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HAND DELIVERED

July 26, 2013

Employment Relations Board
528 Cottage Street NE, Ste 400
Salem, Oregon 97301-3807

Re: *Portland Police Association v. City of Portland*
Unfair Labor Practice Complaint; Filing Fee

Dear Sir/Madam:

I represent the Portland Police Association. I have enclosed the original and three copies of an unfair labor practice complaint for filing, along with the \$300.00 filing fee. Please contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anil S. Karia'.

Anil S. Karia

Enclosures

Copy via email: PPA
Mark Amberg

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

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

**STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

**UNFAIR LABOR PRACTICE COMPLAINT
Public Employment**

For Board Use Only

Case No. _____

Date Filed _____

COMPLAINANT Name, address, phone number, and e-mail address Portland Police Association 1313 NW 19th Ave. Portland, OR 97201 503-225-9760	COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable Anil S. Karia Tedesco Law Group 3021 NE Broadway Portland, OR 97232 866-697-6015 x705 anil@miketlaw.com
RESPONDENT Name, address, phone number, and e-mail address City of Portland 1221 SW Fourth Ave. Portland, OR 97201 503-823-3588	RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable Mark Amberg City Attorney's Office 1221 SW Fourth Ave., Rm 430 Portland, OR 97204 503-823-4047 mark.amberg@portlandoregon.gov

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

Background

1. Complainant Portland Police Association ("PPA") is a labor organization within the meaning of ORS 243.650(13).
2. Respondent City of Portland ("City") is a public employer within the meaning of ORS 243.650(20).
3. The PPA and City are parties to a collective bargaining agreement that expired on June 30, 2013. The parties are currently in negotiations over a successor agreement.
4. To date, the parties have met and bargained for five sessions on January 15, 2013; February 28, 2013; March 13, 2013; March 27, 2013; and June 26, 2013.
5. During the first two bargaining sessions, the parties exchanged ground rules proposals. One of the topics was whether the parties' bargaining sessions would be open to the public. The parties were not able to reach agreement on the issue of public bargaining or on any ground rules at all. The parties abandoned their ground rules discussions and proceeded to exchange contract proposals, in part because ground rules and other procedures to be used in negotiating a collective bargaining agreement are permissive subjects of bargaining. *See OPEU v. State of Oregon, Executive Dep't*, 14 PECBR 746, 765–767 (1993).
6. All five of the parties' bargaining sessions were held at the PPA. The parties discussed and through their course of conduct agreed that those sessions would be private, limiting the sessions only to the PPA's and City's bargaining teams. Neither the public nor off-duty PPA members were allowed in the sessions.
7. At the close of the parties' bargaining session on June 26, 2013, the PPA's lead negotiator, Anil Karia, asked Jerrell Gaddis, the City's lead negotiator, about when future bargaining sessions would take place. Mr. Gaddis stated that the next bargaining session would be on City property

and would be open to the public. Mr. Karia responded by noting that the parties had not agreed to bargaining sessions being open to the public. He further noted that the parties had not discussed future bargaining sessions and asked to discuss the matter further with Mr. Gaddis. Mr. Gaddis left the room without further discussion.

8. On July 1, 2013, Mr. Gaddis sent Mr. Karia an email with potential dates and times for future bargaining sessions. (Ex. A at p. 10).
9. Mr. Karia responded via email on July 2, 2013, seeking clarification from the City on whether the City was insisting that bargaining session would be open to the public. (Ex. A at p. 9).
10. The parties exchanged additional emails and, on July 8, 2013, Mr. Gaddis asserted that, "it is the city's position that the bargaining sessions will be open at the city's locations." (Ex. A at 7-9; emphasis added).
11. That same day, Mr. Karia requested from the City the legal authority "under the PECBA or elsewhere that requires labor negotiations to be open to the public." (Ex. A at 8).
12. On July 10, 2013, Mr. Gaddis responded to Mr. Karia's inquiry by email and agreed that there is no "legal authority under the PECBA or elsewhere that requires labor negotiations to be open to the public." Nevertheless, the City did not withdraw its requirement that future bargaining sessions be open to the public when held on City property. (Ex. A at 6-7).
13. On July 11, 2013, Mr. Karia confirmed via email that the PPA stood "ready and willing to meet at reasonable times and to confer in good faith in accordance with the PECBA." Mr. Karia then noted the PPA's concern with the "City's approach to this issue of public bargaining[.]" (Ex. A at 5).

