

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-006-14

(UNFAIR LABOR PRACTICE)

SERVICE EMPLOYEES INTERNATIONAL)
 UNION, LOCAL 503, OREGON PUBLIC)
 EMPLOYEES UNION,)
)
 Complainant,)
)
 v.)
)
 STATE OF OREGON,)
 DEPARTMENT OF REVENUE,)
)
 Respondent.)
 _____)

FINDINGS AND ORDER
 ON COMPLAINANT’S PETITION
 FOR REPRESENTATION COSTS

On March 16, 2015, this Board issued an order concluding that the State of Oregon, Department of Revenue (Department), violated ORS 243.672(1)(g) by failing to comply with the terms of a September 1, 2011 Settlement Agreement (Settlement Agreement) between it and the Service Employees International Union, Local 503, Oregon Public Employees Union (Union). 26 PECBR 415 (2015). On April 3, 2015, the Union submitted its petition for representation costs. The Department did not file objections to the Union’s petition.

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

1. The Union filed a timely petition for representation costs, and the Department did not object to that petition.
2. This case involved two days of hearing.
3. The Union is the prevailing party.
4. Counsel for the Union submitted affidavits stating that 142.50 hours of legal work were spent on the case, with 8.75 hours billed at a rate of \$165 per hour, and 133.75 hours billed at a rate of \$135 per hour. The total amount billed was \$19,500. The Union’s petition requests an award of representation costs in the amount of \$5,000, which is the maximum amount that this Board awards in the absence of a civil penalty. OAR 115-035-0055(1)(a).

5. The Union's requested hourly rates (\$135 and \$165) are at or below the average representation rate of \$165 to \$170 per hour. *See Oregon School Employees Association v. North Clackamas School District*, Case No. UP-017-13, 26 PECBR 129 (2014) (Rep. Cost Order). We conclude that those requested rates are reasonable.

6. The Union's requested number of hours is greater than average. Cases generally require an average of 45 to 50 hours per day of hearing. *See id.* We will adjust our award accordingly.

7. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the \$5,000 cap contained in OAR 115-035-0055(1)(a). *Laborers' International Union of North America Local 483 v. City of Portland*, Case No. UP-014-14, 26 PECBR 400, 401 (2014) (Rep. Cost Order). However, when designating the amount of representation costs, we consider what award would be consistent with the policies and purposes of the Public Employee Collective Bargaining Act (PECBA). OAR 115-035-0055(4). One of the factors that we consider in designating these amounts is whether the respondent "was guilty of an aggravated or pervasive unfair labor practice or the repetition of a type of conduct previously found to be unlawful." OAR 115-035-0055(4)(a)(B). This Board found in a separate proceeding that the Department violated ORS 243.672(1)(g) by violating the same written agreement at issue in this case. *See Service Employees International Union, Local 503 v. State of Oregon, Department of Revenue*, Case No. UP-31-12, 25 PECBR 691 (2013). Because these violations were of the same written agreement and of a similar nature, we conclude that the unlawful conduct was repetitive, and we will adjust our award upwards.

8. Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable costs of services rendered in this case, we will order representation costs to the Union in the amount of \$5,000.

ORDER

The Department shall remit \$5,000 to the Union within 30 days of the date of this Order.

DATED this 12 day of May, 2015.

*Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

*Chair Logan did not participate in the deliberations or decision in this matter.

This Order may be appealed pursuant to ORS 183.482.