

The issues presented are:

1. Did the County violate ORS 243.672(1)(a) when Brown refused to allow Hamilton to attend a meeting with a union member as FOPPO's representative on September 18, 2012, and/or when he served Hamilton with a notice of investigation on September 24, 2012?
2. Did the County interfere with the administration of FOPPO in violation of ORS 243.672(1)(b) when Brown refused to allow Hamilton to attend a meeting with a union member as FOPPO's representative on September 18, 2012, and/or when he served Hamilton with a notice of investigation on September 24, 2012?
3. If the County violated ORS 243.672(1)(a) or (b), what is the appropriate remedy?

For the reasons discussed below, this Board concludes that the County violated ORS 243.672(1)(a) and (b) when Brown refused to allow Hamilton to serve as a union representative in the employee meeting because she engaged in protected activity. However, we conclude that the County did not violate ORS 243.672(1)(a) and (b) when Brown presented Hamilton with a notice of investigation and we dismiss those allegations in the complaint.

RULINGS

The rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

1. FOPPO is a labor organization and the exclusive representative of a bargaining unit of parole and probation officers (POs) employed by the County, a public employer. The POs work in the Parole and Probation Unit (PPU), which was under the administration of the County Sheriff's Office until January 2013.
2. FOPPO and the County were parties to a collective bargaining agreement (Agreement) that expired on June 30, 2012.
3. Brown was the designated manager of the PPU from June 2012 until January 2013. On August 2, 2012, Brown sent an e-mail to all PPU staff regarding the procedure for notifying supervisors about requests for assistance from other law enforcement agencies (Assistance Procedure).¹ Brown explained that the POs should either (1) seek approval from their supervisor in advance when assistance was requested for a planned event, or (2) advise their supervisor at the earliest convenience after an incident when immediate assistance was requested due to an arrest in progress. Brown believed he was clarifying a procedure outlined by the prior PPU manager in February 2012.

¹All subsequent events occurred in 2012.

4. In response to the e-mail, FOPPO Vice President Rick Pokorny asked Brown a question about the Assistance Procedure. No other POs asked questions and FOPPO did not raise any concerns about the Assistance Procedure.

5. On September 6, PO Cody Mace drove past a Eugene police officer who was talking with a citizen about individuals she had seen shooting heroin down by the Willamette River. The police officer radioed Mace and requested assistance with one of the individuals the officer believed was under PPU supervision. Mace then requested that PO Tim Shreve provide assistance because Shreve was in the area and Mace believed that Shreve supervised one of the individuals. Subsequently, Mace, Shreve, PO Ken Border and PO Mark Dugan assisted the police officer at the river. This incident resulted in the apprehension of several individuals.

6. After the incident at the Willamette River (River Incident), Border notified his supervisor, Andrea Schlesinger, about the assistance that the four POs had provided to the police officer. Schlesinger told Border that under the Assistance Procedure, he should have sought her approval before providing assistance. Border disagreed and asked to meet with Brown about the Assistance Procedure. After Schlesinger told Brown about her conversation with Border, Brown decided to meet with the four POs to debrief the River Incident and clarify his expectations under the Assistance Procedure.

7. On September 9, Brown and Supervisors Aaron Rauschert and Schlesinger met with Border to discuss the River Incident. Border was offered the opportunity to have a FOPPO representative present, but declined. During the meeting, Brown told Border that because there had been time to notify his supervisor before engaging in the River Incident, the incident was a planned event under the Assistance Procedure and Border should have requested prior supervisor approval.

8. On September 10, Supervisor Schlesinger, an employee from the County Human Resources (HR) Department, Captain Fox, and Hamilton, who was FOPPO's President, met to discuss Hamilton's return to Schlesinger's work unit. Hamilton had been placed in Supervisor Rauschert's work unit temporarily while a complaint that Hamilton had filed against Schlesinger was investigated. The meeting was scheduled at Hamilton's request.

