

STATE OF OREGON, EMPLOYMENT RELATIONS BOARD

**UNFAIR LABOR PRACTICE COMPLAINT
AGAINST PUBLIC EMPLOYER**

ERB Case No. provided upon filing

File your complaint (with any attachments) and pay the \$300 filing fee on our online [Case Management System-CMS](#). Alternative filing options detailed in the instructions.

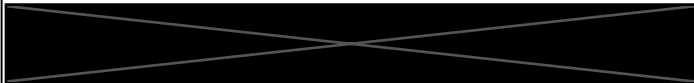
Case No.: UP-029-23

If using our online CMS, you will be directed to a payment option to pay the required \$300 filing fee. At this time, only ACH payments (*i.e.*, those using a checking account) can be processed through our CMS—**credit card payments are not currently supported**. If you do not use our online payment system, you may also mail the \$300 filing fee, or make arrangements with an ERB staff member for in-person delivery. Your filing is not complete until the \$300 is paid. There is an additional \$25 fee to file a document by fax.

Date Filed: 5/18/23

1. COMPLAINANT

Name, address, phone number, and email address.



2. COMPLAINANT'S REPRESENTATIVE

Name, address, phone number, and email address.

3. RESPONDENT (EMPLOYER)

Name, address, phone number, and email address.

4. RESPONDENT'S REPRESENTATIVE

Name, address, phone number, and email address.

5. Complainant alleges that Respondent has violated the following section(s) of ORS chapter 243 of the Public Employee Collective Bargaining Act, which make it an unfair labor practice for a public employer or its designated representative to (check all that apply):

243.672(1)(a): Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

243.672(1)(b): Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

243.672(1)(c): Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization.

243.672(1)(d): Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.806.

243.672(1)(e): Refuse to bargain collectively in good faith with the exclusive representative.

243.672(1)(f): Refuse or fail to comply with any provision of ORS 243.650 to 243.806.

243.672(1)(g): Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

243.672(1)(h): Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

243.672(1)(i): Violate ORS 243.670(2), relating to the use of public funds to support actions to assist, promote or deter union organizing.

243.672(1)(j): Attempt to influence an employee to resign from or decline to obtain membership in a labor organization.

243.672(1)(k): Encourage an employee to revoke an authorization for the deductions described under ORS 243.806.

243.752: Refuse or fail to comply with any provision of a final and binding arbitration award.

6. This Complaint includes the following requests (check all that apply):

A request that the Board award a civil penalty, pursuant to ORS 243.676(4) and OAR 115-035-0075.

A request that the Board order reimbursement of the filing fee, pursuant to ORS 243.672(3) and OAR 115-035-0075.

A request that the Board expedite all or part of this Complaint, pursuant to OAR 115-035-0060.

7. Statement of Claims

You must attach a statement of claims to this Complaint. The statement must provide the following information:

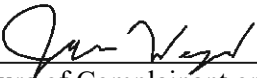
- A clear and concise statement of the facts involved in each alleged unfair labor practice (including relevant dates, names, places, and actions);
- A specific reference to each section and subsection of the law allegedly violated; and
- A brief description of the remedies Complainant is seeking.

If you refer to documents in the statement of claims, you may attach copies of those documents to the statement.

If you are requesting a civil penalty and/or filing-fee reimbursement, the statement of claims must also include an explanation of why you believe a civil penalty and/or filing-fee reimbursement is appropriate in your case, and a clear and concise statement of the facts alleged in support of the request(s). *See* OAR 115-035-0075.

If you are requesting expedited processing, you must also provide the affidavit required by the Board's rules. *See* OAR 115-035-0060.

I certify that the statements in this Complaint and the attached statement of claims are true to the best of my knowledge and information.

By: 
Signature of Complainant or Complainant's Representative

Title

Date

ATTACHMENT TO UNFAIR LABOR PRACTICE COMPLAINT

The Parties

1. Student workers at the University of Oregon (the “University”) have, since at least 2021, been working to form a union to address unsatisfactory and unfair compensation, benefits, and working conditions for employees, and to give student workers a collective voice on campus. These student workers chose to exercise their right to form a union of their choosing, the University of Oregon Student Workers Union (“the Union”). The Union filed a petition for representation with the Employment Relations Board on April 7, 2023, seeking certification as the exclusive representative for a diverse group of workers.

