

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No UP-11-08

(UNFAIR LABOR PRACTICE)

OREGON AFSCME COUNCIL 75,)	
LOCAL #2503,)	
)	
Complainant,)	RULINGS,
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
HOOD RIVER COUNTY,)	AND ORDER
)	
Respondent.)	
_____)	

On February 4, 2009, this Board heard oral argument on Respondent's objections to a Recommended Order issued on December 5, 2008, by Administrative Law Judge (ALJ) Larry Witherell after the case was submitted to ALJ Wendy L. Greenwald on a joint stipulation of facts and accompanying exhibits on August 25, 2008. The record closed on September 29, 2008, upon receipt of the parties' post-hearing briefs.

Jason M. Weyand, Legal Counsel, Oregon AFSCME Council 75, represented Complainant.

Bruce Bischof, Attorney at Law, Law Offices of Bruce Bischof, represented Respondent at the hearing. Nancy Hungerford, Attorney at Law, The Hungerford Law Firm LP, represented Respondent at oral argument.

On March 14, 2008, Oregon AFSCME Council 75, Local #2503 (Union) filed an unfair labor practice complaint against Hood River County (County) alleging that the County violated ORS 243.672(1)(b) and (f) by refusing to withhold and remit Union dues from bargaining unit members' paychecks. The County filed a timely answer.

The Union changed its dues structure and calculation so that the amount of Union dues for each bargaining unit member is calculated as a percentage of the bargaining unit member's base salary plus \$3. The Union alleges that the County unlawfully refused the Union's request to deduct the new dues assessment from bargaining unit members' paychecks. The County asserts that it was not required to calculate the dues because doing so would require it to spend an unreasonable amount of money to create the computer software needed to deduct dues under the new formula.

The issues are:

Did the County violate ORS 243.672(1)(b) and (f) by refusing to deduct Union dues from a bargaining unit member's paycheck that are calculated as a percentage of the bargaining unit member's base salary plus \$3?

RULINGS

The rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT¹

1. The Union, a labor organization, is part of a statewide organization, AFSCME Council 75. The County is a public employer within the meaning of ORS 243.650(20).

2. The County and Union are parties to a collective bargaining agreement that is effective from July 1, 2007 through June 30, 2010.

3. Article V of the collective bargaining agreement provides :

Section 1 – Fair Share: The County shall deduct from the wages of employees in the bargaining unit who are members of the Union, and who have requested such deductions in writing, a sum equal to Union dues. Employees in the bargaining unit who are not members of the Union shall make payment-in-lieu[-]of-dues to the Union. Payments-in-lieu-of-dues shall be equivalent to the regular Union dues used for collective bargaining purposes in accordance with ORS 243.650. Each month the County will deduct from the wages of each bargaining unit employee who is not a Union member, the payment-in-lieu-of-dues required by this Section. Similar deductions will be made in a similar manner from the

¹Findings of Fact 1 through 19 are based on the parties' joint fact stipulation and accompanying exhibits. Finding of Fact 20 is based on an additional stipulation to which the parties agreed at oral argument.

wages of new bargaining unit employees who did not become members of the Union within thirty (30) days after the effective date of their employment. Said payments shall be accompanied by a listing of the names of all employees from whom deductions are made.

“The union shall be notified of any and all changes to the wage scale, and shall also be notified of any changes to the classification system

“Section 2 – Religious Exemption: The provisions of Section 1 hereof shall not apply if an employee objects in writing to the County, based on such employee’s membership in a bonafide church or religious group whose tenets or teachings are contrary to such payment. The County will provide the Union with a copy of any such letter within five (5) days of its receipt.

“In such instances, the employee shall authorize a deduction that is in lieu of and equivalent to the fair share amount. Such payroll deduction shall be in addition to any previously established deduction and shall be for the United Fund or other mutually satisfactory charitable organization as agreed to between the employee and the Union.

“Section 3 – Months: For the purpose of calculating months to determine the beginning or end of the payroll deductions called for in Sections 1 or 2 of this Article, dues or like amounts shall be for any calendar month during which the employee works ten (10) working days or more

“Section 4 – Hold Harmless: The Union will indemnify, defend and hold the County harmless against any claims made and against any suit instituted against the County as a result of any County action taken pursuant to the provisions of this Article. The Union and the County each agree to reimburse any monies paid or not paid in error within thirty (30) days of notification of such error.” (Emphasis in original.)

4. Under the provisions of ORS 292.055², which extend to all public employers by ORS 243.776³, the County is required to withhold dues from employees' paychecks, if the employee requests in writing to do so. In addition, the collective bargaining agreement requires the County to withhold dues.