9. On September 11, Supervisor Rauschert told Shreve that Brown wanted to meet with him to debrief the River Incident and clarify management's expectations under the Assistance Procedure. Rauschert told Shreve that the meeting would not be disciplinary, but Shreve could have a FOPPO representative present. Because Border had told Shreve what had occurred during his River Incident meeting, Shreve asked Hamilton to attend the meeting with him.

10. That day, Shreve, Hamilton, Brown, and Rauschert met in Brown's office. Hamilton was present as Shreve's union representative. At the outset, Brown stated that the meeting was not disciplinary and the purpose was to debrief the River Incident and clarify management's expectations under the Assistance Procedure. As Brown began to discuss the Assistance Procedure with Shreve, Hamilton interrupted and objected to the Assistance Procedure's validity. Hamilton asserted that Brown could not change a policy under the parties' Agreement until the County provided FOPPO with notice and an opportunity to respond to any new policy. She indicated that his e-mail did not accomplish that purpose.

11. Brown responded that they were not there to debate the validity of the Assistance Procedure, but to debrief the River Incident and talk about the Assistance Procedure's requirements. After Hamilton continued to argue about the validity of the Assistance Procedure, Brown told Hamilton that if she wanted to meet with him after Shreve's meeting, they could discuss her issue. Brown then proceeded to discuss the Assistance Procedure and River Incident with Shreve. At some point, Hamilton again raised the issue of whether the Assistance Procedure was legitimate and could be enforced. Brown again responded that they were not there to talk about the Assistance Procedure's validity. After Hamilton continued to assert her concerns, Brown stated that if she did not want to meet to talk about her issues after the meeting, she could file a grievance. Hamilton replied that she might do this. At this point, both Brown's and Hamilton's voices were raised.²

12. Shreve and Brown again proceeded to discuss the Assistance Procedure. At one point, Shreve stated that although some positive things had happened in the PPU recently, the Assistance Procedure made the POs feel that the supervisors did not trust them. Brown responded that the requirement for POs to contact their supervisors was an issue of accountability. He explained that, under the Assistance Procedure, if the Sheriff asked why four POs were assisting police officers along the river, either he or the supervisors would be able to respond. When Hamilton sarcastically commented that the command staff had nothing better to do than sit and listen to the radio, Brown stated the meeting was again getting off point.

13. After some additional discussion about the Assistance Procedure, Shreve left the meeting. Hamilton then told Rauschert and Brown that accountability goes both ways. When Brown tried to address the situation he thought she was referring to, Hamilton stood and objected in a raised voice that she was talking about another situation. Hamilton stated her concerns about a situation in which she felt that Rauschert had not responded to a late night call about an offender from the Department of Corrections (DOC). Rauschert and Hamilton proceeded to disagree about whether DOC had called Rauschert, during which Hamilton spoke loudly and became angry and agitated and Rauschert became upset because he felt Hamilton was saying that he was lying.³ Brown told Hamilton that she did not have to yell and she was being disrespectful. He asked her to lower her voice. Hamilton told Brown that she was not yelling or being disrespectful and left.

²The witnesses disagree about whether Hamilton or Brown raised their voices at this point. Resolving this conflict is not critical to our decision. However, it is credible that they both raised their voices because Hamilton had to interrupt Brown's discussion with Shreve to express her frustration over what she saw was an invalid policy, and Brown was attempting to stop Hamilton's interruptions and redirect the discussion back to the River Incident and Assistance Procedure.

³Hamilton testified that she was neither yelling nor angry, but was calm during this portion of the meeting. However, Brown's and Rauschert's testimony that Hamilton was angry, agitated, and yelling is more believable because Brown raised a concern about Hamilton yelling at the time the conversation occurred and Hamilton was upset by the incident they were discussing.

14. After the Shreve meeting, Brown notified his supervisor, Captain Greg Fox, about the conflict between himself and Hamilton during Shreve's meeting and indicated that Hamilton was likely to file a grievance. Hamilton sent an e-mail to Deputy Chief Doug Hooley stating that Brown had been heavy-handed during the Shreve meeting. Hooley then spoke with Fox, who explained what Brown had told him about the meeting. Hooley was concerned that Hamilton and Brown were accusing each other of being disrespectful.

