer's motive is irrelevant." *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District of Oregon*, Case No. UP-39-10 at 15, 25 PECBR 325, 339 (2012). We focus only on the effects of the employer's actions. If the employer's action has the "natural and probable effect" of deterring employees from engaging in PECBA-protected activities, then the employer violates the "in" the exercise prong of subsection (1)(a). *Id.* Because the "in" the exercise standard is objective, neither the employer's motive nor the extent to which employees were coerced is controlling. *Mult. Sch. Dist. No. 1*, 171 Or App at 623-24; *Service Employees International Union Local 503, Oregon Public Employees Union v. City of Tigard*, Case No. UP-040-13 at 8-9, 26 PECBR 131, 137-38 (2014). An employer who commits a "because of" violation also generally commits a derivative "in" the exercise violation because an action taken in response to employees' exercise of protected rights has the natural and probable effect of chilling the exercise of those rights. *Id.*

We begin with the Association's allegations that the District took the disputed actions "because of" ED's exercise of protected rights. The causal connection is clear: Site Principal Ryan's comments to ED during the March 5, 2025, meeting were a response to what he considered to be her inappropriate advocacy as a union representative during the meeting; and Director Vanderschuere's March 12, 2025, email to ED was a response to what she considered to be ED's inappropriate advocacy as a union representative during their January 9, 2025, meeting. The District attempts to parse the question of causation by arguing that Vanderschuere did not send the email because ED was acting as a representative for the Association during the meeting, but because ED's "specific conduct in that meeting was unprofessional, inhibited the discussion between Vanderschuere and the member, and undermined the meeting's purpose of supporting [JPN] in her transfer." (District's post-hearing brief at 21.) The District's argument goes to the question of whether ED's conduct went beyond the scope of PECBA-protected activity, not to the question of whether it was connected to the District's actions.

The credible record evidence does not establish that ED exceeded the boundaries of PECBA-protected activity during the January 9, 2025, meeting. Under our established precedent, employees are given significant leeway for heated conduct during protected activity. *E.g., Wy'East Education Association/East County Bargaining Council/Oregon Education Association, et al. v. Oregon Trail School District, No. 46*, Case No. UP-16-06 at 32-34, 22 PECBR 668, 699-701 (2008), *rev'd and rem'd* 244 Or App 194, 260 P3d 626 (2011), order on remand, 24 PECBR 786 (2012) (aggressive picket-line shouting at school administrators is protected activity so long as there is no violence or credible threat of violence); *Central Education Association and Vilches v. Central School District 13J*, Case No. UP-74-95 at 17, 17 PECBR 54, 70 (1996), *aff'd* 155 Or App 92, 962 P2d 763 (1998) (rude, discourteous, or impolitic behavior in pursuing protected rights does not remove the activity from the protection of the PECBA); *International Association of Fire Fighters, Local 1395 v. City of Springfield*, Case No. UP-48-93 at 11, 15 PECBR 39, 49 (1994) (otherwise lawful union activities do not lose protection under the PECBA simply because they are exercised in a way that fails to meet the employer's expectation of proper decorum and diplomacy); *Lane Unified Bargaining Council v. McKenzie School District # 68*, Case

No. UP-14-85 at 39, 8 PECBR 8160, 8198 (1985) (“Emily Post-approved deportment is not a requirement of good-faith bargaining”). The evidence here establishes that ED doggedly pursued her theory of a contract violation and assertively questioned Vanderschuere about the District’s choices that could have impacts on employee workload. Although the meeting was undoubtedly tense, that conduct did not exceed the boundaries of what is protected under the PECBA. In arguing to the contrary, the District contends that ED ran afoul of our established boundaries for union representative conduct during *investigatory interviews*.¹⁷ For the reasons explained below, the District’s reliance on that framework is misplaced here.

