

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-029-23

(UNFAIR LABOR PRACTICE)

UNIVERSITY OF OREGON STUDENT)	
WORKERS,)	
)	
Complainant,)	RULINGS,
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
UNIVERSITY OF OREGON,)	AND ORDER
)	
Respondent.)	
_____)	

On June 9, 2025, this Board heard oral argument on the objections of both parties to an April 18, 2025, recommended order, as corrected on April 21, 2025, issued by Administrative Law Judge (ALJ) B. Carlton Grew, after a hearing held on April 30, May 1-2, July 10-11, and September 12, 2024, by videoconference. The record closed with submission of the parties' final post-hearing briefs on November 5, 2024.

Luke Kuzava, Attorney at Law, Tedesco Law Group, Portland, Oregon, represented Complainant.

Jeslyn A. Everitt, Associate General Counsel, University of Oregon, Eugene, Oregon, and Paula Barran, Attorney at Law, Barran Liebman LLP, Portland, Oregon, represented Respondent.

On May 18, 2023, the University of Oregon Student Workers (Union) filed an unfair labor practice complaint against the University of Oregon (University), and an amended complaint on August 4, 2023. The amended complaint alleges that the University violated ORS 243.672(1)(a), (b), (c), and (i) by engaging in a variety of conduct (discussed in detail below). The University filed its answer on January 23, 2024. In its answer, the University averred that: (1) its actions were undertaken in good faith and justified by legitimate business motives; (2) the Union failed to exhaust administrative remedies; (3) the Union's claims were untimely; (4) the Union's damages were the result of the Union's actions; (5) the Union unreasonably failed to take advantage of opportunities to avoid harm, or failed to exercise reasonable care to mitigate any alleged damages;

(6) the Union’s damages are not recoverable as a matter of law; and (7) the Union’s claims were moot because the unionization efforts were successful.¹ Before the conclusion of the hearing, the Union withdrew some of its claims.²

On Board review, the issues are whether the University violated ORS 243.672(1)(a) when: (1) a supervisor told student workers that they could not engage in organizing activities while on work time, while allowing those workers to engage in other personal activities while on work time; (2) a lead worker in another bargaining unit discussed union activities with a student worker; (3) the Center for Student Involvement Director made a note about Union activity in a routine report at a student event; (4) a professor prohibited a student from giving a Union-related presentation in a University class; (5) the University prohibited union card signing in residence halls; (6) a University manager asked two student workers about how unionizing might affect international or undocumented students; (7) a University supervisor directed student employees to remove Union pins; (8) a University supervisor removed Union-related posters; and (9) a University manager implied that an expected stipend increase for Resident Assistants might be delayed or denied based on the outcome of the Union’s organizing campaign.³

This Board concludes that the University violated ORS 243.672(1)(a) by: (1) telling student workers that they could not engage in organizing activities while on work time, while allowing those workers to engage in other personal activities while on work time; (2) prohibiting a student from giving a union-related presentation in a University class; (3) prohibiting union card signing

¹The recommended order rejected several of these University-identified “affirmative defenses” on the ground that the University did not address them in its post-hearing brief. On Board review, the University objects to that portion of the recommended order, asserting that the University’s post-hearing brief detailed: (1) “all the ways [that the University] remained neutral and whenever a question arose how to best remain neutral erred on the side of assisting the [U]nion”; (2) “how no student worker ever informed [the University] of the alleged incidents of interference”; and (3) “that the [U]nion was in no way hindered in their campaigning.” Putting aside whether the University established any of those facts, those are not affirmative defenses under the Public Employee Collective Bargaining Act (PECBA), and the University provides no Board precedent supporting such a position. Rather, these contentions amount to argument over how this Board should interpret the evidence in this case, which we have resolved as set forth in this order. Accordingly, we agree with the recommended order that the only viable affirmative defenses at issue are timeliness and mootness. For the reasons discussed below, we also reject those defenses.

²Before the hearing, the Union withdrew its claims regarding the termination of a student worker. Before the end of the hearing, the Union withdrew additional claims, which concerned Union-related conversations between student workers and managers.

³The Union initially alleged that the at-issue University misconduct separately (or collectively) violated ORS 243.672(1)(b), (c), and (i). In its post-hearing brief, however, the Union did not provide any specific arguments applying any of those subsections to its specific claims. Accordingly, the recommended order proposed dismissing those claims. On Board review, the Union has not objected to dismissal of its claims under ORS 243.672(1)(i). Despite this, the Union asks that we independently analyze the founded misconduct separately under ORS 243.672(1)(b) and (c); however, it did not offer any meaningful briefing on how those statutes apply to that misconduct. We conclude that the recommended order properly dismissed those alternative alleged violations. Accordingly, we address the claims only under ORS 243.672(1)(a).

in residence halls; (4) directing student workers to remove Union pins; and (5) implying that an expected stipend increase for Resident Assistants might be delayed or denied based on the outcome of the Union organizing campaign. We decline to order the University to post a notice of its violations and we decline to impose a civil penalty. We dismiss the remaining claims.

RULINGS

1. The following exhibits of the parties were received into evidence: for the Union, Exhibits C-1 to C-10 and C-13 to C18; for the University, Exhibits R-1 to R-44.
2. The ALJ's remaining rulings have been reviewed and are correct.

FINDINGS OF FACT

The Parties

1. The University is a public employer as defined in ORS 243.650(20). The University serves thousands of students, and its campus includes several undergraduate residence halls, food service facilities, retail and service spaces, and various other facilities. A large number of University employees are represented by various labor organizations, including SEIU Local 503, which represents a bargaining unit that includes food service classified staff.

2. The Union is a labor organization as defined by ORS 243.650(13) and, as of November 7, 2023, the exclusive representative of a bargaining unit of approximately 4,000 "student worker" employees employed by the University.

3. Beginning in the fall of 2022, the Union began efforts to organize a union of student employees employed by the University. The proposed bargaining unit included food service employees, clerical employees, and resident assistants (RAs). These student workers were widely distributed across a large number of workplaces on the campus. Some of them were supervised by University management employees, while others were supervised by members of University union bargaining units. For example, student worker food service employees could be supervised by non-student, non-management classified staff members who are in an SEIU bargaining unit.

4. On April 7, 2023, the Union filed a petition with this agency to represent "[a]ll student employees of the University of Oregon (meaning all employees holding any position designated as a 'student employee' position in the University's [Enterprise Resource Planning (ERP)] system, as well as resident assistants), excluding supervisory, confidential, and temporary positions, as well as positions already included in other recognized bargaining units." The petition was supported by showing of interest cards. The final tally for the unit was completed on October 25, 2023, and ERB certified the unit on November 7, 2023.

University policy of neutrality

5. The University's avowed position throughout the Union's organizing campaign was to remain neutral, and it frequently communicated this to staff. On February 14, 2023, Tom

Driscoll, Director of University Housing for Dining Services, Retail and Business Partnerships, sent an email to all food service managers explaining:

“When it comes to union activity, Oregon state law has specific provisions around what employers can and cannot do. State law restricts employers from:

“Attempting to influence an employee’s decision as to whether to support or oppose a labor organization or to become a member of a labor organization;

“Interfering with, restraining, or coercing employees in regard to their right to form or join a union;

“Interfering with or assisting in the formation, existence, or administration of any union; and

“Attempting to influence an employee to resign from or decline to obtain membership in a labor organization.

“For these reasons, we ask that you not engage with students in relation to union activity. If a student worker asks you about the unionization efforts, you may respond that it is their personal decision. Please do not take a position on the union activity or take any action that could be construed as influencing or deterring the activity. You are also reminded to not retaliate in any way against student workers/leaders who have expressed an interest in unionizing. Any failure to adhere to this guidance could result in a violation of university policy and/or give rise to an unfair labor practice that carries civil penalties for the institution.”

6. On March 29, 2023, Chris Meade, University Director of Employee and Labor Relations, sent an email to University supervisors stating: “The university takes a completely neutral stance on unionization and supports a fair union election process,” and that “no action should be taken to influence, endorse, deter, or disrupt the unionization efforts.”

7. Other University executives sent similar communications to other University managers.

University Center for Student Involvement (CSI) in the Erb⁴ Memorial Union (EMU)

8. Julie Scroggins is the University’s Assistant Director of Student Government, Engagement and Success. Her office was located in the Center for Student Involvement (CSI) office suite or area on the second floor of the Erb Memorial Union (EMU), an area largely open to the core of the building. Scroggins supervised eleven employees, including student workers. Five to 25 people could be in the CSI space at any given time.

⁴The Erb Memorial Union (EMU) is named after Donald Erb, a former University president; it bears no relationship to this agency, the Employment Relations Board (ERB), which in turn bears no relationship to Donald Erb.

9. Scroggins worked in an office with a door. In an open space in front of her office door were two desks used by student workers (organization leadership support workers) who Scroggins supervised. Scroggins usually held weekly check-in meetings with the support workers, discussing a variety of matters including performance issues. During the relevant time period, the two support workers were Isabel Marshall and Frankie Bodine. The three had a good working relationship and they frequently spoke with one another about personal or nonwork topics like celebrity news. Scroggins also had an open-door policy under which the support workers could visit and discuss any subject.

