

BEFORE THE BUREAU OF LABOR AND INDUSTRIES  
CIVIL RIGHTS DIVISION

Complaint of Unlawful Employment Practice

*COMPLAINANT:*

*Case No:* **EEEMRC220317-40355**

**ANITA SITES**

*Attorney:* Rebecca Cambreleng  
CRISPIN EMPLOYMENT LAW PC  
1834 SW 58<sup>th</sup> Avenue, Suite 200  
Portland, Oregon 97221-1455  
(503) 293-5770

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*RESPONDENT:*

Contacts:

**CITY OF YACHATS**  
501 Hwy 101 N  
P.O. Box 345  
Yachats, OR 97498

Leslie Vaaler, Mayor  
City of Yachats  
501 Hwy 101 N  
P.O. Box 345  
Yachats, OR 97498  
leslie@yachatsmail.org

No. of employees: <50

County of Employment: Lincoln

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**ORS 659A.030(1)(a) (race discrimination and hostile work environment); Title VII, 42 U.S.C. § 2000e-2, -342 U.S.C. § 2000e-2(a), -3(a) (race discrimination and retaliation); ORS 659A.030(1)(f) (retaliation); 42 U.S.C. § 2000e-3(a) (race discrimination opposition); ORS 652.220 (discriminatory pay practices)**

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I, **ANITA SITES**, hereby allege as follows:

1. I began my employment with Respondent City of Yachats (“Yachats”) in September 2019 in a temporary position. When my contract was up in January 2020, I left to travel and live abroad.
2. Because of my exemplary work performance, I was asked back by the City Manager Shannon Beaucaire in June 2020. I returned through the same temporary staffing agency.
3. Shortly after returning to Yachats, I began to experience racism as one of only two BIPOC individuals working for Yachats, and one of the few people of Asian descent in the small town.
4. The change in treatment towards me began after I returned and was assigned additional duties beyond my initial job description, performed them with efficiency, and then requested proper compensation in alignment with those extra duties. These included: a) improving administrative

efficiencies in handling certain city operations such as processing utility billing, revenues, staff suspense list and progress reports and various communication to the community, b) city newsletter editing, design and production, and c) city website administration and management. For the newsletter duties, I requested compensation of \$25/hour for 8 hours a month, and for website management \$50/hour for 10-15 hours a month. These were both duties previously done by Helen Anderson, a white woman, who was compensated at that rate.

5. I was also being subject to harassment from individual employees, including an incident in the breakroom where Rick McClung, Water Treatment Operator, said to me that if I would "give him time" he'd "set me right." He thought I was being too assertive, based on a racial stereotype. On other occasions he would threaten that I was going to be terminated because I was stepping outside my "role".

6. On November 10, 2020, I requested a meeting with Ms. Beaucaire to discuss my concerns around the threat by Mr. McClung, as well as to request compensation specifically for the two additional responsibilities that I had taken on. I learned at the time that I was being paid \$11,000 per year less than a white woman who had a smaller workload and less experience.

7. Ms. Beaucaire told me she would approach City Council about the raise. She never did.

8. On December 8, 2020, I requested a follow-up on the status of our discussion. Ms. Beaucaire had previously advised me that the Council did not approve the increase as "the city was not in a position" to offer such an increase.

9. On December 10, 2020, after seeing an out of office notification from Ms. Beaucaire, I sent an email to the council and mayor asking what I could do to demonstrate my value to Yachats and included examples of pay differential between what I was doing and being paid, and what the white woman had done and been paid. I also listed my accomplishments and again pointed out my treatment by Mr. McClung since that had not been addressed by Ms. Beaucaire.

10. Within an hour, Mayor John Moore and Council President Max Glenn came into City Hall for a closed-door meeting with Ms. Beaucaire. I was subsequently asked to email all of the job tasks I "refused" to continue doing, which was concerning since I had not said anything about refusing work.

11. I responded with a question about the raise, to which I received no answer.

12. After that, I was the subject of a campaign of retaliation based on my allegations of racism and request for equal pay.

13. The retaliation included a smear campaign against me with many false and defamatory statements made including Ms. Beaucaire telling Heather Hoen and Kimmie Jackson that I "demanded" to be paid \$50 an hour, that there were "concerns" about my work, necessitating a consult with human

resources and the city lawyer - a discussion that never happened. They stated that I was “aggressive” and a “troublemaker,” that I "can't be trusted", I was "not a team player", and was a "mean girl". It was also alleged that I was involved in vandalism to city property, a completely false accusation. Many of these statements were based on racial tropes about Asian women.

14. My work product was called into question, yet there was no discussion with me, no complaints, coaching, or any documented performance problems.

15. These false allegations were started by Ms. Beaucaire and repeated to City Councilors, the Mayor, and members of the community.

16. Most insulting were the jokes and comments based on my race, including Ms. Beaucaire referencing “ESL” (English as a second language) in a sarcastic reference to me when she warned staff that I might find a typo in their written work.

17. In February 2021, I received a call from the Director of Human Resources from the temp agency I was working for. She explained that she had been made aware of my formal complaint of discrimination and that she was concerned about the hostile environment I was working in. I explained that Ms. Beaucaire was creating divisiveness between me, staff, and the elected officials, refusing to speak to me, excluding me in staff meetings and staff-wide emails. She said she would follow up. She never did.

18. In March 2021, Ms. Beaucaire directed my temp agency to offer an ultimatum to take on an additional seven (7) pages worth of responsibilities with no additional pay or vacate the position within 24 hours and leave the keys on the desk.

19. I advised the Customer Service Manager at the temp agency that I believed this was retaliatory for my complaints and was done in order to get me to resign my position. She responded that she “didn’t want to hear it.”

20. I accepted the new responsibilities for no increase in pay because Ms. Beaucaire had given notice and a new interim City Manager was starting in a few weeks and I was hoping that person would be more reasonable, and the retaliation and harassment would stop.

21. Ms. Beaucaire left the position and Lee Elliot took over as Interim City Manager.

22. Around that same time, the City Council and Union approved extending my contract until August 2021.

23. I had scheduled vacation for two weeks in June, but because of a personal matter I needed to take the vacation a week earlier. I made the request to Mr. Elliot, and it was approved.

24. Two days into my vacation I was called by the temp agency and notified that my contract with Yachats was terminated. I reached out to Mr. Elliot for an explanation, but my calls and texts went unanswered.

25. I was later told by the second Interim City Manager Katherine Guenther that Mr. Elliot was upset about the change in my vacation schedule.

26. However, a white woman, Heather Hoen, gave an hour and half notice for a two-week vacation around the same time, and was not disciplined or terminated. Ms. Hoen then resigned during her vacation. Despite those actions and alleged theft and inappropriate use of church funds that were reported to Yachats prior to her vacation, Ms. Hoen was still given codes to the City Manager's safe and accolades in Yachats' June Newsletter.

27. In July 2021, there was an opening for a position that was similar to the work I had been doing for Yachats and for which I was qualified. The salary range in the job description was \$56,000-\$60,000.

28. This was the same position which I had expressed interest and requested consideration for in February 2021. The position had not been filled since that time.

29. Ms. Guenther recommended my rehire in this position only after several interviews and reference checks. Ms. Guenther, a white woman, did not go through an application or interview process to be the second interim City Manager, despite her lack of qualifications for that position.

30. In another example of the differing treatment between myself and the white women who were considered for the positions, after stating my interest in the finance job, Yachats Finance Contractor Tom Lauritzen scolded me to "keep my head down," and we would see "if [my] work speaks for itself because half of the council [did] not trust [me]."

31. During the hiring process, Mayor Leslie Vaaler insinuated that I was not ethical, but said she would allow me to work in that position if I accepted a salary of \$48,600 – almost \$10,000 below the approved budget for the position. This after Mayor Vaaler had asked if Yachats had \$76,000 for the other candidate, a white woman.

32. I did not accept the offer and had to pursue a job out-of-state as the reporting of the mistreatment and the smear campaign made me unemployable in Lincoln County.

33. The position continued to be performed by contractors Tom Lauritzen and/or Janet Cline at \$55/hour each. This works out to over \$100,000 per year. Both these individuals are white.

34. I allege that Respondent is a joint employer under ORS 659A.001(4)(a) and thus can be held liable for their illegal actions. *See McClusky v. City of N. Bend*, 308 Or. App. 138, 481 P.3d 431 (2020), review denied, 368 Or. 37, 484 P.3d 1071 (2021).



# Signature Certificate

Reference number: 8DWME-GDICS-LWXGB-UQHUU

Signer	Timestamp	Signature
<b>Anita Sites</b> Email: anitasites@gmail.com  Shared via link  Sent: 16 Mar 2022 18:57:29 UTC Viewed: 17 Mar 2022 01:39:00 UTC Signed: 17 Mar 2022 02:01:27 UTC		  IP address: 68.118.162.118 Location: Waldport, United States

Document completed by all parties on:  
17 Mar 2022 02:01:27 UTC

Page 1 of 1



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LOCAL  
GOVERNMENT  
LAW GROUP

*An Oregon Professional Corporation*

Carolyn H. Connelly  
Ross M. Williamson\*  
Mark A. Wolf  
Diana Moffat  
Emily B. Guimont  
Lori J. Cooper  
Rebekah L. Dohrman\*\*  
\*Also Admitted in Washington  
\*\*Member of American Institute of  
Certified Planners

May 9, 2022

**Via Email Only To:** [tyler.stokes@boli.oregon.gov](mailto:tyler.stokes@boli.oregon.gov)

Attention: Tyler Stokes  
Oregon Bureau of Labor and Industries, Civil Rights Division  
800 NE Oregon Street #1045  
Portland, OR 97232

Re: Complainant: Anita Sites  
Respondent: City of Yachats  
Case #: EEEMRC220317-40355  
EEOC #: 38D-2022-00337

Dear Mr. Stokes:

This letter serves as the City of Yachats response to Anita Site's BOLI Complaint (Complaint) filed on March 17, 2022, in the above-entitled matter. Respondent is the City of Yachats (City). The City is a governmental entity within the State of Oregon. Below the City provides its response to the allegations presented by Complainant.