A public employee has a right to union representation at an investigatory interview or at an interview that the employee reasonably believes may lead to discipline. *OSEA v. Tigard-Tualatin School District*, UP-041-23 at 18 (2025). This right is triggered when: “1) the employee reasonably believes that disciplinary action is being contemplated or may result; 2) the employer insists on the interview; and 3) the employee requests representation.” *Amalgamated Transit Union, Division 757, AFL-CIO v. Tri-County Metropolitan Transportation District of Oregon*, Case No. UP-21-88 at 9, 11 PECBR 480, 488 (1989)). The right attaches to meetings where an employee reasonably believes that the meeting could result in discipline even if the employer either did not anticipate or does not consider the meeting to be an investigatory interview. When determining whether an employee reasonably believed that a meeting could result in discipline, the standard “is always an objective one, from the perspective of the proverbial ‘reasonable employee’: would an employee, based on the facts known to the employee, reasonably conclude that discipline might result.” *Oregon AFSCME Council 75, Local 3940 v. State of Oregon, Department of Corrections*, Case No. UP-3-00 at 13, 19 PECBR 568, 580, recons denied, 19 PECBR 608 (2002). When applying that standard, we consider the totality of the circumstances, “not just the announced purpose of the interview.” UP-3-00 at 9, 19 PECBR at 576. Here, the record does not establish, and the Association has not argued, that JPN reasonably believed that discipline could result from the January 9, 2025, meeting with Director Vanderschuere to discuss her temporary transfer. Therefore, it is not relevant whether ED’s conduct during the January 9, 2025, meeting conformed to our standards for union representatives during investigatory interviews.

We conclude that ED was engaged in protected activity when, in her role as an Association Vice President, she represented employees in meetings with management to discuss temporary transfers and caseload reallocations, during which she advocated regarding members’ concerns about workload and advocated that the District must properly follow the collective bargaining agreement. ED’s efforts to advocate for members’ rights under the collective bargaining agreement

¹⁷The District cites *Washington County Police Officers Association v. Washington County*, Case No. UP-15-90 at 12-13, 12 PECBR 693, 704-05 (1991), in which we held that during investigatory interviews: (1) the representative may inquire about the purpose of the interview and the general subject of the questioning; (2) during questioning, “the representative may participate only to the extent of seeking clarification of questions”; (3) after the questioning, the representative may ask the employee questions to clarify their answers or to elicit relevant information; and (4) the representative may suggest other witnesses and may “describe relevant practices, prior situations, or mitigating factors” that could bear on the employer’s deliberations regarding discipline.

were protected regardless of whether her interpretation of the agreement was correct.¹⁸ See *Central School District 13J*, UP-74-95 at 17, 17 PECBR at 65.

The Association also argues that ED was engaged in protected activity when she requested to be accompanied by OEA UniServe Representative O'Donnell at the meeting requested by Director Vanderschuere because ED was exercising her "Weingarten right." As explained above, a public employee has a right to union representation during a meeting if the employee reasonably believes that the meeting could result in discipline, even if the employer does not consider the meeting to be an investigatory interview. Here, Vanderschuere articulated the purpose of the requested meeting as a discussion "to make sure we have a shared understanding of how we can work together" in meetings where employees request union representation. The Association argues that it was reasonable for ED to believe that discipline could result from the meeting because she had just filed a complaint against Site Principal Ryan, and that ED would reasonably fear retaliation in those circumstances. Even accepting the premise of the Association's argument, the evidence also establishes that ED exercised her right to decline the meeting without union representation. In *Tigard-Tualatin School District*, we stated: "once an employee makes a valid request for union representation, the employer is permitted one of three options: (1) grant the request; (2) discontinue the interview; or (3) offer the employee the choice of continuing the interview unaccompanied by a union representative or having no interview at all." UP-041-23 at 19 (citing *Roadway Express*, 246 NLRB 1127, 1129 (1979)). After ED requested union representation at the meeting, Vanderschuere abandoned the meeting request, consistent with option three above. Yet the Association asks us to find that in doing so, the District committed another subsection (1)(a) violation. We decline to find a violation on that basis.

