

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-030-25

(UNFAIR LABOR PRACTICE)

|                               |   |                     |
|-------------------------------|---|---------------------|
| BANDON EDUCATION ASSOCIATION, | ) |                     |
|                               | ) |                     |
| Complainant,                  | ) |                     |
|                               | ) | RULINGS,            |
| v.                            | ) | FINDINGS OF FACT,   |
|                               | ) | CONCLUSIONS OF LAW, |
| BANDON SCHOOL DISTRICT 54,    | ) | AND ORDER           |
|                               | ) |                     |
| Respondent.                   | ) |                     |

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

Erin O. Sweeney and Alysha D. Phelps, Attorneys at Law, Ogletree, Deakins, Nash, Smoak and Stewart, P.C., Portland, Oregon, represented Respondent.

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On August 3, 2026, Administrative Law Judge (ALJ) Stephanie Miller issued a recommended order in this matter. The parties had 14 days from the date of service of the order to file objections. OAR 115-010-0090(1). On August 13, the Board granted a joint request to extend the objections period until August 31, 2026. No objections were filed, which means that the Board adopts the attached recommended order as the final order in the matter.<sup>1</sup> OAR 115-010-0090(4).

ORDER

1. The District shall cease and desist from violating ORS 243.672(1)(a).
2. Within 30 days of the entry of the final order in this matter, the District shall restore and/or reinstate Pearson, Guzman, KH, and Ells to their assignments as of May 20, 2025, and make them whole for any losses suffered due to their unlawful transfers or reassignments in violation of ORS 243.672(1)(a).

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<sup>1</sup>Member O'Glasser would adopt Conclusion of Law 3 on a non-precedential basis. *See* OAR 115-010-0090(5)

3. Within 30 days of the entry of the final order in this matter, the District shall post the attached notice and distribute it by email to all bargaining unit employees.

4. Within 30 days of the entry of the final order in this matter, the District shall pay a civil penalty in the amount of \$1,000.00 to the Association.

DATED: September 4, 2026.



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Adam L. Rhynard, Chair



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Shirin Khosravi, Member



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Benjamin O'Glasser, Member

This Order may be appealed pursuant to ORS 183.482.

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| BANDON EDUCATION ASSOCIATION, | ) |                      |
|                               | ) |                      |
| Complainant,                  | ) |                      |
|                               | ) | RECOMMENDED RULINGS, |
| v.                            | ) | FINDINGS OF FACT,    |
|                               | ) | CONCLUSIONS OF LAW,  |
| BANDON SCHOOL DISTRICT 54,    | ) | AND PROPOSED ORDER   |
|                               | ) |                      |
| Respondent.                   | ) |                      |
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|                               | ) |                      |

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

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On June 5, 2025, the Bandon Education Association (Association) filed an unfair labor practice complaint against the Bandon School District 54 (District). The Association moved to amend the complaint twice, and both motions were granted. The District filed timely answers to the original and the amended complaints. Administrative Law Judge (ALJ) Stephanie Miller held a hearing on the second amended complaint on February 23, 24, and 27, 2026, via videoconference. The record closed on March 27, 2026, upon receipt of the parties' post-hearing briefs.

The issues to be decided are:

1. Did the District interfere with, restrain, or coerce employees in or because of the exercise of protected rights, in violation of ORS 243.672(1)(a), and/or discriminate in regard to any terms or conditions of employment based on union membership in violation of ORS 243.672(1)(c), by:

- a. Involuntarily transferring Association President Ashley Pearson, Association Vice President Jen Ells, Association Secretary-Treasurer Nicole Guzman, and member KH;

- b. Questioning employee KC about her support for the Association's grievance and instructing KC to put in writing that she did not file the grievance and did not want the remedy requested by the grievance; and/or
- c. Sending a letter to bargaining unit employees which said that "all public employees" are "legally and ethically" bound to not speak about matters concerning working conditions?

2. Should the District be required to post a notice of any violations found, pay the Association a civil penalty, and/or take other affirmative action as necessary to effectuate the purposes of the Public Employee Collective Bargaining Act (PECBA)?

For the reasons explained below, we conclude that the District violated ORS 243.672(1)(a) by the all conduct identified in Issue 1 and decline to reach the question whether the same conduct violated ORS 243.672(1)(c). We order the District to cease and desist violating the PECBA, to post a notice of the violations found and distribute it to bargaining unit employees via email, to reinstate and make whole the teachers it involuntarily transferred, and to pay a civil penalty to the Association.

### RULINGS

1. On July 23, 2025, the complaint in this matter was formally served on the District along with the ALJ's letter directing the District to file its answer and submit its filing fee by August 6, 2025. On August 7, 2025, the ALJ issued an Order to Show Cause explaining that, while the answer was uploaded on August 6, 2025, the District did not pay its filing fee until August 7, 2025, making the answer untimely. *See* OAR 115-010-0033(1)(b). The Order to Show Cause directed the District to provide good cause for its untimely submission by August 14, 2025, and permitted the Association to file a response by August 20, 2025. Respondent filed its submission on August 14, 2025, explaining that it made good faith attempts to pay the fee through the online Case Management System (CMS) on the night of August 6, 2025, but could not do so because of a technical limitation in CMS, and that it promptly paid the morning of August 7, 2025, when staff of the Employment Relations Board (the Board) could assist. In a ruling dated August 15, 2025, the ALJ found the District's explanation stated good cause for its late fee payment and ruled that the answer was timely filed. The Association filed requests for reconsideration of that ruling and its objections to the District's response to the Order to Show Cause. The ALJ denied the Association's requests for reconsideration.<sup>1</sup> Having reviewed the record, we find the ALJ acted reasonably within her discretion in finding that Respondent established good cause for the untimely payment of its filing fee.

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<sup>1</sup>During the prehearing conference and in a written statement filed February 18, 2026, the Association renewed its argument that the District failed to establish good cause and that it should not be permitted to present evidence as to the facts of the original complaint. The Association again renewed its argument on the untimeliness of the initial answer in its Post-Hearing Brief. (Association Post-Hearing Brief at 13.)

2. On November 7, 2025, the District filed a motion to quash the Association's documents subpoena issued on October 16, 2025. In a ruling dated December 12, 2025, the ALJ denied the District's motion to quash, overruling the District's objections concerning improper service of the subpoena and an improper production date in advance of the hearing. The ALJ found that the Board's procedures permit a production date before the hearing, and the subpoena was served a reasonable amount of time in advance of the designated production date. The ALJ directed the District to serve responses along with a statement identifying any documents withheld and the reasons for withholding. On the District's objection that Request 5 called for documents including confidential health information, the ALJ directed the parties to confer on a plan for responding that included safeguards for confidential information. The parties conferred and submitted a stipulated protective order for documents having confidential information.

We have reviewed the record and find the ALJ's rulings were correct. Our rules permit a party to subpoena documents from an opposing party by service on the party's representative. OAR 115-010-0033(1)(a), *see also* ORCP Rules 55B(5) and 9B. Our rules further permit the subpoenaing party to designate a date for production other than the hearing date so long as the responding party has a reasonable time to respond. OAR 115-010-0055(5).

3. On the record at the hearing, the parties stipulated that all exhibits should be received into the record. (February 27 Afternoon recording at 1:39-41.)

4. We have reviewed the remaining rulings of the ALJ and find they are well within the proper exercise of her discretion.

## FINDINGS OF FACT

### The Parties

1. The District is a public employer within the meaning of ORS 243.650(20). It is located in the City of Bandon in Coos County, Oregon.

2. The Association is a labor organization within the meaning of ORS 243.650(13). At the time of the hearing, there were approximately 40 teachers in the bargaining unit represented by the Association.

3. The District has about 125 employees, including 10 administrators, 40 teachers, and other staff such as educational assistants, academic advisors, secretaries, and behavior specialists.

4. There are three schools within the District: Ocean Crest Elementary, Harbor Lights Middle School (HLMS), and Bandon High School (BHS). The school buildings are in close physical proximity to each other.

5. At the time of the hearing, the District enrolled approximately 600 students in total: 207 students enrolled at BHS (grades 9 through 12), 173 students enrolled at HLMS (grades 5 through 8), and 250 students enrolled at Ocean Crest Elementary (kindergarten through grade 4). (Schmerer testimony.)

6. At the time of the hearing, Shauna Schmerer was the District's Superintendent, a position she held since 2021. She previously held superintendent positions in other districts beginning around 2006. (Schmerer testimony.)

