

STATE OF OREGON
EMPLOYMENT RELATIONS BOARD
(UNFAIR LABOR PRACTICE)

OREGON AFSCME COUNCIL 75,

Complainant,

v.

MID-COLUMBIA CENTER FOR LIVING,

Respondent.

Case No. UP-025-20

CONSENT ORDER

Jason M. Weyand, Attorney at Law, Tedesco Law Group, LLC, Portland, Oregon, represented the Complainant.

Douglas S. Parker, Attorney at Law, Littler Mendelson, PC, Portland, Oregon, represented the Respondent.

On August 18, 2020, Complainant Oregon AFSCME, Council 75 (the “Union”) filed an unfair labor practice complaint against Mid-Columbia Center for Living (“MCCFL”) alleging violations of ORS 243.672(1)(a), (b), (c), (e), and (i). Two days of hearing were held on October 21-22, 2020, before Administrative Law Judge Martin Kehoe. The hearing was set to continue in November, but the parties have agreed to settle this matter by entry of this Consent Order and waive further proceedings and review by the Board. To the extent not included below, the Union is withdrawing the remaining allegations in the Complaint.

Stipulated Facts

1. The Union is a labor organization as defined in ORS 243.650(13).
2. MCCFL is a public employer as defined in ORS 243.650(20). MCCFL is an intergovernmental agency and a Certified Behavioral Health Clinic that provides mental health, substance abuse, and IDD services for three counties in Oregon – Hood River, Wasco, and Sherman.

3. MCCFL has experienced increasing financial difficulties in the past several years as a result of significant cutbacks in funding sources and due to changes in how those sources compensate MCCFL for service delivery within the counties it serves. By mid-2019, the financial situation had deteriorated such that MCCFL had to begin drawing down on its reserves to continue to fund services. Its Board of Directors began to tell its management that it could no longer budget in this way and instructed that a balanced budget be prepared for the fiscal year beginning July 1, 2020.

4. On June 12, 2020, the Union filed the Petition under ORS 243.682(2) and OAR 115-025-0000(4) to certify without an election a new bargaining unit for the employees of MCCFL to the ERB. MCCFL did not file objections and effective July 6, 2020, the Union was certified by the Employment Relations Board as the exclusive representative for all MCCFL employees, excluding supervisory and confidential employees.

5. On June 16, 2020, MCCFL managers and supervisors distributed two flyers to MCCFL employees and talking points to supervisors at the direction of Dr. June Gower, the Executive Director for MCCFL. Modified versions of the flyers were distributed the next day. The flyers and talking points communicated MCCFL's position that it preferred that employees not form a union and various reasons that it contended supported that position. MCCFL supervisors mistakenly believed that an election would be held and that it was lawful for it to convey its position on the election to employees. The information distributed was intended to influence employees' decision on whether to support the formation of a union.

6. The flyers and talking points were created by MCCFL supervisors with a review conducted by Akin Blitz, the outside legal counsel for MCCFL at the time. Public funds in the amount of \$1,000.00 were expended in legal fees, employee compensation for time spent in creating and distributing the flyers and talking points, and printing costs.

7. On July 21, 2020, Dr. Gower sent a memo directly to the MCCFL employees that the Union contended contained incorrect statements about the Union's position regarding restoration of employees to full-time status after hours had been reduced during the pandemic. This letter also contained statements that were critical of the Union as an organization.

8. On August 6, 2020, Dr. Gower announced that MCCFL was eliminating its Intellectual and Developmental Disabilities Services ("IDD") program by terminating the contract with the State of Oregon that provided funding for those services. Dr. Gower's stated purpose for eliminating the program was for budgetary savings. The Union had various concerns about this change and other issues raised in its Complaint in this case, including a concern that the reason for the elimination of the program was retaliatory. As a result, Union labor counsel Jason Weyand sent correspondence to Blitz on August 11, 2020 outlining these concerns and informing MCCFL of the likelihood that a ULP would be filed unless MCCFL agreed to rescind the decision to terminate the IDD program and to maintain the program pending negotiations. In response to the Union's threat of a ULP, Union representatives and Blitz later discussed—among other things—MCCFL's willingness to bargain over the impacts of the IDD decision at some future point if no ULP was filed. As MCCFL had already returned its contract to the State, it did not rescind the

decision as requested by Weyand on August 11, and neither party had put forth any proposals related to the impacts of the decision to eliminate the program as of the date of the parties' signatures below.