15. On September 13, Hamilton filed four grievances against Brown. Three of the grievances alleged violations of different provisions in the parties' Agreement arising out the issuance of the Assistance Procedure. One grievance alleged a violation of the Agreement based on Brown's conduct during the Shreve meeting, stating:

"Lt. Brown on 09-11-2012, failed to maintain a working relationship with the union that is reflective of bilateral respect. He accused me of yelling and being disrespectful when attempting to convey that accountability goes both way[s] for management and employees. I attempted to provide examples where accountability is not being held at [the] same standards for management as is for employees. I also attempted to suggest notice to employees on policy being revised or changed and he said 'you don't like file [sic] grievance.' Making changes in work rules and not notifying the union along with refusing to engage in dialogue as required by contract is not fostering an environment of mutual trust, not business like manner and does not encourage management and bargaining unit members to maintain a working relationship that reflect[s] bilateral respect."

16. After the grievances were filed, Brown contacted Fox to determine if he should hold the River Incident meetings with POs Mace and Dugan and, if so, who should attend those meetings. Fox and Deputy Chief Hooley decided that Brown should continue with the meetings, but that Hamilton would not be allowed to attend because of the grievances. Fox and Hooley also wanted to avoid repeating the conflict that had developed between Hamilton and Brown in the Shreve meeting. They did not discuss excluding Hamilton from any other meetings or taking any other action against Hamilton.

17. On September 18, Supervisor Rauschert told Mace that Brown wanted to meet with him to debrief the River Incident and go over management's expectations under the Assistance Procedure. Rauschert told Mace the meeting was not disciplinary, but that Mace could have a FOPPO representative present. Mace wanted Hamilton to be his union representative because she had been Shreve's representative and was familiar with the issues. Rauschert told Mace that Hamilton could not be his union representative.

18. When Hamilton learned she could not attend Mace's meeting, she sent an e-mail to Brown, Captain Fox, Deputy Chief Hooley, and Sheriff Tom Turner, asking why she was not allowed to attend. Brown responded to Hamilton:

“I was advised by Captain Fox to have the debrief meeting with PO Mace and PO Dugan and to make sure they understand the supervisor expectation for requested assistance with law enforcement agencies. Even though this is not disciplinary in nature in any way - if they wanted to have a Union Rep present to monitor the conversation, they were most welcome to do so. However, due to your complaint / grievances against me, Captain Fox told me to have another Union Rep sit in instead of you to avoid any conflict of interest.

“Therefore, please arrange to have another Rep sit in on these two particular meetings if they are requested.”

19. On September 18, Rauschert and Brown met with Mace about the River Incident and Assistance Procedure. Hamilton was available and willing, but was not allowed to attend the meeting as Mace’s union representative. Mace was represented by FOPPO Vice President Pokorny, who is an experienced union representative. Before the meeting, Pokorny was told what had occurred during the River Incident and in the meetings with Border and Shreve, and felt well-versed on the issues.

20. On September 21, Supervisor Schlesinger filed a complaint against Hamilton for discrimination and disrespectful conduct. In the complaint, Schlesinger set out her concerns about Hamilton’s behavior at the September 10 meeting and a comment Hamilton had made at a meeting on September 18 with Supervisor Rauschert.

21. Complaints are processed through the Office of Professional Standards, which is administered by Deputy Chief Hooley. Under the Sheriff’s Office policy, complaint investigation notices are required to be served in a timely manner. The service of such a notice is a procedural matter. Although the policy provides for the supervisor assigned to conduct the investigation to serve the investigation notice, this does not always occur. Sergeant French, who works in the Office of Professional Standards, has conducted certain investigations and delivered investigation notices in the past. Fox and Hooley have also served investigation notices. In the past, Hamilton was served investigation notices by French or her unit supervisor.

