

INSTRUCTIONS: File the original and three copies of this complaint with the Board at 528 Cottage Street NE, Suite 400, Salem, Or 97301
Phone (503) 378-3807

**STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

<p>For the Board Use Only</p> <p>Case No. _____</p> <p>Date Filed _____</p>

Date Filed _____

UNFAIR LABOR PRACTICE COMPLAINT

Public Employment

<p>COMPLAINANT name/address:</p> <p>Oregon AFSCME Council 75 Local #3940 463 S. Park Blvd. Ontario, Oregon 97914</p>	<p>Name/address/phone of Complainant's representative:</p> <p>Jason M. Weyand, Legal Counsel 1400 Tandem Avenue NE Salem, Oregon 97301 (503) 370-2522</p>
<p>RESPONDENT name/address</p> <p>Dept. of Corrections 2573 Center Street, N.E. Salem, Oregon</p>	<p>Name/address/phone of Respondent's representative:</p> <p>Craig Cowan, Labor Relations Manager Department of Administrative Services 155 Cottage Street, N.E. Salem, Oregon 97310 (503) 378-3967</p>

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)((e)). ORS 243.672(2)(), or 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. (For each claim, specify dates, names, places and actions. Attach copies of main supporting documents referred to in the statement of claims.)

See Attached

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

By _____
Signature of Complainant or Complainant's Representative

Legal Counsel
Title

Date _____

ATTACHMENT TO UNFAIR LABOR PRACTICE COMPLAINT

1. AFSCME Local 3940 (the "Local" or "Union") is a labor organization under ORS 243.650(13). The Local represents the security series employees of the Oregon Department of Corrections at Snake River Correctional Institution ("SRCI") in Ontario, Oregon.
2. The State of Oregon, Department of Corrections ("DOC") is a public employer under ORS 243.650(20).
3. The Union and the DOC are parties to a collective bargaining agreement that expired June 30, 2011 (the "Contract"), a copy of which is attached as Exhibit 1. Negotiations for a successor contract have been completed but the final agreement has not been signed. For all intents and purposes relevant to this case, there are no meaningful distinctions between the expired Contract and the new agreement.

FIRST CLAIM FOR RELIEF:

REFUSAL TO PROVIDE INFORMATION ON LEAVE WITHOUT PAY GRIEVANCE

4. On February 25, 2011, Union Vice President Darrin Easley met with Captain J.R. Smith over a variety of possible contract violations, including but not limited to pay issues, furlough issues, sick leave problems, and FMLA problems. Immediately after that meeting, Mr. Easley sent Captain Smith a formal information request seeking:
 1. A list of all security series represented employees who have been charged leave without pay (LWOP) when they call in sick on a holiday for the past two (2) years (February 29, 2009 to present).
 2. Any management meeting minutes notes, or other documentation where charging a represented employee with LWOP when he/she calls in sick on a holiday was discussed for the past 2 years (February 25, 2009 to present).

Mr. Easley noted that he needed this to prepare for a grievance over the issues raised in the meeting. A copy of the information request and the email it was attached to are included as Exhibit 2.

5. Captain Smith never provided the information, so on April 16, 2011, Mr. Easley moved the information request up to SRCI Superintendent Mark Nooth. This email is attached as Exhibit 3.
6. Mr. Nooth never provided the information, so on November 4, 2011, Mr. Easley again requested the information from Mark Nees, who is tasked with coordinating responses to information requests from the Union. In the email to Mr. Nees, Mr. Easley notes that the request is made pursuant to ORS 243.672(1)(e), and resent the specific request. A copy of the email and attached formal information request are included as Exhibit 4.
7. To this date, the DOC has never provided the information requested despite several requests over a long period of time by the Union. As a result, DOC violated ORS 243.672(1)(e).

SECOND CLAIM FOR RELIEF:

REFUSAL TO PROVIDE INFORMATION REGARDING INTERVIEW OF OFFICER DARRIN EASLEY

8. On or about October 19, 2011, Captain James Eastwood conducted an interview with Officer Darrin Easley, regarding respectful workplace issues involving another officer. AFSCME Council Representative Amber Grant was present with Officer Easley as his Union representative. At the meeting, Ms. Grant requested a copy of the questions from the interview, the notes of the meeting, as well as the recording of the interview. Captain Eastwood asked that the Union submit the request in writing. On October 6, 2011, Ms. Grant emailed the request to Captain Eastwood.
9. The information was requested to prepare for possible grievances under Article 9 (prohibitions on discrimination, including that based on Union activities), Article 47 of the Contract (employee due process), and Article 50 (discipline and discharge).
10. On October 26, 2011, Captain Eastwood agreed to provide the information. The email correspondence on this request is included as Exhibit 5. However, as of the date of the filing of this Complaint, DOC has not provided the information requested nor any explanation of their failure to do so. As a result, DOC violated ORS 243.672(1)(e).

THIRD CLAIM FOR RELIEF:

REFUSAL TO PROVIDE INFORMATION REGARDING STAFF ATTENDANCE IMPROVEMENT PROCESS

11. DOC instituted a Staff Attendance Improvement Process (“SAIP”) that it uses to correct perceived attendance problems. The SAIP can result in corrective actions including both disciplinary and non-disciplinary actions. Because sick leave is one of the leaves provided for in the Contract, the SAIP necessarily involves ensuring that the Contract and the federal and state family leave laws are complied with before corrective actions are taken. As a result, the Union has grieved and otherwise challenged actions under the SAIP.

12. On April 16, 2011, Local 3940 Vice President Darrin Easley emailed Captain Smith an information request seeking information over what the Union believed were systemic violations of the Contract and family leave laws under the SAIP. The request included information about individuals disciplined under the SAIP or other actions taken, as well as minutes or other documents from management meetings concerning the SAIP. This request and the email it was attached to are included as Exhibit 6.