5. Prior to 2008, AFSCME International and Council 75 voted to have all Oregon bargaining units change their dues structure from a flat rate to a percentage of

² ORS 292.055 provides:

“(1) *Upon receipt of the request in writing of a state officer or employee so to do, the state official authorized to disburse funds in payment of the salary or wages of such state officer or employee each month shall deduct from the salary or wages of such officer or employee the amount of money indicated in such request, for payment thereof to a labor organization as the same is defined in ORS 243.650*

“(2) Such state official each month shall pay such amount so deducted to any such labor organization so designated to receive it.

“(3) Unless there is a contract to the contrary, *upon receipt of the request in writing of such officer or employee so to do, such state official shall cease making such deductions and payments.*

“(4) In addition to making such deductions and payments to any labor organization certified under the rules of the Employment Relations Board as representatives of employees in a bargaining unit, any department, board, commission, bureau, institution or other agency of the state shall make deductions for and payments to noncertified, yet bona fide, labor organizations, if requested to do so by officers and employees in that department, board, commission, bureau, institution, or other state agency, and for so long as the requests are not revoked. No deductions for and payments to any labor organization under this section shall be deemed an unfair labor practice under ORS 243.672.

“(5) Upon receipt from the Oregon Department of Administrative Services of a copy of a valid fair-share agreement in a collective bargaining unit, the state official authorized to disburse funds in payment of the salary or wages of the employees in such unit each month shall deduct from the salary or wages of the employees covered by the agreement the in-lieu-of-dues payment stated in the agreement and pay such amount to the labor organization party [to] the agreement in the same manner as deducted dues are paid to a labor organization. Such deduction and payment shall continue for the life of the agreement.” (Emphasis added.)

³ ORS 243.776 provides that “[t]he rights and responsibilities prescribed for state officers and employees in ORS 292.055 shall accrue to employees of all public employers.”

salary so that the amount of dues paid by each employee would be proportional to the employee's base salary. This progressive dues structure provides for more equitable dues rates and ties any increase in dues to an increase in an employee's salary. The Union implemented a dues system that establishes each member's dues at 1.27 percent of the member's base wage per pay period plus \$3. The dues are subject to a cap of \$55 and a minimum of \$15. This structure is common to many public and private sector unions and AFSCME implemented it in all or most of its bargaining units throughout the State during the same time period.

6. By letter dated October 11, 2007, Union treasurer Ellen Davis notified the County payroll office that:

"minimum Dues Rates for full time [*sic*] employees has been set by AFSCME International and Council 75 to be 1.27% of the base salary for each member with a minimum of \$15.00 and maximum of \$55.00 effective January 1, 2008. Local 2503 requests that an additional \$3.00 per member be deducted. Please change our deductions to the new rates effective January 1, 2008."

7. By letter dated December 31, 2007, AFSCME executive director Ken Allen explained the new dues structure to the County payroll office as follows:

"Effective January 1, 2008, the minimum dues rate structure for all members and fair share payers of Oregon AFSCME Council 75 will change from a fixed dollar amount to a percentage of base wage. In general, the dues rate will become 1.27% of base wage per pay period. There is a \$15.00 per month minimum and a \$55.00 per month maximum. Individual locals have the option to increase the percentage, increase the minimum and/or maximum, add a flat dollar amount per member to the percentage, etc. **Effective 1/1/08, the minimum dues rate for AFSCME Local 2503, Hood River Public Works, is 1.27% of base wage per pay period + \$3.00 per month per member with a monthly minimum of \$18.00 (\$15 + \$3) and a monthly maximum of \$58.00 (\$55 + \$3).**

"The dues deduction calculation is similar to that used to determine Social Security taxes. Please advise your payroll service provider and/or payroll department of this change so any necessary revisions to your payroll program and procedures to accommodate the new dues rate can be determined and initiated.

"In order to properly process the dues deduction data, the roster

accompanying the check must indicate name, whether member or fair share payer, amount of the dues deduction and the base wage used to determine that deduction. The check and roster are to be mailed to:

Oregon AFSCME Council 75

P.O. Box 12455

Salem, OR 97309

“Thank you for your assistance in this matter. * * *” (Emphasis in original)

8. The County refused to implement the new dues structure. On December 6, 2007, David Meriwether, County administrator, explained the County’s position to Union treasurer Davis:

“The Hood River County Administration department is in receipt of your request for recalculation of union dues for the membership of Local 2503. Unfortunately, we are unable to comply with your request for the following reasons:

“1. Under the Hood River County and AFSCME Local 2503 Collective Bargaining Agreement, Article V, Section 1-Fair Share, indicates that the County will deduct from the wages of employees in the bargaining unit who are members of the union, and who have requested such in writing, a sum equal to Union dues.