14. Mr. Karia continued his July 11, 2013, email to Mr. Gaddis by noting the PPA's objection to the City's condition that bargaining sessions be open to the public, which is a permissive bargaining subject:

"In your July 8, 2013 email sent at 11:03 am, you wrote that, 'it is the city's position that the bargaining sessions will be open at the city's locations.' (Emphasis added). In your next email to me on July 10, 2013 sent at 10:40 am, you agree that there is no 'legal authority under the PECBA or elsewhere that requires labor negotiations to be open to the public.'

"You'll recall that when the parties first started bargaining in January 2013, the parties discussed ground rules, including whether bargaining should be open to the public. The parties never came to agreement on this issue of public bargaining. In fact, the parties were unable to agree on ground rules of any sort and abandoned ground rules altogether, in part because ground rules are permissive for bargaining. *See OPEU v. State of Oregon, Executive Dep't*, 14 PECBR 746, 765-767 (1993) (procedures to be used in negotiating a collective bargaining agreement are permissive subjects of bargaining).

"With your recent email correspondence asserting that bargaining will be open to the public when held at the City's locations along with your statement that there is no legal authority under the PECBA or elsewhere that requires labor negotiations to be open to the public, the PPA can only conclude that the City is conditioning bargaining on the PPA agreeing to a permissive subject--a ground rule regarding public bargaining. *See City of Cornelius v. AFSCME Local 189-E*, 6 PECBR 5523, 5528 (1982); *Lane County v. AFSCME Local 626*, 5 PECBR 4042, 4044 (1980) (parties guilty of bargaining in bad faith where they conditioned future negotiations upon agreement to ground rules)."

(Ex. A at 5-6).

15. By a July 12, 2013, email to Mr. Gaddis, Mr. Karia reaffirmed the PPA's objection to the City's conduct, stating that: "As a general proposition, the PPA is ready and willing to bargain in good faith. However, the PPA has not agreed to public bargaining, which is a permissive term upon which the City is insisting as a precondition to our continued bargaining." (Ex. A at 4).

16. Mr. Gaddis responded by email on July 15, 2013, and noted that the parties had no ground rules.

Nevertheless, the City did not withdraw its condition that bargaining be open to the public when held on City property and further asserted that the next bargaining session "will be at the city's location[.]" (Ex. A at 3-4; emphasis added).

17. On July 16, 2013, Messrs. Karia and Gaddis exchanged additional emails, with Mr. Gaddis unequivocally stating that when the parties "are bargaining on city property the bargaining sessions will be open to the public." (Ex. A at 3).

18. On July 19, 2013, Mr. Karia responded to Mr. Gaddis by email. Mr. Karia first recounted the parties' conduct in bargaining to date and further clarified that the PPA was willing to meet and bargain on August 1st and 15th:

"The parties' first five bargaining sessions were held at the PPA. The parties discussed and through their course of conduct agreed that those sessions would be private, limiting the sessions only to the PPA's and City's bargaining teams. Neither the public nor off-duty Association members were allowed in the sessions. The PPA is available to meet and bargain on August 1st and 15th at the City or the PPA, consistent with how the parties have agreed to hold bargaining sessions to date."

(Ex. A at 2).

19. In that same email, Mr. Karia continued to note the PPA's objection to the City conditioning its continued participation in bargaining on sessions being open to the public when on City property:

"However, your email responses below illustrate the core problem for the PPA. All of a sudden, the City has now unequivocally asserted to the PPA that bargaining sessions will be open to the public when held on City property and that at least the next session will be on City property. The PPA has not agreed to public bargaining, which is permissive for bargaining. Notwithstanding the PPA's repeated objections, the City continues to assert that it will allow the public into the bargaining room. The City cannot unilaterally define the terms of our bargaining sessions and

condition its future participation on the PPA agreeing to the City's terms."

(Ex. A at 2-3).

20. On July 22, 2013, Mr. Karia inquired by email whether the City would "meet and bargain on August 1 at City [Bureau of Human Resources] given that the PPA has not agreed to have bargaining sessions open to the public?" (Ex. A at 1-2).

21. Mr. Gaddis responded that, "The bargaining session on August 1st will be open to the public." (Ex. A at 1).

22. That same day, Mr. Karia responded by noting the PPA's objection to the City's bad faith bargaining conduct: "The City is conditioning its continued participation in bargaining on the PPA agreeing to public bargaining when sessions are held on City property, which is a permissive subject and hence bad faith bargaining under the PECBA." (Ex. A at 1).

