

STATE OF OREGON, EMPLOYMENT RELATIONS BOARD

**UNFAIR LABOR PRACTICE COMPLAINT
AGAINST LABOR ORGANIZATION**

For ERB Use Only

Case No.: _____

Date Filed: _____

File your complaint (with any attachments) and pay the \$300 filing fee on our online Case Management System-CMS (<https://apps.oregon.gov/erb/cms/auth>). You may also mail, fax, email, or hand-deliver your complaint to:

Employment Relations Board
528 Cottage St. NE, Suite 400
Salem, OR 97301
Email: ERB.Filings@oregon.gov
Fax: (503) 373-0021
Phone: (503) 378-3807

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 or hand deliver the \$300 filing fee. Your filing is not complete until the \$300 is paid. There is an additional \$25 fee to file a document by fax.

1. COMPLAINANT

Name, address, phone number, and email address.
Tri-County Metropolitan Transportation District of Oregon
c/o Laird Cusack
1800 S.W. First Avenue, Suite 300, Portland, OR 97201
Phone: 503.238.7433; e-mail: cusackl@trimet.org

2. COMPLAINANT’S REPRESENTATIVE

Name, address, phone number, and email address.
Taylor D. Richman and Jeffrey P. Chicoine
Miller Nash Graham & Dunn LLP
111 S.W. 5th Ave., Ste. 3400, Portland, OR 97204
Ph: 503.224.5858; e-mail: taylor.richman@millernash.com

3. RESPONDENT (Labor organization or public employee)

Name, address, phone number, and email address.
Amalgamated Transit Union, Division 757
1801 N.E. Couch Street
Portland, OR 97232

4. RESPONDENT’S REPRESENTATIVE

Name, address, phone number, and email address.
Whitney Stark
Albies & Stark LLC
1 S.W. Columbia St., Ste. 1850, Portland, OR 97204
Ph: 503.308.4770; e-mail: whitney@albiesstark.com

5. Complainant alleges that Respondent has violated the following subsection(s) of ORS 243.672(2) or ORS 243.752 of the Public Employee Collective Bargaining Act, which make it an unfair labor practice for a public employee or for a labor organization or its designated representative to (check all that apply):

- 243.672(2)(a): Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.
- 243.672(2)(b): Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.
- 243.672(2)(c): Refuse or fail to comply with any provision of ORS 243.650 to 243.782.
- 243.672(2)(d): 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(2)(e): Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- 243.672(2)(f): Engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995 (if a labor organization).
- 243.672(2)(g): Picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member’s business or to cease handling, transporting or dealing in goods or services produced at the governing body’s business (if a labor organization).
- 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

Attorney for TriMet
Title

2/3/20
Date

**INSTRUCTIONS FOR FILING UNFAIR LABOR PRACTICE
COMPLAINT AGAINST LABOR ORGANIZATION**

Confirm You are Using the Correct Unfair Labor Practice Form

The Employment Relations Board (ERB) has four different unfair labor practice complaint forms:

1. Unfair Labor Practice Complaint Against Public Employer: Use this form for claims that a public employer violated one or more of the subsections of ORS 243.672(1) or ORS 243.752 of the Public Employee Collective Bargaining Act (PECBA).
2. Unfair Labor Practice Complaint Against Labor Organization: Use this form for claims that a labor organization or public employee violated one or more of the subsections of ORS 243.672(2) or ORS 243.752 of PECBA.
3. Duty of Fair Representation Unfair Labor Practice Complaint: Use this form if you are a public employee and your claim is that a labor organization violated its duty of fair representation under PECBA, ORS 243.672(2)(a). You can use the same form to file a related claim against a public employer for violation of PECBA, ORS 243.672(1)(g).
4. Private Sector Unfair Labor Practice Charge: Use this form only for unfair labor practice claims under the Oregon private sector labor-management relations law, ORS 663.005-663.295.

Filing Requirements

To file an unfair labor practice complaint, you must submit the following to ERB:

1. A complete and signed unfair labor practice form;
2. A statement of claims; and
3. A \$300 complaint filing fee.

You do not need to give ERB any extra copies of the complaint, and you do not need to serve the complaint on the respondent.