In summary, we conclude that ED was engaged in PECBA-protected activity when she represented bargaining unit members during meetings regarding temporary transfers and caseload reallocations, and that the District violated the "because of" prong of ORS 243.672(1)(a) when it responded by interfering with ED's participation during the March 5, 2025, meeting; and by emailing ED a list of expectations for conducting herself as a union representative at future meetings.

We further conclude that the District's conduct violated the "in" the exercise prong of subsection (1)(a). A "because of" violation "almost always restrains, coerces, or interferes with the exercise of protected rights." *Oregon AFSCME Council 75, Local 3742 v. Umatilla County*, Case No. UP-2-08, at 20, 23 PECBR 108, 127 (2009) (citing *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-4-06 at 42, 22 PECBR 323, 351 (2008)).

¹⁸The parties disagree whether ED's interpretation of the contract was correct and whether the District correctly applied the collective bargaining agreement to the involuntary transfers and caseload reallocations. We do not decide those contractual issues, which are not before us in this case.

The parties also disagree whether ED had a right under the collective bargaining agreement to be present at the January 9, and March 5, 2025, meetings. That question is irrelevant here because the District permitted ED to attend the meetings. Furthermore, the question of whether ED had a contractual right to be present at the meetings is distinct from the issue before us: whether ED was engaged in PECBA-protected activity during the meetings.

Here, the District's actions in stifling ED's participation during the March 5, 2025, meeting would have the natural and probable effect of deterring employees from requesting union representation during meetings with their employer about workplace matters. Furthermore, the District's actions in emailing ED a list of expectations for conducting herself as a union representative, including by instructing ED that union representatives should not lead discussions on an employee's behalf, would have the natural and probable consequence of chilling employee union representatives from advocating on behalf of their members during meetings with managers. Therefore, the District's conduct also violated the "in the exercise" prong of ORS 243.672(1)(a).

3. The District violated ORS 243.672(1)(e) when it implemented employee transfers without first bargaining over the impacts with the Association.¹⁹

ORS 243.672(1)(e) states that it is an unfair labor practice for a public employer or its designated representative to refuse to bargain collectively in good faith with the exclusive representative. A public employer violates ORS 243.672(1)(e) by making unilateral changes regarding a mandatory subject of bargaining. When presented with a unilateral change claim, we consider (1) whether the employer made a change to the status quo; (2) whether the change concerned a mandatory subject of bargaining; and (3) whether the employer exhausted its duty to bargain. *See, e.g., Assn. of Oregon Corrections Emp. v. State of Oregon*, 353 Or 170, 177, 295 P3d 38 (2013) (AOCE). If an employer pleads that the union waived its right to bargain, we also consider whether the employer met its burden to prove waiver. A party may waive its right to bargain by (1) "clear and unmistakable" contract language; (2) a bargaining history that a party consciously yielded its right to bargain; or (3) the party's action or inaction. *AOCE*, 353 Or at 177.

Here, the parties do not dispute that the District changed a condition of employment when it closed vacant positions and implemented involuntary employee transfers. With respect to whether that change concerned a mandatory subject of bargaining, the Association does not argue that the District was obligated to bargain over the decision to close vacancies and involuntarily transfer employees, but that it was required to bargain over the impacts of that decision before implementing employee transfers. Specifically, the Association contends that the District's actions resulted in an increase in employee workload which created a mandatory impact.

