

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-23-10

(UNFAIR LABOR PRACTICE)

CLACKAMAS COUNTY EMPLOYEES' ASSOCIATION,	)	
	)	
Complainant,	)	
	)	
v.	)	FINDINGS AND ORDER
	)	ON RESPONDENT'S PETITION
CLACKAMAS COUNTY,	)	FOR REPRESENTATION COSTS
	)	
Respondent.	)	
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On April 24, 2012, this Board issued an Order that dismissed the unfair labor practice complaint filed by Clackamas County Employees' Association (CCEA). We held that Clackamas County (County) did not violate ORS 243.672(1)(e) by making a new proposal to bargaining unit members that had not previously been presented to the CCEA's designated bargaining team.

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

1. The County filed a timely petition for representation costs, and CCEA filed timely objections.
2. The County prevailed.
3. According to affidavit of counsel, the County incurred representation costs valued at \$5,890. This represents 47.5 hours of attorney time valued at \$124 per hour.

This case involved one day of hearing. The number of hours spent is 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 per day of hearing). The requested rate is lower than 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). We will consider these factors in determining the County's reasonable representation costs.

4. CCEA's complaint alleged that the County violated ORS 243.672(1)(e) when it sent a May 5, 2010 e-mail to bargaining unit members in which the County made a new proposal that had not previously been presented to CCEA's designated bargaining team. We dismissed the complaint on grounds that the County's e-mail contained a lawful summary of a proposal previously made to the bargaining team, and not an unlawful new proposal.

In cases involving bad faith bargaining charges, we normally award approximately one-third of the prevailing party's reasonable representation costs, up to the \$3,500 limit. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case Nos. UP-25/35-04, 22 PECBR 632 (2008) (Rep. Cost Order). We conclude that an average award is appropriate in this case.

CCEA objects to any award of representation costs on the grounds that by sending the May 5 e-mail to bargaining unit members, the County bears some responsibility for the situation that resulted in the filing of this complaint. Under the statute, however, we are required to award representation costs to the prevailing party if any are incurred. *Gresham Tchrs v. Gresham Gr. Sch.*, 52 Or App 881, 896, 630 P2d 1304 (1981).

Having considered the purposes and policies of the Public Employee Collective Bargaining Act (PECBA), our awards in prior cases, and the reasonable cost of services rendered, this Board awards CCEA representation costs in the amount of \$1,960.

ORDER

CCEA will remit \$1,960 to the County within 30 days of this Order.

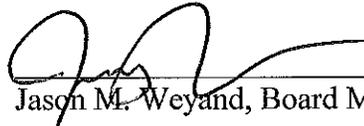
DATED this 16 day of October, 2012.



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Susan Rossiter, Chair



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Kathryn A. Logan, Board Member



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Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.