Filing Methods

You may file your complaint by using our online Case Management System-CMS (*preferred*) (<https://apps.oregon.gov/erb/cms/auth>). You may also mail, fax*, email, or hand-deliver the charge and any attachments to:

Employment Relations Board
528 Cottage St. NE, Suite 400
Salem, OR 97301
Email: ERB.Filings@oregon.gov
Fax: (503) 373-0021*
Phone: (503) 378-3807

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 e-filing system—**credit card payments are not currently supported**.

If you do not use our online CMS to pay the \$300 filing fee, you may mail or hand-deliver a check payable to Employment Relations Board. Please note that the complaint will not be deemed filed until the date that the Board receives the \$300 filing fee.

*There is an additional \$25 fee to file a document by fax. There is no additional fee to file by other methods (CMS, mail, email, or hand delivery).

Fill Out the “Unfair Labor Practice Complaint Against Labor Organization” Form

Section 1: The “Complainant” is the party that is filing the complaint. Provide the complainant’s name and contact information.

Section 2: The “Complainant’s Representative”: If the complainant will be represented by an attorney or other advocate in this unfair labor practice case, provide the representative’s name and contact information. If you (the complainant) are representing yourself (without an attorney), explain that in Section 2 by writing, for example, “No representative,” or “Self-represented.”

Section 3: The “Respondent” is the labor organization and/or public employee against whom the complaint is being filed. Provide the respondent’s name and contact information.

Section 4: The “Respondent’s Representative”: If you know that the respondent is represented by an attorney or other advocate, provide the representative’s name and contact information. If there is no representative, or if you do not know who the representative is, explain that in Section 4.

Section 5: This section lists the PECBA sections that define unfair labor practices by a labor organization or public employee. Check all of the sections that you allege the respondent violated.

Section 6: This section lists the optional requests (for a civil penalty, filing-fee reimbursement, or expedited processing) that you may make by including the request in the complaint and meeting additional requirements, which are described in Section 7. If you are making any of those requests at this time, check all of the boxes that apply.

Section 7: This section describes the requirements for the “Statement of Claims” that you must file with your complaint. This section also describes the additional requirements that apply if you are requesting a civil penalty, filing-fee reimbursement, or expedited processing of your case.

If you refer to documents in your statement of claims, you may attach copies of some or all of those documents, but you are not required to do so. If you choose to submit documents to ERB, you should redact private or confidential information, such as social security numbers.

Certify and Sign the Complaint

You must sign and date the complaint form. By signing the complaint form, you are certifying that all of the statements in the Complaint (including the Statement of Claims) are true to the best of your knowledge and information.

For More Information

The most extensive sources for information on unfair labor practice case procedures are PECBA, ORS 243.650-243.782, and ERB’s administrative rules, specifically in Divisions 10 and 35. A copy of those laws and rules are available in ERB’s Rulebook, which is posted on ERB’s website: <http://www.oregon.gov/erb>. ERB also posts other resources on its website that may be helpful to you, including a guide titled, “Questions and Answers: PECBA Unfair Labor Practice Cases,” which provides basic information about unfair labor practice case procedures.

You may also contact ERB at (503) 378-3807, or Emprel.Board@oregon.gov. ERB staff can answer questions regarding procedures and applicable laws and rules. However, they are not permitted to give you legal advice.

BEFORE THE EMPLOYMENT RELATIONS BOARD
OF THE
STATE OF OREGON

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON,

Complainant,

v.

AMALGAMATED TRANSIT UNION,
DIVISION 757,

Respondent.

No.

TRIMET'S STATEMENT OF CLAIMS TO
COMPLAINT

**EXPEDITED CONSIDERATION
REQUESTED**

Complainant, Tri-County Metropolitan Transportation District of Oregon ("TriMet"), brings this complaint against Respondent, Amalgamated Transit Union, Division 757 ("ATU" and, together with TriMet, the "Parties"), for violating ORS 243.672(2)(b) of the Public Employee Collective Bargaining Act ("PECBA") by insisting on bargaining over certain contractual terms that TriMet identified as permissive and for which TriMet indicated its intent not to bargain. The contract terms in dispute pertain to TriMet's apprenticeship and training programs (collectively, "TriMet's Apprenticeship Programs").

