

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-9-08

(UNFAIR LABOR PRACTICE)

HOOD RIVER COUNTY,	)	
	)	
Complainant,	)	
	)	
v.	)	FINDINGS AND ORDER
	)	ON COMPLAINANT'S
	)	PETITION FOR
OREGON AFSCME COUNCIL 75,	)	REPRESENTATION COSTS
LOCAL 1082,	)	
	)	
Respondent.	)	
_____	)	

This Board issued an Order on February 25, 2010. The Order concluded that Oregon AFSCME Council 75, Local 1082 (AFSCME) violated ORS 243.672(2)(b) and (d) when it failed to recommend to its members that they ratify the bargaining team's tentative agreement to a successor contract. 23 PECBR 583. On March 18, 2010, Hood River County (County) petitioned for representation costs. AFSCME did not object or otherwise respond to the petition. *See* OAR 115-035-0055(3) (an opposing party has 21 days to object to a petition for representation costs).

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. AFSCME did not object to the petition.
2. The County is the prevailing party.
3. According to the affidavit of counsel, the County incurred \$8,236.90 in representation costs. This consists of 40.18 hours of attorney time billed at \$205 per hour, and 6.5 hours of travel billed at \$102.50 per hour.

The hearing took one day. The number of hours spent is reasonable. *See Blue Mountain Faculty Association v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 853 (2007) (Rep. Cost Order) (cases typically take an average of 45-50 hours for each day of hearing).

The hourly rate is higher than average. *See Dallas Police Employees Association v. City of Dallas*, Case No. UP-33-08, 23 PECBR 510 (2010) (Rep. Cost Order) (the average rate for representation costs is \$165-170 per hour). We will consider this factor in determining the County's reasonable representation costs.

4. This Board determined that AFSCME failed to recommend that its members ratify the tentative agreement the bargaining team reached with the County. We held that AFSCME's failure to recommend the tentative agreement constituted bad faith, a violation of ORS 243.672(2)(b), and breached the parties' written ground rules, a violation of ORS 243.672(2)(d). We ordered AFSCME to cease and desist from its unlawful conduct and to post a notice of its wrongdoing in each County facility where AFSCME bargaining unit members work.

An average award is approximately one-third of a prevailing party's reasonable representation costs, up to the \$3,500 cap. *Benton County Deputy Sheriff's Association v. Benton County*, Case No. UP-24-06, 22 PECBR 46, 47 (2007) (Rep. Cost Order). We adjust that percentage up or down based on various policy considerations described in our rules and cases. We generally make average awards in cases involving bad-faith bargaining. *International Association of Firefighters, Local 2285 v. Douglas County Fire District #2*, Case No. UP-3-03 (Unpublished Rep. Cost Order, May 2003). We also make average awards in cases involving breach of contract. *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 189 (2005) (Rep. Cost Order).

We typically adjust the award downward in cases that present a novel issue so that parties will not be deterred from litigating novel issues. *SEIU, Local 503, OPEU v. State of Oregon, Judicial Department*, Case No. UP-52/62-03, 21 PECBR 810 (2007). Here, the Board had to decide difficult and novel evidentiary issues concerning the confidentiality of bargaining unit members' statements at a union meeting. The County also observes that a union's obligation to recommend a tentative agreement "has not been the focus of past ERB decisions."

Based on these various policy considerations, we conclude that a less-than-average award of representation costs is appropriate.

After considering 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 the County representation costs in the amount of \$1,975.

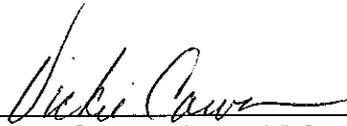
ORDER

AFSCME will remit \$1,975 to the County within 30 days of the date of this Order.

DATED this 17 day of May 2010.



\_\_\_\_\_  
Paul B. Gamson, Chair



\_\_\_\_\_  
Vickie Cowan, Board Member



\_\_\_\_\_  
Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.