

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-33-08

(UNFAIR LABOR PRACTICE)

DALLAS POLICE EMPLOYEES)	
ASSOCIATION,)	
)	
Complainant,)	FINDINGS AND ORDER ON
)	COMPLAINANT'S PETITION
v.)	FOR REPRESENTATION COSTS
)	
CITY OF DALLAS,)	
)	
Respondent.)	
_____)	

This Board issued an Order on October 13, 2009. We held that the City of Dallas (City) violated ORS 243.672(1)(a) when it responded to a demand to bargain from the Dallas Police Employees Association (Association) by proposing to freeze certain bargaining unit members' salaries, and that the City violated ORS 243.672 (1)(b) and (e) when it negotiated and entered a pre-employment agreement with a bargaining unit member. 23 PECBR 365.

On October 29, 2008, the Association petitioned for representation costs. On November 18, 2009, the City objected to the petition.

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

1. The Association filed a timely petition for representation costs. The City filed timely objections to the Association's petition.
2. The Association is the prevailing party.
3. According to the affidavit of counsel, the Association incurred representation costs valued at \$5,877.50. This consists of 26.1 hours of attorney time valued at \$225 per hour.

The hearing took one day. The number of hours spent is considerably less than the average in similar cases. See *Blue Mountain Faculty Association/Oregon Education Association/NEA and John Lamiman 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). We will consider this factor in determining the Association's reasonable representation costs.

The average request for representation costs submitted in the past three years is \$165-\$170 per hour. We find this amount reasonable. The Association seeks an hourly rate considerably higher than average, another factor we will consider in determining the Association's reasonable representation costs.

4. The Order concluded that the City committed two separate unfair labor practices. First, in response to an Association demand to bargain over a proposed reorganization of the police department, the City threatened to freeze the salaries of some bargaining unit members. We concluded that the City's threat would naturally chill employees in the exercise of Public Employee Collective Bargaining Act (PECBA)-protected rights, in violation of ORS 243.672(1)(a). We further concluded that the City did not bargain in bad faith over the proposed reorganization plan.

Second, the City entered a pre-employment agreement. It offered a police officer position to a candidate, and as part of the hiring agreement, promised to promote him to sergeant in about two months, with a four percent pay increase. We held that the City violated ORS 243.672(1)(e) by unilaterally increasing an employee's wages without first bargaining to completion with the Association. We further held that the City violated ORS 243.672(1)(b) by negotiating the wage increase directly with the employee instead of negotiating with the Association.

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. This Board typically makes a larger-than-average award when an employer violates subsections (1)(a) or (b) because the employer's conduct strikes at core rights protected by the Public Employee Collective Bargaining Act (PECBA). *Oregon AFSCME Council 75, Local 3742 v. Umatilla County*, Case No. UP-2-08, 23 PECBR 313 (2009); see *IAFF, Local #1489, and Duane Brown v. City of Roseburg*, Case No. C-53-84, 8 PECBR 8371(1986). We typically make an average award in subsection (1)(e) unilateral change cases. *Northwest Education Association/OEA/NEA v. Northwest Regional Education Service District*, Case No. UP-23-06, 22 PECBR 482 (2008) (Rep. Cost Order). The combination of factors here warrants a slightly larger-than-average award.

After considering the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the Association representation costs in the amount of \$1,650.

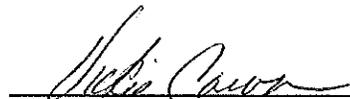
ORDER

The City will remit \$1,650 to the Association within 30 days of the date of this Order.

DATED this 25th day of January 2010.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.