### **Background**

The City of Yachats is a public employer in Lincoln County, Oregon. It has a five-member governing body of elected officials, which includes four City Councilors and the Mayor. The City is structured as a Council – Manager form of government, where the City Council sets policy and adopts a budget. The Council appoints a City Manager to act as the administrative head of the City. The City Manager carries out the policy decisions of the Council and runs the day-to-day operations of the City. Included in the City Manager's duties are managing the daily business of the City, hiring and firing personnel, organizing and reorganizing the departmental structure of the City and others.

The City employs roughly 10 employees spread over varying departments.

The City Manager is Heide Lambert. She was hired in February 2022. The City has had 5 City Managers in the last 5 years.

### **Response to Specific Complaint Allegations**

**Paragraph No. 1:** *I began my employment with Respondent City of Yachats (“Yachats”) in September 2019 in a temporary position. When my contract was up in January 2020, I left to travel and live abroad.*

**City Response:** The City admits the statements in Paragraph No. 1.

**Paragraph No. 2:** *Because of my exemplary work performance, I was asked back by the City Manager Shannon Beaucaire in June 2020. I returned through the same temporary staffing agency.*

**City Response:** In February 2020 the City of Yachats posted a job announcement for an Administrative Assistant position. However, due to COVID restrictions, the City decided against hiring a city employee at that time and the city manager decided to fill the position with a temporary employee until the covid restrictions were better understood. The City again contracted with Cardinal Services and Ms. Sites was assigned by Cardinal Services to perform administrative assistance. Exhibit 1.

**Paragraph No. 3:** *Shortly after returning to Yachats, I began to experience racism as one of only to BIPOC individuals working for Yachats, and one of the few people of Asian descent in the small town.*

**City Response:** The City denies these general conclusions regarding racism.

**Paragraph No. 4:** *The change in treatment towards me began after I returned and was assigned additional duties beyond my job description, performed them with efficiency, and then requested proper compensation in alignment with those extra duties. These included: a) improving administrative efficiencies in handling certain city operations such as processing utility billing, revenues, staff suspense list and progress reports and various communication to the community, b) city newsletter editing, design and production, and c) city website administration and management. For the newsletter duties, I requested compensation of \$25/hour for 8 hours a month, and for website management \$50/hour for 10-15 hours a month. These were both duties previously done by Helen Anderson, a white woman, who was compensated at that rate.*

**City Response:** City does not have the information or knowledge to respond to the allegation regarding “change of treatment.” The Administrative Assistant duties being performed by Ms. Sites under contract with temporary employment agency Cardinal Services were different than the duties Ms. Sites had performed previously for

the City. Helen Anderson was an independent contractor hired by the City to perform various duties, many which differed from the duties Ms. Sites performed, and Ms. Anderson's compensation was governed by her contract with the City.

**Paragraph No. 5:** *I was also being subject to harassment from individual employees, including an incident in the breakroom where Rick McClung, Water Treatment Operator, said to me that if I would "give him the time" he'd "set me right." He thought I was being too assertive, based on a racial stereotype. On other occasions, he would threaten that I was going to be terminated because I was stepping out of my "role".*

**City Response:** The City does not have the information or knowledge to respond to this allegation.

**Paragraph No. 6:** *On November 10, 2020, I requested a meeting with Ms. Beaucaire to discuss my concerns around the threat by Mr. McClung, as well as to request compensation specifically for the two additional responsibilities that I had taken on. I learned at the time that I was being paid \$11,000 per year less than a white woman who had a smaller workload and less experience.*

**City Response:** The City does not have the information or knowledge to respond to this allegation. This allegation is vague as it does not identify the "white woman" referred to.

**Paragraph No. 7:** *Ms. Beaucaire told me she would approach the City Council about the raise. She never did.*

**City Response:** The City does not have the information or knowledge to respond to this allegation. Ms. Sites was a contracted temporary employee, and it would have been unusual for Ms. Beaucaire to request a raise from the Council for a temporary employee. In any case, the City Manager did not need City Council approval to give Ms. Sites a raise.

**Paragraph No. 8:** *On December 8, 2020, I requested a follow-up on the status of our discussion. Ms. Beaucaire had previously advised me that the Council did not approve the increases as "the city was not in a position" to offer such an increase.*

**City Response:** The City does not have the information or knowledge to respond to this allegation. However, as stated above in the City's response to Paragraph No. 7, there would have been no reason for the City Manager to consult the City Council for this type of decision. The City Council and City Manager were not making any changes to the budget due to COVID restrictions and uncertainty regarding financial matters going forward.

**Paragraph No. 9:** *On December 10, 2020, after seeing an out of office notification from Ms. Beaucaire, I sent an email to the council and mayor asking what I could do to demonstrate my value to Yachats and included examples of pay differential between what I was doing and being paid, and what the white woman had done and been paid. I also listed my accomplishments and again pointed out my treatment by Mr. McClung since that had not been addressed by Ms. Beaucaire.*

**City Response:** Ms. Sites did send an email to the entire City Council, requesting additional information. Exhibit 2.

**Paragraph No. 10:** *Within an hour, Mayor John Moore and Council President Max Glenn came into City Hall for a closed-door meeting with Ms. Beaucaire. I was subsequently asked to email all of the job tasks I “refused” to continue doing, which was concerning since I had not said anything about refusing work.*

**City Response:** The City does not have the information or knowledge to respond to this allegation.

**Paragraph No. 11:** *I responded with a question about a raise, to which I received no answer.*

**City Response:** In response to a December 8, 2020, conversation between Ms. Beaucaire and Ms. Sites regarding an increase in the hourly rate being paid to Ms. Sites, Ms. Beaucaire sent an email to Ms. Sites on December 10, 2020, explaining that she could not authorize a pay raise. Ms. Sites responded on December 11, 2020, via email to Ms. Beaucaire’s December 10, 2020 email. Exhibit 3.

**Paragraph No. 12:** *After that, I was the subject of a campaign of retaliation based on my allegations of racism and request for equal pay.*

**City Response:** The City denies general conclusions regarding racism and retaliation.

**Paragraph No. 13:** *The retaliation included a smear campaign against me with many false and defamatory statements made including Ms. Beaucaire telling Heather Hoen and Kimmie Jackson that I “demanded” to be paid \$50 an hour, that there were “concerns” about my work, necessitating a consult with human resources and the city lawyer – a discussion that never happened. They stated that I was “aggressive” and a “troublemaker,” that I “can’t be trusted”, I was “not a team player”, and was a “mean girl”. It was also alleged that I was involved in vandalism to city property, a completely false accusation. Many of these statements were based on racial tropes about Asian women.*

**City Response:** The City denies general conclusions regarding racism and retaliation. The City does not have the information or knowledge to respond to this allegation.

**Paragraph No. 14:** *My work product was called into question, yet there was no discussion with me, no complaints, coaching, or any documented performance problems.*

**City Response:** The City does not have the information or knowledge to respond to this allegation.

**Paragraph 15:** *These false allegations were stated by Ms. Beaucaire and repeated to City Councilors, the Mayor, and members of the community.*

**City Response:** The City does not have the information or knowledge to respond to this allegation.

**Paragraph No. 16:** *Most insulting were the jokes and comments based on my race, including Ms. Beaucaire referencing “ESL” (English as a second language) in a sarcastic reference to me when she warned staff that I might find a typo in their written work.*

**City Response:** Ms. Sites did report via email that she heard from a third party that Ms. Beaucaire had made a sarcastic remark referencing “ESL,” but Ms. Sites herself characterizes this remark as “hearsay.” The Mayor at the time (Leslie Vaaler) responded to Ms. Sites regarding this report. Exhibit 4.

**Paragraph No. 17:** *In February 2021, I received a call from the Director of Human Resources from the temp agency I was working for. She explained that she had been made aware of my formal complaint of discrimination and that she was concerned about the hostile environment I was working in. I explained that Ms. Beaucaire was creating divisiveness between me, staff, and the elected officials, refusing to speak to me, excluding me in staff meetings and staff-wide emails. She said she would follow up. She never did.*

**City Response:** The City does not have the information or knowledge to respond to this allegation.

**Paragraph No. 18:** *In March 2021, Ms. Beaucaire directed my temp agency to offer an ultimatum to take on an additional seven (7) pages worth of responsibilities with no additional pay or vacate the position within 24 hours and leave the keys on the desk.*

**City Response:** The City denies directing Cardinal Services to offer an “ultimatum.” Cardinal Services exchanged emails with Ms. Sites and asked if she was interested in filling the temporary position. Exhibit 5.

**Paragraph No. 19:** *I advised the Customer Service Manager at the temp agency that I believed this was retaliatory for my complaints and was done in order to get me to resign my position. She responded that she “didn’t want to hear it.”*

**City Response:** The City does not have the information or knowledge to respond to this allegation.

**Paragraph No. 20:** *I accepted the new responsibilities for no increase in pay because Ms. Beaucaire had given notice and a new interim City Manager was starting in a few weeks and I was hoping that person would be more reasonable, and the retaliation and harassment would stop.*

**City Response:** Ms. Sites accepted the updated administrative assistant position through Cardinal Services, the temporary employment agency. The City cannot respond to what Ms. Sites may or may not have believed regarding the new interim City Manager. The City denies that there was retaliation and harassment.

