

ORIGINAL

INSTRUCTIONS:
File the **original and three copies** of the complaint and all attachments and the **\$300** filing fee with the Board at:

528 Cottage St NE,
Suite 400
Salem, Oregon
97301-3807
Phone 503-378-3807

**STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

**UNFAIR LABOR PRACTICE
COMPLAINT
Public Employment**

For Board Use Only

Case No. UP-002-16

1-11-16

Date Filed _____

RECEIVED

JAN 11 2016

**EMPLOYMENT
RELATIONS BOARD**

<p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>Oregon School Employees Association c/o Sarah K. Drescher Tedesco Law Group 3021 NE Broadway Portland, OR 97232 866-697-6015 x702 sarah@miketlaw.com</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Sarah K. Drescher Tedesco Law Group 3021 NE Broadway Portland, OR 97232 866-697-6015 x702 sarah@miketlaw.com</p>
<p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>Canby School District 1130 S Ivy St. Canby, OR 97013</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Paul A Dakopolos Garrett Hemann Robertson PC 1011 Commercial St NE Salem, OR 97301 503-581-1501</p>

Complainant alleges that Respondent has committed unfair labor practices under ORS 243.672(1)(a), (b), and (c) of the Public Employee Collective Bargaining Act. The following is a clear and concise statement of the facts involved in each alleged violation, followed by a specific reference to the section and subsection of the law allegedly violated.

1.

Complainant Oregon School Employees Association (“OSEA” or “the Association”) is a labor organization as defined in ORS 243.650(13). OSEA is the exclusive representative of classified school employees employed by Respondent.

2.

Respondent Canby School District (“the District”) is a public employer as defined in ORS 243.650(20).

3.

The parties are signatory to a collective bargaining agreement (CBA).

4.

Chad Kay is an employee of the District and a member of the bargaining unit represented by the Association. Mr. Kay has worked for the District as a Building Technology Specialist since 2007.

5.

On April 8, 2015 the Association filed a grievance pursuant to the grievance procedure in the CBA. The grievance alleged the District was violating Article 14(B) of the CBA by failing to pay Chad Kay at a higher rate of pay for job duties he was performing in the District Technology Office that are normally performed by a higher-paid job classification (referred to as the “working out of class pay grievance”). The grievance and Article 14(B) are attached hereto as Exhibits 1 and 2. The Association requested that the District provide Mr. Kay with back pay for all his time spent performing the job duties of the higher-paid job classification. The District denied the grievance and the parties submitted the grievance to arbitration.

6.

An arbitration hearing for Chad Kay's working out of class pay grievance was held before Arbitrator David Stiteler on November 9, 2015. At the hearing, Chad Kay testified that he had been performing the job duties of a higher-paid classification approximately 90% of his working hours since at least August 2014 and submitted evidence to support that claim. The Association requested that the Arbitrator award Mr. Kay back pay for all his time spent performing the out of class job duties since August 2014.

7.

Tim Oberg, the District's Director of Human Resources, attended the hearing in its entirety and witnessed Chad Kay's testimony, the Association's presentation of evidence, and arguments by the attorneys.

8.

Closing briefs in the working out of class pay grievance were submitted to Arbitrator Stiteler on December 18, 2015.

9.

On December 18, 2015, Human Resources Director Tim Oberg notified Chad Kay that Mr. Kay was being transferred out of his Building Technology Specialist position at the District Technology Office and into a Building Technology Specialist position at Canby High School. The notice of transfer is attached hereto as Exhibit 3. That same day, District Superintendent Trip Goodall informed the Association by electronic mail that the District was hiring an "outside consultant to work in the district tech department" because the "current assignment of Chad Kay in the department has resulted in confusion regarding work assignments[.]" The email from

Superintendent Goodall and the attached letter to the Association are both attached hereto as Exhibit 4.

10.

On December 18, 2015, the District posted a job opening for the “outside consultant” position. The posting seeks applicants for a Help Desk Analyst I. The job posting is attached hereto as Exhibit 5. The job duties described in the job posting are the former job duties performed by Chad Kay in the District Technology Office.

Count 1

(1)(a) “Because of” violation and “in the exercise of” derivative violation

11.

By pursuing the out of class pay grievance and testifying at the arbitration hearing, Chad Kay was engaged in activities protected by ORS 243.662.

12.

By transferring Mr. Kay to a different position following his pursuit of the grievance and testimony at arbitration, and by contracting out his job duties to avoid paying him for those duties, the District has restrained, coerced or interfered with Mr. Kay in and because of the exercise of rights protected by ORS 243.662, in violation of ORS 243.672(1)(a).

Count 2

1(a) Stand alone “in the exercise of” violation

13.

Paragraphs 1- 11 are re-alleged as if fully set forth herein.

14.

The natural and probable effect of the District's conduct, viewed under the totality of the circumstances, would tend to interfere with employees' exercise of protected rights. As a result, the District has restrained, coerced or interfered with bargaining unit employees in the exercise of rights protected by ORS 243.662, in violation of ORS 243.672(1)(a).

Count 3

(1)(c) Discrimination in regard to hiring, tenure or terms of employment

15.

Paragraphs 1-11 are re-alleged as if fully set forth herein.

16.

Chad Kay's former position at the District Technology Office was a promotional path to a higher-paid classification. It was a unique position that required a greater skill set than other Building Technology Specialist positions. Mr. Kay enjoyed exercising that skill set and the position provided him with the ability to seek out of class pay for performing job duties associated with a higher-paid position. The position also allowed him to interact on a daily basis with the Technology Department manager and employees in promotional positions. By unilaterally transferring Mr. Kay out of the District Technology Office, the District has hindered Mr. Kay's ability to promote, denied him of his right to receive out of class pay, and hindered his career. As a result, the District has discriminated against Mr. Kay in regard to a term or condition of employment for the purpose of discouraging membership in an employee organization, in violation of ORS 243.672(1)(c).

The District maintains e-mail addresses for all Association members and routinely uses its e-mail system to communicate with members about job-related matters.

WHEREFORE, the Association requests an order:

A. Finding that the District violated ORS 243.672(1)(a) and (c);

B. Requiring the District to return Chad Kay to his former position at the District Technology Office and make him whole for any losses he has suffered as a result of the District's unlawful actions;

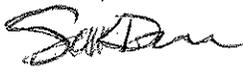
C. Requiring the District to post notices for a reasonable period of time and in noticeable places in the District stating that the District has been found in violation of the PECBA and requiring the District to cease and desist from such conduct in the future. This requirement for posting should include e-mail notification to all Association members through the District's e-mail system;

D. Reimbursing the Association's filing fee under OAR 115-035-0075(3);

E. Awarding the Association its reasonable representation costs and attorney fees under ORS 243.676(2)(d) and OAR 115-035-0055; and

G. Awarding any other relief deemed just and equitable by the Board.

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

By: 

Sarah K. Drescher, Tedesco Law Group

Attorney for Complainant 1/8/16

Title Date