10. Scroggins frequently worked with her door open, and could occasionally overhear conversations taking place at the student worker desks. The area was filled with the general background noise of the large open EMU building, which was often very loud.

11. The work of the support workers included talking with students who approached their desks about the services of the CSI office and other tasks. Their workflow was erratic, and they often had periods of slow time, or periods of simple work which did not impair conversation. During these periods, the support workers were generally required to remain near their desks, in case someone approached to seek information. Scroggins allowed the student workers to discuss nonwork topics or do their homework when it did not interfere with their duties, and those conversations were frequent. Scroggins occasionally participated in these conversations if she heard them and they piqued her interest.

12. In the fall of 2022, Marshall became involved with the Union organizing efforts. Marshall had at least a dozen conversations about unionization with students who approached her desk about CSI matters. During those discussions, Marshall generally discussed the organizing efforts, and encouraged student workers to become more involved in the organizing. On a few occasions, Marshall asked a student worker to sign a union card while staffing the desk. Scroggins had the opportunity to overhear many of those conversations. Scroggins also assumed that Marshall and Bodine discussed union organizing in the workplace.

13. On January 26, 2023, Scroggins, Marshall, and Bodine were interviewing candidates for a third student support worker to staff the desk. When one candidate did not arrive for their scheduled 30-minute interview, Scroggins suggested that the three use that block of time for their weekly meeting. Scroggins did not have a formal agenda.

14. During this meeting, the topics of union and political organizing arose. The three discussed union organizing, and Scroggins explained University rules regarding organizing in general during working time and nonworking time. Scroggins told the students that they could not perform organizing activity on the clock. She provided several examples, including “like going to, I don’t know, the Lane County Democrats are hosting a thing you have to clock out for that discussion,” and examples of appropriate and inappropriate student government campaigning. Scroggin’s examples involved employees leaving the workplace to attend an event such as a rally, phone bank, or demonstration during work time. She told the students that these activities would be permissible if the employee clocked out. Aside from the examples, Scroggins

did not provide a definition of political or union organizing activity. None of her examples involved organizing activity in an employee's workspace like Marshall was actually doing.

15. One student worker asked Scroggins where she had obtained this information. Scroggins stated that she had recently attended a meeting with other EMU managers during which union campaigning was discussed, and that it was determined that it would be "illegal" for union organizers to perform union campaigning during work time.

16. Scroggins's statements confused the student workers. They interpreted Scroggins's remarks as some kind of directive, but weren't certain what Scroggins meant because Scroggins did not give a clear definition of organizing or any examples of what students were and were not allowed to do that were relevant to their jobs and their activity. They did not see any relevance of student government or partisan campaign rules to union organizing.

17. The student workers did not ask Scroggins or any other University official to address their confusion. They continued to engage in union organizing activity at or near their desk, but chose to do so out of earshot from Scroggins. Scroggins did not follow up on the conversation. She believed that if the student workers had additional questions about the matter, like anything else, they could ask them at any time. This is the only conversation Scroggins had with the student workers about political or union organizing.

Barnhart Dining Hall

18. Barnhart Dining Hall is one of the student dining halls operated by the University's Housing department. A number of student workers work in this dining hall, including Lauren Martinez. The manager at Barnhart was Ruben Moreno. When Moreno was not present, many of his managerial duties were performed by Food Service Worker 3 Robert Torres, the lead classified worker at Barnhart. Torres was a member of the University SEIU classified staff bargaining unit. Torres had the authority to send sick workers home, assign them to their work stations for the shift, and schedule their shifts. Torres did not have authority to hire, fire, or issue discipline to student workers on his own. Torres had some role in discipline, however, and received a poor performance review in September 2023 because he "wasn't disciplining students enough" because his preference was to talk with employees about issues rather than document them.

19. Torres delivered messages to the student workers for Moreno, scheduled student workers' shifts, assigned them to workstations, approved or denied schedule changes, documented incidents, and answered work-related questions. When Moreno was not present, Torres usually worked in Moreno's office located in the back of the Barnhart kitchen.

20. In the fall of 2022, Martinez became involved in the Union organizing campaign. After a few months, Martinez became the unofficial lead organizer at Barnhart Dining Hall. Moreno was rarely present during the shifts that Martinez typically worked, and Martinez rarely saw or spoke with him. Torres acted as manager for most of Martinez's shifts.

21. On an evening in May 2023, Torres asked Martinez to come to the office after both of their shifts had ended. Martinez and Torres were the only people in the kitchen at that time.

22. Torres was sympathetic to the students' unionization campaign, and intended to provide Martinez with information relevant to union organizers based on his understanding of rules regarding union activity governing SEIU. Torres deliberately held his conversation with Martinez outside of work time to comply with those rules, so that the conversation would not result in the use of employee time to support the Union or for nonwork purposes.

23. Torres then displayed, printed, and handed Martinez an email from his computer. Torres and Martinez had different recollections regarding both the content and sender of the email. Moreover, neither of them could locate a copy of the email.

24. Torres's motive in meeting with Martinez, and for providing her with the email, was to help the student workers (and Martinez) in their organizing efforts. Viewing Martinez as a fellow union member, he wanted to provide her with information that he believed would aid their efforts.

25. That conversation, however, made Martinez believe that her organizing efforts had come under scrutiny. After that conversation, Martinez continued to engage in union organizing activities in the dining hall, but more discreetly.

Ducks After Dark movie night "tabling"

26. CSI provides students with on-campus activities. Mandy Chong is the CSI Program Director.

27. One regular CSI event is "Ducks After Dark," a movie night held in a large room in the EMU. Ducks After Dark is planned and run by a team of students. Kate O'Mara was one of the students on that team. O'Mara had little direct contact with Chong. However, after every Ducks After Dark event, O'Mara and her team filled out an event report for Chong. Chong would later return each report with her handwritten notes for the team to review.

28. University student organizations regularly set up tables outside the movie room for Ducks After Dark, colloquially referred to as "tabling." Under EMU policy, only student groups affiliated with the University could reserve free tables; nonaffiliated groups were required to sign an agreement with the University and pay a fee. There were no restrictions on students' promoting group activities while on their feet milling around. The restrictions on use of tables were at least partly based on the limited amount of appropriate space for tables.

29. Organizations who tabled included the University; student organizations such as the Star Wars Club, the Students for Choice, various fraternities and sororities, and representatives of the Radical Organizing and Activism Resource (ROAR) Center. The students used their tables to promote their group and to recruit new members. Student organization representatives typically presented sign-up sheets and handed out pamphlets, flyers, stickers, and pins. Some student groups contacted CSI to request a table, but CSI sometimes invited student groups to table.

30. In late 2022, O'Mara joined the union organizing campaign, although her CSI student worker position was not included in the proposed bargaining unit. In late 2022 or early 2023, O'Mara suggested that the Union organizers table at Ducks After Dark. Because the Union was not a recognized student organization and would have had to pay a fee, the Union chose to use a table that was also staffed by ROAR. At the January 26, 2023 Ducks after Dark, Union representatives engaged in union organizing efforts at the ROAR table, attracting significant interest. There was only one other organization tabling that evening. O'Mara did not staff the table. She performed her student worker job at the event, which included taking photographs.

31. After the January 26 event, O'Mara and the rest of the Ducks After Dark team completed an event report and submitted it to Chong. The report listed ROAR's table activity as "union card signing." When Chong reviewed the report, she added a handwritten comment, with an arrow pointing to the ROAR activity, stating "Not sure this is legal." The comment was written in red ink, like the other comments she wrote. There is no evidence that Chong's use of red ink on such documents was unusual.

32. Chong wrote the comment because she was unsure how EMU's tabling policies applied to this situation. In her words, she "wasn't the authority" on how these policies applied to any particular situation, and just wanted to make sure "we were doing the right thing." As was the practice, Chong then returned the report to the Ducks After Dark team.

33. When O'Mara saw Chong's handwritten comment, she became concerned that she had gotten the Union in trouble by suggesting that the Union table at Ducks After Dark. O'Mara shared Chong's comment with her fellow Union organizers. O'Mara did not ask Chong about the comment because she had no previous significant interactions with her. The Union did not contact Chong or other University management about the issue. As a result, the Union never attempted to table at a Ducks After Dark again. However, ROAR continued to promote Union materials at their table.

34. No University official told Union organizers to stop their organizing activity at the ROAR table that night or thereafter. Aside from not pursuing tabling, O'Mara continued her organizing work unaffected by Chong's question.

Union organizer presentation to University class

35. Professor Phil Colbert is a senior instructor in the University's Department of Computer and Information Science. Ashton Pressman was a student worker and Union organizer. His student worker position had no connection to Colbert or Colbert's department.