**Paragraph No. 21:** *Ms. Beaucaire left the position and Lee Elliot took over as Interim City Manager.*

**City Response:** Admit.

**Paragraph No. 22:** *Around that same time, the City Council and Union approved extending my contract until August 2021.*

**City Response:** The City Council was informed in a regular City Council meeting that the union approved the temporary position. Exhibit 6.

**Paragraph No. 23:** *I had scheduled vacation for two weeks in June, but because of a personal matter I needed to take the vacation a week earlier. I made the request to Mr. Elliot, and it was approved.*

**City Response:** The City does not have the information or knowledge to respond to these statements.

**Paragraph No. 24:** *Two days into my vacation I was called by the temp agency and notified that my contract with Yachats was terminated. I reached out to Mr. Elliot for an explanation, but my calls and texts went unanswered.*

**City Response:** The City does not have the information or knowledge to respond to the allegation regarding a call from Cardinal Services to Ms. Sites or her alleged attempts to contact Mr. Elliot.

**Paragraph No. 25:** *I was later told by the second Interim City Manager Katherine Guenther that Mr. Elliot was upset about the change in my vacation schedule.*

**City Response:** Ms. Guenther was the Pro Tem City Manager (not the “second Interim City Manager”). The City does not have the information or knowledge to respond to the allegation regarding what Ms. Guenther allegedly told Ms. Sites.

**Paragraph No. 26:** *However, a white woman, Heather Hoen, gave an hour and half notice for a two-week vacation around the same time, and was not disciplined or terminated. Ms. Hoen then resigned during her vacation. Despite those actions and alleged theft and inappropriate use of church funds that were reported to Yachats prior to her vacation, Ms. Hoen was still given codes to City Manager’s safe and accolades in Yachats’ June Newsletter.*

**City Response:** The City does not have the information or knowledge to respond to the allegations in Paragraph 26.

**Paragraph No. 27:** *In July 2021, there was an opening for a position that was similar to the work I had been doing for Yachats and for which I was qualified. The salary range in the description was \$56,000-\$60,000.*

**City Response:** The City admits that in July 2021, it posted an opening for a Financial Officer. The City denies that the Financial Officer position is “similar” to the temporary work Ms. Sites had been performing.

**Paragraph No. 28:** *This was the same position which I had expressed interest in and requested consideration for in February 2021. The position had not been filled since that time.*

**City Response:** See City’s Response to Paragraph 27.

**Paragraph No. 29:** *Ms. Guenther recommended my rehire in this position only after several interviews and reference checks. Ms. Guenther, a white woman, did not go through an application or interview process to be the second interim City Manager, despite her lack of qualifications for that position.*

**City Response:** Ms. Guenther did advocate for Ms. Sites to be rehired. Due to the abrupt resignation of the previous Interim City Manager Lee Elliot, the City Council appointed Ms. Guenther as the Pro Tem City Manager, as allowed by the City’s charter.

Ms. Guenther was hired as the City Planner for two days a week and was asked to be the Pro Tem City Manager for the other 3 days a week.

**Paragraph No. 30:** *In another example of the differing treatment between myself and the white women who were considered for the positions, after stating my interests in the finance job, Yachats Finance Contractor Tom Lauritzen scolded me to “keep my head down,” and we would see “if [my] work speaks for itself because half of the council [did] not trust [me].”*

**City Response:** The City does not have the information or knowledge to respond to this allegation.

**Paragraph No. 31:** *During the hiring process, Mayor Leslie Vaaler insinuated that I was not ethical, but said she would allow me to work in that position if I accepted a salary of \$48,600 – almost \$10,00 below the approved budget for that position. This after Mayor Vaaler had asked me if Yachats had \$76,000 for the other candidate, a white woman.*

**City Response:** The City does not have the information or knowledge to respond to the allegation of Mayor Vaaler’s “insinuation” or the allegation of what Mayor Vaaler said regarding the \$76,000.

**Paragraph No. 32:** *I did not accept the offer and had to pursue a job out-of-state as the reporting of the mistreatment and the smear campaign made me unemployable in Lincoln County.*

**City Response:** The City denies that there was an “offer” to Ms. Sites and that there was “mistreatment” and a “smear campaign.”

**Paragraph No. 33:** *The position continued to be performed by contractors Tom Lauritzen and/or Janet Cline at \$55/hour each. This works out to over \$100,000 per year. Both these individuals are white.*

**City Response:** The City admits that Tom Lauritzen and Janet Cline did perform Financial Officer duties for the City under contract at \$55/hour and that Mr. Lauritzen and Ms. Cline are white. The City denies that these individuals were paid over \$100,000 per year.

**Paragraph No. 34:** *I allege that Respondent is a joint employer under ORS 659A.001(4)(a) and thus can be held liable for their illegal actions. See McClusky v. City of N. Bend, 308 Or. App. 138, 481 P.3d 431 (2020), review denied, 368 Or. 37, 484 P.3d 1071 (2021).*

**City Response:** This allegation contains legal conclusions to which the City is not required to respond

**Paragraph No. 35:** *I allege that Respondent discriminated against me on the basis of my race, and in the terms and conditions of my employment, and retaliation against me due to my reports of violations of law, regulation, or rule, and engaged in discriminatory pay practices, all in violation of the following laws: ORS 659A.030(1)(a) (race discrimination and hostile work environment); Title VII, 42 U.S.C. § 2000e-2, -342 U.S.C. § 2000e-2(a), -3(a) (race discrimination and retaliation); ORS 659A.030(1)(f) (retaliation); ORS 659A.199 (whistleblowing); 42 U.S.C. § 2000e-3(a) (race discrimination opposition); ORS 652.220 (discriminatory pay practices).*

**City Response:** The City denies all of the allegations in Paragraph 35.

Sincerely,



Lori J. Cooper  
[lori@localgovtlaw.com](mailto:lori@localgovtlaw.com)

LJC:kad

Enclosures: Exhibit 1 – April 2020 Cardinal Services emails  
Exhibit 2 – December 2020 Sites email to Council  
Exhibit 3 – December 10 & 11 Sites-Beaucaire emails  
Exhibit 4 – Jan. – Feb. 21 Sites-Vaaler emails re sarcastic comment  
Exhibit 5 – March 2021 Cardinal Services emails  
Exhibit 6 – Union memo; Beaucaire-Sites email

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**Civil Rights Division – Bureau of Labor & Industries**  
**Complaint Dismissal Memo**

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Complainant: Anita Sites  
Respondent: City of Yachats  
Case Number: EEEMRC220317-40355  
Date: March 24, 2023  
Investigator: Tyler Stokes  
Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

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The City of Yachats (Respondent) is a municipal government in Lincoln County, OR. It has a five-member governing body of elected officials, which includes four City Councilors and a Mayor.<sup>1</sup> The City (Respondent) is structured as a Council – Manager form of government, where the City Council sets policy and adopts a budget. The Council appoints a City Manager to act as the administrative head of Respondent. The City Manager carries out the policy decisions of the Council and runs the day-to-day operations of Respondent. Included in the City Manager’s duties are managing the daily business of Respondent, hiring and firing personnel, organizing and reorganizing the departmental structure of Respondent, among others. Complainant is a woman of Asian descent who worked for Respondent in the position of Administrative Assistant (a “Temporary Hire” contractor employed through a third-party temporary staffing agency, Cardinal Services, Inc.) from September 2019 to January 2020 and again from June 2020 to May 26, 2021. Whomever held the position of City Manager during the time period material to this complaint functioned as Complainant’s direct supervisor.<sup>2</sup>

Complainant alleges that during her second period of work Respondent “discriminated against her on the basis of her race, and in the terms and conditions of her employment, retaliated against her due to her reports of violations of law, regulation, or rule, and engaged in discriminatory pay practices, all in violation of the following laws: ORS 659A.030(1)(a) (race discrimination and hostile work environment); ORS 659A.030(1)(f) (retaliation); ORS 659A.199 (whistleblowing); ORS 652.220 (discriminatory pay practices).” Respondent denies Complainant’s allegations and maintains that she has never been subjected to the unlawful employment practices claimed in her complaint. BOLI interviewed Complainant for this investigation on September 7, 2022.<sup>3</sup> For the reasons discussed below, BOLI finds that Complainant failed to establish substantial evidence of any of her allegations of discrimination or retaliation by Respondent.

**1. *Alleged Discriminatory Pay Practices by Complainant’s Supervisor, Shannon Beaucaire***<sup>4</sup>

When Complainant resumed her \$20-per-hour temporary Administrative Assistant role for Respondent through Cardinal Services in June 2020 her contract stipulated the following job duties: (A) “Assist, protect with records retention and archival procedures;” (B) “Provide office coverage for telephone answering and walk-in customers;” and (C) “Assist with the destruction of all records in accordance with City [Respondent] policy and legal, financial, government and historical requirements.”<sup>5</sup> Complainant alleges that after she returned to work her supervisor Ms. Beaucaire

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<sup>1</sup> Leslie Vaaler, mentioned in the complaint, served as Mayor of Yachats from early January 2021 through early January 2023.

<sup>2</sup> Shannon Beaucaire held the City Manager position from October 2017 - March 19, 2021, Lee Elliott held it (as Interim City Manager) from March 22, 2021 - June 3, 2021, and Katherine Guenther held it (as Pro Tem City Manager) from June 3, 2021 - February 14, 2022.

<sup>3</sup> Complainant’s attorney was present for her interview.

<sup>4</sup> See *Complainant’s Allegation Nos. 4, 6 - 11, 18, 20 - 21*.