9. The IDD program was ended at MCCFL effective September 30, 2020. MCCFL did not provide advanced notice to the Union of this decision nor did it provide adequate time to bargain over the impacts of that decision on mandatory subjects of bargaining. The IDD contract was reassigned by the State to a new provider, which hired all of the bargaining unit members working in that unit effective October 1, 2020, and recognized the Union as their exclusive bargaining representative.

10. After the Union was certified as the exclusive representative for the unit, MCCFL reduced the hours and eliminated the benefits for certain bargaining unit positions when those positions became vacant and were refilled by new hires. This includes but may not be limited to a nurse position. MCCFL did not provide notice of these changes to the Union or bargain over the changes in benefits and compensation. MCCFL has, since at least its 2005 policy, had a policy that provides for the employment of employees on part-time status and only providing health insurance benefits for employees working over 22.5 hours per week.

11. The parties have been in bargaining since September 17, 2020.

Stipulated Conclusions of Law

1. The Board has jurisdiction over these parties and subject matter.

2. MCCFL violated ORS 243.672(1)(i) when it created, printed, and distributed flyers and talking points that conveyed to employees the employer's preference that employees not form a union. MCCFL supervisors were not aware of the neutrality requirement of ORS 243.670(2), but the information distributed was intended to influence the decision of its employees on whether to form or join the Union. For the purposes of a remedy, the parties stipulate that MCCFL spent \$1,000.00 on employee salary, attorney fees, and other costs in creating, printing, and distributing the flyers and talking points.

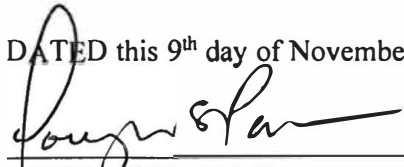
3. The natural and probable consequence of MCCFL's distribution of the flyers and talking points relating to the employer's position on the union organizing drive, and the July 21, 2020 letter concerning the Union's position on restoring full work hours for employees, would be to chill employees in their willingness to engage in protected activities. As a result, MCCFL violated the "in the exercise of" prong of ORS 243.672(1)(a).

4. MCCFL violated ORS 243.672(1)(e) when, without first providing notice and an opportunity to bargain to the Union, it: (1) eliminated the benefits for a vacant bargaining unit position, and (2) when it implemented the decision to terminate the IDD contract without providing the Union with a meaningful opportunity to bargain over the impacts of that decision on the IDD employees before the program was transferred by the State to a new entity.

Stipulated Order

1. MCCFL violated ORS 243.672(1)(i), (1)(a), and (1)(e) as stipulated above.
2. MCCFL will cease and desist from committing the unfair labor practices above.
3. Within 30 days of the date of this order, MCCFL will pay a civil penalty of three thousand dollars (\$3,000.00), which is equal to three times the amount of public funds used in response to the Union's organizing drive.
4. MCCFL will offer to convert the nurse who was hired without benefits to a full time position with benefitted status. It will also provide information to the Union on any vacancies filled after the Union was certified as the exclusive representative where hours of existing positions were reduced or benefitted positions were changed to non-benefitted positions. MCCFL will also cease converting positions to per diem or provisional status unless it bargains to completion over any mandatory subjects of bargaining before making such changes. Before reducing the hours or eliminating benefits for positions in the bargaining unit that become vacant, MCCFL will notify the Union at least two weeks in advance of posting the vacancy to provide the Union with an opportunity to assess whether bargaining might be required or appropriate.
5. MCCFL and the Union agree to bargain over the impacts to mandatory subjects of the decision to eliminate the IDD program. MCCFL will consider and bargain in good faith over Union proposals such as potential severance pay, treatment of employees' sick leave banks at termination of employment, right of recall/first refusal for vacant positions that ex-employees might be qualified for as vacancies arise, and other financial impacts.
6. MCCFL shall post the attached notice for 30 days in prominent places where Union-represented employees are employed and will also post the notice on its intranet system for employees to access.
7. The Union will submit a petition for representation costs to the Board within the time frame required by the Board's rules. MCCFL reserves its right to object to the amount of any claimed fees.

DATED this 9th day of November 2020.



DOUGLAS PARKER
On Behalf of the Respondent



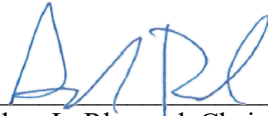
JASON WEYAND
On Behalf of the Complainant

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This Consent Order is approved and adopted by the Board.