36. University student groups and other groups sometimes make brief presentations on subjects of interest to students during the first few minutes of classes, with the permission of the instructors. There are no specific University rules governing this practice, although the University has regulations regarding academic freedom. In addition, Oregon law requires that the University

must give class time for presentations by student government organizations about voter registration.⁵

37. The University’s academic freedom rules are intended to grant its instructors “freedom in the classroom in discussing subjects,” but instructors “should be careful not to introduce into their teaching controversial matter that has no relation to the subject.” The rules also state, “Matters brought up in class should be related to the subject of courses or otherwise be educationally relevant, as determined primarily by the faculty member in charge of the class.”

38. The University Political Activities Policy states that University employees can hold personal opinions and participate in political activities on their own time, but not on university time. University faculty may make their own decisions regarding use of their class time for non-class-subject student presentations. While supplying voter registration information in classes is permitted, a student presentation in support of a particular candidate for public office is considered a prohibited expenditure of public resources for a particular cause and an improper use of class time.

39. In late 2022 and early 2023, Pressman created a PowerPoint presentation to promote the union organizing campaign. He asked University professors and instructors to allow him to show the presentation to students in the first few minutes of class. In total, Union organizers reached out to dozens of faculty members asking to present these “class raps” about the unionization drive, and the vast majority agreed. Most faculty who declined stated that they did not give class time for any presentations, regardless of topic. Pressman ultimately gave Union presentations in 20 University classes.

40. On January 31, 2023, Pressman emailed Professor Colbert, stating:

“My name is Ashton Pressman and I’m hoping to do a short presentation in your Introduction to Programming and Problem Solving class. I’m helping organize talking to classes about the ongoing unionization effort for undergraduate student workers on campus. The end of this term is the final push for our card signing campaign and it’s crucial that we reach as many students as possible! We are trying to get the message out to student workers and all students generally. I’m wondering if I could come talk to your class for about 5-10 minutes at the beginning of your class about the unionization effort.

“Do you have time in your class during week 5, 6, or 7?”

⁵ORS 350.245(3)(c) provides,

“(3) Each school of higher education shall:

“* * * * *

“(c) Upon the request of the school’s official student government or its equivalent, provide the student government or its equivalent with an official class schedule and a list of professional contact information for school faculty, which may be used for the purpose of seeking faculty approval for the student government or its equivalent to provide nonpartisan voter registration classroom presentations.”

41. Colbert replied “Yes, I should have time during any of those weeks, but I’d prefer you attend a Thursday lecture. I also would prefer to see any material that you would be presenting to the class first.” Pressman then emailed the materials to Colbert.

42. Based on Pressman’s first email, Colbert understood that Pressman sought to provide a general presentation about the unionization effort, which Colbert viewed as relevant to the “problem solving” focus of the class. Seeing the slides, Colbert was taken aback by what he perceived as dramatic images and strident content setting out a political call to action rather fulfilling any educational purpose.

43. In deciding whether to permit the presentation, Colbert consulted Reza Rejai, Department Head of the Computer Science Department, and may have contacted other University officials in the College of Arts and Sciences. Colbert then decided to deny permission for the presentation.

44. On February 6, 2023, Colbert emailed Pressman:

“After reviewing your presentation materials, and checking with the CS department and CAS administration, I will decline the presentation in my course. I fully support the intent of your work, but based on feedback from CS and CAS, I do feel you are essentially requesting class time for political activity, and the material is not relevant to students’ roles as students. I believe a forum outside of classroom is a better avenue for your presentation of the material to students, at least for my courses.”

45. Professor Colbert believed that his actions were consistent with the University Political Activity Policy, which states: “No employee shall take action that might be construed as committing the institution or the Board to a position on public issues.” Further, Colbert believed that the unionization effort was visible across the campus and therefore students had plenty of opportunity to learn about it. Finally, Colbert reasoned that the Union presentation was not relevant to his class on computer programming and problem solving.

46. Had Colbert perceived the presentation to be neutral, such as providing information regarding how to participate in the union organizing process, he would have allowed it. Colbert had allowed presentations on cybersecurity, OSPIRG, or get-out-the-vote, that positioned their causes neutrally and were more relevant to the class, which involved problem solving through some type of process.

47. Because of Colbert’s reference to CAS, Pressman concluded that the University was continuing to resist the unionization, and linked the denial of this class presentation to the food service student workers’ dispute with food service managers over wearing pins.

University solicitation policy

48. The University has a number of large, on-campus residence halls for undergraduate students. The residence halls have permanently locked doors openable with a security card. The University requires that residence hall guests carry IDs and present them when asked. The student residents are generally between 17 and 19 years old.

49. The University has a Housing Solicitation Policy, which states in part:

“There is to be no solicitation on University Housing property (including dining venues) by non-University Housing groups without the express written permission of University Housing.”

50. The University also has a policy entitled “Commercial and Charitable Solicitations, Commercial Transactions” that applies to University areas outside of the residence halls. That policy states in part:

“b. ‘Commercial solicitation’ means any direct and personal communication in the course of a trade or business reasonably intended to result in a sale.

“* * * * *

“f. ‘Charitable solicitation’ means any direct and personable communication in the course of the operations of a not-for-profit organization reasonably intended to result in a sale or monetary contribution.”

“* * * * *

“Selling and Solicitation

“● Commercial solicitation, advertising, promotion, and commercial transactions are prohibited in all areas.

“● In order to sell or promote any merchandise or service for private profit on state property, a sales permit must be purchased from the University for each Sales Location.

“● There is to be no solicitation on University Housing property (including dining venues) by non-University Housing groups without the express written permission of University Housing.”

51. University officials define solicitation under the Housing Solicitation Policy as including “going door to door selling a service or promoting a particular product, or getting people to engage in a particular behavior,” such as campaigning for office, going to an athletic event, or joining an organization. University officials view the policy as content-neutral. Accordingly, University officials interpret the policy to ban fraternities and sororities (F&S) from soliciting or recruiting in residence halls. The ban included F&S representatives going door to door to simply inform people about F&S. The policy barring solicitation applies even if the canvassing student is a resident of the hall canvassed. Fraternity and Sorority Life Director Caitlin Roberts has training

meetings with representatives of those organizations throughout the spring and summer where they review this policy.

52. Students going from door to door on a small scale within a residence hall regularly takes place, with students knocking on doors to invite friends to a party or to sign a birthday card. Student residents also commonly invite friends who are not residents of their particular hall over to socialize. Housing Director Michael Griffel's interpretation of the policy allowed residents to knock on friends' doors to sign a birthday card, go to an athletics event, or discuss the Union. Griffel believes that these activities fulfill the University's broad educational goals of building a community and helping develop friendships and relationships. However, Griffel believes that residents going door to door through the residence hall urging them to join the chess club, the military, or a union would all be solicitation barred under University policy.

53. The no-solicitation policy is important to the University, which has sought to consistently enforce it. University officials have enforced the policy to bar athletes from going door to door to recruit students to attend a volleyball game, students engaging in campaign activity, and at least three incidents involving F&S solicitation. The University has applied the policy to the student government Associated Students of the University of Oregon (ASUO), which in turn adopted its own policy that "Candidates and their representatives may not solicit or campaign while in University Housing."

54. Reports of prohibited solicitation are generally made by residence hall residents, RAs, or professional staff. Some solicitation events have not been reported.⁶ However, whenever a report was made, University personnel immediately asked the canvassers to leave. After such an incident, University staff contacted the offending organization.

55. University enforcement of the solicitation policy against outside organizations may include a cease-and-desist or no trespassing order. In enforcing the policy against University organizations, University staff generally hold direct conversations with the sponsoring group. When University officials contacted F&S groups, leaders of those groups were very apologetic and promised University officials future compliance. Each new school year brings students unfamiliar with the policy to the University, requiring University officials to continually educate students about the policy.

56. The University is committed to the no solicitation policy for several reasons. It views the residence halls as students' homes where they have an expectation of privacy. The University also believes that having a safe space free from solicitation is necessary for students to build connections and be academically successful, and reduces the University's potential liability for harm to students in residence halls.

57. University officials believe that allowing open access to students' private spaces by the roughly 1,000 student organizations, numerous unaffiliated student groups, and members of

⁶RAs were part of the enforcement of these rules, but were also members of the proposed bargaining unit seeking access to residence halls to solicit Union support. RAs Roderique and Dieker were the president and vice president of the Union, respectively.

the public, present significant safety and security concerns. In addition, University officials view any facilitation of unknown persons' entry into the residence halls for solicitation (such as by opening a door with a key card) as a policy violation that creates unnecessary risks for other residents and potential liability for the University.

Union solicitation in student residence halls

58. Hamilton Hall is a University residence hall. It has five wings, each with its own name. Hamilton's floors are segregated by gender with shared bathrooms and showers, resulting in students walking in the halls in shower-related attire. Each Hamilton resident is given a key card providing access to any entry and any hallway in the building.

59. Student workers and Union supporters decided to solicit the signing of union cards from residence hall tenants. On March 12, 2023, Union organizer Diego Duarte, a resident of Hamilton, met with three other organizers outside of Hamilton. The three other organizers were not residents of Hamilton, and Duarte did not know their names. The four had a brief conversation about the Union and then entered Hamilton using Duarte's key card. The organizers spent several hours knocking on doors to talk to residents and ask any student workers to sign union cards.