“The percentage calculation of dues based on salary with a minimum and maximum and an additional flat \$3.00 per member would result in our inability to provide a known dollar amount and acquire a signature for deduction of a ‘sum equal to Union dues’ at the time of hire.

“2 The calculation of dues based on percentage of salary with a minimum and maximum plus flat rate is an administrative burden that is a complete departure from previous years and would no longer reflect a ‘sum equal to Union dues’ but would result in an individual amount based on earnings

“The current HTE payroll system can compute an amount based on percentage or a flat amount per individual, but not

both. The system is capable of identifying limits based on a maximum but not on a minimum under deduction codes

- “3. Re-computing deductions due to overtime compensation, change in pay or hours worked, out of classification pay, potentially unpaid leave time, etc., would require costly administrative oversight.

“In an effort to cooperate with your request, the County would consider an individual amount calculated by the Union annually if provided before December 15th of each year.” (Italics in original)

9. On December 19, 2007, Bruce Bischof, attorney for the County, wrote AFSCME council representative Steve Marrs concerning the dues deduction issue:

“I have carefully reviewed your emails and the underlying correspondence regarding the Union’s request that the County implement a new system of deducting dues from bargaining unit members. I am certain you have been provided a copy of a letter written by County Administrator David Meriwether to Ellen M. Davis, Treasurer of Local 2503. This letter is dated December 6, 2007 and I am enclosing a copy for your review.

“As the letter reflects, there would be a significant burden on the County to implement a change in the ‘uniform’ dues deductions for bargaining unit members. As the letter explains, the Union’s request to change the methodology and calculation of dues would result in a significant administrative burden to the County. This is a complete departure from the many years of past practice where a uniform dollar amount was deducted from all employees irrespective of their salary.

“As Mr. Meriwether’s letter points out, the County will attempt to work with the Union if the Union will do the calculations and provide the County with the amounts for each bargaining unit employee prior to the end of the year. If this is not acceptable, then the Union, at a minimum, would have a bargaining obligation to meet with the County since the Union’s proposal is a mandatory subject of bargaining.

“Finally, the Collective Bargaining Agreement provides an Indemnification and Hold Harmless clause, wherein the Union has agreed that in return for

the County handling the Union's bookkeeping, the Union would hold harmless and indemnify the County from any issues arising out of dues deductions.

"Therefore, I strongly disagree with your conclusions, as well as your legal counsel's conclusions, that the County would be committing an unfair labor practice or subject to a grievance based on the Union's substantial change in the status quo "

10. On January 11, 2008, Jason Weyand, legal counsel for the Union, wrote Bischof to protest the County's actions:

"I have received notice that Hood River County is refusing to make the appropriate dues deduction from the paychecks of Local 2503 members. As you know, both the Collective Bargaining Agreement and ORS 292.055 require that the employer deduct dues from the employees' paychecks. The amount and method of calculation of those dues is determined exclusively by the Union, not the employer. The employer is legally bound to honor that determination.

"In this situation, Hood River County is refusing to adjust to the new percentage-based dues structure for various insufficient reasons. This is a violation of Article V of the Contract as well as unlawful interference with the administration of the Union under ORS 243.672(1)(b). If the County does not immediately begin deducting the appropriate dues amount, we will file an unfair labor practice and a separate grievance. If we do not receive written confirmation of the County's willingness to make the correct deductions by the close of business on Tuesday, January 22, we will take the appropriate legal actions.

"In previous cases, the Employment Relations Board has found the failure to withhold dues to be a violation of PECBA and has imposed costly remedies on the employer, including ordering the employer to pay the back dues rather than the employee. In addition, your client will be forced to pay the representation costs in taking the ULP forward and the fees and costs associated with arbitrating the grievance. It is in the best interests of the County and its residents to make the appropriate changes.

"The County has stated that they are unable to honor this request because it is too difficult to determine a 'sum equal to Union dues' with

the percentage based dues and the additional three dollars. With all due respect, the sum equal to Union dues is what the Union sets as the dues rate. This is subject to change at the discretion of the Union and generally changes at least one time per year. No specific dollar figure is required by the law or the Contract.