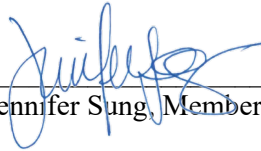
DATED: November 10, 2020.



Adam L. Rhynard, Chair



Lisa M. Umscheid, Member



Jennifer Sung, Member



NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
STATE OF OREGON
EMPLOYMENT RELATIONS BOARD

PURSUANT TO AN ORDER of the Employment Relations Board (Board) in Case No. UP-025-20, *Oregon AFSCME Council 75 v. Mid-Columbia Center for Living*, and in order to effectuate the policies of the Public Employee Collective Bargaining Act (PECBA), we hereby notify our employees that the Board found that Mid-Columbia Center for Living (MCCFL) committed unfair labor practices in violation of ORS 243.672(1)(a), (e), and (i), which prohibit a public employer from interfering with, restraining, or coercing employees in the exercise of protected activities, refusing to bargain in good faith with the exclusive collective bargaining representative of its employees, and spending public funds to influence the decision of employees to join or form a union.

The Board concluded pursuant to a Consent Order that:

1. MCCFL violated ORS 243.672(1)(i) when it created, printed, and distributed flyers and talking points that conveyed to employees the employer's preference that employees not form a union. MCCFL supervisors were not aware of the neutrality requirement of ORS 243.670(2), but the information distributed was intended to influence the decision of its employees on whether to form or join Oregon AFSCME Council 75 (the Union). For the purposes of a remedy, the parties stipulate that MCCFL spent \$1,000.00 on employee salary, attorney fees, and other costs in creating, printing, and distributing the flyers and talking points.

2. The natural and probable consequence of MCCFL's distribution of the flyers and talking points relating to the employer's position on the union organizing drive, and the July 21, 2020 letter concerning the Union's position on restoring full work hours for employees, would be to chill employees in their willingness to engage in protected activities. As a result, MCCFL violated the "in the exercise of" prong of ORS 243.672(1)(a).

3. MCCFL violated ORS 243.672(1)(e) when, without first providing notice and an opportunity to bargain to the Union, it: (1) eliminated the benefits for a vacant bargaining unit position, and (2) when it implemented the decision to terminate the IDD contract without providing the Union with a meaningful opportunity to bargain over the impacts of that decision on the IDD employees before the program was transferred by the State to a new entity.

To remedy these violations, the Board ordered the following:

1. MCCFL violated ORS 243.672(1)(i), (1)(a), and (1)(e) as stipulated above.
2. MCCFL will cease and desist from committing the unfair labor practices above.

3. MCCFL will pay a civil penalty of three thousand dollars (\$3,000.00), which is equal to three times the amount of public funds used in response to the Union's organizing drive.

4. MCCFL will offer to convert the nurse who was hired without benefits to a full time position with benefitted status. It will also provide information to the Union on any vacancies filled after the Union was certified as the exclusive representative where hours of existing positions were reduced or benefitted positions were changed to non-benefitted positions. MCCFL will also cease converting positions to per diem or provisional status unless it bargains to completion over any mandatory subjects of bargaining before making such changes. Before reducing the hours or eliminating benefits for positions in the bargaining unit that become vacant, MCCFL will notify the Union at least two weeks in advance of posting the vacancy to provide the Union with an opportunity to assess whether bargaining might be required or appropriate.

5. MCCFL and the Union agree to bargain over the impacts to mandatory subjects of the decision to eliminate the IDD program. MCCFL will consider and bargain in good faith over Union proposals such as potential severance pay, treatment of employees' sick leave banks at termination of employment, right of recall/first refusal for vacant positions that ex-employees might be qualified for as vacancies arise, and other financial impacts.

6. MCCFL shall post the attached notice for 30 days in prominent places where Union-represented employees are employed and will also post the notice on its intranet system for employees to access.

7. The Union will submit a petition for representation costs to the Board within the timeframe required by the Board's rules. MCCFL reserves its right to object to the amount of any claimed fees.

EMPLOYER

Dated _____, 2020 By: _____

Title: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted for 30 consecutive days from the date of posting in each employer facility in which bargaining unit personnel are likely to see it. This notice must not be altered, defaced, or covered by any other materials. Any questions concerning this notice or compliance with its provisions may be directed to the Employment Relations Board, 528 Cottage Street N.E., Suite 400, Salem, Oregon, 97301-3807, phone 503-378-3807.