60. The organizers went through each of the floors in each of Hamilton's five wings, knocking on more than 200 doors. At times the organizers split into two groups of two but remained close to each other as they took turns knocking on different doors.

61. Duarte had never previously gone door to door within a residence hall. He had never seen anyone else do so either. Including the March 12 incident, Duarte had visited wings of Hamilton other than his own approximately ten times in that academic year.

62. Approximately five percent of students who answered the doors in Hamilton were student workers. Before speaking to the occupants of a particular room, the organizers had no way of knowing whether they were student workers. Several students answered the door and then closed it after only a few words. The organizers did not persist or re-engage with those students when that occurred. Nothing in the record establishes that any residents complained about the organizers knocking on their doors.

63. The Union's door-knocking in Hamilton Hall ended when an RA approached Duarte and asked him to leave because he was violating the no-solicitation policy. The Union organizers asserted that PECBA permitted this and refused to show their IDs to the RA.⁷

64. A Hamilton Hall RA reported this incident to University management. Jasmyne Channel (then the Interim Associate Director for Residential Experiences) called Carolyn Roderique, an RA who was identified in the report as being involved in the organizing activities. Roderique responded that she had not been personally involved, but rather that the activities had been undertaken by student residents and their escorted guests. Channel told Roderique to "make it stop."

⁷The University did not discipline any Union supporter for alleged solicitation.

65. Union organizers performed solicitation in at least one other residence hall after doing so at Hamilton, without interacting with University staff.

Questions about effect of student worker unionization on international or undocumented student workers

66. Lynn Huynh is the University Assistant Director of Residence Life for Student Leadership and Advising. She supervises the residence hall professional staff who in turn supervise RAs. Although not the direct supervisor of any RA, Huynh held regular check-in meetings with individual RAs, including RAs Braeden Dieker and Sulwyn De Crozuc. Huynh was interested in issues affecting undocumented and international students, and had worked with DACA students before at another entity, although that was not a focus of her present job.

67. Dieker was a union organizer. He focused his organizing efforts on RAs, asking how they liked being an RA and then asking them to sign a card if he felt the RA was supportive.

68. On January 26, 2023, Dieker had an RA check-in meeting with Huynh, who had known each other since 2019. Huynh told Dieker that she would like to discuss a union issue but could not do so without Dieker's permission, which Dieker then gave. Huynh indicated that she generally supported unions and the present Union organizing efforts. Then she asked Dieker whether the Union had considered how a student worker union would affect international or undocumented students. The two talked very briefly about the issue. Dieker was aware he could have declined to talk about the subject, but thought it could be something union organizers needed to know about.

69. Dieker ended the discussion of this issue with Huynh, stating that he was not comfortable with the conversation, and Huynh changed the subject. However, the conversation prompted him to look into the issue Huynh raised, and he satisfied himself that becoming part of the Union bargaining unit would not negatively affect undocumented or international students. The conversation did not affect Dieker's future union organizing activity.

70. In mid-April, 2023, after the union cards had been submitted, RA De Crozuc had a conversation with Huynh. Huynh mentioned that she knew the Union had gotten sufficient signatures. Huynh asked De Crozuc how she felt about the unionization's effect on DACA⁸ students. De Crozuc believed that she was free to leave or to decline to discuss the topic, but simply told Huynh that she supported the Union. Huynh appeared to accept that response and conversation over the topic ended.

71. While De Crozuc was unhappy about the conversation because she believed that it was illegal for any supervisor to talk about union organizing with her, her conversation with Huynh did not change her organizing efforts.

⁸DACA students are those under the program Deferred Action for Childhood [Immigrant] Arrivals.

72. At the time Huynh asked these questions, she did not know what effect unionization would have on international or undocumented students, including ineligibility for unionized jobs or a requirement for additional paperwork. She asked the questions because she wanted to know the answer. The students did not appear to her to be uncomfortable with the questions, and, in each case, her interactions with the organizers continued unchanged.

Union pins on food service employees

73. The University's Housing Dining Services Handbook provides a dress code for student food service workers. Along with basic clothing requirements, the Handbook states that workers must wear a name tag pin, and may add a green personal pronoun tag to the name tag. The dress code does not state that other pins are prohibited, but the context suggests that the listed pins are the only pins permitted.

74. Before the events at issue here, the professed University Food Service policy was that kitchen workers, including student workers, were to wear clean Food Service shirts and hats. No additions to the clothing, except for a name and pronoun pin, were permitted. The stated reasons for this policy were the uniformity of uniforms, and safety and sanitary reasons.

75. At the time of hearing, then Food Services Coordinator Kristin Koch had been a classified University employee for nearly 22 years. Most of that time she worked in Food Services. Over that time period, Koch had observed that classified dining workers working alongside student workers regularly wore pins at work, particularly SEIU pins during bargaining. Many other classified staff wore SEIU pins at such times. Koch regularly saw both classified workers and student workers wearing Pride flag pins, pronoun pins, and other non-union-related pins. She estimated that, generally, between one third and one half of the staff wore a pin on every shift. In addition, Koch observed that the University itself gave classified staff pins to honor their five years and ten years of service.

76. In the summer of 2022, when the University hosted World Track and Field events, the Food Service managers encouraged Food Service employees to wear small pins relating to specific events, apparently to help generate enthusiasm for the events in general. Lynn Alvarez, University Assistant Director of Residential Dining, promoted the Track and Field pins to staff. It was her understanding that pins not supplied by the University were not permissible, because allowing dining workers to wear non-University-approved-pins would work against the desired uniformity of appearance.

77. Before the union organizing campaign, two student worker union supporters, Jonah Gildea and Ashton Pressman, had observed student and classified dining staff wearing pins such as SEIU pins, Pride flag pins, and track and field pins regularly. One classified staff member wore a large "Star Wars" Millennium Falcon pin (glued to his hat) on all of his shifts. Those students had never observed any managers objecting to pins until student workers began regularly wearing Union pins.

78. Tom Driscoll, the University's Director of Dining Services, understood that pins were not allowed because a pin could fall off or get caught on food or equipment.

79. Brian Burroughs, Food Services Manager at the Global Scholars Hall Fresh Market dining complex, understood that, before the Union organizing drive, only a name tag was permitted to be attached to the uniform to maintain uniformity.

80. When the Union began organizing efforts, Koch noticed some student workers wearing Union pins. During that time, at least one manager told Koch that the University was enacting a “new policy” under which student workers were allowed to wear only pins issued by the University. This “new policy” was, in fact, a February 14, 2023, email from Tom Driscoll, which re-emphasized the ban on non-University pins but explicitly stated that the University would be “lenient on Union buttons only.”

81. In January 2023, Gildea was working at a food kiosk in Unthank dining hall when Alvarez approached Gildea.⁹ Gildea was wearing a Union pin on his work uniform shirt. Alvarez told Gildea to remove the Union pin from his shirt. Gildea argued that if other workers were allowed to wear pins like pride pins, he was allowed to wear a Union pin. Alvarez told him that she would check University policies and left. Shortly thereafter, Alvarez returned and told Gildea that only University-issued pins were permitted. During their discussion, which interrupted Gildea’s work, a line of students formed at the kiosk. Because of this, Gildea removed his pin to end the confrontation.

82. Alvarez told Gildea to remove his pin, telling him that pins were not part of the uniform, and that student workers could not wear pins at work other than the ones that the University provides to them.

83. Following this event, Gildea emailed Alvarez, attaching a partial copy of this Board’s final order in *LIUNA Local 483 v. Metro*, Case No. UP-030-14, 26 PECBR 665 (2016). That case involved the wearing of union pins at the Metro Zoo in Portland. Gildea wrote, “the Zoo has a policy where only employer-issued pins are allowed, such as name tags, and they told their workers to not wear their union insignia in accordance with the policy. So pretty much a direct parallel to our situation.” Alvarez did not respond to Gildea’s email.

84. In early 2023, Pressman was a student worker at the Global Scholars Hall “Fresh Market” dining area. During this time, Food Services Manager Brian Burroughs, told Pressman to remove or relocate his Union pin at least twice.¹⁰ Pressman saw Burroughs giving similar directives to other student workers during this time. Pressman observed that after many student workers began wearing Union pins, his managers became less tolerant of all pins.

Union posters on University bulletin boards

85. The University housing policy on advertising and postering provides:

⁹At this time, Alvarez was the Unthank dining hall food service head manager.

¹⁰Pressman testified he was directed to remove the pin; Burroughs testified that he told Pressman to relocate it to a less visible place. We need not resolve this dispute.

“Posters (10 day minimum advance submission)

“Only university-affiliated departments or registered University of Oregon student organizations (<https://uoregon.orgsync.com/BrowseOrganizations>) are permitted to submit posters.”

86. The University enforces this rule by placing an approval stamp on posters that meet the University policy, and removing the posters that are posted without an approval stamp. University officials remove a large quantity of posters each week. These are typically from off-campus businesses and organizations, and would swamp the University-approved posters if left up.