<sup>5</sup> This was the same wage and set of job duties she had been contracted for previously from September 2019 to January 2020 as well.

gradually assigned her “additional duties beyond her initial job description” which included: (D) “improving Respondent administrative efficiencies in handling certain city operations such as processing utility billing, revenues, staff suspense list and progress reports and various communication to the community.” Subsequently, in approximately August or September 2020, another “independent contractor” for Respondent, Helen Anderson (a white woman), resigned her position.<sup>6</sup> As a result, Complainant alleges, Ms. Beaucaire assigned her two of Ms. Anderson’s prior duties (i.e., two more “additional duties beyond Complainant’s initial job description”): (E) Respondent city newsletter editing, design and production; and (F) Respondent city website administration and management.<sup>7</sup>

After performing “extra duties” (D), (E), and (F) “with efficiency” in the ensuing months, Complainant arranged a meeting with Ms. Beaucaire on November 10, 2020, to make a “request for equal pay” regarding “extra duties” (E) and (F) (those she had taken over from Ms. Anderson).<sup>8</sup> In response to Complainant’s request that Respondent give her a “raise” (\$25 per hour and \$50 per hour for duties (E) and (F), respectively, in addition to the \$20 per hour stipulated in her “Temporary Hire” contract), Ms. Beaucaire responded that she would “look into it” regarding the “raise” request, informed Complainant that she was “building another position” (a *permanent* Administrative Assistant job) that Complainant could apply for, and indicated that she would soon be asking Respondent City Council for approval to advertise this new permanent position.<sup>9</sup> On November 18, 2020, Ms. Beaucaire proposed to Respondent City Council to advertise the permanent Administrative Assistant position she had built.<sup>10</sup> On December 3, 2020, the City Council approved her proposal to advertise it.<sup>11</sup> On December 8, 2020, Complainant “requested a follow-up” with Ms. Beaucaire “on the status of their discussion” from November 10 regarding the “raise.” Late in the afternoon of December 8 Ms. Beaucaire responded via

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<sup>6</sup> The parties agree that Ms. Anderson had been hired “to perform various duties” for Respondent, “many [of] which differed from the duties [Complainant] performed, and Ms. Anderson’s compensation was governed by her contract with [Respondent].” (*Emphasis added*). Complainant alleges that among Ms. Anderson’s “various duties,” she was responsible for: (1) taking minutes during Respondent City Council meetings; (2) Respondent city newsletter editing, design and production; and (3) Respondent city website administration and management. Complainant further alleges that Ms. Anderson was compensated specifically (and billing Respondent separately) under her contract for the newsletter-related and website-related duties at a rate of “\$25/hour for 8 hours a month” and “\$50/hour for 10-15 hours a month,” respectively.

<sup>7</sup> Complainant admitted that of the duties Ms. Anderson had been responsible for (*see n. 6 above*), Complainant only “had to take on” the newsletter-related and website-related duties after Ms. Anderson’s resignation. Ms. Anderson’s “last duty,” taking minutes during Respondent City Council meetings, was absorbed by Respondent Deputy Recorder Kimmie Jackson, who (Complainant asserts) “was doing it before Helen [Anderson] was there.”

<sup>8</sup> Complainant alleges that she made this “request for equal pay” in part because she “learned at the time that she was being paid \$11,000 per year less than a **white woman who had a smaller workload** and less experience,” referring to Ms. Anderson. (*Emphasis added*). Complainant felt that since she had taken on the newsletter-related and website-related duties from Ms. Anderson’s position, and Ms. Anderson’s “position had been paid for and had budget allocation” already by Respondent City Council, then she could (and should) receive additional compensation for handling Ms. Anderson’s former duties — the same compensation Ms. Anderson had received for doing them (\$25 per hour and \$50 per hour, respectively).

<sup>9</sup> Complainant explained during her interview that the permanent Administrative Assistant job (that Ms. Beaucaire was developing) discussed during the November 2020 meeting would essentially incorporate duties (A), (B), (C), (D), (E), and (F) into a new role with a new job description (i.e., Complainant’s temporary contract role job description plus “an extra seven pages” that would formally cover duties (D), (E), and (F) — Complainant refers to this permanent job set-up derogatorily at Allegation No. 18 in her complaint: “take on an additional seven (7) pages worth of responsibilities”). It is unclear from the record whether Complainant expressed disapproval during this meeting of Ms. Beaucaire’s expressed plan to build a permanent Administrative Assistant position and ask the City Council to advertise it, but she informed BOLI that she held a difference of opinion with her supervisor at the time. Complainant’s preferred plan involved her and Ms. Anderson’s roles being “blended” since Ms. Anderson’s “salary was already in the current budget,” and she felt Ms. Beaucaire (as City Manager) should simply re-allocate Ms. Anderson’s contracted compensation for duties (E) and (F) to her *sua sponte*, without involving City Council whatsoever. The parties agree that Ms. Beaucaire did not need City Council approval to give Complainant, a “contracted temporary employee,” a “raise.” Ms. Beaucaire had such authority on her own as the City Manager.

<sup>10</sup> *See* 12/3/2020 *YachatsNews* article at: <https://yachatsnews.com/yachats-council-says-ok-to-advertise-one-employee-position-but-balks-at-two-other-proposed-hires-for-now/>. On that date, Respondent City Council “asked [Ms. Beaucaire] for more details” in order to have “a more thorough discussion” about her proposal to advertise the permanent position, so further discussion of the proposal was scheduled for the December 3, 2020, City Council meeting. *Ibid*.

<sup>11</sup> *YachatsNews* reported: “[Respondent] City Council gave City Manager Shannon Beaucaire the go-ahead Thursday [December 3, 2020,] to advertise for an administrative assistant position **now being filled by a temporary contractor**. ... **The administrative assistant work is currently being done by Anita Sites [Complainant], whom [Respondent] pays via a labor contractor. But [Respondent]’s contract with the American Federation of State, County and Municipal Employees [AFSCME] says such temporary, contract jobs can only be filled for six months out of 12, unless the union agrees to extend the time. Sites’ six months is up Dec. 15, 2020,** [Beaucaire told the council. The salary range for the position would be \$39,000 to \$50,500 a year, under the proposed job description. Depending on the salary level, Beaucaire told [then Respondent City Councilor Leslie] Vaaler, the total cost to the city could be as high as \$84,000 a year once a range of fringe benefits and retirement contributions are added. ... [Then] Mayor John Moore and [all four City] Councilors ... [agreed] it was clear the position was needed at City Hall and that Beaucaire should proceed with advertising for it. ... Late Thursday afternoon a job posting notice went onto the city’s website [for the permanent administrative assistant position].” *Ibid*. (*Emphasis added*). Notably, the position’s job description also indicates that this permanent role would be “Represented” by the union. (*See Investigation file*).

email to Complainant, who immediately replied.<sup>12</sup> After Complainant received an autoreply out-of-office notification email from Ms. Beaucaire's account that afternoon, rather than simply wait to continue the discussion with her supervisor about obtaining a "raise" directly (a discussion she had already waited over three months to broach in the first place), she attempted to circumvent Ms. Beaucaire entirely on December 10 by emailing Respondent Mayor and City Council directly (Subject: "Request for Additional Consideration").<sup>13</sup> (*See Investigation File*). Five minutes later, then Mayor Moore forwarded Complainant's email to Ms. Beaucaire, who subsequently emailed Complainant directly a few hours later.<sup>14</sup> On December 11 Complainant replied to Ms. Beaucaire, stating, among other things, "thank you for confirming you cannot/will not pay me ... extra." (*See Investigation File*).

On February 3, 2021, Ms. Beaucaire submitted her formal notice of resignation as City Manager to Respondent.<sup>15</sup> That same day AFSCME Local Union 3711 sent a memo to then Mayor Vaaler and Ms. Beaucaire **requesting** that Respondent City Council "**consider extending**" Complainant's "Temporary Hire" "position an additional 6 months."<sup>16</sup> (*Emphasis added*). Ms. Beaucaire's "last day in the office" was March 5, 2021 (aside from being "available for the rest of the month for some meetings and phone consultation").<sup>17</sup> On March 18 Cardinal Services and Complainant had a conversation via email regarding her "decision on the new job offer" from Respondent.<sup>18</sup> On March 19 Ms. Beaucaire emailed

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<sup>12</sup> Ms. Beaucaire's 4:32pm email states: "Certainly. As noted in the Council meeting, **I have conferred with the union today and they have agreed to a 60 day extension of the temporary position. The extension is with the understanding that the [permanent] Administrative Assistant position has been posted and intended to be filled within that timeframe.** As you heard, the Council wishes to remain status quo on everything else at this time." (*Emphasis added*). Complainant then replied to Ms. Beaucaire's email at 4:40pm, stating: "Sorry I was not listening the entire time [during the Council meeting] as I was answering phones, emails, and customers coming in. **Please advise on the difference in pay.** Thanks!" (*Emphasis added*).

<sup>13</sup> Complainant emailed then Mayor John Moore and all four City Councilors at their official City email addresses (as well as several of their personal email addresses) but did not send the email to Ms. Beaucaire. In her complaint, Complainant characterizes the email as "asking what she could do to demonstrate her value to Respondent and included examples of the pay differential between what she was doing and being paid, and what the white woman [Ms. Anderson] had done and been paid. She also listed her accomplishments" during her temporary employment. When asked by BOLI why she decided to email the Mayor and City Council instead of waiting for Ms. Beaucaire's return to the office and speaking with her then, Complainant asserted that Ms. Beaucaire's autoreply email had indicated she would be away for "too long," and admitted that she "didn't think it was right to go around" Ms. Beaucaire as she did by sending the email, but equivocated that she "was desperate," "needed access," "couldn't talk to her supervisor," and had reached a "dead end with Shannon [Beaucaire]." (Given full context from the record (*see for example n. 14*) BOLI finds Complainant's assertion and equivocations here unconvincing at best).