7. At the time of the hearing, Sam Dockery was BHS's Principal. He joined the District in August 2024, the start of the 2024-2025 school year. James Wright was BHS's Vice Principal and the District's Athletics Director, a position he had held since 2023.

8. At the time of the hearing, Becky Armistead was HLMS's principal, a position she held since 2021. Before 2021, Armistead was the principal of Ocean Crest Elementary.

9. At the time of the events at issue, Ashley Pearson was the Association President, Jen Ells was the Association Vice President, and Nicole Guzman was the Secretary-Treasurer. Each of the three schools had a Building Representative who was also part of the Association's leadership.

#### Bargaining a Successor CBA and Planning for the 2025-2026 School Year

10. The District and the Association were parties to a collective bargaining agreement (CBA) in effect from July 1, 2022, through June 30, 2025. (Exh. R-1 at 40.) In January 2025, the parties began bargaining a successor contract for the period of July 1, 2025, through June 30, 2028. The District's bargaining team was Schmerer, Dockery, Armistead, and Belletti, as well as Ocean Crest Elementary Principal Courtney Wehner; BHS Vice Principal James Wright; Business Manager Amanda Steimonts; Payroll and Human Resources Director Jaclyn Brown; and the School Board's Chair and Vice-Chair, David Hisel and AJ Kimball. (Exh. C-3.) The Association's bargaining team was Pearson, Ells, and Guzman, as well as teachers elected to the bargaining team (Kevin Haan, Nicole Kraynik, Cynthia Prasky) and the Association's UniServ Consultant, Carlos "Chico" Robinson. During bargaining, KH joined the team to be the Association's note-taker.

11. Around this same time, the District was engaged in planning for the next school year. The District's annual planning cycle normally begins in January. Teachers notify the District of their "intent to return" the following school year, and the District begins the process of creating class schedules and teaching assignments. The District's past practice was to discuss potential reassignments with teachers for their input before making assignment decisions. (Ells testimony.) The District generally aims to finalize schedules and assignments by the end of the school year. However, those plans are subject to change once the District receives final budget numbers in September. (Schmerer Testimony.) The District's planning takes into consideration student enrollment numbers and its budget based on federal, state, and local funding.

12. In the District administrators' weekly meeting of January 15, 2025, Armistead raised the issue of scheduling budget discussions for the 2025-2026 school year. Armistead also queried whether the District would need to "[r]eturn [to] shared teachers for electives." (Exh. R-7 at 3.) At times, HLMS students attend classes in the BHS building, meaning that a few teachers instruct students from both schools (*i.e.*, shared teachers). Shared teachers had only been utilized for teaching electives like music and shop classes. (Armistead testimony.) They did not have

shared teachers teaching ELA or social studies classes. (Dockery testimony.)<sup>2</sup> The administrators decided to table further budget discussions until they had more information. (Armistead testimony.)

13. The Association's bargaining team came into the negotiations after meeting with their membership and gathering information to prepare their proposals for three months prior to the first bargaining session. The Association believed their CBA had fallen behind other school districts in the area on compensation and decided to begin the bargaining with a big proposal. They expected some give and take and collaboration with the District would follow, as had occurred in past contract negotiations. (Ells testimony.)

14. The bargaining teams met for their first bargaining session on January 27, 2025. From the start, the parties could not come to an agreement on meeting norms, and their discussions were more contentious than in prior years. The Association's bargaining team members took turns speaking during the bargaining session, each discussing the proposals they had studied. Members of the Association's bargaining team felt that Superintendent Schmerer was talking over them and using a harsh, combative tone. (Ells testimony.)

15. At their second bargaining session on February 12, 2025, in response to the Association's proposal for a 15 percent increase in wages, Superintendent Schmerer stated that if the Association were to get the increase they proposed, 10 teachers would have to be terminated. (Exh. C-3.) Schmerer passed around a list of names of all 40 teachers in the District and told the Association's bargaining team that they would be the ones to tell 10 teachers they were losing their jobs. (Exh. C-3 at 3, Ells testimony.) The District did not offer any alternative proposal on compensation. (Exh. C-3 at 3.) During the bargaining session, Schmerer commented that the Association's proposal felt like the teachers were saying they are not happy and their students do not come first, drawing objections from the teachers present. (*Id.* at 5.) The District's team also commented that newer teachers had moved to the top of the pay scale because they had obtained master's degrees, resulting in "a large group of expensive teachers." (*Id.* at 6.)

16. Members of the Association's bargaining team were shocked by the District's position that 10 teachers would need to be terminated and that the Association would be the ones to tell them they were terminated. The bargaining team met with Association members and shared what had occurred in the bargaining session. The members were angry about the District team's conduct and wanted to get more involved in supporting the negotiations.

17. The Association requested, and the parties agreed, to open their negotiation sessions so that teachers and community members could attend and observe. Many teachers attended those meetings. Teachers also increased their attendance at school board meetings to share their questions and concerns.

18. In March 2025, the principals began surveying teachers for their input on funding priorities. (Exh. R-6 at 32.) By mid-April, the District had held several budget planning meetings.

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<sup>2</sup>Of the 40 teachers at the time of the events here, only two were identified as shared teachers for the 2024-2025 school year, both teaching music. (Exh. C-4.)

(*Id.* at 43.) At the April 23 administrators' meeting, Dockery again raised the possibility of shared teacher assignments for the following school year, saying that he planned to meet with Armistead about it. (Exh. R-7 at 20.)

19. On April 28, 2025, in their respective staff meetings with teachers, Armistead and Dockery discussed potential changes in the next school year and the District's budget deficits. Dockery told BHS teachers that other districts had been laying off or furloughing teachers due to budget constraints. He said that the District would try to avoid layoffs through attrition but that some staffing shifts might be necessary. The principals kept these discussions broad since the District had not finalized any decisions. (Armistead testimony; Dockery testimony.)

20. The District's conduct in bargaining sessions spurred teachers to participate in actions related to the negotiations, including wearing "red for ed" on bargaining session days and participating in "walk-ins." At the beginning of May, the Association stepped up its actions, engaging the community to attend open bargaining sessions, school board meetings, and to join in the weekly walk-ins. Teachers participating in walk-ins would assemble outside the school with picket signs for about 30 minutes before entering the school buildings together at the start of the school day. Community members began showing up for these actions to show their support for the teachers. Students also joined the picketing before school. (Pearson testimony.)

21. Superintendent Schmerer stopped attending the bargaining sessions, leaving outside counsel to speak for the District. (Ells testimony.) The District eventually postponed any additional bargaining meetings.

22. On May 13, 2025, the District's administrators exchanged emails with each other about involuntary transfers. Schmerer emailed Armistead, Dockery, and Wehner saying, "We need to talk to staff about their assignments for next year." Schmerer listed off the teachers: Guzman, Ells, and KH and the teachers who would be taking over high school assignments. (Exh. J-1 at 1.) Schmerer added, "They are supposed to picket again tomorrow morning. The District office staff will not arrive until 8:15 when they should all be in class." (Exh. J-1 at 2.) Armistead replied to the group, asking Schmerer why Pearson was not on the list of teachers to be transferred. Schmerer replied that Pearson would only be told about her transfer after the administrators met with the other transferred teachers. (*Id.*) Schmerer said she would send out emails to Guzman, Ells, and KH later that day. Ultimately, however, Schmerer did not send such an email on May 13 or at any time after that. (Schmerer testimony.)

23. At the school board meeting on May 14, 2025, Schmerer spoke about the state of negotiations with the Association and the "challenges" the District was facing in developing the budget for the next school year. (Exh. R-6 at 50.) Schmerer told the school board that the proposed budget would be presented at the first meeting of the Budget Committee and that, if actual costs exceeded the proposed budget, layoffs and furloughs might be necessary. (*Id.* at 56.)