87. There are two poster locations at issue in this case. One location is the “back of the house” in food service facilities. Posters in this location can be seen only by employees. This location typically includes posted employer notices to employees and may include some SEIU union posters. The other location is more public, in the entryways to University dining halls.

88. On February 10, 2023, Lynn Alvarez emailed University Director of ELR, Chris Meade, stating:

“I wanted to forward this on to you. These things [Union posters] are being posted in the back of the house in our dining venues. I also pull [*sic*] some down from the entryway at PNW [PNW Public Market at Unthank Hall]. But I’d like to know is are [*sic*] they allowed to post these in the back? It is clear that they need approval to post out in the general public area.”

Alvarez attached photos of Union posters that were posted in the “back of the house” area in a dining facility.

89. Alvarez removed the posters in the PNW entryway because they did not have the University approval stamp, not because of their content.¹¹

Stipend increase process

90. RAs get a uniform stipend as compensation for their work. The stipend amounts are set annually. The University process for setting the amount for the next academic year can take months, up to all of the preceding academic year.

91. The University Director of Residence Life and Education Initiatives oversees RAs and student residential experience generally. That Director has full discretion to decide whether there will be a stipend increase, and how much. The University Housing Department reviews and updates the RA agreement, which includes a stipend amount.

¹¹The Union argues that it was ineligible for the approval stamps under University policy. The Union did not contact the University to assert a right to the stamps under the PECBA.

92. During the spring term, RAs are given a conditional offer of a stipend for the following fall term. The stated conditions include such things as a requirement to maintain good academic standing. The University gives the RAs about one week to review and sign the conditional offers. The amounts listed in these offers are not the final amounts, although the final amounts would be the same if there is no increase. Between mid-June and July, after final grades have been reported but before the next academic year begins, RAs sign the non-conditional, formal offers. The previous stipend increase, from \$600 to \$800 for the 2020-2021 academic year, was announced in June or July 2021.

2023 stipend increase

93. The University Housing Student Leader Council (SLC), is a group composed of RAs from each residence hall. During the relevant time period, Carolyn Roderique was President of the SLC and a lead Union organizer, and Dieker was SLC Vice President and also a Union organizer. Generally, a University Housing Manager attended these meetings. In January 2023, SLC proposed a stipend increase. SLC members viewed the increase as very important to keep up with rising costs for essentials.

94. In early 2023, Jasmyne Channel became the University Housing Manager that most regularly attended SLC meetings, and SLC members would generally contact Channel for updates on their proposed stipend increase. Roderique closely monitored the progress of the stipend increase.

95. In early March 2023, Channel told SLC members a stipend increase would require the University to raise its residency fees. Such a fee increase had to be approved by the University's Tuition and Fees Advisory Board (TFAB). In March of 2023, the TFAB approved a fee increase.

96. Roderique believed that the TFAB decision was the most important step in the stipend increase process, and therefore TFAB approval made final approval of the increase very likely.

97. Around late March of 2023, the University sent out the conditional offers to the RAs for the 2023-2024 academic year. Roderique and other RAs were surprised that the conditional offers referred to the current position description for RAs, which listed the current \$800/month stipend. Because they were given only one week to sign and return the conditional offers, Roderique and other RAs feared that signing the conditional offers would commit them to another year of the current stipend, and indicated that the stipend increase had been put on hold. This was not the case.

98. On April 26, 2023, more than two weeks after the Union's showing of interest cards had been submitted to ERB, the SLC held a regularly scheduled meeting. At that time, the Union had paused its organizing efforts in anticipation of a likely certification of their bargaining unit. As of that date, Roderique and the other RAs had not received any update regarding the stipend increase. Many of them had already signed and returned their conditional offers. Before the SLC meeting began, Roderique sent Channel a Microsoft Teams message asking for an update on the stipend increase.

99. In response, Channel came to the meeting room in person and spoke with RAs Roderique and Sulwyn De Crozuc. Channel stated that the stipend decision was still under consideration, and it was not certain whether or when the stipend increase would be approved, or for how much. Roderique asked if the unionization was a factor. Channel told the two RAs that several uncertain factors affected the stipend increase decision, including the funding source for the increase and the outcome of the unionization efforts. Channel told them that if the unionization efforts were successful, the University could have to bargain with the Union over RA compensation, and that such bargaining could affect the timing of a stipend increase.

100. Channel intended to convey her personal understanding of union bargaining. In particular, Channel understood that if the Union was certified, the student workers would have to go through their union representatives to determine the amount of the stipend. Channel's knowledge of bargaining came from her interactions with classified staff represented by SEIU, where SEIU and the University negotiate compensation. It did not come from any discussions with University management about the Union. Channel did not make those comments with the intent of affecting activism or support for the Union.

101. De Crozuc understood Channel to mean that RAs wouldn't get the stipend increase until the unionization process had concluded, which De Crozuc expected to occur by the end of April 2023.

102. Roderique interpreted Channel's remarks as an admission by the University that it was withholding the stipend increase in retaliation for union organizing. Roderique immediately began to promote the narrative to student workers that the University was retracting or denying the stipend increase because of the Union's organizing.

103. On April 27, after learning of Roderique's comments, Channel met with Roderique again. This meeting included Roderique, Channel, and a neutral person, Con Logosz, to document the conversation. Channel repeated the reasons for the current timing of the stipend increase. Channel stated that there were a large number of factors and parties involved in changing resident assistant compensation, including the vacancy in the Director of Residence Life and Education Initiatives position, and that the process this time included a University effort to address the stipend amount sustainably over the long term instead of simply as one-time thing. Channel stated that no promise about a stipend increase had been made, and no increase had been revoked. She repeated that certification of the Union could require Union participation in the stipend increase process. Union activists did not seek additional information about the status of the stipend increase.

104. Union activists continued to promote Roderique's earlier narrative that the University was using the stipend process to retaliate against the Union. The Union issued a flyer stating that "RAs would not be receiving a raise that had been essentially promised to them" and asked students to "join us at the Monday [SLC] meetings" because "we must organize or housing will continue to disrespect RAs and the work we do." Roderique also distributed materials connecting the stipend process with Union organizing.

105. On May 30, 2023, Nedzer Erilus was hired as the University Director of Residence Life and Education Initiatives. Because of the importance of this position, Director of Housing Michael Griffel believed that the new director should decide whether there would be a stipend increase and therefore get the credit for it.

106. The University gave Erilus full discretion to determine whether and how much to increase the stipend. He decided to tie the stipend amount to the cost of living, which resulted in RAs receiving more than SLC had requested plus future increases to keep up with inflation.

107. On June 8, 2023, Erilus announced the stipend increase, increasing the Residence Assistant Stipend from \$800 per month to \$1,320 per month. The timing of the announcement was consistent with the University's practice.

108. In response to his decision, Erilus received universally positive feedback and appreciation from RAs. In his view, the decision built good will among RAs and thus bolstered his relationships with key student leaders.

109. On May 19, 2023, the University filed objections to the Union's petition.¹² On September 13, the parties entered into a consent election agreement to hold an electronic-ballot election from October 5 through October 24, in which 1,085 valid ballots were cast. On October 25, the Election Coordinator reported the final tally of 1,055 ballots cast for the Union and 30 ballots cast for no representation. On November 7, this Board issued an order certifying the Union.

CONCLUSIONS OF LAW

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

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 affords 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.” The language of ORS 243.672(1)(a) provides two distinct prongs, one of which prohibits restraint, interference, or coercion “because of” the exercise of protected rights. The second prong of ORS 243.672(1)(a) prohibits actions that restrain, interfere with, or coerce employees “in” the exercise of their protected rights.

To determine if an employer violated the “because of” prong, we ordinarily examine the employer's motives or reasons for the disputed action. “A complainant needs to show only that ‘the employer was motivated *by the protected right* to take the disputed action.’” *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-4-06 at 29, 22 PECBR 323, 351 (2008) (quoting *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transit District*, Case No. UP-48-97 at 9 n 8, 17 PECBR 780, 788 n 8 (1998) (emphasis in original)). “[T]here cannot be an unintentional ‘because of’ violation. It is not enough

¹²*University of Oregon Student Workers v. University of Oregon*, Case No. RC-006-23 (2023).

* * * that an employer acts simply as a *result* of the exercise of protected activity; it must be *in response to* the protected activity.” *Tri-County Metropolitan Transit District*, UP-48-97 at 8, 17 PECBR 787. However, a complainant does not need to show that the employer acted with hostility or anti-union animus. *Lebanon Education Association/OEA*, UP-4-06 at 29, 22 PECBR at 351. When analyzing “because of” claims, we typically examine the record as a whole to determine what motivated the employer to act. *Portland Assn. Teachers v. Mult. Sch. Dist. No.1*, 171 Or App 616, 626, 16 P3d 1189 (2000). We then decide whether the reasons were lawful or unlawful. *Id.* at 639. Generally speaking, if all of the employer’s actions are lawful, we dismiss the alleged “because of” claim. *Oregon AFSCME Council 75, Local 3742 v. Umatilla County*, Case No. UP-18-03 at 9, 20 PECBR 733, 741 (2004).