<sup>14</sup> Ms. Beaucaire's 3:48pm email states: "At the end of our conversation on Tuesday [December 8, 2020,] you asked me to put into writing a summarization. As we discussed, the City Council discussed extensively the administrative support position and authorized it to be posted. The position has been posted. Additionally, the Council requested that I discuss with the Union an extension to allow for the temporary position to remain in place to allow for time to properly post the administrative assistant position and allow the hiring process to be conducted. **After discussion, the union has agreed to a 60 day extension to allow for the hiring process to be completed.** We have discussed that in a small office, we often wear many hats and have numerous job duties. As such, the administrative assistant job description, like all of our positions, has numerous duties. We have appreciated you stepping in and assisting the team in multiple areas such as website, newsletter, software, assistance with organization, etc. We considered your skill sets when we went through the hiring process and we have appreciated them during the time you have been here. **Unfortunately, I can not authorize a contract, or an increase in hourly rate, for \$50/hour as you have requested. I understand that as a result you will not be doing any more work on the newsletter or website. I had asked you to detail any additional duties you would no longer be doing as a result of not receiving a separate contract or increase in pay to this rate, and on Tuesday you declined to do so, I would still appreciate such a list.** I do appreciate you talking to me today about where you are in the newsletter process for December and what program you have been utilizing. Thank you for the work you do due for the office." (*Emphasis added*).

<sup>15</sup> See 2/3/2021 *YachatsNews* article at: <https://yachatsnews.com/carlton-formally-announces-hiring-of-yachats-city-manager-but-transitions-still-need-to-be-negotiated/>.

<sup>16</sup> In pertinent part, the memo states: "On behalf of the [the] Union, we have discussed extending Anita Sites [Complainant], Temporary Hire, and respectfully request the Council consider extending the position an additional 6 months. Our Local Union understands the importance and necessity completing some of these duties have for [Respondent]. ... If [Respondent] **chose to negotiate with [Complainant] for the 6 months period necessary**, the Union would fully support that action. [The] union ... is aware of the recent resignation of the City Manager [Ms. Beaucaire], and [that] the City Council [is] considering to revisit the office structure and duties of this Administrative Assistant position. We respectfully ask that we be included in this conversation and process moving forward, as we believe our experience can be of assistance in answering your questions or concerns as it relates to those duties that are required by [Respondent]."

<sup>17</sup> See 3/4/2021 *YachatsNews* article at: <https://yachatsnews.com/yachats-city-council-hopes-to-bring-texas-administrator-to-yachats-as-interim-city-manager/>.

<sup>18</sup> At **11:19am** Cardinal Services' Customer Service Manager emailed Complainant the following: "Hello Anita, I did not hear from you yesterday [March 17, 2021,] regarding your decision on the new job offer. I need to know how you intend to move forward. Please let me know by the end of the day. Respectfully, Lynn Partin[.]" At **11:34am** Complainant replied: "Sorry I was out sick yesterday [March 17] but please clarify exactly what this New Job Offer means and next steps. Thanks." At **12:12pm** Ms. Partin responded: "I already covered that on our phone conversation Tuesday [March 17]. The job you are currently doing is ending. [Respondent] can only afford one person to fill the Administrative Assistant position. This person will need to do all of the duties stated in the job description I provided to you on Tuesday. We would like to transition you into the new position and need to know if you are willing to accept the offer. This is at the same rate of pay you are currently making[, \$20 per hour]. The schedule would be working Monday - Friday. I need to know if you are going to accept the new position today. If you are not, I will need to start looking for a replacement." At **12:22pm** Complainant replied: "I needed clarity as I had been given notice to be here [at Respondent] until August [2021]. Please advise when would be the start and end date of this new position? When would be the end date if I do not accept the offer of this entirely new position? Thanks for providing details and it's just best practice to have all the details when making decisions." At **12:43pm** Ms. Partin responded: "Shannon [Beaucaire] did not share that with me. I feel like this is all going to start with the transition of the new [Interim] City Manager [Lee Elliott], please reach out to Shannon for the exact date. I was just asked to reach out to you, share the new job description and report back to Shannon with your answer so they know how to move forward." At **3:43pm** Complainant replied: "**I know it's hard for anyone transitioning into a new position and would love to assist in ensuring that it is smooth for the new City Manager. This is a great community and [I'm**

Ms. Partin regarding Complainant, and, given the record, BOLI understands that this was her final date of employment for Respondent as City Manager.<sup>19</sup>

BOLI finds that Complainant's allegations against Ms. Beaucaire with respect to ORS 652.220 are, *likely*, untimely. Complainant filed her complaint with BOLI on March 17, 2022. ORS 659A.820(2) clearly states that "a complaint under this section [(here, regarding ORS 652.220)] must be filed no later than one year after the alleged unlawful practice." Insofar as Complainant's "alleged unlawful practice" by Respondent under ORS 652.220 occurred in December 2020 or earlier (which seems to be the case), said allegations are untimely. Furthermore, *n. 15 - n. 19* in conjunction with the language of the complaint itself appear to establish that Complainant's Allegation No. 18 is either also untimely under ORS 652.220, or is outright negated from being a *prima facie* harm altogether.<sup>20</sup>

However, in consideration of the facts discussed here *in § 1*, even if the allegations under ORS 652.220 are timely, BOLI still finds that Complainant failed to establish substantial evidence of discriminatory pay practices by Ms. Beaucaire because: (a) while Ms. Anderson is a white woman, BOLI does not find that the "work" Respondent contracted her to perform was "of comparable character" to the "work" it contracted Complainant to perform;<sup>21</sup> and (b) BOLI finds it to be clear from the record that Ms. Beaucaire (and Respondent) had a legitimate nondiscriminatory reason for urging Complainant to apply for / pursue the *permanent* Administrative Assistant position (which it had created and advertised) and declining to give her a "raise" as part of her "Temporary Hire" contract role: optimal compliance by Respondent with its AFSCME collective bargaining agreement.<sup>22</sup>

Relatedly, as BOLI *does not find* substantial evidence that Ms. Beaucaire committed a discriminatory pay practice ("unlawful practice") against Complainant in violation of ORS 652.220, BOLI, accordingly, *finds* that Complainant could not have been "discriminated against" under ORS 659A.030(1)(f) by her coworker Rick McClung, her supervisor Ms. Beaucaire, or Respondent (in general) at any time material to this complaint for having made a "request for equal pay" / a "raise" to Respondent while she was a "Temporary hire" Administrative Assistant, as this action was not a protected activity by Complainant ("opposition to an unlawful practice"). (*See §§ 3, 5 below*).

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**proud to be part of the team and will continue to provide best in class service. See them Monday!**" (*Emphasis added*). At **4:03pm** Ms. Partin responded: "Just to Clarify. You are accepting the new Job offer starting Monday [March 22]. I need a yes or no. Thank you[.]" At **4:09pm** Complainant replied: "Yes[.]" (*Emphasis added*).

<sup>19</sup> Ms. Beaucaire's 8:28am email (Subject: "Yachats Office Support") stated, in pertinent part: "Per our conversation late Thursday afternoon, [March 18,] I understand that you discussed with [Complainant] the needs and expectations of the position she occupies in her assignment with [Respondent]. In that, **she is willing to fulfill administrative duties such as outlined in the draft Administrative Assistant description - including duties she had previously been performing such as, the monthly newsletter, administrative website work, and other administrative duties [Respondent] requires at her current rate of pay.** ... Lastly, it is my understanding that [Complainant] was given the opportunity to choose whether to remain in the office support role with these clarifications. As requested, can you please forward all emails involved in these discussions for our files to assist the incoming Interim Manager [Lee Elliott] in this transition process." (*Emphasis added*). Lee Elliott started as Interim City Manager on March 22, 2021. *See 4/15/2021 YachatsNews article at: <https://yachatsnews.com/yachats-interim-city-manager-is-settling-in-setting-staff-direction-talking-to-councilors-and-reminding-community-members-they-live-in-a-great-community/>.*

<sup>20</sup> In Allegation No. 18 Complainant claims that "in March 2021 Ms. Beaucaire **directed** her temp agency [Cardinal Services] to offer her **an ultimatum to take on an additional seven (7) pages worth of responsibilities with no additional pay or vacate her position within 24 hours** and leave the keys on the desk." (*Emphasis added*). Not only does this allegation fail to identify on its face a specific date in March 2021 to help BOLI determine whether the underlying harm claimed is timely, but Complainant's March 18, 2021, email thread with Cardinal Services (*discussed at n. 18 above*) severely undermines the claim that Ms. Beaucaire "directed" the temp agency to "offer" Complainant an employment "ultimatum," as does Complainant's admission in her very next Allegation, No. 19: "**I accepted the new responsibilities for no increase in pay because Ms. Beaucaire had given notice** and a new interim City Manager [Lee Elliott] was starting in a few weeks and **I was hoping that [he] would be more reasonable[.]**" (*Emphasis added*).

<sup>21</sup> ORS 652.220(1) states: "It is an unlawful employment practice under ORS chapter 659A for an employer to: (a) In any manner discriminate **between employees** on the basis of a protected class in the payment of wages or other compensation for **work of comparable character**[:]; (b) Pay wages or other compensation **to any employee at a rate greater** than that at which the employer pays wages or other compensation to employees of a protected class **for work of comparable character.**" (*Emphasis added*). As such, the nature of the statute clearly necessitates there being, at minimum, an identified employee outside of the complainant's protected class who is doing work for the respondent of a *comparable character* to that of the complainant, but is being paid better in terms of wages or other compensation. Complainant claimed that Ms. Anderson (a white woman) was such a coworker outside of her protected class. However, given the record, BOLI does not find that Ms. Anderson's contracted work was of a "comparable character" to Complainant's contracted work. (*See n. 6 - n. 9 above*).