“The letter from Mr. Meriwether also stated that the County would have to recalculate deductions due to overtime pay, work out of classification pay or other additional forms of compensation. This is not true, the percentage is based solely off of base salary and excludes any additional compensation earned by the employer [*sic*] beyond their base salary. All the County needs to do is calculate what 1.27% of the employee’s base salary contained in current salary charts and add three dollars, then adjust for applicable minimums or maximums if they are triggered. This number will not change unless the employee’s salary changes due to steps, cost of living increases, promotion or other payroll changes

“This system of dues deduction is utilized by public and private employers throughout the United States and the State of Oregon. No other public employer has been unable or unwilling to accommodate the change. This is not an unusual or unreasonable request, and the County is legally bound to honor it. Please let me know by January 22 whether your client intends on honoring this request. If you have any questions or would like to discuss the matter at greater length, I may be reached at * * *.”

11. The Union filed a grievance. On February 25, 2008, County administrator Meriwether responded to Union treasurer Davis at Step 3 of the grievance procedure:

“This matter was presented before the Hood River County Board of Commissioners on February 19, 2008 for consideration at the Step 3 level. At that time, the Commission designated the County Administrator to make a decision at the Step 3 level on behalf of Hood River County.

“As stated in previous correspondence between the Hood River County and AFSCME, instituting a formula-based dues calculation requires re-programming of the County’s payroll system, as all dues withheld in the past have been based upon a uniform amount per employee. Shifting to a formula-based system, which applies a percentage to employees’ wages, adds a base amount, and then controls for minimum and maximum

thresholds, requires a change to the payroll software. Hood River County does not own or maintain its accounting system software, no[r] does it have license or authority from the vendor to make changes to the original programming[] Consequently, the options in order to comply with your demand are as follows: a) pay the software vendor to make the necessary program change, b) calculate the amounts to be withheld by hand, and manually monitor compensation changes such as promotions, step increases, COLA adjustments, etc, or c) receive the dues deduction calculations from AFSCME and directly enter the amounts into the payroll system. The first option has been priced by the software vendor at \$32,000; a copy of the estimate is attached. This is a viable option if AFSCME is willing to pay for the cost of this programming change. Option b) will require copious amounts of time and money to process, particularly in light of the county's practice of bi-monthly payrolls. It is not feasible, reasonable or productive to place this burden on Hood River County's one-person payroll operation. Additionally, the opportunities for errors, omissions or disputes are numerous. Option c) is also acceptable to the County; we would be happy to receive and directly enter the dues withholding amounts as calculated by AFSCME.

“Consequently, this grievance is denied at the Step 3 level.”

12. In the past, the Union has regularly changed the flat rate amount of Union dues deducted from bargaining unit members' paychecks from year to year without protest from the County. The most recent change in dues occurred in January 2007.

13. Oregon AFSCME consists of approximately 167 public employee local and sub-local unions. These locals represent employees in the following counties: Multnomah, Clackamas, Deschutes, Crook, Umatilla, Malheur, Harney, Polk, Union, Columbia, Clatsop, Josephine, Benton, Morrow, Lane, Wasco, Tillamook, Hood River, Coos, Wallowa, Washington, and Yamhill.

14. Oregon AFSCME also represents numerous State agencies and cities of various sizes. Hood River County is the only employer that has refused to move to the new dues structure. All other employers have agreed to calculate the dues as requested by the Union.

15. Percentage-based dues are common among public sector labor organizations. Some of the largest public sector unions in Oregon utilize this method, including Service Employees International Union Local 503, Oregon School Employees

Association, Association of Oregon Corrections Employees, and now Oregon AFSCME Washington and Alaska AFSCME also utilize a percentage-based dues structure, as does the California Correctional Peace Officers Association.

16. Hood River County does not own or maintain its accounting system software, and does not have a license or authority from the vendor, Sungard, to make changes to the software or programs. Sungard Public Sector is the parent company of Hood River County's financial software provider H T E. (Sungard/H T E.). The County uses Sungard/H T E. software in all its financial transactions and reporting, including general ledger processes, accounts payable, payroll, accounts receivable, cash receipts, purchasing, and fixed assets.

17. In August 2007, the County changed the method of service provision with Sungard/H.T.E. by leaving its internal operating system and moving to a hosted service. As a result of this change, the former internally-operated and-managed system was removed. The new operating system (with Sungard/H.T.E.) is physically located in Lake Mary, Florida. The County has no operational control over the software other than being a user. If the County needs to modify the system or software, the County requests a modification from Sungard/H T E. The County pays separately for these in addition to the monthly support fees agreed to in the contract with Sungard/H T E. Sungard/H T E estimates that it would cost the County \$32,000 to make the payroll changes necessary to accommodate the new dues structure.

18. The Union questions the legitimacy of Sungard/H.T.E.'s quote. The State of Oregon changed its payroll system for significantly less despite having several thousand employees in multiple agencies in cities across the State. Umatilla County paid approximately \$400 to make the dues-related programming changes while also updating other portions of their payroll software. No other employers raised any concerns about the cost of any payroll modifications necessary to accommodate the change.