2. The Union is a labor organization as defined in ORS 243.650(13).

3. The University is a public university based primarily in Eugene, Oregon, and is therefore a public employer as defined in ORS 243.650(2).

The Union’s Organizing Drive and the University’s Response

4. The Union began an organizing drive to organize student workers at the University going back to at least 2021. The most public phase of the organizing drive began in or around October of 2022. As part of the organizing drive, the Union took a variety of public actions to inform workers, University representatives, and members of the community about the organizing drive. The Union had a table and canvassed employees at the University’s Fall Street Faire on October 12-14, 2022, and publicly and widely canvassed on the streets of the University during business hours for the first few months of the public campaign.

5. The Union also held a kickoff rally in the Erb Memorial Union (the “EMU”) amphitheater on October 20, 2022, which was publicized with posters and other publicly visible communications in the week prior. The Union held a mass member meeting on November 5, 2022, which was also publicized with posters and other publicly visible communications for the week prior to the meeting. Union posters were placed in public spaces throughout campus, and media stories were published about the campaign. There is quite simply no way that the University administrators, supervisors, and managers were not aware of the organizing drive and the identity of the most outspoken and public members of the Union’s organizing committee.

6. After the organizing drive become more visible, multiple University administrators, managers, and supervisors have improperly attempted to deter and undermine the workers’ organizing efforts, and to interfere with, coerce and restraining individual workers and Union organizers in and because of the exercise of their protected Union activities. The University’s improper actions in the 180 days preceding the filing of this unfair labor practice complaint include, but are not necessarily limited to, the following:

- A. University managers and supervisors prohibited and/or attempted to prohibit student workers from discussing the Union and Union-related activities during work time, when those student workers are permitted to talk to about other non-work-related subjects (such as sports, movies and tv shows, and non-union-related political issues).

- B. University managers and supervisors prohibited and/or attempted to prohibit non-employee students, and/or employees who are off the clock, from discussing the Union and Union-related activities with on-the-clock student workers, when those on-the-clock workers are permitted to discuss other non-work-related subjects (such as sports, movies and tv shows, and non-union-related political issues).
- C. University managers and Supervisors at the EMU (the central student union building at the University's primary campus in Eugene, Oregon, and the primary worksite of hundreds of student workers) have attempted to prohibit Union organizing efforts inside of the EMU. Among other things, EMU managers and supervisors have attempted to prohibit Union organizers from (i) asking workers to sign cards for the Union's card-check election (both on the off the clock), (ii) tabling at events inside the EMU, and (iii) speaking about and promoting organizing efforts (for example, encouraging others to become involved) inside the EMU. Students and non-student members of the community are routinely allowed to engage in other types of promotional activities (such as tabling, handing out flyers and literature, holding meetings) for other non-union-related causes and matters of public interest.
- D. Administration in academic departments told faculty that discussion of Union organizing efforts during class time is a "political activity" in contravention of University policy. The prohibition of comparable in-class announcements about petitions and other political issues (such as voter registration) has never been enforced in the same way.
- E. University managers and supervisors at multiple dining venues throughout the University Campus have told student workers that they cannot wear Union pins or other Union insignia while at work. Wearing non-union-pins and other insignia at work has long been a widespread practice for both student and classified workers since long before any organizing efforts began, and has not been prohibited. University managers have, at times, claimed to be enforcing a facially neutral policy about all pins or insignia, but have directed enforcement of this policy exclusively at student organizers wearing Union pins.
- F. One or more University managers or supervisors improperly removed Union posters and flyers from bulletin boards on campus. Other flyers and posters that related to non-union matters and subjects were not removed. One such instance occurred around February 10, 2023, when Lynn Alvarez, an assistant manager of residential dining, sent an email to other managers, with attached photos of Union petitions and flyers attached to a bulletin board (see attached "**Exhibit A**"). In that email, Ms. Alvarez wrote, in relevant part: "These things are being posted in the back of the house in our dining venues. I also pull [sic] some down from the entryway at PNW."