24. On May 21, 2025, the administrators held their weekly administrator meeting. Dockery later said that the administrators made decisions about the teachers to be transferred during that meeting.<sup>3</sup>

25. Also on May 21, 2025, after the end of the school day, the District emailed all employees to announce that it was cancelling the traditional end-of-year, all-employee luncheon “due to budget constraints.” (Exh. J-2.) The email said that the District shared the employees’ disappointment about having to cancel it. (*Id.*)<sup>4</sup>

26. The following morning, May 22, 2025, Pearson sent an email to Association members’ non-work email accounts in response to the cancellation of the luncheon. (Exh. C-7.) Pearson’s email framed the District’s decision to cancel the event as an attempt to hamper teachers’ morale during active bargaining, stating that the Association and its members could “see through” the District’s conduct. Pearson announced that the Association would be hosting an end-of-year luncheon for all teachers, expressing her appreciation for and solidarity with the teachers. (Exh. C-7.) Based on statements of the District’s finances shared in negotiations, Pearson did not believe the District’s “budget constraints” excuse for cancelling the luncheon. Pearson felt the District was trying to blame the teachers’ contract negotiations for cancellation of the all-staff luncheon and to “kick us when we were down.” (Pearson testimony.)

27. The final teacher in-service and staff meeting for the school year was scheduled for the afternoon of May 23, 2025. The District’s 2024-2025 school year ended on June 10, 2025.

#### Transfer/Reassignment Notices to Pearson, Guzman, Ells and KH

28. On May 22, 2025, Armistead sent Dockery a draft of a form email to be sent to the teachers the District decided to transfer or reassign. (Exh. J-4.)

29. After the end of the school day on May 22, 2025, Pearson, Guzman, Ells, and KH received the nearly identical emails from Dockery and Armistead informing them that they were transferred or reassigned for the 2025-2026 school year and that the District’s staffing decisions would be shared at the staff meeting the following day, May 23, 2025. (Exhs. J-5, J-6, J-7, J-8.) The only explanation provided in the form emails was that the changes were “part of a broader staffing adjustment made in response to student needs and staffing shifts due to attrition.” (*Id.*)

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<sup>3</sup>No meeting agenda or notes for this meeting are part of the record here, and no documentary evidence supports Dockery’s statement that the transfer decisions were made on May 21. To the contrary, the email chain between Dockery, Schmerer, and Armistead shows that decisions had been made before May 13 to move Pearson, Ells, Guzman, and KH. Despite the Association’s requests, the District never produced notes of administrators’ meetings during the critical period between April 28 and May 28, 2025.

<sup>4</sup>Just one week prior, the District had informed the catering company that it was still deciding on the menu options for the year-end luncheon and would get back to them soon. (Exh. J-3 at 1.)

## Pearson Transfer

30. Amanda Pearson began working for the District in 2017, making her one of the more senior teachers in the District. At the time of the events here, she was teaching English Language Arts (ELA) for ninth graders and eleventh graders, as well as a dual-credit Speech and Debate class. Pearson also coached the school's Speech and Debate team.

31. Under Pearson's guidance, the Speech and Debate team and individuals on the team placed highly in state and national competitions. The District offered the Speech and Debate class as a dual-credit course with the local community college. In order to qualify for the dual college credit for the Speech and Debate class, Pearson had gone back to school herself, obtaining 12 units of graduate-level education in communication and ultimately a master's degree in communication. No other teacher in the District had sufficient graduate-level credits to teach the dual-credit Speech and Debate class. Pearson particularly enjoyed teaching these courses and made that known to Dockery.

32. Pearson previously taught middle school. After multiple incidents of students behaving inappropriately toward her and some difficult staff dynamics, Pearson requested that the District no longer assign her to teach middle school. (Pearson testimony.)

33. On May 6, 2025, Principal Dockery sent Pearson a calendar invitation for a year-end conference and performance review to be held on May 22, 2025.

34. On May 9, 2025, Dockery requested Pearson and others teaching dual-credit classes to complete the paperwork necessary to qualify for dual-credit through the Oregon Institute of Technology (OIT). Pearson completed and submitted the paperwork that same day. (Exh. C-6.)

35. On May 22, 2025, at 11:15 a.m., Pearson attended her end-of-year evaluation with Dockery, during which they discussed Pearson's plans for her high school classes for the next school year. (Pearson testimony, Exh. J-12.) Dockery gave Pearson positive ratings and comments in the evaluation. (Exh. J-12.) Dockery gave her no negative feedback, no indication that she was the subject of any negative reports, and no information about her students' test scores being poor. Nothing in the conversation with Dockery or the written evaluation by Dockery suggested that Pearson would be transferred from teaching her assigned classes at the high school to teaching at the middle school.

36. A few hours later that same day, Dockery sent an email to Pearson notifying her that the District involuntarily transferred her to teach at the middle school for the 2025-2026 school year. As a consequence, she would no longer be teaching the Speech and Debate class. Pearson had already obtained additional education credits, earning her a master's degree in communication, to qualify as an instructor for the dual-credit class. Just days before the transfer email, she also completed additional paperwork to qualify the program for dual credit through a different institution, at Dockery's direction.

37. Pearson later learned that her involuntary transfer to HLMS meant the District essentially swapped her high school ELA classes with those of middle school ELA teacher KC, a

teacher still in her probationary period with the District.<sup>5</sup> KC was not part of the Association's bargaining team.

38. In April 2025, BHS Vice Principal Wright approached KC during a school softball game. Wright asked whether KC had a credential to teach at the high school level and whether she wanted to teach high school, both of which she answered in the affirmative. Wright told KC to "hold tight" and that there might be a chance to teach at BHS "if the pot gets stirred." (KC testimony.)<sup>6</sup> A brief time later, when KC met with Armistead about her annual evaluation, Armistead counseled KC about low scores on several factors and her need to improve. (Exh. J-14; KC testimony.) Armistead nevertheless mentioned to KC that she could potentially transfer to the high school if one of the two ELA teachers left. (KC testimony.) On May 22, 2025, KC received notice that the District was transferring her to teach ELA at the high school.

#### Ells Assignment Change

39. At the time of the hearing, Jen Ells had taught in the District for 25 years, starting in 2001. She began teaching art at BHS in 2007. She worked with many different principals before Dockery became the BHS principal at the start of the 2024-2025 school year.

40. Ells met with Dockery on May 19, 2025, for her annual evaluation discussion. Dockery's comments were overwhelmingly supportive and positive. (Exh. J-1.) Ells "raved" to Dockery about how much she loved her teaching schedule and the high school students. (Ells testimony.) The two did not discuss teaching middle school classes.

41. On May 22, 2025, Ells received a notice that the District was assigning her two additional teaching periods of middle school art in addition to the four periods of high school art she was already teaching. (Exh. J-6.) She responded the same day, asking why Dockery had not mentioned this change when they met on May 19, 2025. Ells said this was a big change in her teaching assignments and that Dockery had not offered any explanation nor allowed her to give input about the decision. (Exh. R-33.) Ells had not taught middle school for 18 years; she knew that preparing materials and curriculum for middle schoolers would greatly increase her workload. (Ells testimony.)

42. Ells attended the staff meeting led by Dockery on May 23, 2025. During the meeting she and others asked about the involuntary reassignments and about Ells's added middle

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<sup>5</sup>In addition, the District assigned Dockery's wife (Daisy) to teach the Speech and Debate class for Fall 2025. Neither KC nor Daisy Dockery held the advanced degree needed to teach the dual-credit Speech and Debate class.

<sup>6</sup>In his testimony, Wright denied ever discussing a transfer to BHS with KC. He said he did not remember making a "stirring the pot" comment to her. He conceded that it was not unusual for him to talk with KC and that his wife coached softball with KC. Wright's demeanor during his testimony was defensive and evasive. Given his position on the team of administrators, he would have a greater incentive to tell a story consistent with the District's other witnesses. KC's version, on the other hand, goes against her personal interests. Thus, we credit KC's testimony about the April 2025 "stir the pot" conversation over Wright's denial.

school classes. Dockery said he would not discuss changes to individuals' jobs in the staff meeting and that individuals could take it up with him privately.

43. After the May 23 staff meeting, some teachers were in tears and shaking. Some remarked to Ells that the District's actions were the consequence of teachers taking action and being part of the union's actions. Teachers expressed concerns about being associated with the union, believing it posed a risk to their livelihoods and families. (Ells testimony.)

44. Later that same afternoon, Ells met privately with Dockery. Ells told Dockery that the District's reassignment violated the terms of the CBA, and looked "really bad," like retaliation. Dockery agreed that it looked bad but said sometimes leaders must make hard choices. Dockery explained that the District had just decided on the reassignments and transfers during the administrator's meeting on May 21, 2025. (Ells testimony.) Dockery told her that the change was best for the students and would give them more electives.