23. To date, the City continues to condition its participation in further bargaining on an agreement by the PPA that bargaining take place in public when held on City property.

24. By its actions, the City has delayed and blocked the parties' bargaining over a successor collective bargaining agreement.

First Claim For Relief
Violation of ORS 243.672(1)(e)

25. The PPA realleges paragraphs 1-24, above.

26. Under ORS 243.672(1)(e), it is an unfair labor practice for a public employer to, "Refuse to bargain collectively in good faith with the exclusive representative."

27. Procedures to be used in negotiating a collective bargaining agreement, such as public bargaining sessions, are permissive subjects of bargaining. *See OPEU v. State of Oregon, Executive Dep't*, 14 PECBR 746, 765-767 (1993)

28. The City has conditioned bargaining on the PPA agreeing to a procedure used in negotiating a collective bargaining agreement—public bargaining. In so doing, the City has engaged in bad faith bargaining, in violation of ORS 243.672(1)(e). *See City of Cornelius v. AFSCME Local 189-E*, 6 PECBR 5523, 5528 (1982); *Lane County v. AFSCME Local 626*, 5 PECBR 4042, 4044 (1980) (parties guilty of bad faith bargaining where they conditioned future negotiations upon agreement to procedures to be used in negotiating a collective bargaining agreement).

Second Claim For Relief
Violation of ORS 243.672(1)(f)

29. The PPA realleges paragraphs 1-24, above.

30. Under ORS 243.672(1)(f), it is an unfair labor practice for a public employer to, "Refuse or fail to comply with any provision of ORS 243.650 to 243.782."

31. ORS 243.650(4) states in pertinent part:

"Collective bargaining' means the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining[.] * * * . The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession."

32. The City violated ORS 243.650(4) and, therefore, ORS 243.672(1)(f) when it refused to "meet at reasonable times and confer in good faith," and instead sought to compel the PPA to agree to a permissive subject for bargaining—a procedure regarding public bargaining sessions—over the PPA's objection.

Request for Civil Penalty

33. The City has acted egregiously, repeatedly, and in bad faith. Given Mr. Karia's emails to the City setting forth the ERB's case law on this issue, the City is aware that it is unlawful to condition bargaining on the PPA agreeing to public bargaining sessions. Notwithstanding multiple

opportunities to withdraw its bad faith bargaining position, the City continues to stand on its unlawful position, forcing the PPA to seek redress from this Board and further delaying the parties' bargaining over a successor collective bargaining agreement. It would further the policies of the PECBA to award a civil penalty of \$1,000 and filing fees against the City for its actions in this case.

WHEREFORE, the PPA requests an order:

- A. Finding that the City engaged in bad faith bargaining when it violated ORS 243.672(1)(e);
- B. Finding that the City violated ORS 243.672(1)(f);
- C. Requiring the City to cease and desist from its unlawful actions;
- D. Requiring the City to cease and desist from seeking to delay or block the parties' bargaining over a successor collective bargaining agreement by conditioning bargaining on a permissive subject;
- E. Requiring the City to post notices for a reasonable period of time and in noticeable places in the City stating that the City has been found in violation of ORS 243.762(1)(e) and (f), and to cease and desist from such conduct in the future. The City maintains e-mail addresses for all PPA members, and routinely uses its e-mail system to communicate with PPA members about job-related matters. This requirement for posting should include e-mail notification to all PPA members through the City's e-mail system;
- F. Reimbursing the PPA's filing fee under OAR 115-035-0075(3);
- G. Imposing a civil penalty on the City under OAR 115-035-0075(1);
- H. Awarding to the PPA its reasonable representation costs and attorney fees under ORS 243.676(2)(d) and OAR 115-035-0055;

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 information.



