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-005-16

Date Filed 02-08-16

COMPLAINANT Name, address, phone number, and e-mail address Brookings-Harbor Education Association/OEA/NEA 3229 Broadway, Unit J & K North Bend, OR 97459 541-756-5835	COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable Margaret S. Olney Bennett, Hartman, Morris & Kaplan, LLP 210 SW Morrison #500, Portland, OR 97204 503-227-4600 olneym@bennetthartman.com
RESPONDENT Name, address, phone number, and e-mail address **Brookings-Harbor School District 17-C** 629 Easy Street Brookings, OR 97415 541-469-7443	RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable Paul A Dakopolos Garrett Hemann Robertson PC 1011 Commercial St NE Salem OR 97301 503 581-1501 pdakopolos@ghrlawyers.com

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)(a), (b), (c) & (e), ORS 243.672(2) (___), or ORS 243.752 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. (For each claim, specific dates, names, places, and actions. Attach copies of main supporting documents referred to in the statement of claims.)

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

RECEIVED
FEB - 8 2016
EMPLOYMENT
RELATIONS BOARD

By: Margaret S Olney
Signature of Complainant or Complainant's Representative

Atty
Title

2/5/2016
Date

Updated October 2012

UNFAIR LABOR PRACTICE COMPLAINT

Statement of Facts

1. The Brookings-Harbor Education Association/OEA/NEA (the Association) is a labor organization within the meaning of ORS 243.650(13).

2. The Brookings-Harbor School District (District) is a public employer within the meaning of ORS 243.650(20).

3. The Association represents a wall-to-wall unit of certified and classified employees in the District.

4. Sean Gallagher is the Superintendent of the District who began work for the District during the summer of 2015. Lisa Dion is the Principal of the Brookings-Harbor High School. Helena Chirinian is the Principal of Kalmiopsis Elementary School.

5. Matthew Bennett is the former President of the Association. Dawn Bennett is the current President. Susan Anderson is a UniServ Consultant employed by the Oregon Education and assigned to represent the local Association.

6. The parties' are currently covered by a collective bargaining agreement that expires June 30, 2017.

7. During the summer of 2015, the District requested that the Association agree to waive a contract provision regarding posting an opening in order to allow it to re-hire a retired employee. The Association Executive Board sent a letter dated August 17, 2015 in which it agreed to allow the retiree to be rehired for the 2015-2016 school year, with the understanding that the Association would file a grievance if the opening was not posted the following year. A copy of that letter is attached as Ex. A to this agreement.

8. During the summer of 2015, Chirinian sought Association input on a letter discussing an adjustment to an elementary teacher's work hours for personal reasons. Matt Bennett forwarded the principal's letter to Susan Anderson for her review. Anderson made a couple of edits to be more even-handed and noted that the agreement was for one year only, but could be extended for an additional year. Bennett returned that letter to Chirinian, who indicated that she had no problems with the changes. A copy of the original letter is attached as Ex. B; the revised letter is attached as Ex. C.

9. On Friday, August 21, 2015, Gallagher and Dion asked for an impromptu meeting with Bennett. In that meeting, Gallagher called the Association's response regarding the retiree "threatening." He also yelled at Bennett demanding to know "who made the

changes" on the hours adjustment letter, claiming that the changes were "illegal." Gallagher also repeatedly yelled at Bennett, saying something to the effect of "who's in charge, Anderson or you?" Bennett felt very intimidated by the Gallagher's actions.

10. As part of the standard return-to-school routine, the Association has always had the opportunity to make a presentation to members and set up a table to sign up and greet members during in-service days. Consistent with this practice, the District agreed to give the Association time during its August 2015 in-service. However, on Friday, August 21, 2015, Gallagher retracted that permission claiming that the school board was "upset by the Association's threatening letter" (relating to the retiree.). Gallagher also indicated that there are "other people that didn't want any union activities this week."

