

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-17-11

(UNFAIR LABOR PRACTICE)

AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL)
EMPLOYEES, COUNCIL 75, LOCAL 132,)
)
Complainant,)
)
v.)
)
OREGON EMPLOYMENT DEPARTMENT,)
CHILD CARE DIVISION,)
)
Respondent.)

FINDINGS AND ORDER
ON RESPONDENT'S PETITION
FOR REPRESENTATION COSTS

On April 4, 2011, the American Federation of State, County and Municipal Employees, Council 75, Local 132 (AFSCME) filed an unfair labor practice complaint against the Oregon Employment Department, Child Care Division (CCD), alleging that the CCD violated ORS 243.672(1)(e). On November 6, 2012, this Board issued an Order dismissing AFSCME's complaint. 25 PECBR 216 (2012). On November 26, 2012, the CCD submitted its petition for representation costs. On December 14, 2012, AFSCME filed its objection to the amount of the costs sought by the CCD.

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

1. The CCD filed a timely petition for representation costs and AFSCME filed timely objections to the petition.
2. The CCD is the prevailing party. We dismissed AFSCME's complaint, holding that the complaint and grievance procedures for child care providers, and their impact on providers' registration or certification status, are prohibited subjects for bargaining.
3. Counsel for CCD submitted an affidavit and exhibits showing that 103.4 hours of legal work was performed at \$143 per hour, and 6.50 hours of legal work was performed at \$137 per hour. The CCD's petition requests payment in the amount of \$14,786. The maximum amount this Board awards in the absence of a civil penalty is \$3,500. *American Federation of State, County and Municipal Employees Council 75, Local 88 v. Multnomah County*, Case No. UP-22-10, 25 PECBR 150, 151 (2012) (Rep. Cost Order); OAR 115-035-0055.

4. The requested hourly rate is lower than average. The average rate for representation costs is between \$165 and \$170 per hour. *Clackamas County Employees' Association v. Clackamas County/Clackamas County District Attorney*, Case No. UP-7-08, 24 PECBR 769, 771 (2012) (Rep. Cost Order). The number of hours claimed is above average for a single day of hearing. Cases generally require an average of 45 to 50 hours per day of hearing. See *AFSCME Council 75, Local 3964 v. Josephine County*, Case No. UP-26-06, 24 PECBR 720, 723 (2012) (Rep. Cost Order). We will adjust our award accordingly.

5. AFSCME raised two objections: 1) the amount of attorney fees requested, and 2) failure of the petition to include a statement as to how the amount of the award would be consistent with the policies and purposes of the Public Employee Collective Bargaining Act (PECBA). See OAR 115-035-0055(2)(c). AFSCME asserts that the claim should be rejected in its entirety for failing to comply with the rule.

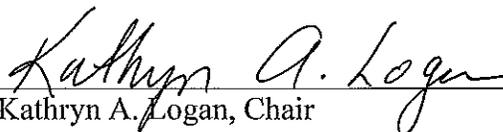
While neither the petition nor the affidavit specifically quotes the language of OAR 115-035-0055(2)(c), the information provided in both documents minimally supports our determination that an award of representation costs is consistent with the policies and purposes of the PECBA. However, AFSCME is correct that the amount of attorney fees would be capped at \$3,500.

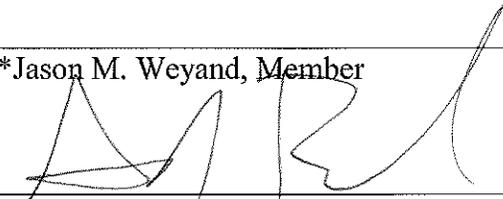
6. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the \$3,500 cap contained in OAR-115-035-0055(1)(a). Having considered the purposes and policies of the PECBA, our awards in prior cases, the novel issues raised and the reasonable cost of services rendered, this Board awards representation costs to CCD in the amount of \$2,383.

ORDER

AFSCME will remit \$2,383 to the CCD within 30 days of the date of this Order.

DATED this 29 day of June 2013.


Kathryn A. Logan, Chair

*Jason M. Weyand, Member

Adam L. Rhynard, Member

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

This Order may be appealed pursuant to ORS 183.482.