By: _____
Signature of Complainant's Representative

Attorney for Complainant
Title

July 26, 2013
Date

[Print](#) | [Close Window](#)

Subject: RE: PPA & City of Portland Bargaining Dates

From: "Anil Karia" <anil@miketlaw.com>

Date: Mon, Jul 22, 2013 11:33 am

To: "Gaddis, Jerrell" <Jerrell.Gaddis@portlandoregon.gov>

"Daryl Turner" <daryl@ppavigil.org>, "Secretary-Treasurer" <tom@ppavigil.org>, "Weber, Maureen"

Cc: <Maureen.Weber@portlandoregon.gov>, "Ward, Patrick" <Patrick.Ward@portlandoregon.gov>, "Amberg, Mark" <Mark.Amberg@portlandoregon.gov>, "Crebs, Michael" <Michael.Crebs@portlandoregon.gov>

Jerrell,

We're going in circles. The City is conditioning its continued participation in bargaining on the PPA agreeing to public bargaining when sessions are held on City property, which is a permissive subject and hence bad faith bargaining under the PECBA. At this point, I see no reason to continue this email discussion until the parties are able to resolve the City's bad faith bargaining tactic, perhaps with the ERB's assistance.

Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates

From: "Gaddis, Jerrell" <Jerrell.Gaddis@portlandoregon.gov>

Date: Mon, July 22, 2013 11:14 am

To: 'Anil Karia' <anil@miketlaw.com>

Cc: Daryl Turner <daryl@ppavigil.org>, Secretary-Treasurer

<tom@ppavigil.org>, "Weber, Maureen" <Maureen.Weber@portlandoregon.gov> ,

"Ward, Patrick" <Patrick.Ward@portlandoregon.gov>, "Amberg, Mark"

<Mark.Amberg@portlandoregon.gov>, "Crebs, Michael"

<Michael.Crebs@portlandoregon.gov>

Anil,

The bargaining session on August 1st will be open to the public. Please let me know if PPA will not be attending the bargaining session on August 1st.

Thank you

Jerrell P. Gaddis

Labor/Employee Relations Manager

City of Portland, Bureau of Human Resources

1120 SW 5th Ave., Rm. 404

Portland, Oregon 97204-1912

(503) 823-4170, Fax (503) 823-4156

Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]

Sent: Monday, July 22, 2013 11:07 AM

To: Gaddis, Jerrell

Cc: Daryl Turner; Secretary-Treasurer; Weber, Maureen; Ward, Patrick; Amberg, Mark; Crebs, Michael

Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

Will the City meet and bargain on August 1 at City BHR given that the PPA has not agreed to

Exhibit A

have the bargaining session open to the public?

Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates

From: "Gaddis, Jerrell" <Jerrell.Gaddis@portlandoregon.gov>

Date: Mon, July 22, 2013 10:41 am

To: 'Anil Karia' <anil@miketlaw.com>

Cc: Daryl Turner <daryl@ppavigil.org>, Secretary-Treasurer <tom@ppavigil.org>, "Weber, Maureen" <Maureen.Weber@portlandoregon.gov>, "Ward, Patrick" <Patrick.Ward@portlandoregon.gov>, "Amberg, Mark" <Mark.Amberg@portlandoregon.gov>, "Crebs, Michael" <Michael.Crebs@portlandoregon.gov>

Anil,

Thank you for confirming that PPA will be bargaining at the City on August 1, and at PPA on August 15th.

Location: Portland Building Conference Room HR 1

Time : 8:30 am – 1:00 pm.

Thank you

Jerrell P. Gaddis
Labor/Employee Relations Manager

City of Portland, Bureau of Human Resources
1120 SW 5th Ave., Rm. 404
Portland, Oregon 97204-1912
(503) 823-4170, Fax (503) 823-4156
Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]

Sent: Friday, July 19, 2013 1:57 PM

To: Gaddis, Jerrell

Cc: Daryl Turner; Secretary-Treasurer; Weber, Maureen; Ward, Patrick; Amberg, Mark; Crebs, Michael

Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

The parties' first five bargaining sessions were held at the PPA. The parties discussed and through their course of conduct agreed that those sessions would be private, limiting the sessions only to the PPA's and City's bargaining teams. Neither the public nor off-duty Association members were allowed in the sessions. The PPA is available to meet and bargain on August 1st and 15th at the City or the PPA, consistent with how the parties have agreed to hold bargaining sessions to date.

However, your email responses below illustrate the core problem for the PPA. All of a sudden, the City has now unequivocally asserted to the PPA that bargaining sessions will be open to the public when held on City property and that at least the next session will be on City property. The PPA has not agreed to public bargaining, which is permissive for bargaining. Notwithstanding the PPA's repeated objections, the City continues to assert that it will allow the public into the bargaining room. The City cannot unilaterally define the terms of our

bargaining sessions and condition its future participation on the PPA agreeing to the City's terms.

