

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-05-08

(UNFAIR LABOR PRACTICE)

PORTLAND POLICE ASSOCIATION,)	
)	
Complainant,)	
)	FINDINGS AND ORDER
v.)	ON COMPLAINANT'S PETITION
)	FOR REPRESENTATION COSTS
CITY OF PORTLAND,)	
)	
Respondent.)	
_____)	

On August 12, 2010, this Board issued an Order that held that the City of Portland (City) violated ORS 243.672(1)(g) by refusing to arbitrate grievances filed by the Portland Police Association (Association). The grievances at issue arose from changes in pension benefit calculation rules made by the City's Fire and Police Disability and Retirement Fund (Fund). 23 PECBR 856. On August 31, 2010, the Association petitioned for representation costs. On September 20, 2010, the City objected to the petition.

The City appealed. We followed our normal procedure and held the petition for representation costs in abeyance until the appeal was complete. OAR 115-035-0055(5). On February 8, 2012, the Court of Appeals affirmed this Board's Order. 248 Or App 109, 273 P3d 192 (2012). The court issued its Appellate Judgment on April 11, 2012.¹

Pursuant to ORS 243.676(2)(d) and OAR 115-035-0055, this Board finds:

1. The Association filed a timely petition for representation costs and the City filed timely objections to the petition.
2. The Association is a prevailing party.
3. The Association seeks a total of \$14,882.50 in representation costs. According to affidavit of counsel, this amount represents 59.53 hours of attorney time valued at \$250 per hour.

¹The Association petitioned separately for attorney fees on appeal. ORS 243.676(2)(d); OAR 115-035-0057. We address that petition in a separate Order issued on this date.

The requested rate is higher than average. *Clackamas County Employees' Association v. Clackamas County/Clackamas County District Attorney*, Case No. UP-07-08, 24 PECBR 769 (2012) (Rep. Cost Order) (the average rate for representation costs is \$165-170 per hour). The case involved one day of hearing. The number of hours claimed is slightly above average. See *AFSCME Council 75, Local 3694 v. Josephine County*, Case No. UP-26-06, 24 PECBR 720 (2012) (Rep. Cost Order) (cases typically take an average of 45-50 hours for each day of hearing). We will consider these factors in determining the Association's reasonable representation costs.

4. The City refused to arbitrate grievances that the Association filed after the City's Fire and Police Disability Retirement Fund (Fund) changed the method for calculating certain pension benefits. We concluded that the parties had unambiguously agreed to arbitrate the disputes at issue and that the City's refusal to arbitrate the grievances violated ORS 243.672(1)(g). We ordered the City to cease and desist from refusing to arbitrate changes in pension benefit calculations, to post a notice of its wrongdoing in facilities where bargaining unit members worked, and to mail a copy of this notice to bargaining unit members who retired after May 1, 2007.

An average award of representation cost is typically one-third of the prevailing party's reasonable representation costs, up to the \$3,500 limit. OAR 115-035-0055(1)(a); *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-04-06, 22 PECBR 623 (2008) (Rep Cost Order). Because the Public Employee Collective Bargaining Act (PECBA) favors dispute resolution through arbitration and because our case precedent establishes a strong presumption of arbitrability, we typically make a larger than average award when a party unlawfully refuses to arbitrate a grievance. *Teamsters Local 670 v. City of Ontario*, Case No. UP-40-08, 23 PECBR 384 (2009) (Rep Cost Order). We conclude that a larger than average award is appropriate in this case.

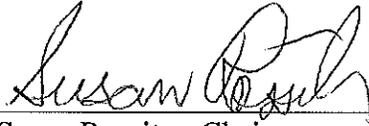
The City argues that the amount of representation fees awarded should be reduced because of the significant issues involved in the case. The City misconstrues our standards. We often reduce the amount of representation fees awarded in cases that present novel issues so that parties will not be deterred from litigating these types of issues. *Hood River County v. Oregon AFSCME Council 75, Local 1082*, Case No. UP-09-08, 23 PECBR 734 (2010) (Rep Cost Order). This case does not involve a novel issue, however; an employer's duty to arbitrate a grievance is an issue that has often arisen in unfair labor practice complaints.

After considering the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the Association representation costs in the amount of \$3,200.

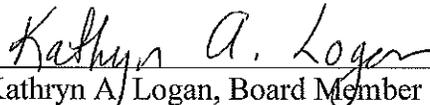
ORDER

The City will remit \$3,200 to the Association within 30 days of the date of this Order.

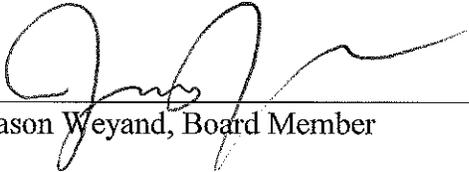
DATED this 2 day of October, 2012.



Susan Rossiter, Chair



Kathryn A. Logan, Board Member



Jason Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.