22. After consulting with the HR Department, Hooley assigned the investigation of Schlesinger’s complaint to an outside investigator. The outside investigator was not available to prepare the investigation notice, so Hooley assigned this responsibility to French. Because the outside investigator also was not available to serve the investigation notice and it needed to be served in a timely manner, Hooley told Fox to either have Brown serve it or have Brown delegate this responsibility. After Fox told Brown to serve the investigation notice, Brown asked Hooley whether he should serve the notice in light of Hamilton’s grievances. Hooley told Brown that serving the notice was a routine matter and there should not be a problem.

23. On September 24, Brown served Hamilton with the investigation notice by delivering the notice to her and reading the listed allegations. When Brown delivered the notice, Hamilton believed that he was smiling and retaliating against her for filing the grievances. Rauschert, who was Hamilton’s supervisor, was working that day.

24. The County has not excluded Hamilton from attending any meetings other than the meeting with Mace and a subsequent meeting with Dugan. The County has not prohibited Hamilton from otherwise participating as a FOPPO representative.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The County violated ORS 243.672(1)(a) and (b) by refusing to allow Hamilton to serve as a union representative at the September 18, 2012 meeting because of her protected activity.
3. The County did not violate ORS 243.672(1)(a) or (b) when Brown served Hamilton with an investigation notice on September 24, 2012.

DISCUSSION

FOPPO alleges that the County violated ORS 243.672(1)(a) and (b) when Brown refused to allow Hamilton to attend Mace’s meeting as his union representative on September 18, 2012, and when Brown delivered an investigation notice to Hamilton on September 24, 2012. We begin by analyzing FOPPO’s claims under subsection (1)(a).

Subsection (1)(a) Allegations

Under ORS 243.672(1)(a), it is unlawful for a public employer to “[i]nterfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.” In turn, ORS 243.662 provides public employees with 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.” ORS 243.672(1)(a) includes two distinct prohibitions: (1) restraint, interference, or coercion “because of” the exercise of rights guaranteed by ORS 243.662; and (2) restraint, interference, or coercion “in the exercise” of rights guaranteed by ORS 243.662. *Portland Assn. Teachers v. Mult. Sch. Dist. No. 1*, 171 Or App 616, 623, 16 P3d 1189 (2000). FOPPO alleges a violation of both prongs of subsection (1)(a).

To determine if an employer violated the “because of” prong of subsection (1)(a), we examine the employer’s reasons for the disputed action. If the employer acted because of an employee’s exercise of rights protected by the Public Employee Collective Bargaining Act (PECBA), the employer’s actions are unlawful. *Id.* It is not necessary for a complainant to demonstrate that an employer acted with hostility or anti-union animus, nor must a complainant prove that the employer was subjectively motivated by an intent to restrain or interfere with protected rights. A complainant need only show that there is a causal nexus between the employer’s action and the protected activity. *Id.* at 623-24.

When we analyze an employer's actions under the "in" prong of subsection (1)(a), we focus on the effect of the employer's actions on the employees. If the employer's conduct, when viewed objectively, has the natural and probable effect of deterring employees from engaging in PECBA-protected activity, the employer commits an "in" violation. *Portland Assn. Teachers*, 171 Or App at 623-24. A violation of the "in" prong may be derivative, since it is presumed that an employer who violates the "because of" prong of subsection (1)(a) also violates the "in" portion of the statute. *Oregon Public Employes Union and Termine v. Malheur County, Commissioner Cox, Commissioner Hammack and Sheriff Mallea*, Case No. UP-47-87, 10 PECBR 514, 521 (1988). An employer's actions may also independently violate the "in" prong, which typically occurs when the employer makes threats that are directed at protected activity. *Clackamas County Employees' Assn. v. Clackamas County*, 243 Or App 34, 42, 259 P3d 932 (2011). However, violations may also occur as a result of an employer's implied coercion or threat of reprisal. *Hood River Education Association v. Hood River County School District*, Case No. UP-38-93, 14 PECBR 495, 499 (1993).

