

EMPLOYMENT RELATIONS BOARD  
OF THE  
STATE OF OREGON

Case No. UP-3-03

INTERNATIONAL ASSOCIATION )  
OF FIREFIGHTERS, LOCAL 2285, )  
 )  
Complainant, )  
 )  
v. )  
 )  
DOUGLAS COUNTY )  
FIRE DISTRICT #2, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINDINGS AND ORDER ON  
BOTH PARTIES' PETITIONS  
FOR REPRESENTATION COSTS

This Board issued an Order in the above-captioned case on March 20, 2003. Complainant filed a petition for representation costs on March 27, 2003. Respondent filed a petition for representation costs and objections to Complainant's petition on April 7, 2003. Complainant filed objections to Respondent's petition for representation costs on April 7, 2003. Pursuant to Board Rule 115-35-055, this Board makes the following findings:

1. Both parties filed timely petitions for representation costs, and both filed timely objections to the other's cost petition.
2. Complainant is the prevailing party.

Board Rule 115-35-055(1)(b) defines "prevailing party":

"Prevailing party is the party in whose favor a Board Order is issued. Where one charge (or more) in a complaint is upheld while one charge (or more) in a complaint is dismissed, each party may be regarded as a prevailing party and may file a

petition for representation costs for the portion of the case upon which it prevailed \* \* \* .”

Complainant alleged more than one violation of ORS 243.672(1)(e). This Board found that Complainant established one of the violations alleged, and failed to establish the other. According to Respondent, dismissal of one count of the complaint entitles Respondent to representation costs. Respondent is incorrect.

The rule goes on to provide that both parties may be considered prevailing parties when:

“Separate charges in a complaint are based on clearly distinct and independent operative facts; i.e. the charges could have been plead and litigated without material reliance on the allegations of the other(s), and the separate charges concerned the enforcement of rights independent of the other(s) \* \* \* .”

That was not the case here. Complainant alleged that Respondent had violated (1)(e) under two alternative theories. These two theories were not based on “clearly distinct and independent operative facts.” Rather, the complaint alleged that Respondent’s actions amounted to a refusal to bargain in good faith for one of two reasons. Our dismissal of one of those alternative theories does not entitle Respondent to representation costs. Respondent’s petition will be dismissed.

3. Complainant seeks an award of \$2,016. According to the affidavit of Complainant’s counsel, that amount is based on 14.4 hours of legal services at the rate of \$140 an hour.

4. This case was heard directly by the Board on an expedited basis. The hearing occupied approximately half a day. The number of hours claimed is less than the average for similar cases. The hourly rate is somewhat above the average.

5. The complaint alleged that Respondent violated its duty to bargain in good faith. One of the central purposes of the Public Employee Collective Bargaining Act (PECBA) is to require parties to bargain in good faith concerning employment relations. We concluded that Respondent did not do so here because it submitted a modified final offer to interest arbitration. Under the circumstances, we conclude that an average award is appropriate.

Having considered the charges for services, our awards in similar cases, and the policies and purposes of the PECBA, this Board awards Complainant representation costs of \$700.

ORDER

Respondent will remit \$700 to Complainant within 30 days of the date of this Order.

DATED this 30th day of May 2003.



---

David W. Stiteler, Chair



---

Rita E. Thomas, Board Member



---

Kathryn T. Whalen, Board Member

This Order may be appealed pursuant to ORS 183.482.