When we analyze an employer’s actions under the “in” prong, we focus on the likely consequences or effects of the employer’s actions on employees. An employer commits an “in” the exercise violation if the employer’s conduct, when viewed objectively under the totality of the circumstances, has the natural and probable effect of deterring employees from engaging in activity protected by PECBA. Because this standard is objective, neither the employer’s motive nor the extent to which employees actually 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). Put simply, our test for this prong is: Would a reasonable employee be chilled from exercising PECBA rights by the employer’s conduct? *Oregon Public Employees Union v. Jefferson County*, Case No. UP-55-98 at 14, 18 PECBR 109, 122, *recons*, 18 PECBR 199 (1999). Additionally, an employer that commits a “because of” violation also generally commits a derivative “in” violation because the natural and probable effect of the employer’s unlawful action is to chill the exercise of protected rights. *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District of Oregon*, Case Nos. UP-42/50-12 at 28, 25 PECBR 640, 667 (2013) (citing *Clackamas County Employees’ Assn. v. Clackamas County*, 243 Or App 34, 259 P3d 932 (2011)).

Under ORS 243.672(1)(a), when a public employer seeks to place limits on employee communications about union or labor relations issues, the rules must be narrowly tailored and must not unduly infringe on employees’ protected rights to participate in union activities. *See Association of Engineering Employees of Oregon, v. State of Oregon, Department of Administrative Services*, Case No. UP-043-11 at 30, 25 PECBR 525, 554, *adhered to on recons*, 25 PECBR 764 (2013). Moreover, a “rule prohibiting union-related speech or distribution of union-related materials in nonwork areas or on nonwork time is presumptively invalid.” *Id.* at 30, 25 PECBR at 554. This presumption may be rebutted where, for example, special circumstances make the rule necessary to maintain production or discipline and where the employer’s interest in light of the special circumstances outweighs the employees’ interest in engaging in union-related speech. *Id.* at 30-31, 25 PECBR at 554-55.

In contrast, a “rule prohibiting union-related speech and distribution of materials in working areas or during work time is presumptively valid.” *Id.* at 31, 25 PECBR at 555. This presumption can be rebutted by showing that the rule was discriminatorily promulgated or enforced. An employer may prohibit its employees from discussing nonwork-related or personal matters on work time, but it cannot permit discussions on those matters while prohibiting discussion of union matters. *Id.*

With that framework in mind, we turn to the Union's claims regarding the University's alleged violations of ORS 243.672(1)(a).

2. The University violated ORS 243.672(1)(a) when a supervisor told student workers at the CSI office that they could not perform organizing activities while working (while allowing other personal activities while working).

As detailed in the factual findings above, this claim concerns the comments of a University supervisor (Scroggins) who regularly overheard the conversations of two student workers, assumed that they talked about Union organizing on the clock, and told them that they could not perform organizing activity on the clock. Scroggins also told the students that it would be "illegal" for them to engage in Union campaign activity during worktime. As set forth more fully above, it is undisputed that the two student workers were otherwise permitted to engage in a wide range of personal activities and conversations during their work time. A public employer may not prohibit employees from engaging in union activity while on work time while allowing those employees to engage in other personal (or nonwork-related) activities on work time. *Id.*

In arguing that the supervisor's conduct did not violate ORS 243.672(1)(a), the University did not object to the factual findings that form the basis of our conclusion. Rather, the University argues that the examples that Scroggins provided as part of her comments would lead to a conclusion that no reasonable person would be chilled in the exercise of protected rights. The University also asserts that we should not find a violation because the student workers did not ask clarifying questions on the scope of Scroggins's statements that it would be illegal for them to engage in union campaigning on work time.

The University's argument is misplaced. The record reflects that one student worker asked clarifying questions regarding the source of the blanket prohibition against union activities on work time. Scroggins responded to this inquiry by referencing her meeting with other managers and emphasized that such activity would be "illegal." Thus, when presented with an immediate opportunity to clarify or limit her restriction on organizing activity, Scroggins maintained and reinforced the message that *all* organizing activity was impermissible, thereby treating it differently than other personal, nonwork activities that student workers were routinely permitted to engage in. Such conduct violates the "because of" prong of ORS 243.672(1)(a). *See id.* at 36, 25 PECBR at 560. In addition to a derivative "in" the exercise violation, we also conclude that Scroggins's instruction to the student workers independently violated that prong because the instruction would have the natural and probable effect of chilling employees from engaging in union activity. Accordingly, we reject the University's objections to this conclusion of law and conclude that this conduct violated ORS 243.672(1)(a).

3. The actions of a classified University employee in a Barnhart Dining Hall conversation did not violate ORS 243.672(1)(a).

This claim concerns a conversation between a classified University employee in the SEIU bargaining unit (Torres) and a student worker (Martinez). As detailed above, Torres met with Martinez while both employees were off-the-clock to provide support and assistance to Martinez

in her organizing activities. As part of that conversation, Torres provided Martinez with an email that he thought would be helpful to her.¹³ Martinez, however, came away from the conversation concerned about engaging in organizing activities. The Union argues that, as a lead worker, Torres exercised supervisory duties over Martinez, and that Martinez's response to the conversation is sufficient to establish a violation of ORS 243.672(1)(a).

We disagree. We credit Torres's testimony that he was supportive of Martinez's organizing efforts and that his conversation was intended to help her in those efforts. We do not think that such conduct would have the natural and probable effect of deterring employees from engaging in activity protected by PECBA. Therefore, we dismiss the claim.

4. The note regarding tabling at a Ducks After Dark movie night did not violate ORS 243.672(1)(a).

This claim concerns a director's note on a document regarding tabling at an event. The Center for Student Involvement (CSI) hosts hundreds of events for students each year. One of those events is a Ducks After Dark movie night, at which approved student organizations set up tables to promote their organizations. At a January 26, 2023, Ducks After Dark event, an approved student organization (ROAR) tabled to promote the Union (not an approved student organization), specifically identifying the activity as "union card signing." Mandy Chong, CSI Director, was unsure whether this was allowed under University policy, so she made a note of "not sure this is legal" on the routine report kept for each CSI event. Chong did not interfere with ROAR tabling for the Union that night. Chong then checked with her supervisor and was informed that it was permissible for ROAR to table for the Union. Chong relayed that information to her team at their weekly meeting, and ROAR continued to table at future events for the Union.

Kate O'Mara was a member of the CSI team and supported the Union, although she was not herself an eligible student worker in the bargaining unit. When O'Mara saw Chong's note of "not sure this is legal," she was initially worried that she might have caused some trouble for the Union by suggesting that the Union table at the event. O'Mara did not follow up with Chong (or anyone else) and she continued organizing for the Union.

Based on these facts, the Union asserts that the University violated ORS 243.672(1)(a). Specifically, the Union asserts that the note "not sure this is legal" interfered with, restrained, or coerced student workers in or because of the exercise of protected rights. We disagree. With respect to any "because of" violation, we find that Chong made the note as a matter of routine reporting on an unfamiliar situation. PECBA does not prohibit a public employer manager from wondering about and expressing genuine curiosity or uncertainty about the legal implications of a novel situation. The record establishes that Chong's primary concern in asking whether the tabling was "legal" related to a recurrent concern over approved student groups tabling for non-approved student organizations or unauthorized outside organizations. Moreover, the record does not establish that Chong raised whether the tabling was "legal" to any eligible student workers. Once

¹³As previously noted, neither Torres nor Martinez could provide a copy of the email, and neither could specifically recall the details of the email.

Chong met with her supervisor, her question was answered. At no point was ROAR or the Union restricted from engaging in any tabling activity regarding the Union.

We also conclude that the rather innocuous question of whether or not a particular tabling activity was allowed under University policy would not have the natural and probable effect of chilling employees from engaging in protected activity. Rather, an objectively reasonable response would recognize the note for what it was—a question or expression of uncertainty on a report about an unusual situation. Therefore, we do not find that Chong’s note interfered with any student workers “in” the exercise of any protected activity. We dismiss this claim.

5. On a non-precedential basis, we adopt the recommended order’s conclusion that the refusal to allow a student presentation to a University class violated ORS 243.672(1)(a).¹⁴

This claim involves the refusal of a University professor to allow a student worker union organizer to make a Union presentation at the start of one of the professor’s classes. After reviewing the materials, the professor concluded they were too strident and advocacy-oriented as opposed to a more even-handed discussion of the issues, and denied the request.

As stated above, the general rule is that, although an employer may prohibit its employees from discussing nonwork matters on work time, it cannot permit discussions on nonwork matters while prohibiting discussion of union matters. *Service Employees International Union, Local 503, Oregon Public Employees Union v. State of Oregon, Judicial Department*, Case No. UP-3-04, 20 PECBR 864 (2005).

The issue presented here is whether Colbert’s decision regarding union-related speech at the start of his class is valid under ORS 243.672(1)(a). As discussed above, such restrictions are presumptively reasonable unless the Union can prove that the restrictions were discriminatorily enforced.