<sup>22</sup> The collective bargaining agreement in place between Respondent and AFSCME Local Union 3711 said that temporary contract jobs like Complainant's could only be filled for six months out of twelve unless the union agreed to extend the time. The "Represented" permanent Administrative Assistant position would face no such constraint. (*See n. 11 - n. 12 above*).

## 2. Cancellation of “Temporary Hire” Contract by Complainant’s Supervisor, Lee Elliott <sup>23</sup>

On May 5, 2021, Interim City Manager Lee Elliott submitted his formal resignation to Respondent and set June 3 as his final date of work.<sup>24</sup> On May 26, according to local news outlet YachatsNews, Mr. “Elliott cancelled the contract with an employment agency [Cardinal Services] that had Anita Sites [Complainant] working in City Hall as an administrative assistant for the past year. [Complainant] had started a previously scheduled three-week leave on Monday [May 24] and was traveling across the country to a family gathering.”<sup>25</sup> BOLI finds that Complainant failed to establish substantial evidence that Mr. Elliott cancelled her contract because of any protected class or activities identified in the complaint. First, while the record establishes that the union supported the extension of Complainant’s “Temporary Hire” contract position for “an additional 6 months” (from February to August 2021) and Respondent admits its City Council was “informed” of this fact, Mr. Elliott, as Interim City Manager, appears to have had the authority to unilaterally cancel Complainant’s contract whenever he determined it prudent to do so.<sup>26</sup> For her part, Complainant does not seem to claim otherwise. Second, Complainant does not appear to claim that Mr. Elliott’s decision to cancel her contract was retaliation due to a protected activity (under ORS 659A.199 or ORS 659A.030(1)(f)) or racial discrimination (under ORS 659A.030(1)(a)).<sup>27</sup> If anything, the fact that Mr. Elliott’s decision to cancel Complainant’s contract (May 26) occurred three weeks *after* he had already put in his own notice of resignation (May 5), and eight days *prior* to the final date of employment he identified (June 3) at the time he gave notice, makes his decision seem all the more arbitrary. However, without evidence of a nexus to a protected class or activity, BOLI cannot find even a seemingly arbitrary personnel decision by a supervisor to end a worker’s contract to be an unlawful employment action.

## 3. Alleged Racist and/or Retaliatory Comments by Complainant’s Coworker, Rick McClung <sup>28</sup>

Complainant claims she was subjected to racist comments (“harassment”) from her coworker Rick McClung, Respondent Water Treatment Operator, on several occasions.<sup>29</sup> Mr. McClung’s first comment, “he would threaten that Complainant was going to be terminated because she was stepping out of her ‘role,’” occurred at some point between the resumption of her position in June 2020 and Ms. Anderson’s resignation in August or September 2020. As Mr. McClung was not Complainant’s supervisor and had no authority to terminate her contract, she understood him to be indicating that Ms. Beaucaire *may* do so imminently. Mr. McClung’s second comment (“an incident in the breakroom”) was “that if she would ‘give him the time’ he’d ‘set her right,’” and occurred at some point “shortly after” March 17, 2021. Complainant understood Mr. McClung to have made this comment because “he thought she was being too assertive, based on a racial stereotype.”

BOLI finds that Complainant failed to establish substantial evidence that either of Mr. McClung’s alleged comments constituted “harassment” against her based on her protected class (race). *See OAR 839-005-0010(1)(d), (4)(a)-(b)*. Rather than Complainant’s race being Mr. McClung’s “motivating factor” for making the alleged 2020 and 2021 comments to her, BOLI finds instead that Complainant’s

<sup>23</sup> See Complainant’s Allegation Nos. 21 - 26.

<sup>24</sup> See 5/8/2021 YachatsNews article at: <https://yachatsnews.com/23080-2/>.

<sup>25</sup> See 5/27/2021 YachatsNews article at: <https://yachatsnews.com/sudden-departure-of-two-yachats-city-hall-staffers-stalls-re-opening-plans-for-commons-throws-administration-into-turmoil/>. The article also notes that Complainant “did a wide variety of tasks around the office, including posting items to [Respondent]’s website, editing and designing the monthly newsletter, clerical chores and answering the phone and email inquiries.”

<sup>26</sup> *Ibid*.

<sup>27</sup> At Allegation Nos. 23 - 26 Complainant attempts to hazard a theory as to why Mr. Elliott cancelled her contract with Respondent, claiming she “later” heard from Ms. Guenther that Mr. Elliott had been “upset” with her because she “had scheduled” (made a “request” to Mr. Elliott and had it “approved” by him) to take “vacation for two weeks in June [2021], but because of a personal matter[,] she needed to take the vacation [starting] a week earlier.” However, this theory is unsupported by evidence in the record, may actually be in conflict with some local reporting in the record (*see n. 25 above*), and alleges insufficient nexus between the contract cancellation and any protected class or activity identified in the complaint.

<sup>28</sup> See Complainant’s Allegation Nos. 3, 5 - 6.

<sup>29</sup> Complainant did not identify in the complaint *when* Mr. McClung made these various comments to her. BOLI obtained this information from her during her interview.

status as a non-union “Temporary Hire” contract worker outside of Respondent’s collective bargaining agreement with AFSCME Local Union 3711 was Mr. McClung’s sole “motivating factor.”<sup>30</sup> BOLI makes this determination based primarily on the information from the record discussed below:

- i. Respondent’s collective bargaining agreement with AFSCME Local Union 3711 mandated that temporary contract jobs like Complainant’s could only be filled for six months out of twelve, unless the union agreed to extend that time. (*See n. 11 above*). Complainant’s first period of contract work was about five months or less, from September 2019 to January 2020. Her second period of contract work then began in June 2020, with her six months set to expire December 15, 2020. (*Ibid*).
- ii. During her interview Complainant provided vital context regarding Mr. McClung’s alleged 2020 comment: (a) one of the “responsibilities” given to her by Ms. Beaucaire involved “writing out memos and making sure packets were sent,” so she “followed up” with Mr. McClung once about a packet he had done (but did not complete) and asked him to complete it, and he responded that she was “stepping outside of her role;” (b) around the time that Mr. McClung allegedly made this comment he would also sometimes “ask her **how long she’d been there**” (working for Respondent as a “Temporary Hire”) and “**how long her contract was**,” with Complainant characterizing such questions as Mr. McClung “walk[ing] around like he had power over her **because he was [a] permanent [employee].**” (*Emphasis added*); (c) *several months later* on November 10, 2020, Complainant “reported” Mr. McClung’s various comments to Ms. Beaucaire, summarizing her then “report” to her supervisor as “Rick is going around **threatening her role and asking what her plans were**” and that he was “going around saying she **might not be there**” in the future (working for Respondent as a “Temporary Hire”).<sup>31</sup> (*Emphasis added*); (d) Complainant admitted that during this meeting Ms. Beaucaire responded that “she didn’t have anything to worry about” (in terms of Ms. Beaucaire imminently ending her contract due to Mr. McClung’s alleged comments or otherwise), agreed that she “had been doing great work,” and assured that “**she [Ms. Beaucaire] would address Mr. McClung separately.**”<sup>32</sup> (*Emphasis added*).
- iii. In her December 10, 2020, email to the Mayor and City Council Complainant stated, in pertinent part: “This list gives you a framework of why I had requested a meeting with Shannon [Beaucaire] on 11/10/2020 **after Rick [McClung] questioned the validity and legality of my role and later confronted me on how long I had been at the City [Respondent], suggesting I would soon be terminated.** When I was initially hired in September 2019, I was asked to commit 2-3 months. No other communication regarding the timeline or functions was ever brought to my attention, **so admittedly, I did not know of any violation of the collective bargaining agreement around the length of my employment or my performance of such duties.** Regardless, **this made for a hostile environment for me** so I audited what I was spending my time on.”<sup>33</sup> (*Emphasis added*).

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<sup>30</sup> “The aggrieved person at all times has the burden of proving that [their] protected class was the reason for the respondent’s unlawful action.” BOLI finds that Complainant failed to meet this burden of proof. BOLI’s investigation did not reveal “evidence that a reasonable person would accept as sufficient to support that [Complainant’s] protected class membership was a motivating factor for” Mr. McClung’s alleged 2020 and 2021 comments to her. *OAR 839-005-0010(1)(d), (4)(a)-(b)*.

<sup>31</sup> By “plans” Mr. McClung would have been referring to Complainant’s employment plans (i.e., continuing to work in a temporary contract capacity or exploring becoming a permanent Respondent employee). In her complaint Complainant generally alleges: “On November 10, 2020, I requested a meeting with Ms. Beaucaire to discuss my concerns around **the threat** by Mr. McClung.” (*Emphasis added*).

<sup>32</sup> Complainant’s admissions here regarding Ms. Beaucaire’s November 10, 2020, responses appear to conflict with her claim in the complaint as to why she decided in her December 10, 2020, email to the Mayor and City Council to “again point out her treatment by Mr. McClung **since that had not been addressed by Ms. Beaucaire.**” To the contrary, Complainant’s concerns regarding Mr. McClung seem to have been immediately “addressed” by Ms. Beaucaire. Moreover, Complainant has never claimed during this investigation that she received any similar comments from Mr. McClung between her November 10 meeting with her supervisor and her December 10 email to the Mayor and City Council.