11. On or around August 21, 2015, Gallagher told Matt Bennett that he couldn't contact the school board directly. The discussion arose when Gallagher stated that it was the School Board who was pulling the Association time during in-service. Bennett said he would speak with them and Gallagher stated emphatically that "you can't contact the school board without going through him" under school board policy, no employee, including the Association, was allowed to speak directly with Board members without going through him first. This statement is inconsistent with the school board policy, a copy of which is attached as Ex. D

12. Gallagher has demonstrated other anti-union animus and interference with the administration of the union. For example, he collected back the collective bargaining agreements that BHEA had handed out to school board members that included the names and contact information for current BHEA leaders and building representatives, and then emailed administrators to request that the contracts be returned. Gallagher did not want others to have Association contact information.

13. At the beginning of the school year, the District increased student contact time at Kalmiopsis Elementary School by requiring staff to supervise students an additional fifteen minutes before classes started. While the District notified members in the summer that the school day for staff would start earlier, it did not notify the Association or staff this change would increase student contact time. Rather, teachers learned of the expectation that they open their classroom doors to students and greet parents at 7:45 (15 minutes earlier than in the prior school year) during an in-service staff meeting. This constituted an increase in student contact time.

14. On or around October 7, 2015, Gallagher notified the Association that the District intended to increase instructional time at Kalmiopsis Elementary School by an additional 15 minutes at the end of the day, and at the High School by an additional 5

minutes per day. Gallagher claimed that the increase was necessary in order to comply with OAR 581-022-1620, the Oregon Department of Education's instructional time rule. A copy of the notice is attached as Ex. E. In fact, the District could have chosen to count other activities as part of "instructional time" under the Department of Education rules and thereby be in compliance with state standards, which is what it had done historically. However, the Superintendent recommended to the School Board that it not allow these other activities to count as instructional time, and the School Board accepted that recommendation at its September 16, 2015 school board meeting. A copy of the Superintendent's "Instructional Time Report and Board Decision Outline," which discusses the District's ability to meet state standards without increasing instructional time is attached as Ex. F to this complaint. In other words, Gallagher's assertions that external forces – rule changes by the State – *required* the increase in instructional time were false and misleading.

15. The Association made a demand to bargain both the decision and impact of the decision to increase instructional time on or around October 16, 2015. A copy is attached as Ex. G to this complaint.

16. Bennett spoke with Gallagher on or around October 19 regarding bargaining. At that time, Bennett notified the District that OEA UniServ Consultant Susan Anderson would be leading the negotiations on behalf of the Association. Gallagher expressed surprise and irritation.

17. On or around October 20, Gallagher notified Bennett that the District could implement instructional hour changes before negotiations had concluded. A copy of his email is attached as Ex. H.

18. On the morning of October 23, 2015 OEA attorney Margaret Olney, contacted Rebekah Jacobsen, counsel for the District, to object to Gallagher's assertion that the District could implement the increased instructional time before bargaining was completed.

19. Later that same day, October 23, 2015, Gallagher approached Bennett repeatedly during the middle of his teaching day to seek permission to implement the increase in instructional time before bargaining was completed, emphasizing the need to come into compliance with state standards. Bennett felt extremely pressured by Gallagher to immediately agree to his proposal. A copy of the memorandum that Bennett prepared is attached as Ex. I.

20. On the evening of October 23, 2015, Bennett sent the memorandum prepared by Gallagher to other Association leaders and Susan Anderson. Anderson responded

immediately saying that the District could not implement on November 2 without completing bargaining, a point that the Association's legal counsel had made clear earlier that day with the school district's attorney. Accordingly, Bennett immediately texted Gallagher to say that the Association did *not* agree that the District could increase instructional time on November 2, 2015

21. The District increased instructional time at both the elementary and high school on November 2, 2015, before bargaining had even commenced. This was in addition to the increased student contact time at the elementary level implemented at the beginning of the school year.

22. The parties met two times to bargain over the "impacts" of increased instructional time before the District announced that it had completed bargaining. This included loss of driving time for bus drivers represented by the Association, as well as the impact on classroom staff. The Association bargaining team offered numerous additional dates in December for bargaining, which the District claimed were unavailable. The Association also offered dates in early January, but because it was more than 90 days after bargaining commenced, the District declined. The parties did not reach an agreement.

