

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-5-06

(UNFAIR LABOR PRACTICE)

OREGON AFSCME COUNCIL 75,)	
)	
Complainant,)	
)	
v.)	FINDINGS AND ORDER ON
)	RESPONDENT'S PETITION FOR
STATE OF OREGON,)	REPRESENTATION COSTS
DEPARTMENT OF CORRECTIONS,)	
)	
Respondent.)	
_____)	

On January 11, 2008, this Board issued an Order which held that the State of Oregon, Department of Corrections (DOC) did not violate ORS 243 672(1)(e) or (g) by directing a DOC representative to testify at a hearing concerning Lindsey's unemployment benefits. 22 PECBR 224.

On February 1, 2008, DOC petitioned for representation costs. Oregon AFSCME Council 75 (AFSCME) did not object to the petition

Pursuant to OAR 115-035-0055, this Board finds:

1. DOC filed a timely petition for representation costs
2. DOC is the prevailing party.
3. DOC requests an award of \$3,500 in representation costs. According to the affidavit of counsel, DOC incurred \$29,460.40 in representation costs. These costs include 171.3 hours of attorney time billed at \$111 per hour and .3 hours of

attorney time billed at \$126 per hour.¹ In addition, DOC's representation costs include 6.40 hours of paralegal time billed at \$69 per hour.

DOC's hourly rates are reasonable. *See Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-33-06, 22 PECBR 456 (2008) (Rep. Cost Order), quoting *Lebanon Association of Classified Employees v. Lebanon Community School District*, Case No. UP-33-04, 21 PECBR 557 (2006) (Rep. Cost Order) (hourly rates of up to \$140 per hour for an attorney is reasonable). We also find the use of a paralegal to be an appropriate cost for reimbursement. *IBEW, Local 48 and District Council of Trade Unions v. School District No. 1J, Multnomah County*, Case No. UP-69-03, 21 PECBR 13 (2005) (Rep. Cost Order).

4. The complaint alleged that DOC violated ORS 243.672(1)(e) and (g) when it directed a DOC employee to testify at a hearing regarding Lindsey's unemployment benefits. AFSCME contended that these actions violated the terms of a settlement agreement it made with DOC concerning Lindsey's resignation, in which DOC agreed that it would not respond to inquiries by the Employment Department (Department). We concluded that a particular application of the agreement was illegal—that portion of the agreement that prohibited DOC from giving the Department information that became material after Lindsey admitted that she misrepresented the reasons for her resignation to the Department. We held that by directing a representative to testify at Lindsey's unemployment hearing, DOC refused to apply the terms of Lindsey's resignation agreement in an illegal manner. Accordingly, we concluded that DOC did not violate subsection (1)(g). We also dismissed the (1)(e) allegation.

A case normally requires approximately 45-50 hours of attorney time for each day of hearing. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, 22 PECBR 456. The hearing in this case lasted one day. DOC spent more than three times the average number of hours for a hearing of this length. DOC contends that this amount of time is justified by the fact that this case involved novel and difficult legal issues.

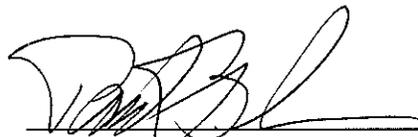
DOC misinterprets our practice concerning the award of representation costs. Typically, we award a prevailing party approximately one-third of its reasonable representation costs, up to the \$3,500 limit in OAR 115-035-0055(1)(a). In cases involving novel legal issues, we generally reduce the award to one-fourth of the prevailing party's reasonable costs so that parties will not be deterred from litigating novel issues.

¹DOC provides no explanation regarding the reason for the difference in the hourly rates.

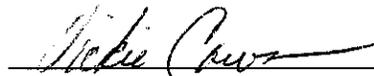
Service Employees International Union, Local 503, Oregon Public Employees Union v. State of Oregon, Judicial Department, Case No. UP-52/62-03, 21 PECBR 810 (2007) (Rep. Cost Order), citing Benton County Deputy Sheriff's Association v. Benton County Sheriff's Department, Case No. UP-36-02, 21 PECBR 176 (2005) (Rep. Cost Order). We will consider these factors in determining DOC's reasonable representation costs.

Having considered the purposes and policies of the Public Employee Collective Bargaining Act, our awards in prior cases, and the reasonable cost of services rendered, this Board awards DOC representation costs in the amount of \$1,400.

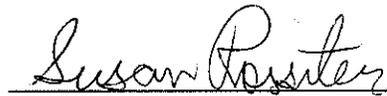
DATED this 29th day of April 2008.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.