The University contends that the professor’s decision did not discriminate against PECBA-protected union speech because it was advocacy-oriented toward a specific outcome, unlike presentations by voting registration groups and public interest/environmental membership groups. This comparison is partially inapt. Voter presentations are specifically authorized by state law. *See* ORS 350.245(3)(c). The record does reveal limited public interest/environmental advocacy, urging involvement in the issues and membership.

Looking at the course of the emails, and the professor’s explanations, this Board concludes that the professor’s apparent change in attitude was due to the stridency of the advocacy contained in the Union presentation materials. We adopt the recommended order’s conclusion that the Union has proved that the professor denied permission for the presentation because it involved strident union advocacy when he had granted permission for lesser forms of advocacy, and appeared

¹⁴The University did not object to this conclusion of law in the recommended order, meaning that any objection is unreserved and waived. *See* OAR 115-010-0090(3). Accordingly, we adopt and affirm this unobjected-to conclusion of law. However, we exercise our discretion to limit its precedential value to the named parties in this case. *See* OAR 115-010-0090(5).

inclined to allow the union presentation until he saw how direct it was. Therefore, his conduct violated the “because of” provision of ORS 243.6721(a). We will order the University to cease and desist from this conduct.

6. The University’s prohibition on union card signing in student residence halls violated ORS 243.672(1)(a).

It is undisputed that the University prohibited student workers from seeking support for the Union in student resident halls. Specifically, the University enforced its general “no solicitation” policy to bar students from seeking out student workers in residence halls to gather cards supporting its petition for representation. Moreover, when made aware that student workers were engaging in this activity, one University official directly told an RA to “make it stop.” The University took this action without receiving any resident complaints or any reports of any security-related concerns. The Union asserts that this conduct violates ORS 243.672(1)(a). We agree.

As set forth above, a “rule prohibiting union-related speech or distribution of union-related materials in nonwork areas or on nonwork time is presumptively invalid.” *Association of Engineering Employees of Oregon*, UP-043-11 at 30, 25 PECBR at 554. We do not understand the University to dispute that it enforced what was, in effect, a blanket rule prohibiting all union card signing in residence halls, even when that protected activity was in nonwork areas on nonwork time.¹⁵ That rule is presumptively invalid. *Id.* To avoid violating ORS 243.672(1)(a), the University must rebut that presumption by establishing that special circumstances exist such that the University’s interest outweighs the employees’ interest in engaging in protected activity. *Id.* Here, the University cites its concerns regarding the safety and security of student residents as the reasons that we should find its actions lawful.

We have little difficulty concluding that student safety and residence hall security are valid concerns and constitute a legitimate University interest. That, however, does not end our inquiry. Rather, we must assess whether that interest (as protected by the University’s policy) outweighs the interests of student workers in engaging in activity statutorily protected by PECBA. The record in this case does not satisfy that showing. In reaching that decision, we note that the record does not establish that the University made any efforts to reconcile its blanket “no solicitation” policy with the student workers’ rights to engage in their statutory “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.” ORS 243.662. Rather, the University equated that statutory right with activities related to commercial solicitation or attempts to solicit students to join social clubs and applied those policies to protected organizing activity.

Moreover, the record also does not establish that the University’s interest in student safety in the residence halls would be inadequately protected by less drastic means than a prohibition on

¹⁵The question of whether the residence halls constituted nonwork areas and nonwork times would be more complicated if RAs were engaged in the card signing. However, we need not address that question in this case because, on this record, the RAs were not involved in that activity.

protected activity in residence halls. Here, for example, the University’s policy permits residents to bring guests in and around the residence halls and to interact socially with other residents and their guests. As we understand the University’s position, a housing policy violation occurred only *after* the resident and their guests began to engage in the protected activity of union organizing (or other activity that the University determined fell under its “no solicitation” policy). It is difficult to understand how a safety interest would be advanced by allowing non-resident building access, so long as they did not discuss certain matters (*e.g.*, union organizing) while already in the building.

On that point, we note that the University has relied on testimony adduced at hearing that some organizing activity at Hamilton Hall might have implicated some security concerns. That evidence, however, was not relied on by the University when a University office told an RA to “make [the union activity] stop,” as the University was unaware of that evidence until the hearing in this matter. It could be that, on an as-applied basis, the University could have justified particular actions or limitations on certain organizing activities. However, that issue is not before us, as the University has insisted that it was entitled to prohibit organizing activities in residence halls under its broad “no solicitation” policy. Because we find that the presumption on the University’s overly broad policy has not been rebutted, we conclude that the University violated ORS 243.672(1)(a).

7. The question about the effect of unionization of student workers on international or undocumented student workers did not violate ORS 243.672(1)(a).

This claim concerns two conversations that Lynn Huynh, University Assistant Director of Residence Life for Student Leadership and Advising, had with two RAs (Braeden Dieker and Sulwyn De Crozuc). Specifically, at a regular check-in with Dieker in January 2023, Huynh spoke with Dieker about the Union’s organizing efforts. After indicating her personal support for those efforts, she asked Dieker whether the unionizing efforts would affect any international or undocumented students. Huynh asked this question out of genuine curiosity, in part because she had long been interested issues concerning undocumented and international students. Dieker was aware that he could have opted not to talk about the issue, but he felt that it was an important issue that was worth knowing about. He subsequently looked into the issue and determined that organizing efforts would not negatively affect undocumented or international students. The two continued to have normal interactions after that conversation.

Hyunh had a similar conversation with De Crozuc in April 2023 (after the Union’s cards had been submitted). De Crozuc understood that she was free to leave or to decline to discuss the topic, but nonetheless continued because she was “engaged in the conversation.” As with her interaction with Dieker, Hyunh did not sense that De Crozuc was uncomfortable with the conversation.

From this, the Union asserts that the University violated ORS 243.672(1)(a) because Hyunh’s questions would have the natural and probable effect of chilling student employees in the exercise of protected activity. We disagree. The record establishes that this question was casual in nature and based on Hyunh’s personal interest in issues related to undocumented and international students. The record also establishes that Hyunh expressed support for the RAs’ organizing efforts. We decline to draw any inference that Hyunh’s question was anything other than an innocuous one, rooted in curiosity. Moreover, the RAs did not believe that they were engaged in a coercive

or forced conversation, but rather willingly discussed the matter with Hyunh. At no point did Hyunh sense any discomfort from either RA, nor did she persist or pursue her question in such a manner that it would amount to interference, restraint, or coercion. Under these circumstances, we hold that Hyunh’s conversations with the RAs did not violate ORS 243.672(1)(a). We dismiss this claim.

8. The directive to food service employees to remove Union pins violated ORS 243.672(1)(a).

The facts underlying this claim are limited to two students and one dining hall. Before the union organizing effort, classified staff and student workers often wore various pins distributed by the University, as well as a variety of pins supplied by the employees. During the beginning of the union organizing campaign, student food service workers sought to wear union buttons on their hats and uniform shirts. On two occasions, one student was told to remove or relocate/lower the visibility of a union button. On another occasion, another student worker was told to remove a button, did so, followed up with an email to his manager citing a reported decision of this Board that supported the student’s right to wear the button, and received no response. Other than these events, University managers allowed student workers to wear union buttons.

“[A]s a general rule, the wearing of union insignia or buttons in the work place is protected activity, and an employer may not prohibit such activity unless the employer can demonstrate that ‘special circumstances’ exist that justify the prohibition. The general rule also applies to employees’ rights to wear shirts or buttons with slogans that demonstrate union support. The facts of each case determine whether ‘special circumstances’ exist to warrant a particular prohibition.”

City of Tigard, UP-040-13 at 9, 26 PECBR at 139 (citations omitted, quoting *International Association of Firefighters, Local 1817 v. Jackson County Fire District, No. 3*, Case No. UP-64-90, 12 PECBR 656, 662-663 (1991)).

Here, two student workers were ordered to move or remove their union buttons despite widespread use of other, non-union related buttons or pins on student food service workers. There is no evidence that these steps were taken for any specific health or safety reasons. The actions were taken because of these workers’ union activity and chilled the worker’s button-based expression of union support. There are no special circumstances in the record that support the employer’s decision. We conclude that these University actions regarding union insignia violated ORS 243.672(1)(a). We will order the University to cease and desist from ordering student food service workers from removing or moving union buttons.

9. The removal of Union posters did not violate ORS 243.672(1)(a).

The University has a poster-approval process for public areas to identify which posters are appropriately University-related so that they can remain up and visible. This approval process has resulted in a high volume of non-University connected posters being removed. As part of her duties, Dining Manager Lynn Alvarez takes down unapproved posters “all the time, multiple times

per week.” Alvarez recalled two occasions on which she took down Union posters in public areas, which had not been submitted through the University’s poster-approval process (and therefore lacked the requisite “approved” stamp). The record does not establish that any University-approved Union posters were taken down, and Alvarez also allowed Union posters in non-public areas to remain up (because they were not subject to the University’s poster-approval process). After she consulted with her manager, there is no evidence that Alvarez removed any more Union posters. On these facts, the Union asserts that the University violated ORS 243.672(1)(a).