45. Ells continued to plead with Dockery and Armistead to reconsider the change in her assignments. (Exh. C-15, C-20.) Parents later spoke out at the District's school board meetings, asking the administrators to reconsider the changes and listen to staff. (Ells testimony; Exh. R-6 at 67, 69, 73.)

46. In Ells's 25 years of experience with the District, teacher transfers and reassignments occurred rarely, and only when a teacher requested a voluntary transfer or if the District needed to fill an immediate vacancy. In those situations, past principals had worked collaboratively with the teachers, seeking their input on reassignment decisions. Ells had never experienced the District's administrators making reassignments without any prior notice or input.

#### Guzman Reassignment/Transfer

47. Nicole Guzman started teaching in the District in August 2020. She has worked in education for over 20 years. At the time of the events here, she taught ELA for grades seven and eight at HLMS, as well as conducting some student reading interventions.

48. In a conversation with Guzman around April 29, 2025, Principal Armistead mentioned the ongoing contract bargaining. Armistead told Guzman that the Association should consider the "really good offer" the District made. Armistead also said she would "hate to lose" Guzman, but Guzman was at risk of being involuntarily transferred to the elementary school. (Guzman testimony.)

49. Armistead awarded Guzman high marks on her year-end evaluation. Armistead gave her no negative feedback and mentioned no concerns about standardized test scores for Guzman's students. (Guzman testimony; Exh. J-13.)

50. On May 22, 2025, Guzman received an email from Armistead stating that, effective August 2025, Guzman would be serving as a "Middle School Interventionist" and no longer teaching classes. (Exh. J-7.) Guzman was shocked and surprised. The Middle School Interventionist position did not exist at the time. Guzman was confused about what the job would be and about the negative impact her reassignment could have on students in the ELA classes. She had advocated for the District to consider an interventionist position only after it fully staffed all

teaching positions, which it had not done. Guzman was surprised that Armistead did not have a conversation with her and did not take her preferences into account before deciding to reassign her to the yet-to-be-defined Interventionist position.<sup>7</sup>

51. On May 26, 2025, Guzman emailed Armistead. Guzman said she was offering her input about reassignments since the District had not given her an opportunity to do so earlier, as required by the CBA. (Exh. C-9.) Guzman emphasized that she did not want to take on more intervention sections if staffing for core teaching would suffer. She also noted that, if she was assigned to teach some classes, she did not want to be assigned math classes that would require learning new curriculum outside her training and specialization in ELA. (*Id.*)<sup>8</sup>

#### KH Reassignment/Transfer

52. KH taught high school history for 15 years, the last 10 years as a teacher at BHS. KH had never taught at the middle school level.

53. On May 19, 2025, KH met with Dockery for her annual evaluation.

54. The reassignment email Dockery sent to KH said the District would be reassigning her to teach Social Studies at HLMS for the 2025-2026 school year. (Exh. J-8.)

55. When she received the reassignment notice, KH immediately messaged Dockery and Armistead to say that she did not want to transfer to the middle school or to teach middle school classes. (Exh. C-8.) She was shocked by the reassignment and by the District's failure to provide notice or discuss the change with her. She felt the District had disrespected her and had violated the CBA.

56. KH learned that the District's reassignment meant she would effectively be swapping positions with an HLMS teacher, ZV, who had significantly less seniority than she had. (Exh. J-10.) ZV was not part of the Association's bargaining team.

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<sup>7</sup>The District contends that it had been working on increasing intervention offerings the entire school year. Armistead testified that she had the idea of moving Guzman to a larger interventionist position much earlier in the school year, but once she realized Guzman could not teach high school, she changed the plan to moving Pearson "down" to middle school ELA and KC to the high school so she could "repurpose" KC's position to fund a full-time interventionist position. The documentary evidence show that the administrators discussed any of these plans. Armistead did not provide a coherent explanation why transferring Pearson and KC would yield funding the District could "repurpose" for an additional full-time Interventionist position, given its budget concerns. We find Armistead's testimony on these points was not credible.

<sup>8</sup>Over the course of the next two months, Guzman inquired several times about the contours of the new Interventionist position, only to be told that the District did not know yet. (Guzman testimony.) The District apparently scrapped the Interventionist position at some point.

57. At the staff meeting on May 23, 2025, KH asked about the reassignments and transfers. (Exh. C-8.) Dockery said he could not discuss that topic in the staff meeting, and that the District was “just happy no layoffs were happening.”

58. KH already scheduled an appointment with Dockery for right after the staff meeting. In that appointment, KH reiterated that she did not want to move to the middle school. She told Dockery the transfers would not save money and did not make logical sense.

#### Grievance Filing and End of School Year

59. On May 27, 2025, the Association filed a grievance alleging the District violated the involuntary transfer provision at Article 23(C) of the CBA when it reassigned Pearson.<sup>9</sup> On May 28, 2025, the Association sent a demand letter to the District stating that the involuntary transfer was in violation of the CBA and was a ULP. (Exh. C-13.) Several teachers submitted statements in support of the grievance.<sup>10</sup>

60. Article 23 of the parties’ CBA concerns vacancies, voluntary transfers, and involuntary transfers. (Exh. R-1 at 37.) Article 23(C) of the CBA then in effect stated:

##### “C. Involuntary Transfers

“1. When a teacher is involuntarily transferred, he/she will have the opportunity to make known to the appropriate administrator his/her wishes regarding a new assignment.

“2. Notice of an involuntary transfer will be given as soon as reasonably possible.

“3. An involuntary transfer will be made only after a meeting between the teacher and the principal at which time he [*sic*] will be notified of the reasons for the transfer.

“4. Teachers being involuntarily transferred or reassigned will be informed of appropriate vacancies known at the time the transfer decision is being made. Teachers will be able to indicate their preference of assignment. If possible, the teacher being involuntarily transferred will visit the new assignment prior to transfer.

“5. Teachers who are involuntarily transferred or reassigned during the school year may request paid release time or extended contract time in order to prepare for the new assignment. If the request is denied, reasons will be given in writing.”

(Exh. R-1 at 37-38.)

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<sup>9</sup>Though the grievance initially named Pearson only, it was amended to include Ells, Guzman, and KH soon thereafter. (See Exhs. C-30, C-32.)

<sup>10</sup>KC later submitted a statement in support of the teachers’ grievance. KC expressed gratitude for being assigned to the high school as well as concerns that the District had not followed the CBA’s transfer provisions. She said people were angry or blamed her for the transfers. (Exh. C-28 at 1-2.)

61. On May 28, 2025, the District’s administrative team held their weekly meeting. The schedule for the 2025-2026 school year still was not finalized due to outstanding issues about dual credit classes. (Exh. R-7 at 23.)

62. On May 28, 2025, Pearson met with Dockery about her involuntary transfer. (Exh. R-35.) Pearson reiterated that she was challenging the District’s decision to transfer her. She told Dockery that splitting the Speech and Debate Program, so that the classroom teacher was separate from the team coach role, would harm the team since they would not have time to practice their speeches during school time. Dockery thanked her for sharing her opinion but did not respond substantively. (Pearson testimony.)

63. On May 29, 2025, the Association sent the District a request for information on the involuntary reassignment grievance. (Exh. C-32.)

64. Also on May 29, 2025, the parties held another scheduled bargaining session. The Association urged members and the community to “fill the room.” (Robinson testimony.) Many teachers took part and chanted “fair contract now.” (*Id.*)

65. On June 4, 2025, students from BHS and HLMS engaged in a walkout in support of the teachers. Dockery and Schmerer saw one of the students and invited him into Dockery’s office to answer his questions about the teacher reassignments. That student met with Dockery and Schmerer the following morning. Later, in a group chat, the student shared the reasons Dockery and Schmerer offered for moving teachers—that Pearson was not allowed to be a coach of the Speech and Debate team and a teacher at the same time, and that the District’s standardized test scores in English/ELA had dropped, leading the District to move the more successful teachers like Pearson and KH to teach at the middle school and better prepare those students for high school. (Exh. C-16.)

66. On June 5, 2025, the Association filed this unfair labor practice complaint alleging that the District’s involuntary transfers were a PECBA violation.

67. On June 9, 2025, Schmerer responded to the involuntary transfer grievance on behalf of the District. She rejected the grievance on its merits, stating that the “requirements outlined in Article 23(C) were met or *are currently still underway*,” and that “prior to any transfer decision,” meetings with the principals were held or employees were provided an opportunity to meet. (Exh. J-19 at 2, emphasis added.)