19. The Union represents 26 employees in the bargaining unit. If the County made the requested dues withholding, the Union would have received an additional \$3 per month per employee, in addition to the regular per capita refund to the Union out of the minimum dues. The County's failure to make the requested withholding has cost the Union \$78 per month. In addition, since the maximum dues was increased to \$55 and the County continued to deduct only \$38.55 per employee, Oregon AFSCME has lost additional revenue.

20. At least one bargaining unit member submitted a written request to the County to deduct Union dues from his or her paycheck under AFSCME's new dues structure.

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)(b) and (f) by refusing to deduct Union dues from a bargaining unit member's paycheck that are calculated as a percentage of the bargaining unit member's base salary plus \$3.

DISCUSSION

In October 2007, AFSCME notified the County of a change in its dues structure. Under the new structure, dues are based on a percentage of an employee's salary plus \$3. At least one bargaining unit member requested, in writing, that the County deduct dues from the bargaining unit member's paycheck under this new structure; the County refused to do so.

The Union alleges that the County's refusal violates both ORS 243.672(1)(b) and (1)(f). We begin with the subsection (1)(f) allegation. Under ORS 243.672(1)(f), it is an unfair labor practice for a public employer to "[r]efuse or fail to comply with any provision of ORS 243.650 to 243.782." ORS 292.055(1) provides that upon written request of an employee, a state official will deduct labor organization dues from the employee's salary and pay these dues to the labor organization. Unless there is a contract to the contrary, these deductions continue until the employee requests, in writing, that the deductions stop. ORS 292.055(2) and (3). These statutory provisions are made applicable to all public employees under ORS 243.776. Thus, a violation of these provisions would constitute a violation of subsection (1)(f).

We considered allegations similar to those presented here in *AFSCME, Council 75 v. City of Gladstone*, Case No. C-56-83, 7 PECBR 5944 (1983). In *City of Gladstone*, the union alleged that the employer violated ORS 243.672(1)(b) and (f) by failing to deduct dues in accordance with the relevant provisions in the collective bargaining agreement. We enumerated the required elements for finding an unfair labor practice for failure to deduct dues under subsection (1)(f):

"The elements of such an unfair labor practice charge are thus quite straightforward. Complainant must prove [1] that Respondent is a public

employer, [2] that an appropriate official of Respondent received a written request from one of Respondent's employees to deduct an indicated amount of money for a labor organization, and [3] that Respondent has not made such deductions and payments, or has ceased making them, without a written request to that effect " 7 PECBR at 5947.

Here, at least one Union bargaining unit member asked the County, a public employer, to calculate and deduct monthly dues based on the new percentage formula plus \$3. The County refused to make the requested deductions. Accordingly, we conclude without difficulty that the County violated subsection (1)(f) when it refused to make the dues deductions requested by at least one bargaining unit member.

The County asserts several defenses. First, it claims that the cost of calculating the appropriate percentage of Union dues for each bargaining unit member is prohibitive. According to the County, it will cost \$32,000 to change its payroll system to allow it to accurately calculate monthly dues or fair share fee payments for each of the 26 Union bargaining unit members.

The County's expense figures are implausible. It seems improbable that it will cost the County approximately \$1,231 per bargaining unit member to calculate each member's monthly dues as a percentage of the member's base salary. Evidence in the record shows that other employers have implemented AFSCME's new dues structure for far less. In addition, changes in computer software are not the only alternative. For considerably less money, the County could hire someone for a few hours per month to make the necessary calculations by hand.

Even if we assume *arguendo* that the County's cost estimate is correct, cost alone does not excuse it from complying with its obligations under the Public Employee Collective Bargaining Act (PECBA). In *Oregon School Employees Association, Chapter 98 v. Sheridan School District 48J*, Case No. UP-34-85, 8 PECBR 8098, 8103 (1985), the employer refused to honor written requests from employees to make monthly payroll deductions for union dues, contending "that economic considerations justified its refusal to make the additional deductions." We held that "[t]he statute does not make an allowance for employers to deny such requests because of the amount of the request or because of economic burdens on the employer," and we concluded that the employer's

actions violated subsection (1)(f).⁴ *Id.* Here, we likewise reject economic considerations as a basis for refusing to make required deductions of union dues.