- G.** On February 11, 2023, the University terminated Will Garrahan, a student worker at the Global Scholars Hall dining center, and one of the most visible and outspoken Union organizers. Garrahan’s role in organizing efforts was open and widely known to University management. Among other things, on January 12, 2023, a photo of Garrahan appeared prominently on the front page of the Register Guard, Eugene’s local paper, as the main photo in a cover story on the Union’s organizing efforts (see attached “**Exhibit B**”). Garrahan was also featured prominently in a story on the Union’s organizing efforts that was published in the *Nation*, a well-known left-leaning publication, on February 10, 2023 (the day before Garrahan was terminated).¹ Shortly before being terminated, Garrahan had also been actively engaged in circulating and promoting a Union-related petition for free-shift meals for student dining workers (see attached Exhibit A, page 3). The University terminated Garrahan because of his organizing activities, and/or in a manner likely to interfere with his and other employees’ willingness to engage in protected Union-related activities. The University’s alleged basis for terminating Garrahan was pretext.
- H.** In the same week that Garrahan was terminated, University management targeted Emily Dixon, another outspoken student organizer. Among other things, shortly after firing Garrahan, the same supervisor—Albert Yang—called Dixon into a meeting in which he made vague criticisms about her performance and let her know that she was on “thin ice” and would likely be terminated in the event of any future issues. He did not provide her with any specific performance deficiencies and the timing of this reprimand did not correspond to any specific work-related incident involving Dixon. Prior to that, Dixon was widely seen as a model employee and was one of the three student worker “shift leads” at her worksite. Because of her conversation with Yang, and its proximity to Garrahan’s termination, Dixon believed that if she were to engage in any further Union-related activities, she would likely be terminated. Fearing that the University would follow through on this thinly veiled threat, and feeling unable to engage in further Union-related activities without reprisal, she resigned from student dining services shortly thereafter. The University targeted Dixon because of her organizing activities, and/or in a manner likely to interfere with her and other employees’ willingness to engage in protected Union-related activities.
- I.** After Garrahan was fired and Dixon was threatened, another Union organizer who worked closely with the two inexplicably had her scheduled work hours cut. In response to these repeated attacks on Union organizers, students conducted a walkout to demonstrate against and protest this unfair and unlawful conduct.
- J.** In late April of 2023, Jasmyne Channel (a University manager, and the interim associate director of residence life for residential experiences) met with two

¹ <https://www.thenation.com/article/activism/university-oregon-undergraduate-labor-union/>

resident advisors (“RAs”). RAs are included in the Union’s intended and proposed bargaining unit, and many RAs have been personally active in organizing efforts. The University had previously discussed and approved a stipend increase. However, during the April 2023 meeting, Channel told the RAs that were present that the University’s plan to give the stipend increase was on hold because of ongoing unionization efforts. A second meeting was called by Channel, where she attempted to offer additional explanations for the University’s decision to reverse course on the stipend increase in an obvious attempt to distance herself from the unlawful statements made at the first meeting. However, even after trying to walk back her unlawful statements, she once again reiterated that if the Union were to become certified and the RAs were to be included in the bargaining unit, the University might not end up giving the stipend increase due to uncertainty around the bargaining process.

First Claim for Relief: ORS 243.672(1)(a)

7. ORS 243.672(1)(a) prohibits public employers from interfering with, restraining, or coercing employees in or because of the exercise of rights guaranteed in ORS 243.662. Numerous student workers, including Garrahan, Dixon, the RAs, the Union organizing committee, and every student worker who had spoken out, supported, discussed, or attempted to discuss their desire to form or join the Union, have engaged in activities protected under the law.

8. The University’s response to this protected activity, including but not necessarily limited to the conduct described in paragraph 6 above, interfered with, restrained, and/or coerced these workers because of and/or in the exercise of their protected activities in violation of ORS 243.672(1)(a). Each of the situations set out above violated the in and because of prongs of ORS 243.672(1)(a) independently, but also in the aggregate.

Second Claim for Relief: ORS 243.672(1)(b)

9. ORS 243.672(1)(b) prohibits public employers from dominating, interfering with, or assisting in the formation of an employee organization.