68. On June 10, 2025, the last day of the school year, employees, students, and members of the community held a protest related to the ongoing bargaining.

#### Events After the End of the 2024-2025 School Year

69. On June 25, 2025, Schmerer met with ZBD, a parent who had written to express concerns about the impact of the teacher transfers on her two children. Schmerer said Ells was the one teacher reassigned to address a budget issue. Schmerer did not offer any supporting budget data and could not explain how the reassignments and transfers would result in any cost savings to the District. Though she offered no test score data, Schmerer told ZBD that Pearson was moved to the middle school due to dropping test scores for high school ELA students, and that KC’s

middle school students' scores had "doubled" in the same period.<sup>11</sup> Schmerer told ZBD that KH wanted to teach middle school for career advancement reasons and that Guzman wanted to be assigned to the Interventionist position. When ZBD asked Schmerer if she was aware that all the transferred teachers were active on the Association's bargaining team, Schmerer said she did not really know which teachers were on the bargaining team. During this same meeting, Schmerer told ZBD she was not worried about the possibility of Pearson resigning since others could easily fill that position. Schmerer told ZBD that she had a good relationship with Pearson before the contract negotiations started.<sup>12</sup> (ZBD testimony; Exh. C-24; Exh. C-25.)

70. On July 7, 2025, ZBD sent a letter to the Bandon School Board expressing her concerns about the teacher contract negotiations and involuntary teacher transfers. She summarized the reasons Schmerer provided in their meeting for the involuntary transfers. (Exh. C-25.) ZBD further noted Schmerer's disrespectful tone and dismissive statements about the teachers' concerns, and Schmerer's disparaging comments about the teachers in public meetings and on social media. ZBD sent the letter despite her worry that it might put her children at risk of losing the interdistrict transfer that Superintendent Schmerer had granted them for the past eight years. (*Id.* at 1.)

71. On July 10, 2025, Pearson notified the District she was resigning. (Exh. J-15.)

72. After failing to reach an agreement on a successor contract, the parties went to mediation with this Board's Conciliation Division in July 2025. Ells participated in the mediation, having assumed the role of Association President after Pearson resigned. The parties reached a tentative agreement for a new contract on July 24, 2025.

73. On August 18, 2025, KH gave 60 days' notice that she was resigning. (Exh. J-16.) She took a position outside the District, feeling that it had become too risky to be involved with the Association. (KH testimony.)

74. Shortly before the start of the 2025-2026 school year, on August 21, 2025, Dockery stopped by KC's new classroom where she was preparing for the start of the school year. Dockery asked to speak with her privately. He asked whether she was part of the Association's grievance about the teacher transfers and whether she wanted to be reassigned back to the middle school. KC assured Dockery she had not filed a grievance and did not want to go back to the middle school. Dockery requested that KC confirm that information in an email, which she did that same day. (Exh. C-29.) KC was stressed about why Dockery was asking her these questions and did not want

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<sup>11</sup>This was the opposite of the explanation Dockery and Schmerer gave to the protesting high school student two weeks earlier. The record establishes that KC's students' test scores did not double and Pearson's high school students largely opted out of taking the standardized tests. (KC testimony; Pearson testimony.)

<sup>12</sup>Many of Schmerer's statements (both the hearsay statements relayed by ZBD and her sworn testimony in the hearing) strain credulity. We find it incredible that Schmerer was not aware which teachers were at the table in the contract bargaining sessions or who led the Association's bargaining proposals.

to be moved back to the middle school. She texted some other teacher friends to say that Dockery asked her about the grievance. (KC testimony.)

75. Guzman raised concerns about class size, course load, overall workload with Armistead and Schmerer in August, and requested that she be assigned the prep period they discussed. (Exh. R-36.) Within days of the start of school, Guzman was informed she would be teaching sixth grade in addition to her seventh and eighth grade classes, and that she would no longer have prep periods. Nicole Guzman resigned on September 12, 2025. (Exh. J-17.)

76. Ells continues to teach in the District. Three days before the start of the 2025-2026 school year, the District again changed her course assignments, assigning her five high school art classes, one middle school art class, and one ELA class. Ells was especially frustrated with the ELA assignment since she had not taught ELA for over 17 years and adding that class required her to undertake significant additional preparation.

77. On September 22, 2025, the Association filed its first amended complaint and its request to continue the hearing, which was granted by the ALJ.

78. On October 6, 2025, the School Board held a special session at which KC, Ells, Pearson, Guzman, and KH read prepared statements making their arguments that the District had violated Article 23 of the CBA by involuntarily transferring them without notice and an opportunity to give their input prior to the decision, and the consequences of the District's violation to them and to students. (Exh. R-6, *see also* Exh. C-28.)

79. On October 20, 2025, the District issued a decision denying the involuntary transfer grievance. (*See* Exh. R-39 at 3.)

80. On November 10, 2025, the Bandon School Board issued a statement that the District sent to all employees and posted on the District's public Facebook page. (Roberts testimony; Exhs. R-40, R-41.) The letter stated that, although the School Board had received questions about teacher reassignments, it was prohibited from discussing those personnel and legal matters publicly. The letter further said that "**all public employees and elected officials**" were similarly prohibited from discussing the reassignments or related litigation. (Exh. C-31 at 1, emphasis in original.) Ells, the only remaining involuntarily transferred teacher at this point, felt the emphasized portion of the letter was a School Board "gag order" on discussing the involuntary transfers. (Ells testimony.)

### CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matter of this dispute.
2. The District violated ORS 243.672(1)(a) when it involuntarily transferred/reassigned Pearson, Ells, Guzman, and KH.

#### Standards Applicable to a Claim Under ORS 243.672(1)(a)

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.”<sup>13</sup> The Board has held that the language of ORS 243.672(1)(a) proscribes two distinct unfair labor practices: (1) an employer’s interference, restraint, or coercion “because of” an employee’s exercise of protected rights (*i.e.*, the employer based its action on an employee’s protected activity); and (2) an employer’s interference, restraint, or coercion of employees “in the exercise of” their protected rights (*i.e.*, the likely consequences or effects of the employer’s actions would be to discourage employees’ exercise of PECBA-protected rights). *Klamath Falls Association of Classified Employees v. Klamath Falls City Schools*, Case No. UP-039-21 at 16 (2023) (“KFACE”) (citing *Portland Association of Teachers v. Multnomah School District No. 1*, 171 Or App 616, 623 (2000); *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-4-06 at 29, 22 PECBR 323, 351 (2008)).

The Association alleges both a “because of” and an “in the exercise of” violation of subsection (1)(a). To determine whether an employer committed a “because of” violation, we focus the employer’s motives or reasons for its actions, which we determine by a review of the record as a whole. *Portland Association of Teachers v. Multnomah School District No. 1*, 171 Or App 616, 623 (2000); *International Association of Firefighters, Local 890 v. Klamath County Fire District #1*, Case No. UP-049-12, at 18, 25 PECBR 871, 888 (2013). If we are persuaded that “all of the reasons are lawful, the ‘because of’ claim must be dismissed.” *Oregon AFSCME Council 75, Local 3742 v. Umatilla County*, Case No. UP-18-03, at 9, 20 PECBR 733, 741 (2004). If we find the reasons were unlawful or were a pretext for unlawful conduct, we will find a “because of” violation. *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District of Oregon*, Case No. UP-39-10 at 15-16, 25 PECBR 325, 339-40 (2012).

An “in the exercise of” violation requires the Association to show that the employer’s conduct, viewed objectively under the totality of the circumstances, would have the natural and probable effect of deterring employees from engaging in PECBA-protected activity. *KFACE*, UP-039-21 at 17. Because this standard is objective, we do not require evidence of the employer’s motive nor evidence of actual coercion of employees. *Portland Association of Teachers*, 171 Or App 616, 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). The essential question is whether the employer’s conduct would tend to chill a reasonable employee’s exercise of PECBA rights. *Oregon Public Employees Union v. Jefferson County*, Case No. UP-055-98 at 14, 18 PECBR 109, 122, *recons*, 18 PECBR 199 (1999). To find that a reasonable employee would be deterred in the exercise of PECBA-protected rights, the evidence must show some relationship between the employer’s actions or statements and protected activity. *Tigard Police Officers’ Association v. City of Tigard*, Case No. UP-59-10 at 11, 24 PECBR 927, 937 (2012) (citing *Teamsters Local 223 v. Tillamook County Emergency Communications District*, Case No. UP-46-95 at 8, 16 PECBR 397, 404 (1996)). If an employer commits a “because of” violation, we will find that it has necessarily committed a derivative “in the exercise” violation since taking such actions “because of” PECBA-protected activity would naturally and probably

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<sup>13</sup>ORS 243.662 provides, “Public employees have 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.”

chill other employees' PECBA-protected activity. *Tri-Met*, UP-42/50-12 at 28, 25 PECBR 640, 667.