1. Hamilton's Exclusion From Mace's Meeting

We first decide whether the County committed a "because of" violation when it prohibited Hamilton from serving as Mace's union representative on September 18. We begin by determining the reason the County took this action. FOPPO contends that the County excluded Hamilton from Mace's meeting because she filed grievances against the County after Shreve's meeting. The County admits it prohibited Hamilton from attending the meeting as Mace's union representative, in part, because of the four grievances. The County also asserts that it did not intend to interfere with Hamilton's protected activity, but decided to exclude Hamilton from the meetings so Brown could meet with Mace to clarify the expectations under the Assistance Procedure while avoiding the conflicts caused by Hamilton's disruptive behavior.

This Board concludes that the reason the County prohibited Hamilton from serving as Mace's union representative was because of the four grievances she filed against the County. Brown, in an e-mail responding to Hamilton's questions regarding the reason for the prohibition, stated:

"However, due to your complaint / grievances against me, Captain Fox told me to have another Union Rep sit in instead of you to avoid any conflict of interest. Therefore, please arrange to have another Rep sit in on these two particular meetings if they are requested."

Brown told Hamilton that she was prohibited from attending Mace's meeting due to the grievances she filed. Brown's statement to Hamilton, which occurred right after the County made its decision, is the best evidence of the reason the County decided to exclude Hamilton from the meetings. In addition, the County representatives were aware of Hamilton's behavior at Shreve's meeting before Hamilton filed the grievances, but took no action. When Brown informed his superiors about Hamilton's behavior he neither asked, nor did they raise, whether Hamilton should attend the subsequent River Incident meetings. It was only after the grievances were filed that a decision was made to exclude Hamilton from those meetings. So, even if the County considered Hamilton's disruptive behavior in making its decision, we conclude that it prohibited Hamilton from attending Mace's meeting because of the grievances that she filed.

The next question is whether the filing of the grievances constitutes protected activity under ORS 243.662. This Board has the “authority to determine the range of activities that are protected under ORS 243.662.” *Central School Dist. 13J v. Central Education Assoc.*, 155 Or App 92, 94, 962 P2d 763 (1998). We have long held that filing a contract grievance is protected activity. *Portland Association of Teachers and Bailey v. Multnomah County School District #1*, Case No. C-68-84, 9 PECBR 8635, 8651 (1986). Therefore, FOPPO proved that the County prohibited Hamilton from attending Mace’s meeting as a union representative because she engaged in protected activity.

The County asserts, however, that because Mace had no PECBA-protected right to have a union representative at the meeting, prohibiting Hamilton or any union representative from attending the meeting could not violate ORS 243.672(1)(a).⁴ This argument is not persuasive for a number of reasons. First, Mace may not have had a *Weingarten* right to have a union representative at the meeting. However, once Brown told Mace that a union representative could be present, he could not prohibit Hamilton from being that union representative because of her protected activity.

Second, the complaint does not allege that the County violated Mace’s subsection (1)(a) rights by denying him the union representative of his choice. Instead, the complaint alleges that the County interfered with Hamilton’s subsection (1)(a) rights by excluding her from Mace’s meeting because of the grievances she filed. Therefore, the issue of Mace’s entitlement to a union representative is not before us.

Finally, the issue under a “because of” claim is not whether an employee had a PECBA-protected entitlement related to the employer’s action. The question is whether the reason the employer took the action was because the employee engaged in PECBA-protected activity. For example, in *Grants Pass Association of Classified Employees/OEA/NEA and Bullington v. Grants Pass School District No. 7*, Case No. UP-05-07, 22 PECBR 806 (2008), this Board concluded that the employer violated ORS 243.672(1)(a) when it took certain actions, including moving the employee out of her private office and prohibiting the employee from participating in an interview committee, because the employee had asserted rights under the collective bargaining agreement. This Board did not consider, and it is unlikely we would have found, that the employee had a PECBA-protected entitlement to work in a private office or participate in the interview committee. The only consideration in that case, and the one before us, is whether the employer’s actions were taken because of the employee’s exercise of protected activity.

