

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-33-06

(UNFAIR LABOR PRACTICE)

ASSOCIATION OF OREGON )  
CORRECTIONS EMPLOYEES, )  
 )  
Complainant, )  
 )  
v. )  
 )  
STATE OF OREGON, )  
DEPARTMENT OF CORRECTIONS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINDINGS AND ORDER ON  
RESPONDENT'S PETITION  
FOR REPRESENTATION COSTS

On November 26, 2007, this Board issued an Order which held that the Department of Corrections (DOC) did not violate ORS 243.672(1)(e) by unilaterally transferring work out of the bargaining unit represented by the Association of Oregon Corrections Employees (AOCE). 22 PECBR 159.

On December 13, 2007, DOC petitioned for representation costs. On December 21, 2007, AOCE objected to the petition.

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

1. DOC filed a timely petition for representation costs, and AOCE filed timely objections to the petition.

2. DOC is the prevailing party.

3. DOC requests an award of \$2,640 in representation costs. According to the affidavit of counsel, DOC incurred \$7,925.70 in representation costs for 69.6 hours of attorney time billed at \$111 per hour, and 2.9 hours of paralegal time billed at \$69 per hour.

AOCE does not object to DOC's hourly rates, and we find them reasonable. *See Lebanon Association of Classified Employees v. Lebanon Community School District*, Case No. UP-33-04, 21 PECBR 557 (2006) (Rep. Cost Order) (\$140 is a reasonable hourly rate for an attorney). Nor does AOCE object to the use of a paralegal. *See Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-16-05, 22 PECBR 51 (2007) (Rep. Cost Order).

AOCE objects to the number of hours DOC expended on this case, noting that they exceed the average for this type of hearing. The hearing on this matter lasted one day. It did not involve novel, complex, or difficult issues. 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*, 21 PECBR 51. DOC spent 19-20 hours more than the average for a hearing of this length and complexity. We will consider this factor in determining DOC's representation costs.

AOCE objects to *any* award of representation costs in this case, contending that awarding costs "will not serve the policies and purposes of the PECBA [Public Employee Collective Bargaining Act]." We disagree; we are required to award representation costs if any were incurred. *Lebanon Association of Classified Employees v. Lebanon Community School District*, 21 PECBR 557, citing *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, 52 Or App 881, 896, 630 P2d 1304 (1981). We find that an average award of representation costs is appropriate in this case. Normally, an average award is roughly one-third of the costs reasonably incurred. *Benton County Deputy Sheriff's Association v. Benton County*, Case No. UP-24-06, 22 PECBR 46 (2007) (Rep. Cost Order).

Having considered the policies and purposes of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards DOC representation costs in the amount of \$1,640.

ORDER

Complainant AOCE will remit \$1,640 to Respondent DOC within 30 days of the date of this Order.

DATED this 14<sup>th</sup> day of April 2008.



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Paul B. Gamson, Chair

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\*Vickie Cowan, Board Member



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Susan Rossiter, Board Member

\*Board Member Cowan is recused from this matter.

This Order may be appealed pursuant to ORS 183.482.