

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-16-11

(UNFAIR LABOR PRACTICE)

AMALGAMATED TRANSIT UNION,)
DIVISION 757,)
Complainant,)
v.)
TRI-COUNTY METROPOLITAN)
TRANSPORTATION DISTRICT)
OF OREGON,)
Respondent.)

FINDINGS AND ORDER
ON COMPLAINANT'S PETITION
FOR REPRESENTATION COSTS

On August 11, 2010, Amalgamated Transit Union, Division 757 (ATU) filed an unfair labor practice complaint against Tri-County Metropolitan Transportation District of Oregon (TriMet), alleging violations of ORS 243.672(1)(a), (b), and (e). The parties agreed to bifurcate the claims¹ and we granted the parties' request to expedite consideration of the ORS 243.672(1)(e) claim. On September 12, 2011, this Board issued an Order which held that TriMet violated ORS 243.672(1)(e) by presenting proposals on new issues in its final offer. 24 PECBR 412 (2011).

On October 3, 2011, TriMet petitioned for reconsideration and requested oral argument. On November 17, 2011, we granted reconsideration, without oral argument, and adhered to our original Order, except for minor changes to correct typographical errors. On December 16, 2011, ATU filed a motion to compel compliance. We issued a compliance order on February 16, 2012.

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

1. ATU filed a timely petition for representation costs on September 28, 2011. TriMet filed timely objections to the petition on October 19, 2011.

2. ATU is the prevailing party. This matter arose when TriMet filed its final offer

¹The original filing, Case No. UP-39-10, is currently pending issuance of a recommended order on the ORS 243.672(1)(a) and (b) charges.

with this Board. ATU filed a complaint alleging that TriMet's final offer unlawfully raised numerous new issues. We held that some of the identified issues were new and others were not. TriMet now asserts we should reduce the requested representation costs because ATU did not prevail on all its claims. *See AFSCME Local 88 v. Multnomah County*, Case No. UP-018-06, 22 PECBR 636 (2008) (Rep. Cost Order) (Board reduces representation cost award when a party only partially prevails).

Under OAR 115-035-0055(1)(b)(A), separate charges must be

“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 others(s), and the separate charges concerned the enforcement of rights independent of the other(s).”

In this matter, the only charge before us was bad faith bargaining. Each proposal we reviewed was not a separate charge, but simply a series of facts. All of the proposals were part of the same charge.

This determination is consistent with our ruling in *AFSCME Local 189 v. City of Portland*, Case No. UP-07-07, 23 PECBR 133 (2009) (Rep. Cost Order) in which the City asserted it partially prevailed because we did not adopt an evidentiary privilege claimed by AFSCME. We determined that because AFSCME “prevailed on the same facts and enforced the same right, albeit under a slightly different legal theory,” AFSCME was the sole prevailing party. 23 PECBR at 134.

3. The ATU petition was not filed prematurely. TriMet argues that a petition cannot be filed until final orders are filed in both this case and Case No. UP-39-10. Further, TriMet asserts that a single award should be issued for both cases, similar to this Board's practice in consolidated cases.

When we consolidate cases for hearing and decision, this Board typically issues a single representation cost award subject to the \$3,500 cap. *Eugene Police Employees' Association v. City of Eugene*, Case Nos. UP-38/41-08, 24 PECBR 305 (2011) (Rep. Cost Order). Logic dictates that if the parties are granted the ability to bifurcate issues in a single complaint into separate case numbers, hold separate hearings, and issue separate orders, then representation costs may be awarded on both cases. We will apply that logic here.

4. According to the affidavit of counsel, ATU incurred \$11,250 in representation costs. This consists of 90 hours of attorney time billed at \$125 per hour. The hourly rate is below the average of \$165-\$170. *Dallas Police Employees Association v. City of Dallas*, Case No. UP-33-08, 23 PECBR 510 (2010) (Rep. Cost Order). The number of hours claimed is approximately twice the average of 45-50 hours for a one-day hearing. *Blue Mountain Faculty Association/Oregon Education Association/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 853 (2007) (Rep. Cost Order). We consider both of these factors in determining ATU's reasonable representation costs.

ATU contends the number of hours it spent was justified because this matter was “inextricably intertwined” with Case No. UP-39-10 for purposes of preparation. It also asserts that due to the length and complexity of TriMet’s final offer, ATU needed to spend more time preparing witnesses and presenting evidence than this Board considers “average.” While we recognize that some cases are more complex than average, this is not such a case.

5. An average award is approximately one-third of a prevailing party’s reasonable representation costs, up to a cap of \$3,500. *Benton County Deputy Sheriff’s Association v. Benton County*, Case No. UP-24-06, 22 PECBR 46, 47 (2007) (Rep. Cost Order); OAR 115-035-0055. We may adjust the percentage for policy reasons stated in our rules and cases, but none of those reasons apply here.

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 ATU representation costs in the amount of \$2,100.

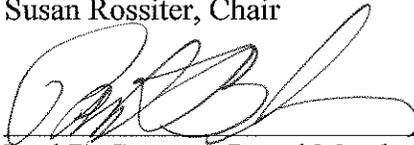
ORDER

Tri-Met will remit \$2,100 to ATU within 30 days of the date of this Order.

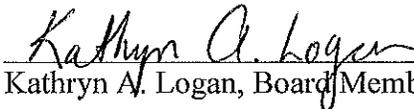
DATED this 15 day of May 2012.



Susan Rossiter, Chair



Paul B. Gamson, Board Member



Kathryn A. Logan, Board Member

This Order may be appealed pursuant to ORS 183.482.