TriMet's specific allegations are as follows:

1. TriMet is a public employer under ORS 243.650(20).
2. ATU is a labor organization as defined in ORS 243.650(13) and is the exclusive representative of a bargaining unit, as that term is used in ORS 243.650(8). This bargaining unit consists of employees in TriMet's Maintenance Department.
3. From December 1, 2016, to November 30, 2019, TriMet and ATU were parties to a collective bargaining agreement titled the Working and Wage Agreement (the "2016-

2019 WWA"). A copy of the 2016-2019 WWA is attached as Exhibit 1. As relevant to this complaint, the 2016-2019 WWA included the following provisions in Article 3 related to

TriMet's Apprenticeship Programs:

"ARTICLE 3 – OPERATIONS DIVISION/MAINTENANCE DEPARTMENT

"Section 1 – GENERAL

* * *

"Par. 10. Notwithstanding any other provision of this Agreement, the District shall have the right to hire up to five (5) journey workers annually from outside the District to fill positions in any apprenticeship discipline within the District.

"Par. 11. Notwithstanding any other provision of this Agreement, all journey level workers shall be required to work for seven years in their discipline prior to moving to a different discipline unless there is a hardship established by the JATC.

* * *

"Section 7 – MECHANIC TRAINING PROGRAM

"Par. 1. There shall be a Mechanic Training Program. The purpose of this program is to offer qualified trainees an opportunity to advance in the field of bus maintenance to a high level of proficiency.

"Par. 2. This program is an on-the-job program. Routine assignments as well as training instruction will be delegated to trainees in this program.

"Par. 3. Work assignments, shift hours, and area of instruction will be decided by the Training Manager.

"Par. 4. Applications will be accepted from employees of the District. A qualification test to determine mechanical aptitude will be given and appointments will be made based on seniority from those applicants receiving a passing test score. All Helpers on the payroll as of April 1, 1979, shall have a right to enter this training program with no reduction in wages, based on seniority and a passing test score before other applicants are appointed. Should no one apply, or should all applicants fail to receive a passing test score, the District shall have the right to recruit applicants from outside the employee group.

"Par. 5. Trainees in the training program shall, except as otherwise provided in this section, operate in accordance to the rules and procedures previously entered into between the parties.

"Par. 6. Trainees will receive the Helper's rate for the first two(2) years in the training program, the Maintenance Mechanic's rate for the third year of training, and shall be advanced to the Journey Level Mechanic's rate upon the successful completion of the third year.

"Par. 7. A log or diary will be kept to record the assignments and duties performed by the trainees, including comments and observations of Supervisors and instructing Mechanics. The Director of Maintenance, or his/her designee will evaluate trainees at the end of ninety (90) days. Unsatisfactory progress will necessitate dismissal from the training program. Helpers unsuccessful in the training program will be returned to their former assignment with no loss of seniority or rights in the former classification. Evaluation of the trainees resulting in continuation in, or dismissal from, the program will take place every ninety (90) days until training has been completed. All trainees retain their rights to the grievance procedure.

"Par. 8. A joint committee composed of three (3) representatives each, for both the District and the Union shall be established in conjunction with this training program.

"Par. 9. Nothing in this Agreement bars the District from promoting a Mechanic Trainee to a Journey Level Mechanic when qualified.

"Par. 10. Apprentice Mechanics may be promoted to a Journey Level Mechanic when qualified. If so promoted, the individual will be paid at the top rate at time of promotion.

"Par. 11. Any District employee who has successfully met all the prerequisites established by the District and is selected to enter a District apprenticeship program, shall, as a condition of entering an apprenticeship program, attend an apprenticeship program orientation of that program. The orientation will include a meeting with a supervisor to cover job requirements and expectations, working conditions, and an interview with a journey level worker. Any employee after entering a program and who leaves that program for any reason prior to attaining journey level status, shall forfeit their right to enter another program for one year or the length of time served in that program, whichever is lesser.