⁴ Under ORS 243.672(1)(a), an employee has the right to request union representation at investigatory interviews that the employee reasonably believes may result in disciplinary action. *AFSCME, Local 328, v. Oregon Health Sciences University*, Case No. UP-119-87, 10 PECBR 922, 926-27 (1988) (adopting the federal law *Weingarten* rights approved in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 95 S Ct 959, 43 L Ed2d 171 (1975)). This right does not apply to meetings called by the employer solely to issue discipline or conversations in which a manager is only giving instruction, training, or needed work-technique corrections. 10 PECBR at 929. The right “arises only when an employee reasonably believes that a purpose of an interview is to obtain information from the employee that could provide a basis for imposing discipline upon the employee or for justifying already-determined discipline.” *Washington County Police Officers Association v. Washington County*, Case No. UP-15-90, 12 PECBR 693, 701 (1991).

The matter before us includes circumstances similar to those that existed in *Teamsters Local 57 v. City of Bandon*, Case No. UP-129-91, 13 PECBR 568 (1992). In that case, we found that the employer violated ORS 243.672(1)(a) by excluding a union steward from attending a bargaining session because the steward engaged in protected activity by filing an unfair labor practice complaint. Here, the County prohibited Hamilton from serving as Mace's union representative because she filed grievances. Therefore, consistent with our reasoning in *City of Bandon*, we conclude that the County interfered with, restrained, or coerced Hamilton because of her exercise of rights guaranteed in ORS 243.662 in violation of ORS 243.672(1)(a).

Having concluded that the County committed a "because of" violation when it prohibited Hamilton from serving as Mace's union representative, it follows that this conduct also constitutes a derivative "in" violation of subsection (1)(a). As previously explained, when an employer takes an action against an employee because of that employee's protected union activity, as occurred here, the inevitable effect is to interfere with, restrain, or coerce the employee in the exercise of their PECSA-protected rights. *Malheur County*, 10 PECBR at 521. Because we find a derivative violation in regard to this allegation, we need not consider whether these actions also constitute an independent "in" violation.

2. Service of the Investigation Notice

FOPPO also alleges that the County violated the "in" prong of subsection (1)(a) by having Brown serve Hamilton the notice of investigation.⁵ FOPPO asserts that because Brown was the subject of the grievances, which is why Hamilton was denied the right to act as a union representative, Brown's actions in serving the notice so soon after the grievances were filed would naturally chill her and other employees from engaging in protected activity. In addition, FOPPO asserts that Brown acted in a harassing and intimidating manner by smiling at Hamilton as he handed her the investigation notice and read the charges.

We review the record to determine whether there is sufficient evidence that, when objectively viewed, the County's actions would chill Hamilton or other union members in their exercise of protected rights. *Portland Assn. Teachers*, 171 Or App at 624. This Board has explained that because "finding an 'in' violation under ORS 243.672(1)(a) is generally based on an employer's threat or implied threat of interference with employees' exercise of protected rights, '[i]n order for a reasonable employee to be chilled in the exercise of protected activity, that employee must see some relationship between the protected activity and the employer's actions or statements.' *Teamsters Local 223 v. Tillamook County Emergency Communications District*, Case No. UP-46-95, 16 PECBR 397, 404 (1996)." *Tigard Police Officers' Association v. City of Tigard*, Case No. UP-59-10, 24 PECBR 927, 937 (2012). In analyzing "in" violations, the Court of Appeals also has distinguished "between employer threats that are directed at protected activity and generic expressions of anger that may be made in the heat of a collective bargaining dispute." *Clackamas County*, 243 Or App at 42.

⁵Although it appears that FOPPO alleged both a "because of" and "in" the exercise of violation under this claim, it limited its argument in its post-hearing brief to the "in" claim. Therefore, we do not address the "because of" claim in our decision.

FOPPO points to the timing of the delivery of the investigation notice as evidence that the County violated subsection (1)(a), noting that Brown served the investigation notice only seven days after Hamilton filed her grievances. FOPPO argues that this close proximity in time between Hamilton's protected activity and the service of the notice raises an inference of a relationship between the two that would have the natural and probable effect of deterring employees from pursuing their PECBA-protected rights. In its post-hearing brief, FOPPO also implied a connection between the timing of Hamilton's grievances and the filing of Schlesinger's complaint.

