

April 24, 2019

Katy Coba,
Director, Oregon Department of Administrative Services
155 Cottage St. NE
Salem, OR 97301-3972

Colette S. Peters
Director, Oregon Department of Corrections
Oregon Department of Corrections
2575 Center St NE
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Sent via electronic communication: katy.coba@oregon.gov; colette.s.peters@doc.state.or.us

Re: Unfair Terms, Collective Bargaining Agreement AFSCME 75 – Oregon Department of Corrections

Dear Ms. Coba and Ms. Peters,

I represent a number of employees of the Department of Corrections who have exercised their First Amendment right to not pay money to a public labor union. Pursuant to this right, my clients have resigned membership in AFSCME 75 and wish to continue their status as nonmembers. However they have been subjected to threats of reprisals should they refuse to renew their AFSCME 75 membership. The most recent and concerning threats of reprisal have been in the form of proposed provisions in the Collective Bargaining Agreement currently under negotiation between yourselves and AFSCME 75. Under proposed Article 25, Article, 32, Article 41 and Article 44, employee seniority status as well as specific job benefits would be dependent on union membership. These threats are of paramount concern to employees who have chosen not to be union members.

As you are no doubt aware, for a public employer, such as the Department of Corrections, to give preferential treatment to employees who are union members *because they are union members* is a violation of both state law and the United States Constitution.

Oregon law makes it an unfair labor practice for a public employer to discriminate regarding “hiring, tenure, or any terms or conditions of employment” for the purpose of encouraging or discouraging union membership. ORS 243.672. Indeed, this type of coercion is very like the sort prohibited by the National Labor Relations Act, whereby acts of employers or unions are impermissibly coercive if they interfere with the right of employees to either engage in union activities or to refrain from doing so. (*See e.g.*, 29 U.S.C. § 157.) Even threatening a loss of benefits can be impermissibly coercive. *N.L.R.B. v. United*

Steelworkers of America, CIO, 357 U.S. 357, 360 (1958); see also *Joy Silk Mills v. N.L.R.B.*, 185 F.2d 732, 739, 740 (1950) (“[T]hreats as to future benefits and job security” amount to impermissible coercion).

As you are also aware, the United States Supreme Court has specifically held that the right to not financially support a public-sector union is protected by the First Amendment to the United States Constitution. *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018). A public employee has an absolute right to not become a union member and to not pay money to a union if he or she so desires. If, as an employer, you discriminate against employees who exercise their First Amendment rights, you will be liable for violations of the First and Fourteenth Amendments.

To avoid liability, I urge you to reject any collective bargaining agreement that impermissibly ties job benefits to union membership. While sincerely desiring to avoid litigation, my clients are prepared to enforce their rights in court and will seek all relief available should the above-referenced proposals come into effect.

Please do not hesitate to be in touch if I can be of any assistance in reviewing this matter. I look forward to working with you to resolve these concerns.

Sincerely,



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