* * *

"Section 11 – LRT MAINTENANCE VEHICLE MECHANICS' TRAINING

"Par. 1. All light rail employees shall receive their regular rate of pay while training.

"Par. 2. The LRT Mechanic Apprentice Program shall be governed by the same provisions contained in Section 7 of this Article with the following exceptions:

- "a. Work assignments, shift hours, and areas of instruction will be decided by the Maintenance Manager.
- "b. A qualification test to determine mechanical, electrical and electronic aptitude will be given.
- "c. The LRT Mechanic Apprentice may be promoted to Journey Level Mechanic when qualified, and if so promoted will be paid at top rate at time of promotion.

"Par. 3. A joint committee composed of three (3) representatives each, for both the District and the Union, shall be established in conjunction with this apprentice program.

* * *

"Section 15 – LRT APPRENTICESHIP TRAINING PROGRAMS

"Par. 1. Light Rail Maintenance Department shall have six (6) Journey Level Classifications:

- Overhead Traction Electrification Maintainer
- Traction Substation Technician
- Signal Maintainer
- Track Maintainer
- Rail Vehicle Mechanic
- Field Equipment Technician

"Par. 2. Each Journey Level Mechanic shall hold seniority only with his/her specific classification. The District may administer cross training to light rail Maintenance of Way (MOW) employees for purposes of teamwork, optimum productivity, and mutual assistance among MOW disciplines, as well as to enhance safety.

"Par. 3. The District shall establish MOW Apprenticeship Programs in the classifications of:

- Signal Maintainer
- Overhead Traction Electrification Maintainer
- Traction Substation Technician
- Field Equipment Technician

"Par. 4. The parties acknowledge the joint apprenticeship and training committees (or trade committees) as the exclusive source for apprenticeship and training standards as approved by the State of Oregon Apprenticeship and Training Council.

"Par. 5. The District shall fill light rail apprenticeship openings in order of seniority of applicants passing aptitude tests offered to District employees in the following priority order:

- "a. Journey Level maintenance employees who have seven (7) or more years of Journey Level status.
- "b. Other non-Journey Level maintenance employees who are not currently enrolled in a District apprenticeship program.
- "c. All other District employees.
- "d. If an apprentice opening remains open after offering aptitude tests to internal applicants, as outlined above, the District may offer such openings to outside applicants.

"Par. 6. District employees entering the light rail MOW Apprenticeship Program shall be paid according to the LRV Apprentice Mechanic schedule.

"Par. 7. In the event that the selection of the most senior Journey Level mechanic (bus or rail) applicant for a light rail MOW apprenticeship vacancy would result in a severe hardship on the District relating to the performance of a Journey Level's regular work (i.e., the resulting Journey Level mechanic vacancy would result in the need to cut jobs or to contract out work under the terms of the Maintenance Assistance Fund), the District may pass over that mechanic and select the next qualified applicant. In such cases, the mechanic who has been passed over will be given the opportunity to fill the next light rail MOW Apprenticeship Program vacancy. Upon successful completion of the Apprenticeship Program, the passed-over mechanic shall be afforded the seniority s/he otherwise would have had if selected for the initial opening.

- "a. 'Passed Up Mechanics':
 - "1. Journey-level mechanics from all disciplines, after meeting the seven (7) year requirement and other pre-qualifications, would go into apprenticeship at the top apprentice rate (equal to the top helper rate) under conditions in Article 3, Section 7, Paragraph 6, and as outlined in the Apprentice Mechanics pay schedule of this Agreement.
 - "2. Helpers from Bus and Rail would enter apprenticeships based upon Article 3, Section 7, Paragraph 6 and the existing pay schedule for Apprentice Mechanics of this Agreement.
 - "3. The District may use the MOW hold back language for journey-level movement into any apprentice program.

"Where applicable, the above provision also applies to Bus Maintenance.