23. On January 20, 2016, the District issued a press release announcing its "final offer" to the Association regarding the "impacts" of its increase in instructional time. A copy of that press release is attached as Ex. J. The Association rejected the offer. A one-time payment of $90 for a permanent increase in student contact time of 90 hours at the elementary school and 35 hours at the high school was insufficient and insulting.

24. On January 28, the District issued "negotiation settlement" checks in the amount of $90 to all licensed staff, including those at the middle school that had not experienced any increase in instructional time. There was no settlement.

CLAIM FOR RELIEF

1. The District's actions described above violate the duty to bargain in good faith required by ORS 243.672(1)(e). Specifically, the District increased student contact time at the elementary school at the beginning of the year without bargaining. It then increased instructional time at both the elementary school and high school on November 2, 2015 without bargaining. Student contact time and instructional time are mandatory subjects of bargaining that cannot be changed without bargaining to completion.

2. The District violated ORS 243.672(1)(e) by failing to bargain in good faith over both the decision to increase student contact time and its impact. It failed to make its team

adequately available for bargaining before the 90 days period ended. Then, when the 90 days was up, it announced to members a supposed "negotiations settlement" in which all certified employees received a check for $90, when no such agreement was reached.

3. The District actions described above violate ORS 243.672(1)(a) and (c) by interfering and coercing employees in or because of protected activity. Beginning in August when Superintendent Gallagher started, he demonstrated disdain and a retaliatory attitude towards the Association. He retaliated against Association leaders and the Association more generally after the Association asserted that the parties' collective bargaining agreement needed to be followed. In addition, even though he knew that the local Association had sought the assistance of the OEA UniServ Representative, Susan Anderson, and legal counsel, Supt. Gallagher pressured the local president into agreeing to waive bargaining rights. That waiver was not voluntary and knowing.

4. The District's action's described above violate ORS 243.672(1)(b) by interfering with the administration of the Association. Gallagher did not want to work with or bargain with the Association's chosen representative, Susan Anderson, as demonstrated by his aggressive statement to Bennett "who is in charge, you or Anderson?" When he learned that Anderson would lead the bargaining over the increase in instructional time, he sought ways to get around that process. This included stating erroneously that he could implement the increases without bargaining, and then, when he learned that was inaccurate, he bullied the Association President into agreeing to allow the District to implement the changes.

5. By falsely announcing a "negotiated settlement" and giving all certified employees a check for $90, the District violated ORS 243.672(1)(a), (b) and (c). The natural and probable effect of announcing a "settlement" and giving employees money is to influence how members viewed the Association's advocacy regarding this issue, and undermine the Association's credibility and support by members.

WHEREFORE, the Association requests the following relief:

1. An order finding that the District violated ORS 243.672(1)(a), (b), (c) and (e) as alleged;

2. An order requiring the District to return to the *status quo* and compensate employees for the increased workload caused by the District's unlawful increase in student contact and instructional time;

3. An order requiring the District to cease and desist from further similar violations;

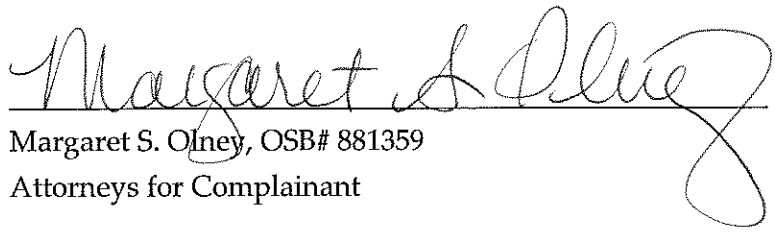
4. An order requiring the District to post notices, both physically and electronically to all bargaining unit members, stating that the District has committed these unfair labor practices and been ordered to cease and desist from such conduct in the future;

5. An order awarding reasonable representation costs to the Association pursuant to ORS 243.676(3);

6. Any other relief deemed necessary to further the policies and purposes of the PECBA.

Dated February 5, 2016

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP



Margaret S. Olney, OSB# 881359
Attorneys for Complainant