As a second defense, the County contends that any change in dues deductions must be bargained before it can be implemented. An employer is obligated to bargain over unilateral changes in the *status quo* concerning subjects that are mandatory for negotiations. ORS 243.672(1)(e); *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 323, 360 (2008). The *status quo* may be established by an expired contract, past practice, work rule, or policy. *Id.*

We have never held that a union has a parallel duty to negotiate in good faith when it changes the *status quo* regarding matters that are mandatory subjects. Assuming *arguendo* that we were to impose such a duty, the County has not filed an unfair labor practice complaint that alleges the Union unilaterally changed working conditions without bargaining. As a result, the issue is not before us. Even if we ignored these difficulties and reached the merits of the District's contention, the District would not prevail because the Union did not change the *status quo*. The record shows that the Union regularly altered the amount of Union dues, and the County deducted these new amounts from bargaining unit members' wages without protest. Accordingly, the parties have a mutual, long-standing, and consistent practice in which the Union notifies the County about changes in Union dues and the County willingly withholds the new amounts from employees' paychecks. This past practice constituted the *status quo*. See *Oregon AFSCME Council 75, Local 2831 v. Lane County Human Resources Division*, Case No. UP-22-04, 20 PECBR 987, 993-994 (2005) (describing the factors that establish a past practice as the *status quo*). The Union's conduct is consistent with the *status quo*.

As a third defense, the County contends that a hold harmless clause in the parties' collective bargaining agreement prevents the Union from bringing this unfair labor practice against the County. Contract Article V, Section 1 requires the County to deduct Union members' dues and payments-in-lieu-of-dues (fair share fee payments) from employees' paychecks. Section 2 of Article V describes the religious exemption to paying dues or payments-in-lieu-of-dues, and Section 3 of Article V explains the mechanics of

⁴We note that the County presented no evidence that it was unable to pay \$32,000 to implement the new dues structure, or evidence that this cost would excessively burden the County. Even if the County had made these arguments, it is likely we would have rejected them. Financial exigencies alone do not constitute the type of business necessity defense that relieves an employer from complying with its good-faith bargaining obligation under the PECBA. See, e.g., *Oregon Nurses Association v. Polk County*, Case No. C-118-82, 6 PECBR 5426 (1982); *AFSCME Local 173 Council 75 v. Polk County Board of Commissioners*, Case No. C-126-82, 6 PECBR 5437 (1982).

the monthly dues deductions. Section 4 of Article V provides that “[t]he Union will indemnify, defend and hold the County harmless against any claims made and against any suit instituted against the County as a result of any County action taken pursuant to the provisions of this Article.” The County asserts that Section 4 bars the Union from litigating any alleged County violations of these contract provisions. We disagree.

In interpreting the provisions of a collective bargaining agreement, our goal is to determine the parties’ intent from the agreement as a whole. We strive to give effect to all sections of the agreement and avoid an interpretation that renders a provision ineffective or meaningless, when an alternative interpretation would not do so. *Lane Unified Bargaining Council/SLEA/OEA/NEA v South Lane School District #45J3*, Case No. UP-36-98, 18 PECBR 1, 24 (1999), *aff’d*, 169 Or App 280, 9 P3d 130 (2000), *rev’d and rem’d on other grounds*, 334 Or 157, 47 P3d 4 (2002), *order on remand*, 19 PECBR 936 (2002), (citing Elkouri & Elkouri, *How Arbitration Works*, 492 (5th ed. 1997)).

If we adopt the interpretation of Article V, Section 4 that the County urges, this contract article becomes meaningless. The County asks us to read Section 4 of Article V as an agreement by the Union to “indemnify, defend and hold the County harmless” against any claims the *Union* may make against the County. Such an interpretation would mean that the County could violate the provisions concerning dues deduction in Article V whenever it chose and the Union would have no recourse. This interpretation would make the County’s agreement to withhold Union dues and fair share fee payments in Article V, Section 1 both illusory and meaningless. An alternative interpretation of Section 4, Article V, and one which is far more logical, is that the Union agrees to indemnify the County against claims made by *individual* bargaining unit members or other parties against the County. Because we refuse to interpret the parties’ agreement in a manner that makes Article V, Section 1 ineffective and unenforceable, we reject the County’s argument that this contract provision restricts the Union from bringing this unfair labor practice complaint.

The County also contends that it will violate both the contract and the law concerning fair share fee payments, ORS 292.055, if it implements AFSCME’s new dues structure. In regard to the alleged contract violation, the County notes that Section 1 of Article V requires the County to deduct an amount equivalent to Union dues from the salaries of bargaining unit members who are not members of the Union. This contract provision also specifies that a “sum” equal to Union dues will be deducted from each member’s paycheck. The County asserts that this contract language requires that the deduction for a fair share fee payer also be a “sum” equivalent to Union dues, *i.e.*, a flat dollar amount.