10. The University’s response to the Union’s organizing drive, including but not necessarily limited to the conduct described in paragraph 6 above, interfered with the formation of an employee organization, in violation of ORS 243.672(1)(b). Each of the situations set out above violated ORS 243.672(1)(b) independently, but also in the aggregate

Third Claim for Relief: ORS 243.672(1)(c)

11. ORS 243.672(1)(c) prohibits public employers from discriminating in regard to hiring, tenure, or any terms or conditions of employment for the purpose of encouraging or discouraging membership in an employee organization. The conduct described above also violated subsection (1)(c).

Fourth Claim for Relief: ORS 243.672(1)(i)

12. ORS 243.670, in relevant part, prohibits public employers from using public funds to assist, promote, or deter union organizing. ORS 243.672(1)(i) in turn makes it an unfair labor practice for a public employer to violate ORS 243.670.

The University's response to the Union's organizing drive, including but not necessarily limited to the conduct described in paragraph 6 above, was intended to unlawfully influence employees' decision whether to form or join the Union. The University used public funds to plan and execute this campaign to deter or otherwise influence employees' decision.

13. These actions were taken by various University employees and representatives in the course of their work duties and using University resources such as computer systems and facilities. This occurred frequently during times where employees in the potential bargaining unit were on duty. Public funds pay for the salary and benefits of the employees and University representatives for the time spent engaging in these improper activities, as well as the resources used to attempt influence the employees' decisions to support or oppose the organizing drive. As a result of its actions, the University has violated ORS 243.670(2), and therefore committed an unfair labor practice under ORS 243.672(1)(i).

Request for Civil Penalty, Reimbursement of Filing Fee, and Posting of Notice

14. When a public employer violates ORS 243.672(1)(i), ORS 243.676(4)(b) requires the Board to order a civil penalty in an amount equal to three times the amount of the public funds that the employer used to promote, assist, or deter an organizing drive. Here, the University used public funds to deter union organizing in a manner intended to undermine the Union. It is unclear the specific amount of the public funds used by the University to promote, assist, or deter the organizing drive. The Union needs further discovery to determine that amount and reserves the right to seek a civil penalty in a specific amount to be determined at the appropriate time.

15. The University's actions described above are sufficiently repetitive and egregious to justify a civil penalty under ORS 243.676(4)(a). The Union requests a civil penalty of \$1,000.00 under ORS 243.672(4)(a).

16. The Union requests reimbursement of its filing fee under ORS 243.672(6).

17. The University's above-described unlawful and improper actions were committed by a variety of University managers and supervisors and impacted the Union's entire bargaining unit at a crucial time in the formation of the Union. In addition, the University's conduct was sufficiently flagrant and egregious to justify a posting of notice of the violation.

18. Additionally, because the University maintains an email system that it uses to communicate with its entire student body (including student workers), the notice of violation should be distributed electronically to all students (including but not limited to student workers), faculty, and employees. The notice should be distributed to all students because that will have the effect of reaching potential future student workers that may otherwise be deterred from engaging

in Union-related activities. The notice should also be distributed to faculty, so that all faculty are informed that it is unlawful to prohibit the discussion of Union-related matters during classes.

Prayer for Relief

The Union respectfully requests an order granting the following relief:

- A. Finding that the University violated ORS 243.672(1)(a), (1)(b), (1)(c), and (1)(i);
- B. Requiring the University to cease and desist with its actions that violate ORS 243.672(1)(a), (1)(b), (1)(c), and (1)(i);
- C. Requiring the University to make Will Garrahan whole for his improper termination, including by paying him backpay and restoring any benefits lost as a result of the improper termination;
- D. Requiring the University to distribute notices of its violations, by email to the University's student body and faculty through the University's email system;
- E. Requiring the University to pay a civil penalty to the Union in an amount equal to three times the amount of the public funds used by the University to promote, assist, or deter an organizing drive (the specific amount to be determined at the appropriate time).
- F. Requiring the University to pay a civil penalty to the Union in the amount of \$1,000.00;
- G. Requiring the University to reimburse the Union's filing fee under OAR 115-035-0075(3);
- H. Awarding the Union its reasonable representation costs and attorney fees under ORS 243.676(2)(d) and OAR 115-03-0055; and
- I. Awarding any other relief deemed just and equitable by the Board.

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

DATED: May 18, 2023

/s/ Jason M. Weyand
Jason Weyand, Attorney for Complainant

/s/ Luke Kuzava
Luke Kuzava, Attorney for Complainant