

ORIGINAL

STATE OF OREGON  
EMPLOYMENT RELATIONS BOARD

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

Case No. UP-050-12

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

UNFAIR LABOR PRACTICE COMPLAINT  
Public Employment

Date Filed 9/26/12

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| <b>COMPLAINANT</b><br>Name, address, and phone number<br><br>Tri-County Metropolitan Transportation District of Oregon<br>c/o Adam S. Collier<br>Bullard Smith Jernstedt Wilson<br>200 SW Market St., Suite 1900<br>Portland, OR 97201<br>503-248-1134 | <b>COMPLAINANT'S REPRESENTATIVE</b><br>Name, address, and phone number, if applicable<br><br>Adam S. Collier<br>Bullard Smith Jernstedt Wilson<br>200 SW Market St., Suite 1900<br>Portland, OR 97201<br>503-248-1134 |
| <b>RESPONDENT</b><br>Name, address, and phone number<br><br>Amalgamated Transit Union Division 757<br>c/o Michael J. Tedesco<br>Julie Falender<br>Tedesco Law Group<br>3021 NE Broadway<br>Portland, OR 97232<br>866-697-6015                          | <b>RESPONDENT'S REPRESENTATIVE</b><br>Name, address, and phone number, if applicable<br><br>Michael J. Tedesco<br>Julie Falender<br>Tedesco Law Group<br>3021 NE Broadway<br>Portland, OR 97232<br>866-697-6015       |

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Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(2) (d) and ORS 243.752 of the Public Employee Collective Bargaining Act. The following is a clear and concise statement of the facts involved in each alleged violation, followed by a specific reference to the section and subsection of the law allegedly violated.

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

1.

Complainant Tri-County Metropolitan Transportation District of Oregon ("TriMet") is a public employer as defined in ORS 243.650(20).

2.

Respondent Amalgamated Transit Union Division 757 ("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). ATU is a strike-prohibited unit under ORS 243.738.

3.

TriMet and ATU were parties to a collective bargaining agreement effective December 1, 2003 through November 30, 2009.

4.

The parties bargained for over 150 days and, on June 7, 2010, commenced mediation pursuant to ORS 243.712. The parties participated in several mediation sessions in June and July 2010.

5.

On or about July 14, 2010, TriMet filed a declaration of impasse with the mediator and petitioned for interest arbitration pursuant to ORS 243.712(2)(a).

6.

On or about July 21, 2010, the parties submitted their respective final offers and cost summaries.

7.

Following delays caused by an unfair labor practice complaint filed by ATU and pursuant to the Board's subsequent order, TriMet subsequently filed a revised final offer on or about December 15, 2011, and a second revised final offer on March 5, 2012.

8.

On or about April 30, 2012, TriMet and ATU exchanged their last best offers (LBOs) pursuant to ORS 243.746. TriMet's LBO is attached hereto as Attachment A. ATU's LBO is attached hereto as Attachment B.

9.

An interest arbitration hearing occurred on May 14-17, 2012, before Arbitrator David Gaba.

10.

TriMet's LBO included a proposal that would impose new health insurance plans on ATU members retroactively to December 1, 2009. At the arbitration hearing, TriMet explained that if the arbitrator awarded TriMet's LBO, TriMet would recoup from ATU members the difference between the premiums paid on their behalf since December 1, 2010, and the premiums TriMet would have paid during that period if the healthcare plan design proposed in TriMet's LBO had been in effect. To minimize any out-of-pocket money due from employees, TriMet indicated its willingness to offset money due from employees against the retroactive COLA wages due to employees.

11.

On or about July 13, 2012, Arbitrator Gaba issued his interest arbitration decision awarding TriMet's LBO. Arbitrator Gaba's award is attached hereto as Attachment C.

12.

On or about July 16, 2012, ATU posted a letter to its members on its website responding to the Arbitrator's decision. Among other things, the letter stated: "It is very likely that TriMet will attempt to get you to sign an authorization for them to deduct past health insurance premium costs from the wage increases TriMet owes you. DO NOT, UNDER ANY CIRCUMSTANCES, SIGN SUCH AN AUTHORIZATION." (Emphasis in original.) The letter is attached hereto as Attachment D.

13.

On September 19, 2012, as a courtesy, TriMet sent a letter to ATU President Bruce Hansen in which it enclosed sample letter statements TriMet intends to send to ATU members informing them of insurance amounts owed to TriMet and/or insurance amounts owed to them pursuant to Arbitrator Gaba's interest arbitration award. A copy of the letter is attached hereto as Attachment E.

14.

On or about that same day, ATU sent a letter to its members informing them that it had "just learned that TriMet will soon be mailing you a letter concerning health insurance" and that "[f]rom some people, TriMet will demand payment of premium costs all the way back to 2009." In the letter, ATU informed its members that it "anticipated this action by TriMet and will be taking action against it" and requested that they "cooperate with and support our actions on your behalf by NOT responding to TriMet's letter." (Emphasis is original.) A copy of the letter is attached hereto as Attachment F.

#### **Count 1**

15.

ATU violated the provisions of the parties' written contract, as awarded by Arbitrator Gaba in his interest arbitration decision, by instructing its members on July 16 and September 19, 2012, to not sign an authorization form and to not respond to TriMet's letter requesting repayment of health insurance premiums. ATU's actions in this regard violated ORS 243.672(2)(d).

**Count 2**

16.

TriMet re-alleges paragraphs 1 through 14 above.

17.

ATU violated ORS 243.752 by instructing its members on July 16 and September 19, 2012, not to comply with TriMet's attempt to recoup health insurance premium costs retroactive to December 1, 2009, in accordance with Arbitrator Gaba's arbitration award.

WHEREFORE, TriMet requests that the Board order as follows:

- A. That ATU cease and desist its unlawful actions;
- B. That ATU inform its members to comply with the interest arbitration award by cooperating with TriMet's efforts to recoup the overpaid health insurance premiums;
- C. That ATU make TriMet whole for health insurance payments it is unable to recoup as a result of ATU's unlawful acts;
- D. That ATU send letters to its members and post notices on its bulletins and website informing its members of its unlawful actions.
- E. That ATU pay TriMet's reasonable representation costs pursuant to OAR 115-035-0055; and,
- 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.

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By: Adam Collier  
Signature of Complainant or Complainant's Representative

attorney Title                      9/25/12 Date