

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-11-08

(UNFAIR LABOR PRACTICE)

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

FINDINGS AND ORDER
ON COMPLAINANT'S PETITION
FOR REPRESENTATION COSTS

On August 13, 2009, this Board issued an Order that held that the 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 unit member's paycheck that are calculated as a percentage of the bargaining unit member's salary plus \$3.00. 23 PECBR 287. On August 26, 2009, the Association petitioned for representation costs. On September 9, 2009, the County objected to the petition.

The County 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 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, 2012.¹

Pursuant to OAR 115-035-0055, this Board makes the following findings:

1. AFSCME filed a timely petition for representation costs and the County filed timely objections.
2. AFSCME prevailed.

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

3. AFSCME seeks an award of \$7,500. According to the affidavit of counsel, these costs represent 45.5 hours of attorney work time billed at \$150 an hour,² and 9 hours of attorney travel time billed at a rate of \$75 per hour.

The requested hourly rates are below average. *Clackamas County Employees' Association v. Clackamas County/Clackamas County District Attorney*, Case No. UP-7-08, 24 PECBR 769 (2012) (Rep. Cost Order) (the average rate for representation costs is \$165-170 per hour). The number of hours spent is substantially more than the average. The parties submitted this matter on a joint stipulation of facts in lieu of an evidentiary hearing. The average time spent on a stipulated fact case of normal complexity is 16-25 hours. *Teamsters Local 670 v. City of Ontario*, Case No. UP-40-08, 23 PECBR 384, 385 (2009) (Rep. Cost Order). We will consider these factors in determining AFSCME's reasonable representation costs.

4. 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).

An average award of representation costs 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-4-06, 22 PECBR 623 (2008) (Rep. Cost Order). We generally increase an award in cases involving violations of ORS 243.672(1)(a), (b), or (c) 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 employees 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). For this reason, we will make a larger than average award in this case.

The County does not object to the hourly rate or the number of hours claimed by AFSCME. Instead, it asserts that the petition is defective because it did not include a "statement describing how the awarding of the fees 'would be consistent with the policies and purposes' of the PECBA" as

²In its petition for Attorney Fees, AFSCME also included a "Supplemental Petition for Representation Costs." In this supplemental petition, AFSCME notes that at the time it filed its original Petition for Representation Costs, its hourly rate for attorneys was \$150 per hour; on January 1, 2010, AFSCME increased its hourly rate to \$165 per hour. In its Supplemental Petition, AFSCME apparently requests that this Board consider this increase to award "full attorney fees."

According to the affidavit of counsel accompanying AFSCME's original Petition for Representation Costs, all work performed before this Board was performed *before* January 1, 2010. Accordingly, we will use \$150, the hourly rate for attorneys AFSCME charged before that date, to compute appropriate representation costs.

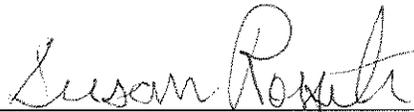
required by OAR 115-035-055(2)(c). (County's Objections to Complainant's Petition for Representation Costs, p. 1.) We disagree. In its petition, AFSCME argued that "[a]n award of full attorneys fees is reasonable and consistent with the intent of the PECBA." (AFSCME's Petition for Representation Costs, p. 2.) This statement is minimally sufficient to describe how an award of the amount requested by AFSCME is "consistent with the policies and purposes of the PECBA." OAR 115-035-055(2)(c). *See Arlington Education Association v. Arlington School District No. 3*, Case No. UP-65-99, 21 PECBR 192 (2005) (Rep. Cost Order) (to comply with OAR 115-035-055(2)(c), a policy statement need only discuss how an award would further PECBA policies).

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 representation costs in the amount of \$2,000.

ORDER

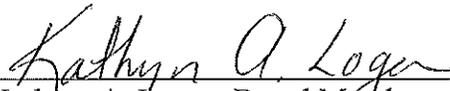
The County will remit \$2,000 to AFSCME within 30 days of the date of this Order.

DATED this 10 of September, 2012.



Susan Rossiter, Chair

*Jason M. Weyand, Board Member



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.