The District's involuntary transfers increased employee workload for both those employees who were involuntarily transferred, and for those employees who had to absorb the caseloads of transferred employees. Occupational therapist JPN was authorized extra duty pay because of the additional workload she experienced during her transfer to Columbia County, and special education teachers SB and MR both experienced increases to their workloads as a result of the temporary transfers. Employer changes that impact workload are generally mandatory subjects of bargaining. *Oregon Public Employees Union, Local 503, SEIU, AFL-CIO, CLC v. State of Oregon*,

¹⁹The record evidence does not establish, and the Association does not argue, that there was a separate demand to bargain over the District's March 3, 2025, notification that it planned to reallocate occupational therapy caseloads from Columbia County to its other sites. The Association treats that action as a consequence of the District's decision to close vacancies and involuntarily transfer employees in December 2024. Accordingly, we do not consider whether there was a separate violation in connection with the District's redistribution of occupational therapy caseloads in March 2025.

Executive Department, Case No. UP-064-87 at 29, 10 PECBR 51, 79 (1987). The Association has established that the District’s actions impacted a mandatory bargaining subject.

The District argues that even if it was obligated to bargain the impacts of its decision to close vacancies and implement involuntary transfers, that obligation was excused for two reasons: one, because the changes are covered by Article 20 of the collective bargaining agreement; and two, because the Association waived its right to bargain through inaction. We first address the District’s claim that the bargaining obligation was waived by the collective bargaining agreement. The District points to Article 20, Section E, of the contract, which provides that the District will notify the Association of District-initiated transfers and meet, upon request, to discuss matters including “how the contemplated transfer will affect the workload of the staff to be transferred and for the staff remaining in the work unit,” and “any other” matters deemed appropriate under the circumstances. (Jt. Exh. 1 at 39.) The District argues that the contract “is designed to cover the very subjects that the Association demanded to bargain—the transfers and related impacts—through the process set forth in Article 20.E. As such, the District was not required to bargain those topics because the transfers and a discussion between the District and the Association concerning the impacts of those transfers was already contemplated by the CBA.” (District’s post-hearing brief at 34.) In support of its position, the District cites *Oregon School Employees Association v. Astoria School District 1*, Case No. UP-52-91, 13 PECBR 474 (1992). In that case, we stated:

“[A]n employer may defend itself against a mid-contract unilateral change charge by pointing to contractual provisions relating to the subject matter of the change. This Board has held that, under the Public Employee Collective Bargaining Act (PECBA), a party exhausts its duty to bargain over a subject when it reaches a negotiated agreement on the matter. During the term of a collective bargaining agreement, then, neither party has a duty to bargain over subjects covered by the agreement * * * *”

UP-52-91 at 5, 13 PECBR at 478.

To the extent the argument advanced by the District is an appropriate framework for determining whether the contract excuses the District’s bargaining obligation,²⁰ the cited contractual language establishes only that the parties negotiated and agreed that the District would provide notification of District-initiated transfers, and that the parties would meet at the Association’s request to consider how those transfers affect workload. The language does not establish that the parties negotiated an agreement for how impacts to workload would be resolved.

The District does not argue that the Association “clearly and unmistakably” waived its right to bargain the impact of transfers, and, in any case, we do not find any clear and unmistakable language in Article 20, Section E, of the collective bargaining agreement that the Association waived its right to bargain over the impacts of transfers on workload. The District did not establish that the contract waives the Association’s right to bargain over workload impacts.

The District also argues that the Association waived its right to bargain through inaction by not pursuing the bargaining dates that were offered by Chief HR Officer Simons. *See*

²⁰As explained above, we apply a “clear and unmistakable” waiver standard. *AOCE*, 353 Or. at 177.

Washington County Police Officers' Association v. Washington County, Case No. UP-15-08, 23 PECBR 449, 481 (2009) (“A union may waive its right to bargain over a unilateral change in working conditions, either expressly or by inaction.”). The Association responds that the dates offered by Simons were not tenable for bargaining because they were dates when employees were not scheduled to work, or the same day that transfers were scheduled to be implemented.

