UNFAIR LABOR PRACTICE COMPLAINT

Statement of Facts

1. The Bay Area Hospital (Hospital) is a public employer within the meaning of ORS 243.650(20).

2. The Oregon Nurses Association (Union) is a labor organization within the meaning of ORS 243.650(13).

3. The Union is the exclusive bargaining representative of nurses employed by the Hospital.

4. The most recent collective bargaining agreement between the Hospital and the Union expired December 31, 2021. The agreement is available at [here](#) and incorporated by this reference.

5. The parties began successor bargaining on September 23, 2021. At that session, the Union came prepared with proposed ground rules. The Hospital did not come prepared with any ground rules or other bargaining proposals.

6. Over the next 150 days, the Hospital and the Union met for bargaining five more times. At the bargaining meetings, the Union presented proposals to modify contract language regarding a number of topics, including workplace safety, staffing levels, disciplinary process, and wages. The Hospital did not offer one proposal or counter-proposal.

7. On February 20, 2022, the 150th day after the parties first met, the Hospital made its first counter-proposal: a one-year roll-over of the previous contract with wage increases, a new shift incentive program and a proposal to discuss contract modifications through committees that could then make recommendations. A copy of that proposal is included as Exhibit A and incorporated by this reference.

8. On or around March 12, 2022, Union members voted to reject the Hospital’s proposal.

9. On March 29, 2022, the Hospital made a modified proposal for another one-year contract roll-over. This proposal also included proposed wage increases. A copy of that proposal is included here as Exhibit BC and incorporated by this reference.
10. On April 12, 2022, Union members overwhelmingly rejected the Hospital’s second proposal.

11. In a letter dated April 18, 2022, the Hospital notified the Union that it would not agree to mediation until 150 days after it had delivered its counterproposal to the Union. (February 20, 2022). The Hospital also indicated that it would not be available to meet for bargaining until June 10th. Finally, it announced that on April 24 that it would unilaterally implement wage increases similar to those it had previously proposed and that had been rejected twice by the Union members. A copy of the letter from the Hospital to the Union is included here as Exhibit C and is incorporated by this reference.

12. On or around April 19, 2022, the Hospital also notified nurses directly that the Hospital would be increasing wages and of its wage increase. A copy of the letter is included as Exhibit D and is incorporated by this reference.

13. Union members have expressed confusion and anger in response to the Hospital’s wage increase. While any wage increase is welcome, they questioned the effectiveness of the Union, and the purpose of bargaining and voting on a contract if the Hospital could unilaterally implement the wage increases.

14. To date, the Hospital has failed to respond to most of the proposals made by the Union on September 23, 2021.

15. While the Union has bulletin boards in the Hospital, the Hospital primarily communicates with its employees through email.

**FIRST CLAIM FOR RELIEF**

**Bad faith bargaining in violation of ORS 243.672(1)(e).**

16. The Hospital’s conduct as described above violates ORS 243.672(1)(e). By implementing a unilateral wage increase (indisputably a mandatory subject of bargaining) during the hiatus period and before the end of the statutory dispute resolution procedures, the Hospital committed a per se violation of the duty to bargain in good faith.

//

//

//

ULP: Oregon Nurses Association and Bay Area Hospital
SECOND CLAIM FOR RELIEF

Union interference in violation of ORS 243.672(1)(a), (b), & (c)

17. The Hospital conduct described above violates ORS 243.672(1)(a). The natural and probable consequence of unlawfully increasing wages in the middle of bargaining (and after the members had twice rejected the offer) is to undermine employee confidence in the union’s ability to organize its members and collectively bargain. It makes no difference in the analysis that the employer has taken an action that benefits employees (as opposed to one that harms employees) because the effect is to undermine the Union. In addition, the Hospital has violated ORS 243.672(1)(a) by engaging in the actions described above because of employees engaging in a protected activity – rejecting the Hospital’s offer.

18. The Hospital’s actions described above violate ORS 243.672(1)(b) because by dealing directly with employees and bypassing the exclusive representative the Hospital has interfered with the existence and administration of the Union. As a result of the Hospital’s unilateral wage increases, members have questioned the efficacy and need for the union. This has a direct and negative impact on the union.

19. The Hospital’s actions described above violates ORS 243.672(1)(c) because of protected activity – voting to reject the Hospital’s proposals – and with the intend to undermine the Union’s authority and support within the bargaining unit. The Hospital’s proffered rationale – the need to retain and recruit nurses – is not credible in light of the H

CIVIL PENALTY AND FILING FEE

20. The Hospital’s actions – unilaterally imposing a wage increase in the middle of bargaining and after members had twice rejected the offer -- constitute a knowing and egregious violation of the PECBA that warrants the award of a civil penalty, full representation costs and reimbursement of the filing fee. The obligation to maintain the status quo during collective bargaining is a bedrock principle of the PECBA which the Hospital cannot credibly claim is questionable. Nor is the Hospital’s need to recruit and retain nurses a justification. If that were truly the issue, then the Hospital would have come to bargaining from day one with concrete proposals. Instead, it waited 150 days from the start of bargaining to make its first proposal, which did not address the non-economic issues raised by the union. Moreover, if the Hospital were truly interested in
reaching an agreement, then the Hospital would have agreed to mediation. It
did not, in an obvious attempt to render the Union irrelevant. Therefore, a civil
penalty and reimbursement of the filing fee is appropriate

REMEDY

WHEREFORE, the Union requests and Order:

1. Finding that the Hospital violated ORS 243.672(1)(e) when it unilaterally
   increases wages during bargaining;

2. Finding that the Hospital violated ORS 243.672(1)(a)(b)(c) by unilaterally
   implementing its offer to increase wages after it had been twice rejected by the
   bargaining unit

3. Directing the Hospital to bargain in good faith and cease and desist from its
   unlawful conduct;

4. Requiring the Hospital to post physical and electronic notices of the wrongful
   conduct in each department of the hospital for a reasonable time and in a
   noticeable place;

5. Requiring the Hospital to pay to the union an amount equivalent to the wage
   increases unlawfully given to nurses during bargaining. This remedy is in lieu of
   returning to the status quo because doing so would punish individual members
   for the Union enforcing the law and would undermine the Union.

6. Awarding a civil penalty of $1000 and full representation costs;

7. Awarding reimbursement to the Union of its filing fee for this complaint; and

8. Any other relief deemed fair and just by the Employment Relations Board.