Although timing can raise an inference of a causal connection between an employee's protected activity and the employer's action, the timing for the service of the investigation notice here occurred for legitimate reasons that mitigate against such an inference. First, it was undisputed that under Sherriff's Office policies, investigation notices were required to be served in a timely manner. Consistent with that requirement, the investigation notice was served three days after Schlesinger filed her complaint. There is not sufficient evidence to cause a reasonable employee to link Schlesinger's decision to file her complaint on September 21 with Hamilton's grievances. And, although the meeting that was the basis of Schlesinger's complaint occurred on September 10, her complaint was also based on a September 18 conversation with Supervisor Rauschert, which occurred just three days before Schlesinger filed her complaint.

Finally, Brown's service of the investigation notice, when viewed objectively, was not inherently intimidating or coercive. Hooley, not Brown, made the decision for Brown to serve the investigation notice solely as a matter of expedience without consideration of Hamilton's protected activity. Although the policy provided for such notices to be delivered by the assigned supervisor, the investigator was not available to serve the notice in this matter and this had not always been the practice. In addition, Brown was the manager of the unit in which Hamilton worked. As a result, as long as Brown was in that position, Hamilton and other employees understood that he was responsible for dealing with employees on various employment issues. Hamilton's exercise of protected activity did not change this. And, even if Brown smiled when he delivered the notice, a smile alone is insufficient evidence of a threat to Hamilton's protected rights. Therefore, the natural and probable consequences of the County's lawful service of the notice of investigation on an unrelated matter, when viewed objectively, would not tend to interfere with, restrain, or coerce employees in the exercise of their protected rights.

Subsection (1)(b) Allegation

Under ORS 243.672(1)(b), it is an unfair labor practice for a public employer to "[d]ominate, interfere with or assist in the formation, existence or administration of any employee organization." Although the purpose of subsection (1)(a) is to protect the rights of individual employees, subsection (1)(b) is concerned with the rights of the union itself. *AFSCME Local 189 v. City of Portland*, Case No. UP-7-07, 22 PECBR 752, 794 (2008). To establish a violation of subsection (1)(b),

"a complainant must prove that an employer took actions which impede or impair a labor organization in the performance of its statutory responsibilities. In establishing this violation a complaining labor organization must provide evidence to support the conclusion that *some actual interference* with its existence or administration occurred as a result of the employer's actions." *Junction City Police*

Association v. Junction City, Case No. UP-18-89, 11 PECBR 780, 789 (1989) (emphasis added).

Hamilton, who was the FOPPO president, was prohibited by the County from serving as a union representative. Hamilton was the FOPPO representative most familiar with the issues in the meeting and was the representative requested by the employee. As a result, FOPPO was unlawfully deprived of a union official “capable of performing the full range of her duties on behalf of the [union] and its members.” *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 323, 355 (2008). *See also City of Portland*, 22 PECBR at 794. Therefore, the County’s decision prohibiting Hamilton from serving as Mace’s union representative impeded, impaired, and interfered with FOPPO in performing its duties as exclusive bargaining representative and thus violated ORS 243.672(1)(b).

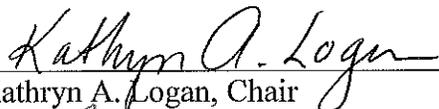
However, for the reasons previously discussed in the subsection (1)(a) complaint, the County’s decision to have Brown serve the investigation notice on Hamilton did not violate subsection (1)(b).

ORDER

1. The County violated ORS 243.672(1)(a) and (b) by refusing to allow Hamilton to serve as a union representative in Mace’s meeting because of her exercise of protected activity.

2. The County shall cease and desist from violating ORS 243.672(1)(a) and (b). The remaining claims are dismissed.

DATED this 28 day of June 2013.


Kathryn A. Logan, Chair


Jason M. Weyand, Member


Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.