We are not persuaded by the District’s implied waiver by inaction argument. The Association explicitly demanded to bargain “before transfers take place and workloads and schedules are reassigned.” (Exhs. C-2 at 3, R-2 at 3.) Furthermore, even assuming that the Association could have scheduled a time to bargain during the winter break, the reasonableness of the District’s offer was undercut by the record evidence that the District’s plan was already finalized and scheduled to be implemented, and by Simons’ statement that she did not agree that the District was required to bargain. We have previously required that for there to be an implied waiver by inaction, an employer must provide “a clear and unambiguous statement that the employer stands ready to bargain over such proposal prior to any decision being made on the matter.” *Oregon School Employees Association v. Coos Bay School District 9*, Case No. C-159-84 at 12-13, 8 PECBR 8248, 8259-60 (1985). The District’s conduct here did not meet that standard.

Finally, the District contends that the Association could have accepted the offer to meet on January 6, 2025, the effective date in the transfer notices, because JPN did not actually start providing services in Columbia County until after that date. The District further contends that, alternatively, the Association could have proposed bargaining dates after January 6. We reject that argument because the Association was not obligated to pursue bargaining after implementation. *See Lebanon Community School District*, UP-4-06 at 40, 22 PECBR at 362 n. 8 (union’s obligation to pursue bargaining ceases when employer has made the unilateral change); *Teamsters Union Local No. 57 v. City of Brookings*, Case No. UP-141-93 at 8, 16 PECBR 267, 274 (1995).

In sum, the District fell short of its obligation to provide the Association with a meaningful opportunity to bargain before implementation. We therefore conclude that the District violated ORS 243.672(1)(e) by implementing the involuntary transfers before bargaining the impacts with the Association.

Remedy

Having found that the District violated ORS 243.672(1)(a) and (e), we order it to cease and desist from the unfair labor practice conduct. *See* ORS 243.676(2)(b). We also order affirmative action necessary to effectuate the PECBA. ORS 243.676(2)(c).

The Association requests that we direct the District to post a notice of its violations. We will order an employer to post an official notice when its unlawful actions: (1) were calculated or flagrant; (2) were part of a continuing course of illegal conduct; (3) were perpetuated by a significant number of the employer’s personnel; (4) affected a significant number of bargaining unit members; (5) significantly or potentially impacted the functioning of the exclusive representative; or (6) involved a strike, lockout, or discharge. Not all of those criteria need to be satisfied for us to order a posting. *Oregon Trail School District No. 46*, UP-32-05 at 53, 22 PECBR

at 157 (2007) (citing *Blue Mountain Faculty Association/Oregon Education Association/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05 at 110, 21 PECBR 673,782 (2007)). We order a notice posting here because there is a likelihood that employees who learn of the District's statements to ED about the role of a union representative would be misinformed about the scope of a union representative's permissible role during workplace meetings and would be deterred from seeking union representation regarding their workplace concerns. Therefore, the District's violations potentially impacted the functioning of the Association.

The Association also requests that we award a civil penalty. PECBA authorizes us to consider awarding a civil penalty when the party committing an unfair labor practice did so repetitively, knowing that the action taken was an unfair labor practice and took such action disregarding that knowledge; or that the action constituting an unfair labor practice was egregious. See ORS 243.676(4). We have found that conduct is "egregious" where it is "conspicuously bad" and "flagrant." *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-56-04 at 18, 21 PECBR 206, 223 (2005). We decline to award a civil penalty here. The District did not repetitively or knowingly violate the PECBA, and we do not find that the District's violations were egregious. Although we found that the District ran afoul of its good faith bargaining obligation and that two of its managers engaged in conduct that had a tendency to chill PECBA-protected activity, that conduct appears to have been isolated and not the result of a willful disregard of PECBA rights.

In its answer to the first amended complaint, the District requested a civil penalty under ORS 243.676(4)(a)(B). The District did not address that request in its post-hearing brief, however, and consequently, we do not consider it.