As explained below, we find that the District engaged in conduct constituting both types of (1)(a) violation.

The District Involuntarily Transferred/Reassigned Pearson, Ells, Guzman, and KH Because of their Union Activity.

We find that the District involuntarily transferred or reassigned four teachers to positions outside their expertise and contrary to their wishes because they were actively involved with the Association's bargaining team.<sup>14</sup> The "because of" portion of ORS 243.672(1)(a) prohibits a public employer from basing its actions on an employee's protected union activity. A complainant does not need to prove anti-union animus as such, but only that complainant's exercise of a protected right motivated the employer's actions. *AFSCME Council 75, Local 3694 v. Josephine County*, Case No. UP-26-06, 22 PECBR 61, 92 (2007); *Milwaukie Police Employees Association v. City of Milwaukie*, Case No. UP 63-05 at 17, 22 PECBR 168, 182 (2007) (citing *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transit District*, Case No. UP-48-97, 17 PECBR 780, 788 n 8 (1998)). Thus, our primary concern is the record evidence establishing the reasons for the employer's actions. Because direct evidence of an employer's motive is rare, we must consider all the circumstances, and the reasonable inferences to be drawn from them, to determine what motivated an employer's action. *See Portland Association of Teachers and Poole v. Multnomah School District No. 1*, 171 Or App 616, 623-24 (2000). Even if the employer retains the power to reassign employees under the parties' CBA, it cannot exercise that power for an unlawful reason. *Milwaukie*, UP 63-05 at 17, 22 PECBR at 182 n 6.

The District's decision to involuntarily transfer these teachers came amid a period of intense union activity. The District announced the involuntary reassignments at the height of the bargaining season, after several walk-ins, protests, and packed School Board meetings. Dockery testified that the administrators met on May 21, 2025, to finalize their involuntary transfer decisions. However, their email exchange of May 13, 2025, shows that they had already decided to transfer Pearson, Ells, Guzman, and KH by that time, and were awaiting Schmerer's approval to tell the teachers. (Exh. J-1 at 2.) In that same email exchange, Schmerer expressed some consternation that "they" [supporters of the Association] would be picketing again the next morning, saying that the administrators needed to "rip the bandaid [*sic*] off." (*Id.*) Presumably, that meant notifying the teachers who the administrators had decided to involuntarily transfer. Though Schmerer said on May 13 that she would be emailing the four teachers about their transfers, there is no evidence that she ever did so. Moreover, Schmerer specifically directed the principals not to tell Pearson she was being transferred to the middle school until the other teachers had been

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<sup>14</sup>Though the School Board later asserted that "37 teachers [out of 40] experienced adjustments to their schedules or assignments," the uncontradicted evidence shows that the four teachers at issue here (plus the two who were swapped into their positions) were the only ones the District involuntarily transferred or reassigned. (*Compare* Exh. R-40 at 2 with Ells testimony, ZBD testimony, Dockery testimony, Armistead testimony.)

notified. The record reveals no plausible reason for delaying notice to Pearson other than her role as Association President and the leader of its bargaining team.

We further note that, despite keeping detailed meeting notes for the weekly administrator meetings before and after the period when the administrators finalized the transfers, the contemporaneous meeting notes for that period are missing from the record here.<sup>15</sup> The absence of notes from the critical period gives rise to a reasonable inference that they would not support the District's reasons for the involuntary transfers.<sup>16</sup>

An inference of improper reasons for the transfers is further supported by the District's failure to follow the requirements of the CBA before it involuntarily transferred and reassigned these four teachers.<sup>17</sup> Article 23 of the CBA provides that involuntary transfers will only be made after a meeting between the principal and the teacher to notify the teacher of the reasons for the transfer.<sup>18</sup> Article 23 further provides that a teacher selected for involuntary transfer or reassignment will be informed of vacancies and allowed to express their preferences and wishes concerning their new assignment. (Exh. R-1 at 37-38.) The District made its transfer and reassignment decisions without first allowing teachers' input and without providing any reasons for its decisions beyond broad assertions that the decisions were best for students. In fact, the District never provided the teachers with the reasons for its decisions. The District did not say its decisions were tentative or open to discussion. The District's form emails said that each of the teachers "will be" serving in the new assignment effective August 2025, and that the "staffing decision will be shared publicly" the following day. (Exhs. J-5, J-6, J-7, J-8.) The sudden announcement of these decisions was inconsistent with the past practice of discussing potential reassignments with teachers for their input before making decisions. Deciding to involuntarily transfer these teachers was thus inconsistent with the process the District used to make similar decisions in the past.

The record includes more overt signs that the District's involuntary transfer decisions were tied to the Association's bargaining-related activity. Prior to announcing the staffing decisions, in

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<sup>15</sup>The record does not include the administrator group notes for scheduled meetings after April 23, 2025 until May 28, 2025, though the Association requested them and the District's witnesses testified that meetings occurred and the District ordinarily kept such notes. The District offered no explanation why the notes were missing. We find that the failure to provide these meeting notes further undermines the credibility of the District witnesses' reasons for involuntarily transferring or reassigning these four teachers.

<sup>16</sup>When Ells met with Dockery on May 23, 2025, after the District announced the transfers at the staff meetings, Dockery agreed with Ells's assessment that the decisions "looked really bad." (Ells Testimony.) Ells also told Dockery the reassignments looked like retaliation. It is not clear whether Dockery's agreement extended to that assessment. (Ells testimony.)

<sup>17</sup>The question of whether the transfers violated the CBA is not before us in this case.

<sup>18</sup>The teachers' contracts with the District state that they will "perform assigned duties in the schools of the school district," suggesting that the District may assign them to any school. However, the teacher contracts also expressly state that the language of the CBA is controlling. (Exh. R-9 at 1 [¶¶ 1, 3].) Further, the District's right to assign them to any school does not allow it to reassign teachers because of their union activity. *See Milwaukie*, UP 63-05 at 17, 22 PECBR at 182 n. 6.

late April, Armistead told Guzman that the Association should accept the District's bargaining proposal, and that Guzman was "at risk" of an involuntary transfer to the elementary school. Armistead directly linked the District's power to make an undesirable change to Guzman's job with the Association's acquiescence in collective bargaining.<sup>19</sup> Around this same time before transfers were announced, BHS Vice Principal Wright asked KC if she would like to teach at the high school, to which she responded with an enthusiastic "yes." Wright told KC that she should "hold tight" because the District might transfer her to the high school "if the pot gets stirred." Wright was part of the District's bargaining team and part of the "small admin" team that made the decision on involuntary transfers. The uncontradicted evidence shows that Wright was aware, weeks before the District announced it, that the District planned to involuntarily transfer certain teachers based upon whether they were confrontational, *i.e.*, "stirred the pot," in bargaining. Under the circumstances, the statements from Armistead and Wright both support an inference that District was motivated to reassign these four teachers because of their involvement in the heated contract negotiations.

After the District announced the involuntary transfers, it received questions and criticism about its staffing decisions from parents and students. The District began offering a variety of shifting justifications for its decision. Schmerer and Dockery told a student-protestor that the District transferred certain teachers to help improve middle school ELA test scores. Not long after, Schmerer told a concerned parent (ZBD) that the District reassigned the four teachers for reasons ranging from poor standardized test scores to budgetary concerns to parent complaints, and even that one teacher wanted their new assignment. Schmerer also said that she had played no role in the transfer and reassignment decisions but was merely copied on emails about Dockery's and Armistead's decisions. Schmerer acknowledged that Pearson might resign due to her transfer, saying that the District could easily fill her position if she left. Schmerer also acknowledged that her relationship with Pearson had become worse since the start of the contract negotiations. (ZBD testimony.) When ZBD asked her why the District was only involuntarily transferring members of the Association's bargaining team, Schmerer claimed she was not aware of which teachers were on the bargaining team. (ZBD testimony and Exhs. C-24, C-25.)