"Par. 8. Nothing in this Agreement bars the District from promoting an apprentice to a Journey Level in less than four (4) years; however, promotion to Journey Level status from an apprentice program in four (4) years shall be based on District seniority in accordance with the collective bargaining agreement. Upon six (6) months' accrual in an apprenticeship program, an employee shall

forfeit seniority held in the employee's previous classification. Prior to such six (6) months' accrual, however, an employee may elect to return to his/her previous classification, whereupon the employee's seniority held upon return shall be the same as if he/she has remained in the previous classification; this provision may also be effective following six (6) months' accrual for a particular employee by mutual agreement between the District and the Union.

"Par. 9. In lieu of a certified apprenticeship program for Track Maintainer, the following provisions shall govern the filling of Track Maintainer openings.

- "a. Create a classification of Laborer/Track Trainee: Labor/Track Trainees will be filled from the Laborers classification. By seniority, Laborers will be offered the Track Trainee positions. The Track Trainees will be given formal training as well as On The Job training (OJT) in Track Maintenance. When not performing Track OJT they will perform their regular Laborer job duties.
- "b. Those holding the Laborer/Track Trainee positions will be eligible for overtime call-outs, to assist when track work is being performed during off-hours. These call-outs would come after the regular Track Maintainers had been called but before other journeymen were called.
- "c. Laborer/Track Trainees shall remain in those positions until such time as the District offers an opening for Track Maintainer. When such an opening occurs it shall be offered by seniority to qualified Laborer/Track Trainees. Those that decline to fill the offered positions will either fill a Laborer's position, if an open position exists, or if no positions exist, will return to the previous classification held prior to Laborer with loss of all seniority as Laborer and/or Laborer/Track Trainee. Once a person declines a Track Maintainers position they will not be eligible for another opportunity for a period of five (5) years.
- "d. A maximum of four (4) Laborer/Track Trainee positions may be created. Additional positions, if needed, may be created with District/Union agreement.
- "e. The State of Oregon Apprenticeship Council shall not govern the Laborer/Track Trainee program, but the Light Rail Apprenticeship Committee shall oversee the training, testing and qualifying of those persons holding these positions.
- "f. Openings for Laborer/Track Trainees shall be filled [in] accordance with Article 3, Section 15, Paragraph 5.

* * *

"Par. 11. Apprentice Programs

"Any District employee who has successfully met all the prerequisites established by the District and is selected to enter a District apprenticeship program, shall, as a condition of entering an apprenticeship program, attend an apprenticeship program orientation of that program. The orientation will include a meeting with a supervisor to cover job requirements and expectations, working conditions, and an interview with a journey level worker. Any employee after entering a program and who leaves that program for any reason prior to attaining journey level status, shall forfeit their right to enter another program for one year or the length of time served in that program, whichever is lesser.

* * *

"Section 21 - HIRING APPRENTICES FROM OUTSIDE

"Par. 1. This Section applies to all District apprenticeship programs.

"Par. 2. Notwithstanding any other provision of this Agreement, the District shall have the right to hire from the outside up to ½ of all apprentices annually in each apprentice program within the District. All newly hired apprentices, whether from within or outside the bargaining unit, shall meet the minimum qualifications established by the District.

"Par. 3. As provided under standards of the State of Oregon Apprenticeship and Training Council, the Joint Apprentice Training Committee (JATC) for the respective apprenticeship program will evaluate placement of an apprentice hired from the outside into the appropriate progression step of the program, and the District will pay such apprentice at the wage pertaining to that step.

"Par. 4. Any apprentice hired from the outside will establish classification seniority behind any apprentices currently in the respective apprenticeship program as of the date such apprentice is hired."

4. Formal bargaining of the Parties' successor agreement to the 2016-2019 WWA began on October 10, 2019.

5. On October 10, 2019, the Parties exchanged initial bargaining proposals and held a bargaining session. TriMet's initial proposal struck the provisions of Article 3 of the 2016-2019 WWA addressing TriMet's Apprenticeship Programs. But TriMet also conveyed that it would nevertheless "maintain the status quo for mandatory subjects of bargaining for employees currently in Apprenticeship positions, until such time as they complete or otherwise

leave their program." A copy of TriMet's October 10, 2019, Article 3 proposal is attached as Exhibit 2.