PROPOSED ORDER

1. The District shall cease and desist from violating ORS 243.672(1)(a) by interfering with, restraining, or coercing employees in or because of the exercise of protected activity by interfering with Association representatives' ability to participate during meetings in which they are representing bargaining unit employees, and by taking steps that would reasonably chill the actions of Association representatives.
2. The District shall cease and desist from violating ORS 243.672(1)(e) by implementing involuntary employee transfers without first bargaining with the Association over the impacts of those transfers.
3. The District shall bargain in good faith with the Association over the impacts of its decision to temporarily transfer bargaining unit employees.
4. Within 10 days of the date of this order, the District shall post the attached notice for 30 days in prominent places where Association-represented employees are likely to see it and shall distribute the attached notice by email to all Association-represented employees.

5. The remaining claims are dismissed.

DATED: March 19, 2026.



Jennifer D. Kaufman
Administrative Law Judge

NOTE: The Employment Relations Board's rules provide that the parties shall have 14 days from the date of service of a recommended order to file specific written objections with this Board. (The "date of filing objections" means the date that objections are received by the Board; "the date of service" of a recommended order means the date that the Board sends or personally serves the recommended order on the parties.) If one party has filed timely objections, but the other party has not, the party that has not objected may file cross-objections within seven days of the service of the objections. Upon good cause shown, the Board may extend the time for filing objections and cross-objections. Objections and cross-objections must be simultaneously served on all parties of record in the case and proof of such service must be filed with this Board. Objections and cross-objections may be filed by uploading a PDF of the filing through the agency's Case Management System (preferred), which may be accessed at <https://apps.oregon.gov/erb/cms/auth>. Objections and cross-objections may also be filed by email by attaching the filing as a PDF and sending it to ERB.Filings@ERB.Oregon.gov. Objections and cross-objections may also be mailed, faxed, or hand-delivered to the Board. Objections and cross-objections that fail to comply with these requirements shall be deemed invalid and disregarded by the Board in making a final determination in the case. (See Board Rules 115-010-0010(10) and (11); 115-010-0090; 115-035-0040; and 115-070-0055.)



**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

PURSUANT TO AN ORDER of the Employment Relations Board (Board) in Case No. UP-024-25, *Northwest Education Association v. Northwest Regional Education Service District*, and in order to effectuate the policies of the Public Employee Collective Bargaining Act (PECBA), we hereby notify our employees that the Board found that Northwest Regional Education Service District (the District) committed unfair labor practices in violation of ORS 243.672(1)(a) by interfering with a union representatives participation during a meeting in which she was representing bargaining unit employees, and by taking steps that would reasonably chill the actions of Association representatives; and in violation of ORS 243.672(1)(e) by implementing employee transfers without first bargaining with the Association over the impacts of those transfers. To remedy these violations, the Board ordered that:

1. The District shall cease and desist from violating ORS 243.672(1)(a) by interfering with, restraining, or coercing employees in or because of the exercise of protected activity by interfering with Association representatives' ability to participate during meetings in which they are representing bargaining unit employees, and by taking steps that would reasonably chill the actions of Association representatives.

2. The District shall cease and desist from violating ORS 243.672(1)(e) by implementing involuntary employee transfers without first bargaining with the Association over the impacts of those transfers.

3. The District shall bargain in good faith with the Association over the impacts of its decision to temporarily transfer bargaining unit employees.

4. Within 10 days of the date of this order, the District shall post this notice for 30 days in prominent places where Association-represented employees are likely to see it and shall distribute this notice by email to all Association-represented employees.

EMPLOYER

Dated: _____, 2026

By: _____

Title: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted for 30 consecutive days from the date of posting in each employer facility in which bargaining unit personnel are likely to see it. This notice must not be altered, defaced, or covered by any other materials. Any questions concerning this notice or compliance with its provisions may be directed to the Employment Relations Board, 1225 Ferry Street S.E., Salem, Oregon, 97301-3807, phone 503-378-3807, ERB.Filings@ERB.oregon.gov.