

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-63-02

CITY OF MADRAS,)	
)	
Complainant,)	
)	
v.)	FINDINGS AND ORDER ON
)	BOTH PARTIES' PETITIONS
)	FOR REPRESENTATION
MADRAS POLICE EMPLOYEES')	COSTS
ASSOCIATION,)	
)	
Respondent.)	
_____)	

This Board issued an Order on April 1¹ which concluded that both parties failed to bargain in good faith. 20 PECBR 258. We held the remedy portion of our decision in abeyance until after the issuance of the pending interest arbitration award. On April 16, we denied the Association's motion to reopen the record and its motion for reconsideration. 20 PECBR 270. On May 22, we issued our Order on Remedy which vacated the interest arbitration award and sent the parties back to the last best offer (LBO) stage of bargaining. 20 PECBR 334. On August 8, we issued a ruling on the Association's motion to reconsider the remedial order. 20 PECBR 384.

Both parties have petitioned for an award of representation costs. The Association filed its petition on June 16; the City objected to the petition on June 27. The City filed its petition on June 27; the Association objected to the petition on July 7. Having reviewed the petitions, the objections, and other relevant materials in the record, this Board finds:

1. Both parties filed timely petitions for representation costs,² and each

¹Unless noted, all dates are 2003.

²This Board's decision became final upon issuance of the Order on Remedy. Neither petition was filed within 21 days of this Order. We would ordinarily dismiss both petitions as
(continued...)

filed timely objections to the other party's petition.

2. According to their affidavits, counsel for the Association spent 29.7 hours on this matter at rates of \$135 and \$180 per hour, for a total of \$4,824.90. According to his affidavit, counsel for the City spent 16.05 hours on this matter at \$175 per hour, for a total of \$2,808.

3. This case involved several charges and countercharges. Each party prevailed on some of the charges. Each is a prevailing party for purposes of representation costs. Board Rule 115-35-055(1)(b)(A).

In such cases, this Board's practice is to determine the percentage of the case on which each party prevailed, and then subtract those percentages for purposes of determining representation costs. For example, in *East County Bargaining Council v. Centennial School District No. 28JT*, Case No. C-185-82, 8 PECBR 8359 (1986) (Rep. Cost Order), we determined that the respondent prevailed on 53 percent of the case, and the complainant prevailed on 47 percent of the case. We subtracted the percentages and concluded that respondent was a six percent prevailing party. We then calculated six percent of the reasonable representation costs, and adjusted the request to that amount. We based our award on the adjusted request. An average award will be approximately one-third of the adjusted request.

4. We determined that both the City and the Association bargained in bad faith based on proposals they submitted to interest arbitration. We rejected the City's contention that the Association acted in bad faith when it refused to return to the bargaining table to discuss a proposal the City made for the first time after the parties had already completed mediation. We also rejected the Association's contention that the

²(...continued)

untimely under Board Rule 115-35-055(2). Here, however, we subsequently issued an Order on Reconsideration. We will consider the petitions because they were timely in regards to the Order on Reconsideration. *Thyfault v. Pendleton School District No. 16*, Case No. UP-101-90 (July 1993) (Rep. Cost Order).

Practitioners should note that a mere *request* for reconsideration does not suspend the 21-day filing deadline. *Marion County v. Marion County Law Enforcement Association*, Case Nos. UP-100/110-93, 15 PECBR 192 (1994) (Rep. Cost Order). Had we denied the Association's request for reconsideration, the petitions for representation costs would have been untimely. *Coos Bay Education Association v. Coos Bay School District No. 9*, Case No. UP-67-96 (May 1998) (Rep. Cost Order); *Washington County Police Officers Association v. Washington County*, Case No. UP-15-90 (June 1991) (Rep. Cost Order).

City acted in bad faith by failing to reveal a potential source of revenue and by using a set of comparables in interest arbitration it had not discussed in bargaining.

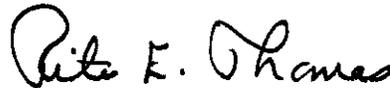
Although the time spent on each separate issue was not identical, we conclude that the substantive issues on which each party prevailed are basically equivalent. In these circumstances, we find that each party prevailed in 50 percent of the case.

5. Neither party prevailed to a greater extent than the other. Based on our rules and practices, we will not award representation costs to either party. We will dismiss both petitions.

ORDER

The petitions for representation costs are dismissed.

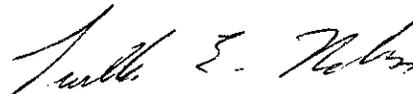
DATED this 30th day of October 2003.



Rita E. Thomas, Chair



Paul B. Gamson, Board Member



Luella E. Nelson, Board Member

This Order may be appealed pursuant to ORS 183.482.