<sup>33</sup> Through these contemporaneous statements, Complainant appears to be tacitly and formally acknowledging that the motivating factor for Mr. McClung’s alleged 2020 comments to her (as she understood it as of December 10, 2020) was **not her race**, but that he “questioned the validity and legality” of her “Temporary Hire” contract role under the collective bargaining agreement and believed that the “length of her employment” and “performance” of certain “duties” under said temporary contract was “violation” of the collective bargaining agreement. Complainant’s responses to BOLI during her interview further confirm this. When asked to clarify the “When ... duties” passage of her email, Complainant admitted: (1) “That was what Rick [McClung] was saying, ‘Why are you here? The union only allows like six months for any temp. Why are you still here?’” and (2) that she understood at that time that Mr. McClung meant by this “‘you should be following the collective bargaining agreement and you’re not.’” When asked directly why she did not mention in her email to the Mayor and City Council that she believed that Mr. McClung was being racist toward

- iv. Mr. McClung was one of the six AFSCME Local Union 3711 signatories to the February 3, 2021, memo that the union sent to Ms. Beaucaire and then Mayor Vaaler, the first sentence of which stated: “On behalf of the [the] Union, we have discussed extending Anita Sites [Complainant], Temporary Hire, and respectfully request the Council consider extending the position an additional 6 months.”<sup>34</sup> (*See n. 16 above*).
- v. During her interview Complainant provided vital context regarding Mr. McClung’s alleged “‘give me the time to set you right’” comment (which occurred at some point “shortly after” March 17, 2021): immediately prior to making the alleged comment to Complainant in the breakroom, Mr. McClung encouraged her that she “should stay” working for Respondent in her “Temporary Hire” contract role “because you [Complainant] add so much value.”<sup>35</sup> Furthermore, when BOLI asked Complainant directly to clarify why she believed Mr. McClung’s motivation for these various comments to be “he thought she was being too assertive, based on a racial stereotype,” she explained “being too assertive” as being in regard to “being paid.”<sup>36</sup>

BOLI also finds that, to the extent Complainant is claiming that Mr. McClung’s alleged 2021 comment to her violated ORS 659A.199, such a claim is, *most likely*, untimely.<sup>37</sup> However, in consideration of the facts discussed here *in § 3*, even if such a claim under ORS 659A.199 is timely, BOLI still finds that Complainant failed to establish substantial evidence that Mr. McClung’s alleged 2021 comment (“that if she would ‘give him the time’ he’d ‘set her right’”) was discrimination or retaliation against her with regard to terms, conditions, or privileges of employment because she “in good faith reported information” that she believed to be unlawful (whistleblowing). When Complainant made a “request for equal pay” / a “raise” to Ms. Beaucaire, the Mayor, and City Council in November and December 2020, she *may* have *believed* that she was reporting an unlawful action (discriminatory pay practice) by Respondent, even though it *was not an unlawful action*. (*See § 1 above*). Likewise, Mr. McClung *may* have made the alleged 2021 breakroom comment in part because he was aware that Complainant had made said “request for equal pay” / a “raise” to Ms. Beaucaire, the Mayor, and City

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her when he made his 2020 comments, Complainant admitted she “**didn’t even think to insert that**” in this email and “**didn’t even think to mention it.**” (*Emphasis added*). BOLI also finds it notable that, though Complainant admits Mr. McClung made his 2020 comments to her before Ms. Anderson’s resignation in August or September 2020, she did not bring them to Ms. Beaucaire’s attention until several months later on November 10, 2020, approximately one month before she would be reaching her six month work anniversary (December 15, 2020) after resuming work in June 2020. This seems to further establish that Mr. McClung’s comments regarding the “length of her employment” in relation to the collective bargaining agreement’s rules simply made Complainant concerned that Ms. Beaucaire may end her contract once she had reached month six of work on December 15 (i.e., her job was under “threat”), so she felt compelled to meet with her supervisor about this concern a month prior.

<sup>34</sup> Mr. McClung is listed in the memo as a local union “Member” signatory, alongside local union “President” Kimmie Jackson, “VP” Kevin Kentta, “Member” David Buckwald, “Member” Jeremy Mabe, and “Member” Russell Roberts.

<sup>35</sup> Ms. Beaucaire, through Cardinal Services’ Lynn Partin, had very recently on March 17, 2021, presented Complainant with a new job offer to extend her “Temporary Hire” Administrative Assistant position for more time, but with an expanded formal job description scope of responsibilities at the same rate of pay (\$20 per hour). (*See n. 18 above*). By “stay on” then, Mr. McClung was referring to this opportunity for Complainant to extend her temporary contract role with Respondent. Complainant explained to BOLI what she understood Mr. McClung’s perspective here to be, stating that his “view” (“and everyone’s” at Respondent) was “that if ‘you’re in the system,’ it’s easier for you to apply for positions” (i.e., it would be easier for Complainant to obtain permanent employment for Respondent if she stayed on “in the system” in a temporary contract worker capacity). Although Complainant admitted her perspective at the time was that to accept the new offer would be “much more work for the same money,” she ultimately did accept the new job offer on March 18, 2021. (*See n. 18 - n. 20 above*).

<sup>36</sup> Complainant asserted, variously, that Mr. McClung “was trying to exert that he’s been with the city” (i.e., he was a permanent Respondent employee and union member, and she was not), he “seemed to indicate she was too cocky,” and meant “he’ll put me in my place, I’m stepping out of line, I’m not keeping my head down, I’m not being a model minority by not causing any trouble, I should just keep doing what I’m told” (in that, there is a “bias that people think something Asian minorities don’t do is stand up for themselves” and Mr. McClung thought she was “deviating from the model minority by speaking up for [her]self” and previously asking Ms. Beaucaire, the Mayor, and City Council for a “raise” in her temporary contract role). While Mr. McClung’s 2021 breakroom comment alleged in the complaint appears, perhaps justifiably, to have been perceived by Complainant as unprofessional, her assertion to BOLI that it was motivated by racial animus toward her seems to be contradicted by the record. Mr. McClung’s documented February 3, 2021, support for her temporary contract role to be extended for six months, coupled with his additional breakroom comments of encouragement that she should “stay on” in a temporary capacity because she “added so much value,” indicate rather that, as a union member, he simply disagreed with her on the merits of Respondent giving her (a temporary non-union worker) a “raise” as opposed to extending her temporary contract out (an action that had the union’s approval). BOLI also finds it notable that Complainant, by her own admission, never reported Mr. McClung’s alleged 2021 comments to her outgoing supervisor Ms. Beaucaire, her incoming supervisor Mr. Elliott, the Mayor, or City Council.

<sup>37</sup> Complainant filed her complaint with BOLI on March 17, 2022. ORS 659A.820(2) clearly states that “a complaint under this section [(here, regarding ORS 659A.199)] must be filed no later than one year after the alleged unlawful practice.” Complainant stated to BOLI during her interview somewhat conflicting information, responding at one point that Mr. McClung’s alleged 2021 breakroom comment occurred, generally, in February or March 2021, and at another point that it occurred “shortly after” March 17, 2021.

Council in late 2020.<sup>38</sup> However, neither Complainant nor the record establish substantial evidence of what Mr. McClung’s alleged comment means, let alone that it constituted discrimination or retaliation against Complainant “with regard to [her] terms, conditions or privileges of employment” in any objectively reasonable sense.

#### 4. *Alleged Racist Comments by Complainant’s Supervisor, Ms. Beaucaire*<sup>39</sup>

Complainant claims she was subjected to a racist comment (“harassment”) from her supervisor in the form of “joke,” wherein Ms. Beaucaire “referenced ‘ESL’ (English as a second language) in a sarcastic reference to Complainant when she warned staff that Complainant might find a typo in their written work.” During her interview with BOLI Complainant claimed that Ms. Beaucaire made the comment at some point “back in November” 2020, that coworker Heather Hoen (then Respondent Community Services Coordinator) heard Ms. Beaucaire make the comment during a meeting with Ms. Hoen and Mr. McClung “going over [Respondent’s] website,” and that Ms. Hoen then “came out of the meeting and immediately told” Complainant Ms. Beaucaire’s comment. In a January 21, 2021, late afternoon email Complainant sent to Ms. Beaucaire, she stated, in pertinent part:

**“I would not have brought this up, but finding there have been other times since November 2020 that you have been making disparaging remarks about me such as ‘don’t let the ESL girl find typos[.]’ ... While [this is] hearsay, I am bothered by the context and that the source is you — the Manager of the City. You have agreed in many instances that I have done impeccable work and thus I believe I do not deserve such treatment (or anyone else in this professional capacity). People in a leadership position should always treat each employee equally and not cause or contribute to any divisiveness. Your words and actions can make for a hostile and toxic environment and we all expect you to rise above that and inspire a positive working environment. Sometimes we don’t know we are doing these things so hoping this serves as a reminder to be mindful how you present yourself and others to your subordinates and how this can impact our working conditions.”**<sup>40</sup> (*Emphasis added*).

Subsequently, at some point, then Mayor Vaaler was forwarded Complainant’s January 21, 2021, email to Ms. Beaucaire, and on February 1, 2021, the Mayor emailed the following to Complainant directly: “The City of Yachats [Respondent] is committed to providing our employees with a respectful work environment. **To that end, I will be speaking to Shannon [Beaucaire] about the importance of that commitment and the role she plays in modeling that behavior. Should you encounter any future difficulties, please let me know.**”<sup>41</sup> (*Emphasis added*).

BOLI finds that Complainant established substantial evidence that Ms. Beaucaire’s “ESL girl” comment constituted “harassment” against her based on her protected class (race), but also finds that Respondent is not liable for Ms. Beaucaire’s harassment of Complainant. *See OAR 839-005-0010(1)*,

<sup>38</sup> The record is not clear as to what extent Mr. McClung was aware that Complainant had sought a “raise” with the City Manager, Mayor, and City Council several months prior.