The Superintendent's justifications for the transfer decisions and affected unawareness that the transferred teachers were all active on the bargaining team are not credible. The contemporaneous documentary evidence shows that Schmerer attended at least some bargaining meetings and that she took the lead in the bargaining meeting of February 12, 2025, telling the Association bargaining team that they would be the ones to tell 10 teachers they were being terminated because of the Association's bargaining demands. The District's bargaining notes specifically identified Ells as a vocal proponent of the pay increase proposal and Pearson as the point person for tracking bargaining documents. (Exh. C-3 at 5, 6.) Even Armistead conceded that Schmerer had made a "handful" of negative comments about Pearson during bargaining. (Armistead testimony.) The emails between Schmerer, Armistead, and Dockery underscore Schmerer's knowledge. Schmerer's instruction to delay informing Pearson until after they notified the other teachers also suggests that Schmerer was fully aware of Pearson's leadership role in the Association and its bargaining team. In sum, we conclude that Schmerer and the District were

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<sup>19</sup>Armistead did not deny that she made these comments to Guzman and did not explain or contradict Guzman's testimony on this point.

motivated to select these teachers for involuntary transfers and reassignments because they were leading the Association's bargaining efforts.

The record contains no evidence to corroborate the District's various asserted reasons for reassigning the four teachers. It provides no evidence of parent complaints or negative teacher evaluations, whether for poor test score performance or otherwise; the evaluations in the record are overwhelmingly positive.<sup>20</sup> Despite the District's arguments that the transfers were motivated, in part, by budgetary concerns, the District offered no evidence that any of the transfers resulted in budget savings.<sup>21</sup> The District's justifications based on decreasing enrollment at the high school are belied by its own evidence.<sup>22</sup>

Finally, at the hearing, Dockery asserted for the first time that "serious, ongoing" concerns about the rigor of Pearson's and KH's classes were the reason for their transfers. Dockery asserted that he had met with both teachers about lack of rigor multiple times during the single school year he had been BHS's principal. On rebuttal, both Pearson and KH denied Dockery ever raised concerns about "rigor" with them and testified that they never had one-to-one discussions with him nor received any feedback from him about rigor. The District failed to offer any documentary evidence to support the purported "rigor" concerns. Dockery's testimony is belied by his extremely positive evaluation of Pearson, given days before the transfer decision, which contains no mention of rigor. Further, Dockery conceded that the District decided to swap two experienced, qualified, senior BHS teachers for two probationary middle school teachers whose teaching he had observed for less than five minutes in the 2024-2025 school year. In sum, we find Dockery's contention that he decided to involuntarily transfer Pearson and KH to improve "rigor" at the high school lacks credibility.

Considering the totality of the circumstances here, we conclude that the Association has shown that the District's involuntarily reassignments of Pearson, Ells, Guzman, and KH were motivated by their union activity in bargaining, in violation of subsection (1)(a).

#### The District's Conduct Also Interfered with Employees' Exercise of PECBA Rights

The evidence detailed above also establishes an "in the exercise of" violation of subsection (1)(a). The District involuntarily transferred outspoken union leaders from their positions, contrary

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<sup>20</sup>The record does not include a year-end evaluation for KH, though the Association requested it. Nevertheless, the record establishes that Dockery provided KH with a "glowing" recommendation for the job she took after her involuntary transfer. (KH testimony.)

<sup>21</sup>The District hired four new teachers in April and May of 2025, despite its contention that budget cuts would require it to decrease spending through teacher attrition. (Exh. R-6 at 50, Exhs. R-23, Exh. R-24.)

<sup>22</sup>The District argued that BHS was "overstaffed" (*i.e.*, there were more teachers per student at BHS than in the other two schools in the District) and that the District's overall student enrollment had been declining. However, in December 2025, Schmerer reported that high school enrollment was the largest it had been since she joined the District and that enrollment was steady. (Exh. R-6 at 82.) The number of teachers per student was not significantly different in the middle school (8 teachers for 173 students or about 10:1) compared to the high school (16 or 17 teachers for 191 students or about 11:1).

to the CBA and to past practice, after those employees engaged in assertive collective bargaining and in very public actions in support of the teachers' bargaining demands. A reasonable employee seeing these actions against prominent members of the Association's bargaining team would understand that the District would punish employees engaging in union activity. While an "in the exercise" claim does not require evidence that any employee was actually chilled in the exercise of PECBA-protected rights, the record here shows that the other teachers understood that the District had targeted union leaders for their protected union activity. After the May 23 staff meeting, many teachers were in tears and shaking; some remarked that the District's actions were the consequence of taking action with the Association, and they could no longer be part of Association activities for fear of putting their jobs and families at risk. (Ells testimony.) We conclude that the District's conduct would have the natural and probable effect of discouraging union activity by other teachers and staff of the District.

3. The District violated ORS 243.672(1)(a) when it questioned KC about her participation in the Association's grievance and requested a written disavowal of the grievance.

The Association asserts that Dockery's questioning of KC about her support for the Association's teacher transfer grievance was a violation of subsection (1)(a). Dockery questioned KC in a coercive manner, suggesting that she might lose her new position at the high school. The conversation made KC anxious, and she messaged other teachers about what happened. The right to pursue or participate in a grievance without threats or reprisal is fundamental to the policies and protections of the PECBA. *Portland Association of Teachers and Bailey v. Multnomah County School District No. 1*, Case No. C-68-84 at 15, 9 PECBR 8635, 8649 (1986).

Plainly, Dockery initiated the conversation with KC "because of" the Association's grievance. ORS 243.672(1)(a). He directly questioned KC about her support for the grievance and whether she wanted to be moved back to the middle school. Further, Dockery's conduct would have the natural and probable effect of deterring employees from participating in or supporting grievances, particularly given the tense and contentious bargaining that had just concluded and the ongoing litigation about the transfers. A reasonable employee under these circumstances would understand that their supervisor did not want them to join in or support the grievance process. Thus, we conclude that Dockery's questioning and request for written confirmation that KC was not a part of the pending grievance violated both the "because of" and the "in the exercise of" prongs of ORS 243.672(1)(a).

4. The District violated ORS 243.672(1)(a) when it sent teachers a letter saying they would be in violation of legal and ethical restrictions if they discussed the involuntary transfers and related litigation.

The School Board issued a public letter on November 10, 2025, stating that the District was "legally and ethically prohibited" from sharing details or discussing individual teacher transfers or the legal actions related to those transfers. The letter further stated, "our responsibility, and the responsibility of **all public employees and elected officials**, is to respect the privacy of employees, protect the integrity of ongoing proceedings, and ensure that all actions comply with law, district policy, and our negotiated agreements." (Exh. C-31, emphasis in original.) The letter did not acknowledge any exception for teachers or other public employees exercising their PECBA-protected right to discuss grievances and contract violations. Ells, the one involuntarily

transferred teacher who was still teaching at the District at the time, considered the letter a “gag order” on teachers and staff.

We find that the District’s distribution of this letter to the teachers would have the natural and probable effect of discouraging them from discussing the pending grievance and ULP claim about the involuntary transfers. A public employee’s right to speak about contract violations and grievances is protected by ORS 243.662. An employer’s actions violate the PECBA if they discourage or restrict such discussions. *Sandy Education Association and Davey v. Sandy Union High School District No. 2 and Heaton*, Case No. UP-42-87 at 9, 10 PECBR 389, 397 (1988). Any limits on employees’ ability to communicate about working conditions or labor relations “must be narrowly tailored and must not unduly infringe on employees’ protected rights to participate in union activities” under the PECBA. *Service Employees International Union Local 503, OPEU v. State of Oregon, Judicial Department*, Case No. UP-3-04 at 9, 20 PECBR 864, 872 (2005); *KFACE*, Case No. UP-039-21 at 17 (“It is well settled that a public employer’s directive to a bargaining unit member not to discuss a work-related incident or workplace concerns with coworkers or their exclusive representative violates ORS 243.672(1)(a).”) (citing *Sandy Education*, UP-42-87 at 9).

Based on the record here, we find that the School Board’s November 10 letter would have the natural and probable effect of deterring employees from speaking about the involuntary teacher transfer issue, related litigation about that issue, and other such grievances, in violation of their rights under the PECBA. An employer’s statement that it would consider employees’ discussions about the subject of pending grievances or ULP claims “unlawful” would lead a reasonable employee to believe that their employer would punish them for exercising those PECBA-protected rights. Thus, we conclude that sending that letter to all employees amid an ongoing dispute about the involuntary teacher transfers was a further “in the exercise” violation of subsection (1)(a).

