EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. FR-002-13

(UNFAIR LABOR PRACTICE)

JOH HORN, Complainant, v. SALEM POLICE EMPLOYEES' UNION, and CITY OF SALEM AND SALEM POLICE DEPARTMENT, Respondents.	)	FINDINGS AND ORDER ON SALEM POLICE EMPLOYEES' UNION'S PETITION FOR REPRESENTATION COSTS

On September 24, 2014, this Board issued an order dismissing an unfair labor practice complaint filed by Joe Horn (Horn), alleging that the Salem Police Employees' Union (Union) violated its duty of fair representation to Horn under ORS 243.672(2)(a), and that the City of Salem and Salem Police Department (City) violated ORS 243.672(1)(g) by terminating Horn. 26 PECBR 183 (2014). On October 7, 2014, the Union filed a petition for representation costs. Horn filed timely objections to that petition on October 22, 2014.

Pursuant to ORS 243.676(3)(b) and OAR 115-035-0055, this Board finds that:

1. The Union filed a timely petition for representation costs and Horn filed timely objections to that petition.[1]

2. The Union is a prevailing party.

[1]Horn objects to any award of representation costs to the Union, asserting that this was a case of first impression and that an award of representation costs would undermine the purposes and policies of the Public Employee Collective Bargaining Act (PECBA) by "punishing" Horn for "a reasonable exercise of rights." As an initial matter, we do not agree that this case involved a matter of first impression. This Board has extensive case law discussing and delineating the duty of fair representation that a labor organization owes to employees that it represents, and there is nothing unusual about this case that required a deviation or significant clarification of that case law. Moreover, ORS 243.676(3)(b) states that, if this Board finds that a party has not engaged in an unfair labor practice, we "shall" issue an order dismissing the complaint and "[d]esignate the amount and award representation costs, if any, to the prevailing party."

3. This case required two days of hearing.

4. Counsel for the Union submitted an affidavit reflecting total representation costs of $38,430, based on 128.10 hours of legal work at a rate of $300 per hour. Based on these costs, the Union requests an award of $5,000 in representation costs, which is the maximum amount that we award in the absence of a civil penalty. *See* OAR 115-035-0055(1)(a).

The requested rate is above average. *See Oregon School Employees Association v. North Clackamas School District*, Case No. UP-017-13, 26 PECBR 129 (2014) (Rep. Cost Order) (the average rate for representation costs is between $165 and $170 per hour). The number of hours claimed is also above average for a case requiring two days of hearing. *See id.* (cases generally require an average of 45 to 50 hours per day of hearing). We will consider these factors in our award below.

5. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the $5,000 cap in OAR 115-035-0055(1)(a). However, in cases such as this, where complainants rely on their personal resources to litigate the claim, we usually make a smaller-than-average award. OAR 115-035-0055(4)(a)(D). We typically award approximately ten percent of the petitioner's reasonable representations costs. *Zemmer and Kirk v. American Federation of State, County and Municipal Employees and State of Oregon, Department of Corrections*, Case No. FR-01-10, 24 PECBR 52 (2010) (Rep. Cost Order). Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable costs of services rendered, this Board awards the Union representation costs of $1,485.

ORDER

Horn will remit $1,485 to the Union within 30 days of the date of this Order.

DATED this 30 day of December, 2014.

Kathryn A. Logan, Chair

Jason M. Weyand, Member

Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.