Given the City's conduct, the PPA will need to consider its available legal options with the Employment Relations Board to remedy the City's bad faith bargaining tactic.

Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates

From: "Gaddis, Jerrell" <Jerrell.Gaddis@portlandoregon.gov>

Date: Tue, July 16, 2013 1:24 pm

To: 'Anil Karia' <anil@miketlaw.com>

Cc: Daryl Turner <daryl@ppavigil.org>, 'Secretary-Treasurer' <tom@ppavigil.org>, "Weber, Maureen" <Maureen.Weber@portlandoregon.gov>, "Ward, Patrick" <Patrick.Ward@portlandoregon.gov>, "Amberg, Mark" <Mark.Amberg@portlandoregon.gov>, "Crebs, Michael" <Michael.Crebs@portlandoregon.gov>

Anil,

To answer your question "No", the city will not be withdrawing it's position. Anil I will make it clear for you again, when we are bargaining on city property the bargaining sessions will be open to the public.

JG

Jerrell P. Gaddis
Labor/Employee Relations Manager

City of Portland, Bureau of Human Resources
1120 SW 5th Ave., Rm. 404
Portland, Oregon 97204-1912
(503) 823-4170, Fax (503) 823-4156
Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]

Sent: Tuesday, July 16, 2013 11:24 AM

To: Gaddis, Jerrell

Cc: Daryl Turner; 'Secretary-Treasurer'; Weber, Maureen; Ward, Patrick; Amberg, Mark

Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

While I'm confirming dates with my bargaining team, we need to get to the bottom of this public bargaining issue. Your email response below is unclear. Has the City withdrawn its position that bargaining sessions will be open to the public when on City property?

Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates

From: "Gaddis, Jerrell" <Jerrell.Gaddis@portlandoregon.gov>

Date: Mon, July 15, 2013 9:14 am

To: 'Anil Karia' <anil@miketlaw.com>
Cc: Daryl Turner <daryl@ppavigil.org>, 'Secretary-Treasurer' <tom@ppavigil.org>, "Weber, Maureen" <Maureen.Weber@portlandoregon.gov>, "Ward, Patrick" <Patrick.Ward@portlandoregon.gov>, "Amberg, Mark" <Mark.Amberg@portlandoregon.gov>

Anil,

What I am trying to convey to you is "public bargaining" is not a "ground rule" or a permissive term on which the City is trying to condition bargaining. There are no ground rules and the City is not conditioning bargaining on anything. It is merely a fact that the Association and the City have not agreed to closed bargaining - or defined who can attend bargaining sessions. If members of the public want to attend bargaining on City property - which, generally, is open to the public - unless the City excludes them (which the City would have the right to do), they can attend. This is no different than if a group of off-duty Association members show up for a bargaining session at the Association's office. If that happens, the City would not have any grounds to keep them out since there is no agreement to restrict who can attend bargaining. Basically, since there are no ground rules, the parties can invite or allow who they want to attend bargaining. The same would be true for the City. Please let me know at your earliest convenience what dates will work for PPA. Whatever dates you chose the first meeting will be at the city's location and we will rotate from that point forward.

Thank you

Jerrell P. Gaddis
Labor/Employee Relations Manager

City of Portland, Bureau of Human Resources
1120 SW 5th Ave., Rm. 404
Portland, Oregon 97204-1912
(503) 823-4170, Fax (503) 823-4156
Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]

Sent: Friday, July 12, 2013 4:42 PM

To: Gaddis, Jerrell

Cc: Daryl Turner; 'Secretary-Treasurer'; Weber, Maureen; Ward, Patrick; Amberg, Mark

Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

At the outset, July 18th is not feasible as we have a status conference with Judge Simon regarding the USDOJ matter. Further, I am still confirming the availability of the PPA's bargaining team on the other dates you have offered (a number of my team members are on vacation or are out of the office, including Daryl).

More importantly, you have misread my correspondence. As a general proposition, the PPA is ready and willing to bargain in good faith. However, the PPA has not agreed to public bargaining, which is a permissive term upon which the City is insisting as a precondition to our continued bargaining. Please confirm that the City is not preconditioning our continued bargaining on a permissive term--public bargaining.

Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates
From: "Gaddis, Jerrell" <Jerrell.Gaddis@portlandoregon.gov>
Date: Fri, July 12, 2013 4:07 pm
To: 'Anil Karia' <anil@miketlaw.com>
Cc: Daryl Turner <daryl@ppavigil.org>, 'Secretary-Treasurer' <tom@ppavigil.org>, "Weber, Maureen" <Maureen.Weber@portlandoregon.gov>, "Ward, Patrick" <Patrick.Ward@portlandoregon.gov>, "Amberg, Mark" <Mark.Amberg@portlandoregon.gov>

Anil,

Your response is a confirmation to the City that you are not refusing to bargain with the city on the dates and locations that the city has communicated to PPA in an earlier e-mail. Just so we are on the same page our upcoming bargaining date and time.

Date : July 18th, 2013

Time : 8:30 – 12:00 pm

Location : Portland Building HR 1 –On the Second Floor

Thanks

Jerrell P. Gaddis
Labor/Employee Relations Manager

City of Portland, Bureau of Human Resources
1120 SW 5th Ave., Rm. 404
Portland, Oregon 97204-1912
(503) 823-4170, Fax (503) 823-4156
Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]

Sent: Thursday, July 11, 2013 3:30 PM

To: Gaddis, Jerrell

Cc: Daryl Turner; 'Secretary-Treasurer'; Weber, Maureen; Ward, Patrick; Amberg, Mark

Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

The PPA is not refusing to bargain, and nothing in my correspondence can or should be construed as a refusal to bargain. The PPA stands ready and willing to meet at reasonable times and to confer in good faith in accordance with the PECBA.

With that said, it is the City's approach to this issue of public bargaining that is cause for concern. In your July 8, 2013 email sent at 11:03 am, you wrote that, "it is the city's position that the bargaining sessions will be open at the city's locations." (Emphasis added). In your next email to

me on July 10, 2013 sent at 10:40 am, you agree that there is no "legal authority under the PECBA or elsewhere that requires labor negotiations to be open to the public."

You'll recall that when the parties first started bargaining in January 2013, the parties discussed ground rules, including whether bargaining should be open to the public. The parties never came to agreement on this issue of public bargaining. In fact, the parties were unable to agree on ground rules of any sort and abandoned ground rules altogether, in part because ground rules are permissive for bargaining. See *OPEU v. State of Oregon, Executive Dep't*, 14 PECBR 746, 765-767 (1993) (procedures to be used in negotiating a collective bargaining agreement are permissive subjects of bargaining).

With your recent email correspondence asserting that bargaining will be open to the public when held at the City's locations along with your statement that there is no legal authority under the PECBA or elsewhere that requires labor negotiations to be open to the public, the PPA can only conclude that the City is conditioning bargaining on the PPA agreeing to a permissive subject--a ground rule regarding public bargaining. See *City of Cornelius v. AFSCME Local 189-E*, 6 PECBR 5523, 5528 (1982); *Lane County v. AFSCME Local 626*, 5 PECBR 4042, 4044 (1980) (parties guilty of bargaining in bad faith where they conditioned future negotiations upon agreement to ground rules).

Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates
From: "Gaddis, Jerrell" <Jerrell.Gaddis@portlandoregon.gov>
Date: Wed, July 10, 2013 11:40 am
To: 'Anil Karia' <anil@miketlaw.com>
Cc: Daryl Turner <daryl@ppavigil.org>, 'Secretary-Treasurer' <tom@ppavigil.org>, "Weber, Maureen" <Maureen.Weber@portlandoregon.gov>, "Ward, Patrick" <Patrick.Ward@portlandoregon.gov>, "Amberg, Mark" <Mark.Amberg@portlandoregon.gov>

Anil,

I appreciate your follow up communication. However, I would like to respond to your statement that "I am not aware of any legal authority under the PECBA or elsewhere that requires labor negotiations to be open to the public." You are correct, and there is no legal authority under the PECBA or elsewhere that requires labor negotiations to be closed to the public either. I believe it is in the interest of both parties follow our agreement from 2010 on this issue. With that said, what the

City needs to know is whether the PPA is refusing to bargain on the dates and locations the City has identified below.

Thank you

Jerrell P. Gaddis
Labor/Employee Relations Manager

City of Portland, Bureau of Human Resources
1120 SW 5th Ave., Rm. 404
Portland, Oregon 97204-1912
(503) 823-4170, Fax (503) 823-4156
Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]
Sent: Monday, July 08, 2013 12:05 PM
To: Gaddis, Jerrell
Cc: Daryl Turner; 'Secretary-Treasurer'; Weber, Maureen; Ward, Patrick
Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

Thank you for clarifying the City's position. I am not aware of any legal authority under the PECBA or elsewhere that requires labor negotiations to be open to the public. Perhaps I'm missing something. Can you provide me with the City's legal authority on this point?

Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates
From: "Gaddis, Jerrell"
<Jerrell.Gaddis@portlandoregon.gov>
Date: Mon, July 08, 2013 11:03 am
To: 'Anil Karia' <anil@miketlaw.com>
Cc: Daryl Turner <daryl@ppavigil.org>, 'Secretary-Treasurer'
<tom@ppavigil.org>, "Weber, Maureen"
<Maureen.Weber@portlandoregon.gov>,
"Ward, Patrick" <Patrick.Ward@portlandoregon.gov>

Anil, I represent the City and it is the city's position that the bargaining sessions will be open at the city's locations.

Thanks

Jerrell

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Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]

Sent: Monday, July 08, 2013 10:49 AM

To: Gaddis, Jerrell

Cc: Daryl Turner; 'Secretary-Treasurer'; Weber, Maureen; Ward, Patrick

Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

Your note reaffirms my understanding of your personal position: negotiations are open to the public unless both parties agree to close them. However, it's unclear to me whether your point of view is also the City's position, as you have not answered my question. Again, can you please let me know the City's position on this issue?

Thanks,
Anil

----- Original Message -----

Subject: RE: PPA & City of Portland Bargaining Dates

From: "Gaddis, Jerrell"

<Jerrell.Gaddis@portlandoregon.gov>

Date: Mon, July 08, 2013 9:02 am

To: 'Anil Karia' <anil@miketlaw.com>

Cc: Daryl Turner <daryl@ppavigil.org>, 'Secretary-Treasurer'

<tom@ppavigil.org>, "Weber, Maureen"

<Maureen.Weber@portlandoregon.gov>,

"Ward, Patrick"

<Patrick.Ward@portlandoregon.gov>

Anil,

My recollection is a little different from yours. I asked about dates and location for the next bargaining session and I said to you we can have the next meeting at our location and then rotate weekly. Then you asked who will be attending, and I responded it will be open to the public and then your response was we never agreed to have open sessions and I stated we never agreed that they will be closed and that is where the conversation ended and as I walked out I said I will send you dates.

Thanks

Jerrell P. Gaddis
Labor/Employee Relations Manager

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Jerrell.Gaddis@portlandoregon.gov

From: Anil Karia [<mailto:anil@miketlaw.com>]
Sent: Tuesday, July 02, 2013 3:54 PM
To: Gaddis, Jerrell
Cc: Daryl Turner; 'Secretary-Treasurer'; Weber, Maureen; Ward, Patrick
Subject: RE: PPA & City of Portland Bargaining Dates

Jerrell,

At the end of our last bargaining session on June 26, 2013, I asked you about the location for upcoming sessions and whether, from the City's perspective, the upcoming sessions would be open to the public. As you were leaving the room, you made some mention of negotiations being open to the public unless both parties agree to close them. It's unclear to the PPA whether your point of view was meant to represent the City's position.

Can you please let me know the City's position on this issue? The PPA's bargaining team will be discussing the schedule for upcoming bargaining sessions, and it would be helpful to have a better understanding of the City's position.

Thanks,
Anil

----- Original Message -----

Subject: PPA & City of Portland
Bargaining Dates

From: "Gaddis, Jerrell"

<Jerrell.Gaddis@portlandoregon.gov>

Date: Mon, July 01, 2013 12:10 pm

To: "anil@miketlaw.com"

<anil@miketlaw.com>

Cc: Daryl Turner <daryl@ppavigil.org> ,

'Secretary-Treasurer'

<tom@ppavigil.org> , "Weber, Maureen"

<Maureen.Weber@portlandoregon.gov> ,

"Ward, Patrick"

<Patrick.Ward@portlandoregon.gov>

Dear Anil:

We have identified future
bargaining dates that work for the
City as follows:

Thursday, July 18 at Portland
Building

Friday, July 26 at PPA

Thursday, August 1 at Portland
Building

Thursday, August 15 at PPA

Thursday, August 22 at Portland
Building

Please confirm whether these
dates work for the PPA. Thanks,

Jerrell P. Gaddis
Labor/Employee Relations Manager

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