

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-66-03

TEAMSTERS LOCAL 206, )  
)  
Complainant, )  
)  
v. )  
)  
CITY OF COQUILLE, )  
)  
Respondent. )  
\_\_\_\_\_ )

FINDINGS AND ORDER  
ON COMPLAINANT'S PETITION  
FOR REPRESENTATION COSTS

On September 15, 2004, this Board issued an order that found Respondent in violation of ORS 243.672(1)(a). 20 PECBR 767 (2004). Complainant filed a petition for representation costs on October 5, 2004. Respondent filed objections on October 12, 2004. Pursuant to OAR 115-35-055, this Board makes the following findings:

1. Complainant filed a timely petition for representation costs. Respondent filed timely objections.

2. Complainant is the prevailing party.

Respondent asserts that Complainant prevailed on only part of its complaint, and that we should base any representation cost award on the percentage of the case on which Complainant prevailed. We reject this argument and conclude that Complainant is the prevailing party on the entire complaint.

Board rules recognize that a party may prevail on some "charges" but not on others. In such circumstances, the party is entitled to seek representation costs for only that portion of the case on which it prevailed. OAR 115-35-055(1)(b). When each party partially prevails, we will determine the percentage won by each and make an offset when calculating the amount of the award. *Lane Unified Bargaining Council v. McKenzie School District*, Case No. UP-14-85 (Rep. Cost Order, January 1986).

The rule defines the circumstances in which a complaint contains “separate charges” for purposes of representation costs: “Separate charges in a complaint are 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 \* \* \*.” OAR 115-35-055(1)(b)(A). *See Teamsters Local 670 v. City of Vale*, Case No. UP-14-02, 20 PECBR 526 (Rep. Cost Order) (2003) (discussing and applying rule). The issue is whether this complaint states a single charge, or a number of separate charges. If it states a single charge, Complainant is entitled to seek representation costs for the entire case; if it states a number of separate charges, Complainant is entitled to seek costs for only that portion on which it prevailed.

Here, an employee participated in a unit clarification petition filed with this Board which sought to include the employee in Complainant’s bargaining unit. We concluded that she was neither supervisory nor confidential, but also that her position was not included in the bargaining unit. Based on this Board’s findings in the unit clarification case, Respondent reduced the employee’s wages and expanded her duties. Complainant filed this action alleging that Respondent’s actions constituted an unfair labor practice under ORS 243.672(1)(a), (c), and (d). We concluded that Respondent violated the “in” branch of subsection (1)(a), and we dismissed the allegations under subsections (1)(c) and (d).

Under our rules, the question is whether the charges were “based on clearly distinct and independent operative facts” such that each charge could have been pled and litigated without material reliance on the allegations of the other charges. Based on this standard, we conclude without difficulty that this complaint states a single charge. It is based on one set of operative facts, and offers several legal theories as to why Respondent’s actions were unlawful. The operative facts are essentially the same for each theory. They are not “distinct and independent,” and none of the separate theories could have been pled or litigated without reliance on the same core facts.

Complainant is the prevailing party on the entire complaint.

3. Complainant requests an award of \$2,953.75. According to the affidavit accompanying the petition, \$2,860 of the request is for 22 hours of representation services valued at \$130 per hour, and the remaining \$93.75 is for mileage reimbursement. This Board does not award mileage reimbursement as part of representation costs, and we will reduce the request accordingly.

4. The case required a one-day hearing before an administrative law judge (ALJ), followed by post-hearing briefs. Neither party objected to the ALJ’s proposed order,

and there was no oral argument before this Board. We find the number of hours claimed is reasonable. Respondent does not object to the hourly rate sought. We note that it is within the range we found reasonable in other cases.<sup>1</sup>

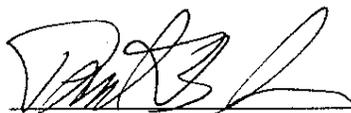
5. As described earlier, we concluded that Respondent violated ORS 243.672(1)(a). We typically make a larger-than-average award when we find a (1)(a) violation because such violations strike at core rights under the Public Employee Collective Bargaining Act (PECBA). *Coos County Board of Commissioners and AFSCME Local 2936 v. Coos County District Attorney*, Case No. UP-32-01, 20 PECBR 650, 653 (2004) (Rep. Cost Order). An average award is approximately one-third of the representation costs reasonably incurred. *City of Vale*, 20 PECBR at 529 n.7, and cases cited therein. We will award one-half of the costs reasonably incurred by Complainant.

Having considered the appropriate charges for services rendered, prior awards in similar cases, and the purposes and policies of the PECBA, this Board will award Complainant \$1,430 in representation costs.

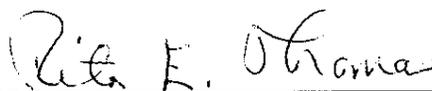
ORDER

Respondent shall remit \$1,430 to Complainant within 30 days of the date of this order.

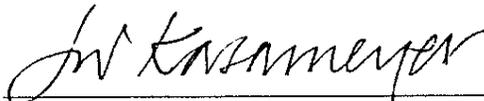
DATED this 25<sup>th</sup> day of February, 2005.



Paul B. Gamson, Chair



\*Rita E. Thomas, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.

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<sup>1</sup>The pleadings do not raise, and we thus need not decide, whether a reasonable hourly rate should be different when, as here, the representative is not a member of the Oregon bar

Board Member Thomas Dissenting:

Both parties prevailed here. The Respondent is a prevailing party for two thirds of this complaint. However, it did not file a petition for representation costs, but argues instead that because the Complainant prevailed in only one third of its complaint, the representation costs should be reduced. I agree. See *OPEU v. Jefferson County*, UP-9-99, Order on Petitions for Representation Costs (1999), and my dissent in *Teamsters Local 670 v. City of Vale*, Case No. UP-14-02, Order on Petitions for Representation Costs, (2002).

The Complainant charged that the Respondent violated ORS 243 (1) (a), (c) and (d). We dismissed the (1) (c) and (d) charges, finding only that the actions of the Respondent violated (1)(a) when it demoted an employee who had requested that the Board include her position in the bargaining unit. After the Board ordered that the employees work was not of a supervisory or confidential nature, the Respondent demoted the employee by reducing her pay while expanding her work duties. We concluded that this action violated the employees rights "in the exercise" of protected rights because there was no PECBA status salary criteria in place before the Order was issued.

The Complainant prevailed on one third of its complaint. In an ORS 243. 672 (1) (a) complaint the Board orders an average award unless it is proven that the complaint involves sustained interference with protected rights under the Public Employees Collective Bargaining Act (PECBA).

Having considered the policies and purposes of the PECBA, the appropriate charges for services rendered, and our awards in similar cases, \$953 would be an average representation cost. However, because the Complainant prevailed in only one third of the charges, I would order \$317, or one third of the average award.