6. ATU's October 10, 2019, initial proposal did not strike any provisions of Article 3 of the 2016-2019 WWA addressing TriMet's Apprenticeship Programs. ATU informed TriMet that, except as expressly modified by ATU's proposal, it was proposing that all language from Article 3 of the 2016-2019 WWA carry forward into the successor agreement. Because ATU's proposal did not strike any provisions of Article 3 addressing TriMet's Apprenticeship Programs, ATU was therefore proposing to bargain over these training programs. A copy of ATU's October 10, 2019, proposal is attached as Exhibit 3.

7. At the October 10 bargaining session, having received ATU's initial proposal, Laird Cusack, TriMet's Director for Labor and Employee Relations, asked whether ATU contended that bargaining over TriMet's Apprenticeship Programs was mandatory. Whitney Stark, the attorney representing ATU in successor bargaining, responded affirmatively.

8. On November 11, 2019, the Parties met for an information session regarding the Maintenance Department. At this meeting, Mr. Cusack asked whether ATU was refusing to agree to a successor agreement that did not include provisions for the maintenance of TriMet's Apprenticeship Programs. Ms. Stark confirmed that this was ATU's position. Shirley Block, ATU's President and Business Representative, also remarked: "There is no way in hell I am signing a contract that takes away the apprenticeship program."

9. On December 5, 2019, the Parties held another bargaining session and TriMet submitted another proposal, which included a reclassification of positions in the Maintenance Department. The December 5 bargaining session was intended to be an

opportunity for ATU to present a counterproposal to TriMet's October 10 proposal concerning Article 3 terms. But instead of making a counterproposal, Ms. Stark claimed that ATU could not respond to TriMet's October 10 proposal, which she characterized as a "slash and burn" proposal. Ms. Block confirmed that ATU would not withdraw its proposal to bargain over the maintenance of TriMet's Apprenticeship Programs, stating that she was "not going to sit idle and let this happen." A copy of TriMet's December 5, 2019, proposal is attached as Exhibit 4.

10. On December 10, 2019, Ms. Block copied several TriMet managers on an e-mail in which she wrote: "I will never turn my back on the apprenticeship program."

11. On December 19, 2019, ATU finally presented a counterproposal to TriMet's October 10, 2019, proposal on Article 3 terms. But this counterproposal sought to expand the scope of TriMet's Apprenticeship Programs so that "all Journey Worker classification[s] shall have a trainee program" that is governed by the "JATC and BOLI standards." A copy of ATU's December 19, 2019, counterproposal is attached as Exhibit 5.

12. On December 19, 2019, TriMet provided ATU with a document setting forth a "concept for discussion," which included concepts about training and minimum qualifications for new maintenance positions. This document was not a bargaining proposal. A copy of TriMet's December 19, 2019, concept document is attached as Exhibit 6.

13. On December 30, 2019, Mr. Cusack e-mailed a letter to Ms. Block addressing bargaining over TriMet's Apprenticeship Programs. Mr. Cusack's letter expressed his concern that even after TriMet had made clear its intent not to bargain over certain permissive subjects, including the provisions of Article 3 of the 2016-2019 WWA that addressed TriMet's Apprenticeship Programs, ATU had repeatedly stated that it would not sign a successor

agreement unless TriMet included provisions maintaining TriMet's Apprenticeship Programs. The letter further pointed to multiple statements by representatives of ATU that conveyed ATU's position that it was insisting on bargaining over the maintenance of TriMet's Apprenticeship Programs, even after TriMet had expressed its intent not to bargain over the maintenance of these programs. Mr. Cusack reiterated TriMet's position that it was declining to bargain over the Article 3 terms addressing TriMet's Apprenticeship Programs that it had struck in its October 10 initial proposal, because these terms were permissive for bargaining, but would bargain over any mandatory subject related to current apprentices. Mr. Cusack demanded that ATU withdraw any terms related to maintaining TriMet's Apprenticeship Programs from its counterproposal. In addition, Mr. Cusack included the provisions of Article 3 of the 2016-2019 WWA pertaining to TriMet's Apprenticeship Programs that, in TriMet's assessment, are permissive for bargaining and over which it was electing not to bargain. A copy of Mr. Cusack's December 30, 2019, letter to Ms. Block is attached as Exhibit 7.

