

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-011-08

(UNFAIR LABOR PRACTICE)

OREGON AFSCME COUNCIL 75, )  
LOCAL #2502, )  
 )  
Complainant, )  
 )  
v. )  
 )  
HOOD RIVER COUNTY, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINDINGS AND ORDER  
ON COMPLAINANT'S PETITION  
FOR ATTORNEY FEES ON APPEAL

On August 13, 2009, this Board issued an Order that held that Hood River County (County) violated ORS 243.672(1)(b) and (f) by refusing to deduct Oregon AFSCME Council 75, Local #2503 (AFSCME) dues from a bargaining member's paycheck that are calculated as a percentage of the bargaining unit member's salary plus \$3.00. 23 PECBR 287. The County appealed. On February 23, 2012, the Court of Appeals affirmed this Board's Order. 248 Or App 293, 274 P3d 186 (2012). The Court issued its Appellate Judgment on April 27, 2012.<sup>1</sup>

On March 13, 2012, AFSCME filed this petition for attorney fees on appeal. The County did not object or otherwise respond to the petition. *See* OAR 115-035-0057(1) and 115-035-0055(3) (an opposing party has 21 days to object to a petition for attorney fees on appeal).

Pursuant to OAR 115-035-0057, this Board makes the following findings:

1. The Appellate Judgment names AFSCME as the prevailing party.
2. AFSCME incurred \$7,591.50 in attorney fees on appeal. According to the affidavit of counsel, this represents 9.8 hours of attorney time billed at \$150 per hour and 37.1 hours of attorney time billed at \$165 per hour. The requested hourly rate of \$150 is slightly below average. *See Gresham-Barlow Education Association/OEA/NEA v. Gresham-Barlow School District No. 10J*, Case No. UP-32-07, 24 PECBR 375 (2011) (Attorney Fees Order) (the average rate for attorney fees

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<sup>1</sup>AFSCME petitioned separately for representation costs for work performed before this Board. ORS 243.676(2)(d); OAR 115-035-0055. We address that petition in a separate Order issued on this date.

on appeal is \$165-170 per hour). The number of hours devoted to this appeal is slightly above average. *Id.* (The average number of hours spent on an appeal is 35.)

3. The County refused to deduct dues from a bargaining unit member's salary in accordance with a new dues structure that AFSCME implemented. That structure based dues on a percentage of an employee's salary plus \$3.00. We held that the County's failure to make the requested dues deduction violated its legal obligation under ORS 292.055(5) to deduct a labor organization's dues from an employee's salary and ORS 243.672(1)(f). We also concluded that the County's actions interfered with the existence and administration of AFSCME in violation of ORS 243.672(1)(b).

In cases involving violations of ORS 243.672(1)(a), (b), or (c), we generally make a larger than average award because these violations are "the kind that strike directly against one of the most basic rights guaranteed by the PECBA [Public Employee Collective Bargaining Act] – the right of public employes to organize and be represented." *IAFF, Local #1489, and Brown v. City of Roseburg*, Case No. C-53-84, 8 PECBR 8371, 8372 (1986) (Rep. Cost Order). We will make a larger than average award in this case.

After considering the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards AFSCME attorney fees on appeal in the amount of \$2,100.

ORDER

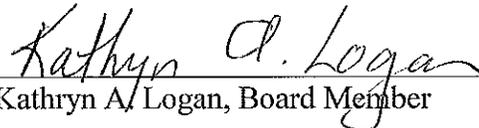
The County will remit \$2,100 to AFSCME within 30 days of the date of this Order.

DATED this 10 of September, 2012.



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Susan Rossiter, Chair

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\*Jason M. Weyand, Board Member



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Kathryn A. Logan, Board Member

This Order may be appealed pursuant to ORS 183.482.

\*Member Weyand did not participate in the deliberations and decision in this case.