13. DOC never provided the information requested nor gave a response, so on December 1, 2011, Mr. Easley submitted the information request to Captain Smith’s supervisor, Superintendent Nooth. Mr. Easley reiterated the reasons for the request and noted that the request was made under ORS 243.672(1)(e). The email and request are attached as Exhibit 7.

14. As of the date of the filing of this Complaint, DOC has not provided the information requested nor any explanation of their failure to do so. As a result, DOC violated ORS 243.672(1)(e).

FOURTH CLAIM FOR RELIEF:
REFUSAL TO PROVIDE INFORMATION REGARDING TUBERCULOSIS ISSUES

15. Article 29 of the Contract incorporates Oregon workplace safety laws into the Contract and generally requires that DOC provide a safe work environment for AFSCME members.

16. In June of 2011, SRCI staff were notified that at least one inmate at SRCI had been diagnosed with Tuberculosis (“TB”). The Union had concerns about whether appropriate safety laws and protocols were followed regarding the staff’s possible exposure to TB, and needed to explore what actions might need to be taken to protect its members, including but not limited to filing of a grievance and filing possible complaints with Oregon Occupational Health and Safety Administration (“OSHA”). To evaluate possible actions, Local 3940 Steward Mark Curry sent a request for information to SRCI Superintendent Nooth for information on the situation. This first request was sent June 9, 2011. A copy of the email request is attached as Exhibit 8.

17. Mr. Nooth did not immediately respond to the request, and Mr. Curry needed more information, so on June 17 and again on June 24, he requested additional information on the conversion rates for staff and inmates at SRCI. These requests are attached as Exhibit 9.

18. On June 27, 2011, Mark Nees from DOC provided the information from the original request, but refused to provide the conversion rates for staff and inmates, claiming that SRCI did not receive this information. Mr. Curry responded on July 11, 2011, in an email to Mr. Nees. In this response, he noted that the Union had received these numbers in the past and that the SRCI safety unit tracks the numbers. On July 18, 2011, Mr. Nees again stated that SRCI did not receive the numbers and asked who had given him the information previously. Mr. Curry responded that Eunice Hunt and Thomas Lester had provided the information in the past. Mr. Nees did not respond, so on July 20, 2011, Mr. Curry again asked when the Union could expect the information. This correspondence is attached as Exhibit 10.

19. Mr. Nees continued to question the relevance of the request and refused to provide the information. Mr. Curry explained the relevance and noted that the Union was likely to file an unfair labor practice complaint and an OSHA complaint over the TB situation. This correspondence is attached as Exhibit 11.

20. As of the date of the filing of this Complaint, DOC has not provided the information requested nor any explanation of their failure to do so. As a result, DOC violated ORS 243.672(1)(e).

FIFTH CLAIM FOR RELIEF:
REFUSAL TO PROVIDE INFORMATION RELATING TO PERSONNEL FILES AND WORK OUT OF
CLASSIFICATION FOR POSSIBLE GRIEVANCES

21. On February 24, 2011, Local Vice President Easley met with Institution Security Manager Alfred Hannon to discuss violations of the Contract provisions on personnel file access and work out of classification, specifically for AFSCME members who were working as out-of-class lieutenants.

22. Immediately after this meeting, Mr. Easley sent a formal information request via email to Mr. Hannon requesting information to evaluate a grievance on the Union's concerns. Specifically, he requested personnel files, working files and performance evaluations for represented staff who have served as out-of-class lieutenants. In addition, he requested notes from management meetings concerning these topics as well. A copy of the request and the email are included as Exhibit 12.

23. On April 19, 2011, Superintendent Nooth emailed Mr. Easley that he had received the request and was forwarding it to John Nees for response. This email is attached as Exhibit 13. Mr. Nees did not provide the information requested.

24. On October 1, 2011, Mr. Easley sent the request again with some additional information requested to Assistant Superintendent Jamie Miller. In the request, Mr. Easley noted that the request was made pursuant to PECBA in order to explore potential grievances. The request and email correspondence are included as Exhibit 14.

25. On October 2, 2011, Mr. Nees responded that he thought the matter had been resolved previously, but promised to issue a response. See Exhibit 15.

26. As of the date of the filing of this Complaint, DOC has not provided the information requested nor any explanation of their failure to do so. As a result, DOC violated ORS 243.672(1)(e).

A CIVIL PENALTY IS WARRANTED

27. Within the past six months, DOC has refused to provide information at least five separate times, despite frequent reminders from the Union and being given a great deal of time to collect or at least respond to the requests. This is not the first time DOC has failed to provide information to the Union in violation of PECBA. AFSCME has filed several unfair labor practice complaints in the past over this same issue.

28. As a result, the refusal to provide the information is both egregious and repetitive, and a civil penalty is appropriate.

PRAYER FOR RELIEF

29. WHEREFORE, Complainant requests the following relief:

- A. An Order declaring that the State has committed unfair labor practices as alleged herein;
- B. An Order that the State cease and desist from committing unfair labor practices and that the DOC immediately provide the Union with all information requested;
- C. An Order that the State pay AFSCME its reasonable representation costs, including fees, expended in processing this matter at hearing and on appeal;
- D. An Order that DOC pay a civil penalty;
- E. An Order that the DOC post a notice of the violations both electronically and physically; and
- F. Order any other further relief deemed necessary to do justice under the PECBA.

Dated this ____ day of December 2011.

Respectfully submitted,

Jason M. Weyand
Legal Counsel, Oregon AFSCME Council 75