<sup>39</sup> *See Complainant’s Allegation Nos. 3, 16.*

<sup>40</sup> Complainant did not confront Ms. Beaucaire about the November 2020 “ESL girl” comment, or discuss it with Respondent leadership in any manner, prior to this January 21, 2021, email. Complainant asserted to BOLI that, although she learned of Ms. Beaucaire’s “ESL girl” comment from Ms. Hoen in November 2020, “she didn’t bring it up [with Respondent] until there was a teachable moment.” The “teachable moment” that prompted Complainant’s email occurred soon after a January 20, 2021, email Ms. Beaucaire sent to Complainant (and copied to Kimmie Jackson) at 4:40pm, stating “Please sign off [from the City Council meeting] and enjoy your evening. Kimmie has the rest of the meeting. We will see you tomorrow. **Thank you for your work today.**” (*Emphasis added*). Complainant claimed to BOLI that when Ms. Beaucaire emailed her during the City Council meeting, “she didn’t realize that [Complainant] had already left” the meeting, and claimed that after the meeting ended (“because” Ms. Beaucaire “saw that [Complainant] was gone”) she said to Heather [Hoen]: “Did she [Complainant] throw a fit?” (i.e., was Complainant upset because Ms. Beaucaire had directed Complainant, an hourly contract worker, to go home for the day?).

<sup>41</sup> The record does not indicate who forwarded Complainant’s January 21, 2021, email to then Mayor Vaaler, or what date the forwarding occurred (between January 21 and February 1, 2021). Notably, there is a February 5, 2022, email in the record from then Mayor Vaaler to Katherine Guenther wherein the Mayor forwarded her February 1, 2021, email to Complainant to Ms. Guenther and referred to it as “My second reply to Anita [Complainant], alerting her I would be speaking to Shannon [Beaucaire].” However, the Mayor’s insinuated “first reply” to Complainant about this incident is not in the record.

(4)(a)-(b), (e).<sup>42</sup> When harassment by a supervisor with immediate authority over a worker is found to have occurred, but no tangible employment action was taken, the employer is not liable if it “knew of the harassment” but “took immediate and appropriate corrective action.” *Id. at (4)(e)(A)*. In this case Respondent then Mayor Vaaler knew of Ms. Beaucaire’s “ESL girl” comment about Complainant by February 1, 2021 (if not earlier, *see n. 41*). BOLI finds Mayor Vaaler’s email to Complainant on that date regarding Ms. Beaucaire to constitute Respondent “taking immediate and appropriate corrective action” in response to the “ESL girl” comment by its then City Manager.

5. ***Alleged “Campaign of Retaliation” by Complainant’s Supervisor, Ms. Beaucaire***<sup>43</sup>

BOLI finds Complainant’s claims regarding Ms. Beaucaire’s “campaign of retaliation” against her in violation ORS 659A.199 are, *most likely*, untimely.<sup>44</sup> However, even if such claims under ORS 659A.199 are timely, BOLI still finds that Complainant failed to establish substantial evidence that this “campaign of retaliation” occurred, let alone that it constituted discrimination or retaliation against Complainant with regard to terms, conditions, or privileges of employment because she “in good faith reported information” that she believed to be unlawful (whistleblowing). When Complainant made a “request for equal pay” / a “raise” to Ms. Beaucaire, the Mayor, and City Council in November and December 2020, she *may have believed* that she was reporting an unlawful action (discriminatory pay practice) by Respondent, even though it *was not an unlawful action*. (*See § 1 above*). Regardless, neither Complainant nor the record establish substantial evidence of the purported retaliatory actions Complainant claims (at Allegation Nos. 13 - 15, 17) that Ms. Beaucaire subjected her to because she made a “request for equal pay” / a “raise” in late 2020.<sup>45</sup> Moreover, evidence in the record and various admissions by Complainant contradict that Ms. Beaucaire had “concerns about Complainant’s work,” “called into question” her “work product,” or held retaliatory animus toward her because she made a “request for equal pay” / a “raise.”<sup>46</sup>

Relatedly, as BOLI *does not find* substantial evidence that Mr. McClung committed “harassment” against Complainant based on her protected class (race) (“unlawful practice”) in violation of OAR 839-005-0010 (*see § 3 above*), BOLI, accordingly, *finds* that Complainant could not have been “discriminated against” under ORS 659A.030(1)(f) by her supervisor Ms. Beaucaire or Respondent (in general) at any time material to this complaint for having notified Ms. Beaucaire on November 10, 2020, about Mr. McClung’s alleged 2020 comment, as this action was not a protected activity by Complainant (“opposition to an unlawful practice”). (*See also the final ¶ of § 1 above*).

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<sup>42</sup> BOLI finds that OAR 839-005-0010(4)(d) is not applicable to this case because the record does not establish that Ms. Beaucaire’s “ESL girl” comment about Complainant resulted “in a tangible employment action.”

<sup>43</sup> *See Complainant’s Allegation Nos. 12 - 15, 17*. (Note: Allegation No. 17 is cited here only in regard to a portion of its third sentence: “Ms. Beaucaire was creating divisiveness between me, staff, and the elected officials, refusing to speak to me, excluding me in staff meetings and staff-wide emails”).

<sup>44</sup> Complainant filed her complaint with BOLI on March 17, 2022. ORS 659A.820(2) clearly states that “a complaint under this section [(here, regarding ORS 659A.199)] must be filed no later than one year after the alleged unlawful practice.” On February 3, 2021, Ms. Beaucaire submitted her formal notice of resignation as City Manager to Respondent. Her “last day in the office” was March 5, 2021 (aside from being “available for the rest of the month for some meetings and phone consultation”). Her final date of employment for Respondent was March 19, 2021.

<sup>45</sup> Complainant claims “she was the subject of a campaign of retaliation **based on her allegations of racism** and request for equal pay,” but the record does not establish that she ever framed Mr. McClung’s alleged 2020 comment as being “racist” when she communicated about his alleged 2020 behavior to Ms. Beaucaire, the Mayor, or City Council. (*Emphasis added; see § 3, items (ii)(c) and (iii) above*).

<sup>46</sup> Complainant admitted that Ms. Beaucaire “indicated many times she was really happy with her work product” and “agreed” during their November 10, 2020, meeting that she “had been doing great work.” Ms. Beaucaire’s December 10, 2020, email to Complainant states: “We have appreciated you stepping in and assisting the team in multiple areas such as website, newsletter, software, assistance with organization, etc. We considered your skill sets when we went through the hiring process and we have appreciated them during the time you have been here. ... Thank you for the work you do do for the office.” Ms. Beaucaire’s January 20, 2021, email to Complainant notes: “Thank you for your work today.” Complainant’s January 21, 2021, email to Ms. Beaucaire acknowledges: “You have agreed in many instances that I have done impeccable work.” Finally, Ms. Beaucaire also, of course, presented Complainant with a new job offer on March 17, 2021 (through Cardinal Services’ Lynn Partin) to extend her “Temporary Hire” Administrative Assistant position for more time.

6. ***Alleged Discrimination by Respondent City Council and Mayor (Leslie Vaaler) after Complainant's Contract Ended on May 26, 2021*** <sup>47</sup>

In relation to Allegation Nos. 27 - 33 BOLI finds that Complainant failed to establish substantial evidence that she was discriminated against by Respondent City Council and then Mayor Vaaler on the basis of a protected class or activity in any discernable sense. Rather, six contemporary and comprehensive articles from local news outlet YachatsNews establish that the City Council, then Mayor, and then Pro Tem City Manager collectively exhibited **severe** disagreement and paralysis of leadership in Summer 2021 while deliberating about whether to hire Complainant back into a new position, what said position would involve in terms of responsibilities, whether she was qualified for said position, and how much to pay her (which resulted in Complainant turning down the \$48,600 job offer Respondent ultimately made to her), but the chaotic conduct of Respondent's leadership in Summer 2021 did not constitute unlawful action in violation of Complainant's civil rights.<sup>48</sup>

In light of the reasons discussed at length above, and the record overall, it is clear Complainant failed to establish substantial evidence that she was discriminated or retaliated against by Respondent as alleged in her complaint. Therefore, it is recommended that this complaint be dismissed for lack of substantial evidence.

\_\_\_\_\_/Tyler Stokes

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<sup>47</sup> See *Complainant's Allegation Nos. 27 - 33*. ORS 652.220(1)(a)-(b), (d, *second sentence*) and ORS. 659A.199 are not applicable to these allegations because Complainant was no longer an "employee" of Respondent as of May 26, 2021, when her "Temporary Hire" contract was cancelled by Mr. Elliott. Complainant does not claim violation of ORS 652.220(1)(c)-(d, *first sentence*) in relation to these allegations, in that she does not claim that Respondent screened her as a job applicant for the "position opening" she cites in Allegation No. 27 based on her "past compensation," and she does not claim that Respondent determined compensation for said position based on her "past compensation." ORS 659A.030(1)(a) is not applicable to these allegations because Respondent did not "refuse to hire or employ" Complainant, but rather, she admits in her complaint that Respondent offered her the "position" she cites in Allegation No. 27, but "she did not accept the offer." Finally, Complainant could not have been "discriminated against" under ORS 659A.030(1)(f) by Respondent at any time material to this complaint due to the reasons discussed *in the final ¶ of § 1 above and the final ¶ of § 5 above*.

<sup>48</sup> See 5/27, 7/1, 7/22, 8/7, 8/12, and 8/19/2021 YachatsNews articles at (respectively):

- <https://yachatsnews.com/sudden-departure-of-two-yachats-city-hall-staffers-stalls-re-opening-plans-for-commons-throws-administration-into-turmoil/>
- <https://yachatsnews.com/24803-2/>
- <https://yachatsnews.com/25356-2/>
- <https://yachatsnews.com/yachats-city-council-tries-a-little-self-evaluation-of-its-first-six-months-and-it-does-not-go-well/>
- <https://yachatsnews.com/after-another-disorganized-contentious-discussion-yachats-city-council-agrees-to-advertise-for-city-manager-and-hire-deputy-city-recorder/>
- <https://yachatsnews.com/yachats-council-authorizes-city-manager-to-negotiate-higher-salary-for-potential-office-employee-after-initial-job-offer-rejected/>