The County has not filed an unfair labor practice under ORS 243.672(2)(d), charging that the Union violated the terms of the collective bargaining agreement.⁵ As a result, the issue of a possible contract violation is not before us. Even if we were to reach the merits of the County's argument, we disagree with its interpretation of the relevant contract language.

When we interpret the language of a collective bargaining agreement, our goal is to determine the parties' intent. We begin our analysis by examining the provision at issue in the context of the entire document. If the language is clear, our inquiry ends. If the language is ambiguous, we then look at extrinsic evidence of the parties' intent. If the language remains ambiguous after these analytical steps, we then utilize generally accepted maxims of contract construction. *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 20, 29 (2005).

Here, Section 1 of Article V requires that the amount deducted from a fair share fee payer's salary be a "sum" equal to Union dues. *Webster's Third Int'l Dictionary* 2289 (unabridged ed 1971) defines "sum" as "an indefinite or specified amount of money." Thus, the applicable contract language does not require that the salary deductions for Union members and fair share fee payers be a specified amount.

We next turn to the County's contention that deducting fair share fee payments under the Union's dues structure violates the law. Under ORS 292.055(5) and 243.776, a public employer must "deduct from the salary or wages of the employees covered by the agreement the in-lieu-of-dues payment stated in the agreement and pay such amount to the labor organization * * *." ORS 292.055(5). As discussed above, the County does not violate the collective bargaining agreement by deducting dues and fair-share fee payments under the Union's new dues structure. As a result, the County will not violate the law by making these deductions.

Finally, we consider the Union's allegation that the County's refusal to make appropriate dues deductions violated ORS 243.672(1)(b), which makes it an unfair labor practice for an employer to "[d]ominate, interfere with or assist in the formation, existence or administration of any employee organization." To prove a violation of subsection (1)(b), a labor organization must demonstrate that an employer's actions impaired or impeded the union in performing its duties as exclusive representative. *Lebanon Education Association v. Lebanon Community School District*, 22 PECBR at 354-355.

⁵ORS 243.672(2)(d) makes it an unfair labor practice for a labor organization to "[v]iolate the provisions of any written contract with respect to employment relations * * *."

In *Oregon School Employees Association v. The Dalles School District #12*, Case No UP -75-87, 11 PECBR 167, 173 (1989), we considered the effects on a labor organization of a school district's failure to withhold one member's union dues. We concluded that the employer's actions violated subsection (1)(b) because they

“* * * directly interfered with the existence and administration of an employe organization. The existence of an employe labor organization is largely dependent on the financial support of its employe membership. We believe that ORS 243.776 is expressly designed to accommodate the prompt receipt of such dues from employes who are members of a union. Any thwarting of direct dues withholding therefore interferes with the administration of an employe labor organization.”

Here, the County's failure to withhold the correct amount of dues violated subsection (1)(b) just as the employer's actions did in *The Dalles School District*. The effect of the County's unlawful conduct on the Union is even greater than in *The Dalles School District*, because 26 employees are involved, rather than just one.

REMEDY

We will order the District to cease and desist from violating ORS 243.672(1)(b) and (f) by refusing to withhold bargaining members' dues and fair share fee payments in accordance with the formula described in the Union's October 11, 2007, letter to the District. ORS 243.676(2)(b). We may also order affirmative relief when necessary to effectuate the purposes and policies of the PECBA. ORS 243.676(2)(c).

One of the fundamental policies of the PECBA is the right of employees “to join [labor] organizations of their own choice, and to be represented by such organizations in their employment relations with public employers.” ORS 243.656(5). As discussed above, the existence of a labor organization is almost completely dependent on the financial support of dues and fair share fee payments. When, as here, an employer prevents a union from receiving this support, the employer adversely affects the union's ability to operate and perform its duties as exclusive representative. When a union is impaired, an employee's right to effective representation is also impaired. Accordingly, the purposes and policies of the PECBA are best served by ordering the County to make the Union whole for the dues and fair share fee payments it lost because of the County's illegal conduct.

This remedy is consistent with our practice in similar cases. When an employer unlawfully refuses to deduct union dues from employees' paychecks, we require the

employer to pay appropriate sums to the union, without reimbursement from the employees. This remedy is appropriate, even though the money, if paid at the time requested, would have come out of bargaining unit members' paychecks. *OSEA v. Sheridan School District*, 8 PECBR at 8104. When a hospital unlawfully refused to deduct fair share fee payments from nurses' salaries, we ordered the employer to reimburse the union and did not allow the hospital to take the money from the nurses' salaries. We explained:

“* * * If we were to allow the District to simply make deductions from the nurses' pay at this time, we essentially would be placing the burden of the District's unlawful conduct on the ONA and the individual nurses rather than on the District.” *Oregon Nurses Association v. Bay Area Health District*, Case No. C-48-83, 7 PECBR 5937, 5943, n. 3 (1983).