5. The Association is entitled to an order directing the District to cease and desist, to restore the teachers to their former positions, to post a notice, and to pay the Association a civil penalty.

We find the District violated ORS 243.672(1)(a). We therefore order the District to cease and desist from that unlawful conduct. ORS 243.676(2)(b). We must also order affirmative action necessary to effectuate the purposes of the PECBA. ORS 243.676(2)(c).

### Reinstatement

The Association requests that the Board order the District to reinstate Pearson, Guzman, KH, and Ells to their original positions and make them whole for all losses suffered due to their unlawful transfers. This Board will order “the employer to restore the employee to the position [they] would have held but for the unlawful action\* \* \* so [as] to make the employee whole for the employer’s unlawful actions and so that the employer does not benefit from its illegal conduct.” See *Gresham-Barlow Education Association/OEA/NEA v. Gresham-Barlow School District No. 10J*, Case No. UP-32-07 at 29, 23 PECBR 170, 198 (2009) (ordering reinstatement to remedy violation of “because of” prong in ORS 243.672(1)(a)); *Milwaukie Police Employees Association*, UP-63-05 at 20, 22 PECBR at 187 (ordering reinstatement and backpay where employer involuntarily transferred two employees because of their union activity in violation of ORS

243.672(1)(a)). We find it appropriate to order that Pearson, Guzman, KH, and Ells be restored to their former positions and that they be made whole for any losses suffered due to the District's unlawful decision to involuntarily transfer them because of their protected activity.

### Posting Order

We generally order a notice posting when a public employer's unlawful actions were: (1) calculated or flagrant; (2) part of a continuing course of illegal conduct; (3) perpetuated by a significant number of the employer's personnel; (4) affected a significant number of bargaining unit members; (5) significantly or potentially impacted the functioning of the exclusive representative; or (6) involved a strike, lockout, or discharge. *Wy'East Education Association/East County Bargaining Council v. Oregon Trail School District No. 46*, Case No. UP-32-05 at 50, 22 PECBR 108, 157 (2007) (citing *Oregon School Employees Association, Chapter 35 v. Fern Ridge School District 28J*, Case No. C-19-82 at 12, 6 PECBR 5590, 5601, *aff'd without opinion*, 65 Or App 568, 671 P2d 1210 (1983), *rev den*, 296 Or 536, 678 P2d 738 (1984)). We do not require each of those criteria to be satisfied before finding a posting order is warranted. *Id.* (citing *Blue Mountain Faculty Association/Oregon Education Association/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05 at 110, 21 PECBR 673, 782 (2007)).

Here, nearly all the District's top administrators perpetuated or participated in the unlawful actions. The District's actions were aimed at the four teachers who were the most visible faces of the Association and its bargaining team, and who were also among the most senior teachers in the District. The District's actions sent a chilling message to all employees about the consequences of exercising their rights under the PECBA. The actions also undermined the Association's functioning as the exclusive representative since it demonstrated to employees that the District would ignore the contract and past practice in order to move teachers who clashed with the District. The teacher transfers, and the resignations they provoked, gained widespread notoriety within the bargaining unit and other District staff, as well as among parents, students, and the community at large. Thus, we find it appropriate to order the District to post the attached notice, and to distribute the notice by email to bargaining unit employees. *See Oregon Tech American Association of University Professors v. Oregon Institute of Technology*, Case No. UP-023-20 at 37 (2020).

### Civil Penalty

The Association also requests a civil penalty. The PECBA authorizes us to consider awarding a civil penalty when the party committing an unfair labor practice did so repetitively or knowingly, or when the action constituting an unfair labor practice is egregious, meaning "conspicuously bad" and "flagrant." *See* ORS 243.676(4); *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-56-04 at 18, 21 PECBR 206, 223 (2005). "Egregious violations are those that tend to undermine the very nature of the collective bargaining process." *AFSCME Council 75 v. Clackamas County*, Case No. UP-025-22 at 17 (2022). When a party's conduct shows "flagrant disregard for its PECBA duties, [that is] so far removed from the standards of good practice under PECBA," this Board will find egregious conduct justifying a civil penalty. *Id.*

Here, we find that the District took unlawful actions in a conspicuous manner, sending a message to the Association and the bargaining unit that it would punish employees who opposed

it. District administrators decided to involuntarily transfer the most vocal leaders in the Association, without notice or opportunity to respond, and without regard to those teachers' unique training and qualifications or to their strong desires to remain in their current positions. The District took those actions at the height of contentious contract bargaining, following the Association's efforts to generate loud public support for its bargaining demands. The District's actions took aim at the members of the Association's bargaining team while the parties were in ongoing, contentious contract negotiations, striking at the heart of the collective bargaining process itself. The District took those actions in a deliberate manner, essentially notifying the teachers that the transfers were a "done deal" and announcing the transfers at the teachers' staff meeting the next day. Despite concerns raised by the teachers, parents, and students, including that the transfers appeared to be retaliatory, the District did not budge in its position. *AFSCME Local 2831 v. Lane County*, Case No. UP-009-18 at 2, 19-20 (2019). Consequently, we conclude that a civil penalty is warranted.

### PROPOSED ORDER

1. The District shall cease and desist from violating ORS 243.672(1)(a).
2. Within 30 days of the entry of the final order in this matter, the District shall restore and/or reinstate Pearson, Guzman, KH, and Ells to their assignments as of May 20, 2025, and make them whole for any losses suffered due to their unlawful transfers or reassignments in violation of ORS 243.672(1)(a).
3. Within 30 days of the entry of the final order in this matter, the District shall post the attached notice and distribute it by email to all bargaining unit employees.
4. Within 30 days of the entry of the final order in this matter, the District shall pay a civil penalty in the amount of \$1,000.00 to the Association.

DATED: August 3, 2026



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Stephanie Miller (she/her)  
Administrative Law Judge

NOTE: The Employment Relations Board's rules provide that the parties shall have 14 days from the date of service of a recommended order to file specific written objections with this Board. (The "date of filing objections" means the date that objections are received by the Board; "the date of service" of a recommended order means the date that the Board sends or personally serves the recommended order on the parties.) If one party has filed timely objections, but the other party has not, the party that has not objected may file cross-objections within seven (7) days of the service of the objections. Upon good cause shown, the Board may extend the time for filing objections and cross-objections. Objections and cross-objections must be simultaneously served on all parties of record in the case and proof of such service must be filed with this Board. Objections and cross-objections may be filed by uploading a PDF of the filing through the agency's Case Management System (preferred), which may be accessed at <https://apps.oregon.gov/erb/cms/auth>. Objections and cross-objections may also be filed by email by

attaching the filing as a PDF and sending it to [ERB.Filings@ERB.Oregon.gov](mailto:ERB.Filings@ERB.Oregon.gov). Objections and cross-objections may also be mailed, faxed, or hand-delivered to the Board. Objections and cross-objections that fail to comply with these requirements shall be deemed invalid and disregarded by the Board in making a final determination in the case. (See OAR 115-010-0010(10) and (11), 115-010-0090, 115-035-0040, and 115-070-0055.)



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

PURSUANT TO AN ORDER of the Employment Relations Board (the Board) in Case No. UP-030-25, and in order to effectuate the policies of the Public Employee Collective Bargaining Act, we hereby notify our employees that the Board found that the Bandon School District committed unfair labor practices in violation of ORS 243.672(1)(a) by involuntarily transferring employees Ashley Pearson, Jen Ells, Nicole Guzman, and KH because of their union activity, questioning an employee about whether they supported the grievance, and sending a letter suggesting that employees who discussed the transfers and related challenges could be punished for such discussions. To remedy these violations, the Board ordered the District to:

1. Cease and desist from violating ORS 243.672(1)(a);
2. Restore Ashley Pearson, Jen Ells, Nicole Guzman, and KH to their prior assignments and make them whole for losses suffered;
3. Post this notice for 30 days in prominent places where Association-represented employees are likely to see it within 10 days of the date of the Board's final order;
4. Distribute this notice by email to all Association-represented employees within 10 days of the date of the Board's final order;
5. Pay the Association a \$1,000 civil penalty within 30 days of the date of the Board's final order.

EMPLOYER

Dated \_\_\_\_\_, 2026

By: \_\_\_\_\_

Title: \_\_\_\_\_

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**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED**

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