14. On January 6, 2020, Ms. Block responded to Mr. Cusack's December 30, 2019, letter. In her response, Ms. Block stated that "ATU has not ever stated that it will not agree to a contract without the apprenticeship program, nor that it will refuse to engage in further bargaining. To be clear: ATU is not conditioning either bargaining or a settlement of the contract on specific proposals regarding the apprenticeship program." Despite this purported assurance, Ms. Block did not deny any of the statements made on behalf of ATU to the contrary, which were discussed in Mr. Cusack's letter. Further, Ms. Block essentially conceded that ATU had made these statements, explaining that in her opinion "those statements do not show that

ATU has engaged in any unlawful conditioning." A copy of Ms. Block's January 6, 2020, letter is attached as Exhibit 8.

15. Despite Ms. Block's insistence that ATU was not refusing to bargain in good faith over the Parties' successor agreement unless TriMet acquiesced to continuing its Apprenticeship Programs, ATU did not agree to withdraw its proposal to bargain over TriMet's Apprenticeship Programs.

16. On January 21, 2020, Mr. Cusack responded to Ms. Block's January 6, 2020, letter. Mr. Cusack reiterated TriMet's position that bargaining over TriMet's Apprenticeship Programs is permissive and that TriMet would maintain the status quo for any mandatory subjects for current apprentices. He identified actions by ATU since his December 30, 2019, letter showing that, despite claiming otherwise, ATU was conditioning bargaining on the inclusion of TriMet's Apprenticeship Programs in the Parties' successor agreement. Mr. Cusack informed ATU that it would file an unfair labor practice complaint if ATU did not withdrawal from its bargaining proposals all contract language related to TriMet's Apprenticeship Programs. A copy of Mr. Cusack's January 21, 2020, letter is attached as Exhibit 9.

17. On January 27, 2020, Ms. Block responded to Mr. Cusack's January 21 letter. Ms. Block again denied that ATU was conditioning bargaining over a permissive subject. She wrote that "ATU has continued to bargain with TriMet without limitation on [TriMet's Apprenticeship Programs]" because it is ATU's position that TriMet's Apprenticeship Programs address a mandatory subject of bargaining. Ms. Block, however, again did not provide any

information about or even identify what mandatory subject TriMet's Apprenticeship Program purportedly addresses. A copy of Ms. Block's January 27, 2020, letter is attached as Exhibit 10.

18. As of the date of this filing, ATU has not withdrawn its proposal to bargain over TriMet's Apprenticeship Programs.

19. ATU has breached its duty to bargain in good faith under ORS 243.672(2)(b) by unlawfully maintaining proposals containing permissive subjects of bargaining over the objections of TriMet and, therefore, conditioning settlement of the Parties' successor agreement on bargaining over the permissive subject of TriMet's maintaining its Apprenticeship Programs.

TriMet therefore asks that the Board issue an Order:

A. Setting this matter for expedited consideration under OAR 115-035-0060.

In accordance with OAR 115-035-0060(2), TriMet's request for expedited consideration is supported by an affidavit from Mr. Cusack, discussing the reason that this matter should be expedited.

B. Concluding that ATU has engaged in an unfair labor practice by not withdrawing the proposed bargaining language addressing the maintenance of TriMet's Apprenticeship Programs and insisting on bargaining over these provisions after TriMet repeatedly and unambiguously stated that it was electing not to bargain over them because they addressed permissive subjects of bargaining.

C. Directing ATU to cease and desist from its unlawful actions.

D. Awarding TriMet its reasonable attorney fees and representation costs under ORS 243.676 and OAR 115-035-0055, respectively.

E. Awarding TriMet any other relief deemed just and proper.

I certify that the statement of claims in this complaint is true to the best of my knowledge and information.

DATED this 3rd day of February, 2020.

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