We disagree with the Union’s assertion. The record does not establish that the University removed any poster “because of” its content supporting the Union. Rather, the only documented instances of any poster removal were “because of” their unapproved status. The Union never sought University approval for the removed posters. Moreover, once the posters were called to the attention of the University management, those managers directed staff to leave the Union posters up. The record does not establish that the University would have categorically denied approval of Union-related posters. Under these circumstances, we conclude that the University did not violate ORS 243.672(1)(a).¹⁶

10. The University’s message suggesting that union organizing efforts might negatively affect an expected RA Stipend increase violated ORS 243.672(1)(a).

At all pertinent times, Carolyn Roderique was the president of the Student Leader Counsel (SLC), a group of RAs that met regularly with University Housing leadership. As detailed above, Roderique was also an early core organizer for the Union. In Fall 2022, Roderique and other SLC members began advocating for a stipend increase for the RAs. At some point before March 2023, University Housing Manager Jasmyne Channel informed the SLC members that to pay for a stipend increase, the University would have to raise its residency fees, which would require approval from the University’s Tuition and Fees Advisory Board (TFAB). In March of 2023, the TFAB approved a fee increase. However, when the University subsequently sent out “conditional offers” for the RAs for the 2023-24 academic year, the offers did not include a stipend increase.

Before an April 26, 2023, SLC meeting, Roderique sent a message to Channel asking for an update on the stipend increase. Channel did not respond to the message, but instead came to the meeting and explained that the stipend increase was “still under consideration,” and that the Union’s organizing efforts was a contributing factor on whether or when a stipend increase would be approved. Channel reiterated that position in a conversation with Roderique and another RA on the following day.

We conclude that, when viewed objectively under the totality of the circumstances, Channel’s comments would have the natural and probable effect of deterring employees from engaging in PECBA protected activity in violation of ORS 243.672(1)(a). In reaching that conclusion, we emphasize that the stipend increase was a primary issue for the RAs and the

¹⁶The Union appears to only argue a “because of” violation. To the extent that it asserts that Alvarez’s conduct would have the natural and probable effect of deterring employees “in” the exercise of protected activity, we reject such a claim. Simply put, we do not conclude that administering the University’s content-neutral poster approval process would have such an effect.

Union's organizing campaign. By expressly tying the possibility of any increase to the outcome of the Union's organizing efforts, Channel's comments implied that a core financial benefit might be withheld if the Union's organizing campaign was successful. An objectively reasonable employee would be chilled in exercising their PECBA rights based on such an implication.

In arguing for a different outcome, the University argues that Channel's comments were more nuanced and that she was merely providing accurate information that if the organizing campaign was successful, then the University would need to bargain over compensation (including the stipend). The difficulty with that argument is severalfold. First, Channel made the comment before any certification of the bargaining unit had even occurred, thereby directly linking the possibility of a stipend with the success or failure of the organizing efforts.¹⁷ Second, Channel's comments to the RAs (as opposed to her testimony at hearing) did not effectively communicate or otherwise convey the type of nuance that the University now relies on. Finally, in early June 2023 (and approximately five months before the Union was certified as the exclusive representative), the University unilaterally increased the stipend for RAs. Accordingly, we dismiss the University's objections regarding this claim and conclude that the University violated ORS 243.672(1)(a).

11. The claims of the Union are neither moot nor untimely

Under ORS 243.672(6), "[a]n injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice." This statute of limitations incorporates a "discovery rule," which means that the 180-day limitation period begins to run when the allegedly injured party "knows or reasonably should know" that an unfair labor practice has occurred. *Rogue River Education Assoc. v. Rogue River School*, 244 Or App 181, 190, 260 P3d 619, 624 (2011). "[T]he determination of whether and when an injured party reasonably should have known of an unfair labor practice presents a factual question that requires case-specific analysis." *Id.* at 190.

The original complaint in this case was filed on May 18, 2023, and amended on August 4, 2023. The amended complaint was filed in response to the University's motion to make the complaint more definite and certain. The amended complaint did not allege new claims and, for statute of limitations purposes, relates back to the original complaint. *See Oregon Public Employees Union v. State of Oregon, Department of Administrative Services*, UP-112-93 at 3, 15 PECBR 567, 569 (1995) ("assuming the original complaint was filed within the statutory 180-day requirement, the amended complaint 'relates back' to the date that the original complaint was filed and is also considered timely.") 180 days before May 18, 2023, was November 19, 2022. Although some background facts include events that occurred before November 19, 2022, no Union claim is based on University conduct before that date. The University has also not specifically identified any claims where the unfair labor practice occurred before November 19, 2022. Therefore, we reject this defense.

¹⁷Although the Union's showing of interest cards had already been submitted to this Board at the time of the April 26, 2023, SLC meeting, the outcome of the organizing campaign had not been determined. Moreover, the University filed objections to the representation petition weeks later, on May 19, 2023. Therefore, the outcome of the organizing campaign was uncertain at the time of the meeting.

The University also argues that the Union’s claims are moot because the Union succeeded in its efforts to organize. The University cites no PECBA authority for its position, and we reject the notion that the success of an organizing campaign absolves a public employer from liability for its unlawful actions during a campaign. Moreover, this Board has held that it “may adjudicate an unfair labor practice complaint even when the unlawful practice has ceased.” *Portland Association of Teachers/OEA/NEA v. Multnomah County School District No. 1J*, Case No. UP-024-17, 27 PECBR 146 (2017). Further, as the Union notes, labor organizations and public employees do not stop engaging in protected activity after certification of a bargaining unit. Instead, they generally continue to participate in a variety of PECBA-protected activities including negotiation and general advocacy. This Board has rejected the application of mootness under these circumstances, and we reject this defense here.

12. Remedy, notice posting, and civil penalty

Because the University violated PECBA as described above, we are required to enter a cease and desist order for that conduct. *See* ORS 243.676(2)(b). The Union also asks that we direct the University to post a notice of its violations. We generally order the posting of a notice if we determine that a party’s violations of PECBA: (1) were calculated or flagrant; (2) were part of a continuing course of illegal conduct; (3) were perpetrated by a significant number of a Respondent’s personnel; (4) affected a significant portion of bargaining unit employees; (5) had a significant potential or actual impact on the functioning of the designated bargaining representative as the representative; or (6) involved a strike, lockout, or discharge. Not all of those criteria need to be satisfied for us to order a posting. *Wy’East Education Association/East County Bargaining Council v. Oregon Trail School District No. 46*, Case No. UP-32-05 at 53, 22 PECBR 108, 157 (2007). On Board review, the Union has not identified any conduct warranting a notice posting, and we decline to order one.¹⁸

The Union also asks that we award a civil penalty. Under ORS 243.676(4)(a)(A) “The [B]oard may award a civil penalty to any person as a result of an unfair labor practice complaint hearing, in the aggregate amount of up to \$ 1,000 per case, without regard to attorney fees, if * * * [t]he complaint has been affirmed * * * and the [B]oard finds that the person who has committed, or who is engaging, in an unfair labor practice has done so repetitively, knowing that the action taken was an unfair practice and took the action disregarding this knowledge, or that the action constituting the unfair labor practice was egregious * * *.” In this context, the statutory term “person” can apply to a public employer. ORS 243.676(5). Our precedent defines the term “egregious” as “conspicuously bad” and “flagrant.” *East County Bargaining Council (David Douglas Education Association) v. David Douglas High School District*, Case No. UP-84-86 at 11, 9 PECBR 9184, 9194 (1986). Although we have concluded that the University violated ORS 243.672(1)(a) in some respects, we do not find that the actions of the University to be repetitive, knowing, “conspicuously bad,” or “flagrant.” Accordingly, we deny the request for a civil penalty.

¹⁸The recommended order declined to order a notice posting, and the Union did not object to that conclusion.

ORDER

1. The University violated ORS 243.672(1)(a) by telling student workers that they could not engage in organizing activities while on work time, while allowing those workers to engage in other personal activities while on work time. The University shall cease and desist from engaging in this conduct.

2. The University violated ORS 243.672(1)(a) by prohibiting a student from giving a union-related presentation in a University class. The University shall cease and desist from engaging in this conduct.

3. The University violated ORS 243.672(1)(a) by prohibiting union card signing in residence halls. The University shall cease and desist from engaging in this conduct.

4. The University violated ORS 243.672(1)(a) by directing student employees to remove Union pins. The University shall cease and desist from engaging in this conduct.

5. The University violated ORS 243.672(1)(a) by implying that an expected stipend increase for Resident Assistants might be delayed or denied based on the outcome of the Union organizing campaign. The University shall cease and desist from engaging in this conduct.

6. The remaining claims are dismissed.

DATED: September 10, 2025.



Adam L. Rhynard, Chair



Shirin Khosravi, Member



Benjamin O'Glasser, Member

This Order may be appealed pursuant to ORS 183.482.