See also AFSCME Council 75, Local 3694 v. Josephine County, Case No. UP-26-06, 22 PECBR 61, 102-103 (2007), *appeal pending*. We will order the County to reimburse the Union for the amount of dues and fair share fee payments, with interest, it would have received if the County had implemented the new dues structure when requested. *OSEA v. Sheridan School District*, 8 PECBR at 8104, n 4, and *Oregon Nurses Association v. Bay Area Health District*, 7 PECBR at 5941, 5943 n 3.

The Union also asks that we order the County to post a notice of its wrongdoing. We generally order an employer to post a notice when its unlawful action:

“(1) was calculated or flagrant; (2) was part of a continuing course of illegal conduct; (3) was perpetrated by a significant number of a Respondent's personnel; (4) affected a significant portion of bargaining unit employees; (5) had a significant potential or actual impact on the functioning of the designated bargaining representative as the representative; or (6) involved a strike, lockout, or discharge ”

Oregon School Employees Association, Chapter 35 v. Fern Ridge School District 28J, Case No. C-19-82, 6 PECBR 5590, 5601, *AWOP*, 65 Or App 568, 671 P2d 1210 (1983), *rev den*, 296 Or 536 (1984). Not all these criteria need be fulfilled to require a posting. *Oregon Nurses Association v. Oregon Health Sciences University*, Case No. UP-3-02, 19 PECBR 684, 685 (2002).

Here, two of the above criteria were met. The employer's unlawful refusal to make appropriate deductions for dues or fair share fee payments affected *all* bargaining unit

employees. In addition, by denying the Union dues revenue needed to support its work, the County's actions significantly affected the Union in performing its role as exclusive representative. We will order the County to post a notice of its wrongdoing.

In its post-hearing brief, the Union asks that we order the County to pay a civil penalty and to reimburse the Union's filing fees. Under OAR 115-035-0075(2) and (3), a complainant must request a civil penalty and reimbursement for filing fees in its complaint, or in an amendment to the complaint made "at any time prior to the conclusion of the evidentiary hearing." The Union did not request filing fee reimbursement or a civil penalty in its complaint, and did not move to amend its complaint to make these requests prior to the conclusion of the evidentiary hearing. The requests for a civil penalty and reimbursement of filing fees are denied.

ORDER

1. The County will cease and desist from refusing to calculate and withhold Union dues and fair share fee payments using the formula described in the Union's October 11, 2007, letter.

2. The County will make the Union whole for the difference between the dues and fair share fee payments the Union received and the dues and fair share fee payments it would have received if the County had calculated and deducted Union dues using the formula described in the Union's October 11, 2007, letter, with interest at nine (9) percent per annum, for the period beginning on January 1, 2008, and ending on the date the County begins to deduct dues using the formula described in the Union's October 11, 2007, letter. The County will make this payment from its own funds and will not deduct the amount from bargaining unit members' paychecks or otherwise seek reimbursement from individual bargaining unit members.

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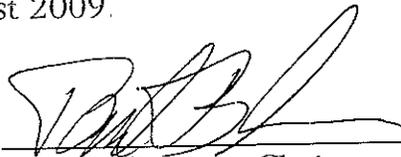
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3. The County shall sign and prominently post a copy of the attached notice in each location where Union bargaining unit members work. The notice will be posted within 30 days of the date of this Order and will remain posted for 30 consecutive days.

DATED this 13th day of August 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.



NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

STATE OF OREGON

EMPLOYMENT RELATIONS BOARD

Pursuant to an Order of the Employment Relations Board in Case No. UP-11-08, *AFSCME Council 75, Local #2503 v. Hood River County*, and in order to effectuate the purposes and policies of the Public Employee Collective Bargaining Act (PECBA), we notify employees that:

The Employment Relations Board has held that Hood River County (County) violated the PECBA by refusing to calculate and deduct Union dues and fair share fee payments under a new formula set by the Union.

The Employment Relations Board has ordered the County to:

1. Cease and desist from its unlawful actions.
2. Make the Union whole for the difference between the amount of dues and fair share fee payments the Union received and the amount of dues and fair share fee payments the Union would have received if the County had calculated and deducted Union dues using the new formula, with interest at nine (9) percent per annum, for the period beginning on January 1, 2008, and ending on the date the County begins to deduct dues and fair share fee payments under the appropriate formula. The County may not deduct these amounts from employee paychecks or otherwise seek reimbursement from bargaining unit members.

Dated _____

By: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED