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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-007-16

Date Filed 02/24/16

<p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>Tri-County Metropolitan Transportation District of Oregon c/o Randy Stedman 1800 SW First Ave., Ste. 300 Portland, OR 97201 503.962.2470 stedmanr@trimet.org</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Britney Colton 1800 SW First Ave., Ste. 300 Portland, OR 97201 503.962.2470 coltonb@trimet.org</p>
<p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>Amalgamated Transit Union Division 757 Schoppert Hall 1801 NE Couch St. Portland, OR 97232-3054 503.232.9144</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p>

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EMPLOYMENT RELATIONS BOARD

Complainant Tri-County Metropolitan Transportation District of Oregon (“TriMet”) alleges that Respondent Amalgamated Transit Union Division 757 (“ATU”) has committed unfair labor practices under ORS 243.672(2)(b), (c), and (d), and ORS 243.698 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.

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

1.

Complainant TriMet is a public employer as defined in ORS 243.650(20).

2.

Respondent ATU is a labor organization as defined in ORS 243.650(13). ATU is the exclusive representative of certain employees of TriMet pursuant to ORS 243.650(8).

3.

TriMet and ATU are parties to a collective bargaining agreement (CBA) effective December 1, 2012, through November 30, 2016. A copy of the CBA is enclosed as Exhibit 1. Article 1, Section 19, Paragraph 9 reads: "Prior to the conclusion of these negotiations, the parties shall provide each other with any and all side letters, Memoranda of Understanding, or Supplemental Agreements which remain active and in effect. Any side letters, Memoranda of Understanding, or Supplemental Agreements not specifically identified by either party will be considered null and void."¹

4.

Article 2, Section 1, Paragraph 9(f) reads: "All District schedules will have built into them a recovery or layover time of five (5) minutes within each one (1) hour of running time. Because of traffic conditions, mechanical failures, and other related reasons, a five (5) minute recovery time cannot be guaranteed. All Operators will endeavor to maintain their schedules at all times." Exhibit 1.

5.

On or about November 30, 2012, TriMet provided ATU a copy of the June 14, 2005 Side Letter Relating to Meal and Break Periods and Restroom Facilities (2005 Side Letter) to be brought forward and incorporated into the current 2012-2016 CBA. A

¹ Apart from being renumbered, this language has been included and unchanged in every CBA since the 1994-1998 CBA.

copy of the “bring forward” notice is enclosed as Exhibit 2. Similarly, on September 30, 2014, the parties entered into a Tentative Agreement (TA) for the 2012-2016 CBA. In the section of the TA captioned “Withdrawal of Other Proposals,” the parties agreed that except for proposals previously TTA’d (Tentative Tentative Agreement) and the additional proposals listed in and agreed to as part of the TA, the status quo between parties would remain, specifically including side letters brought forward. A copy of the TA is also enclosed as Exhibit 2.

The ATU did not object, and at no time thereafter during those negotiations demanded to bargain over the 2005 Side Letter.

6.

The 2005 Side Letter sets forth the parties’ agreement concerning scheduling of meal and rest periods for bus and rail operators, and further provides that the language of Article 2, Section 1, Paragraph 9(f) will be deemed fully met and satisfied by the Side Letter. A copy of the 2005 Side Letter is enclosed as Exhibit 3.

7.

The 2005 Side Letter was effective by its terms as of June 14, 2005. There is no expiration date. The Side Letter was the result of a nearly 18-month-long process triggered by a request from the Oregon Bureau of Labor & Industries (BOLI) to TriMet to either abide by statutes governing meal and rest periods or negotiate an agreement with the ATU that covers meal and rest periods. Accordingly, the intent of the 2005 Side Letter was to satisfy ORS 653.261(3) and OAR 839-020-0050(7), which together provide that BOLI’s rules regarding meal and rest periods for employees may be modified by the terms of a collective bargaining agreement that prescribes for rules

concerning meal and rest periods. BOLI agreed to hold any enforcement action in abeyance while TriMet and the ATU negotiated such an agreement.

The Side Letter was signed on June 14, 2005. More than four months later, in October 2005, ATU attempted to repudiate the Side Letter when it notified TriMet that the membership had not ratified the agreement. After TriMet's attempts to convince the ATU to honor the terms of the Side Letter failed, TriMet filed an unfair labor practice complaint.

8.

The Employment Relations Board concluded in UP-55-05 (2008) that the parties had collectively bargained the Side Letter, the Side Letter is a valid and binding agreement, and that ATU unlawfully repudiated the agreement in violation of ORS 243.672(b). ERB ordered the ATU to "cease and desist from violating ORS 243.672(b) by refusing to acknowledge the Side Letter as a binding agreement." A copy of ERB's Rulings, Findings of Fact, Conclusions of Law, and Order is enclosed as Exhibit 4.

9.

The parties have operated in accordance with the 2005 Side Letter since its effective date, or at the very least since ERB's Ruling in May 2008.

10.

On or about February 10, 2016, ATU President-Business Representative Shirley Block sent a letter to BOLI Commissioner Brad Avakian, with a copy to TriMet, erroneously asserting that the 2005 Side Letter had expired and falsely stating that the ATU had offered to meet and negotiate a new agreement. A copy of the letter is enclosed as Exhibit 5.

11.

On or about February 12, 2016, TriMet Executive Director of Labor Relations & Human Resources Randy Stedman responded to ATU's letter, objecting to the assertion that the Side Letter had expired and noting that the ATU had not offered to meet and negotiate a new agreement. A copy of the letter is enclosed as Exhibit 6.

12.

On or about February 15, 2016, Block sent a letter to TriMet General Manager Neil McFarlane, again erroneously asserting that the 2005 Side Letter had expired and requesting for the first time to meet and negotiate a new agreement regarding meal and rest periods. Block threatened that if the parties did not negotiate a new agreement in 60 days, ATU would consider the 2005 Side Letter void. A copy of the letter is enclosed as Exhibit 7.

13.

On or about February 15, 2016, Stedman responded to Block's letter, again objecting to Block's assertion that the Side Letter had expired, and stating that it was therefore inappropriate to demand a new agreement mid-term. Stedman stated that unless the ATU agreed to abide by the terms of the 2005 Side Letter, TriMet would file an unfair labor practice complaint and seek to have ERB again uphold the enforceability of the 2005 Side Letter. A copy of the letter is enclosed as Exhibit 8.

14.

On or about February 16, 2016, the ATU filed a grievance, claiming that TriMet has violated Article 1, Section 19, Paragraph 9. A copy of Grievance #9135 is enclosed as Exhibit 9.

COUNT ONE

15.

ATU's demand to bargain mid-term over the current and valid 2005 Side Letter constitutes an unfair labor practice under ORS 243.672(2)(b).

COUNT TWO

16.

TriMet realleges paragraphs 1 through 14 above.

17.

ATU's attempt to repudiate provisions in Article 1, Section 19, Paragraph 9 and Article 2, Section 1, Paragraph 9(f) and instead seek resolution from BOLI constitutes an unfair labor practice under ORS 243.672(2)(b).

COUNT THREE

18.

TriMet realleges paragraphs 1 through 14 above.

19.

ATU's demand to engage in mid-term bargaining and negotiate an agreement within 60 days is a violation of ORS 243.698 and therefore also a violation of ORS 243.672(2)(c).

COUNT FOUR

20.

TriMet realleges paragraphs 1-14 above.

21.

ATU's allegations that the 2005 Side Letter is expired and its announcement that it intends to declare the Side Letter void if TriMet does not negotiate a new agreement constitute an unfair labor practice under ORS 243.672(2)(d).

COUNT FIVE

22.

TriMet realleges paragraphs 1-14 above.

23.

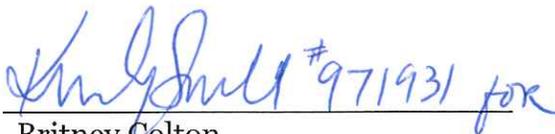
Even if the 2005 Side Letter has expired (it has not), the parties have created a past practice because they have engaged in a clear and consistent mutually accepted pattern of conduct – abiding by the terms of the Side Letter – for over a decade.

WHEREFORE, TriMet requests that the Board order as follows:

- A. That ATU cease and desist its unlawful action;
- B. That ATU comply with all of the terms of the existing CBA, including the 2005 Side Letter;
- C. That ATU send letters to its members and post notices on its bulletin boards and website informing its members of its unlawful actions;
- D. That ATU withdraw its pending Grievance #9135;
- E. That ATU pay TriMet's reasonable representation costs pursuant to OAR 115-035-0055;
- F. Any additional relief that the Board deems just and equitable.

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

DATED: February 22, 2016.

By  #971931 for
Britney Colton
Attorney for Complainant,
Tri-County Metropolitan Transportation
District of Oregon

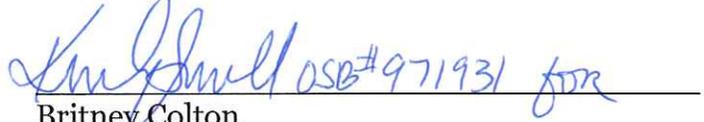
1800 SW First Ave., Ste. 300
Portland, OR 97201
503-962-2470/Telephone

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2016, I served the foregoing
UNFAIR LABOR PRACTICE COMPLAINT on:

Shirley Block, President
Amalgamated Transit Union Division 757
Schoppert Hall
1801 NE Couch St.
Portland, OR 97232-3054
Facsimile: (503) 230-2589

- by **mailing** a true and correct copy to the last known address of each person listed. It was contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with the U.S. Postal Service in Portland, Oregon.
- by causing a true and correct copy to be **hand-delivered** to the last known address of each person listed. It was contained in a sealed envelope and addressed as stated above.
- by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- by **faxing** a true and correct copy to the last known facsimile number of each person listed, with confirmation of delivery. It was addressed as stated above.
- by **emailing** a true and correct copy to the last known email address of each person listed, with confirmation of delivery.


Britney Colton
Attorney for Complainant,
Tri-County Metropolitan
Transportation District of Oregon