

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-013-10

(UNFAIR LABOR PRACTICE)

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| PORTLAND FIREFIGHTERS' ASSOCIATION, LOCAL 43, IAFF, |) | |
| |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | FINDINGS AND ORDER ON |
| |) | COMPLAINANT'S PETITION |
| |) | FOR ATTORNEY FEES ON APPEAL |
| CITY OF PORTLAND, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

On November 15, 2011, this Board issued an Order holding that the City of Portland (City) violated ORS 243.672(1)(g) by refusing to implement the terms of an arbitrator's award. 24 PECBR 472 (2011). On January 23, 2012, we issued a reconsideration order that adhered to our original order. 24 PECBR 583 (2012). On February 13, 2012, the City filed a petition for review with the Court of Appeals.¹ On December 10, 2014, the court affirmed this Board's order. *See Portland Fire Fighters' Assn. v. City of Portland*, 267 Or App 491, 341 P3d 770 (2014). The Appellate Judgment was entered on March 16, 2015.

While the matter was pending before the court, Complainant Portland Firefighters' Association, Local 43, IAFF (Association), filed a motion with this Board seeking compliance with our order. The City responded, asserting that it was in compliance. On December 12, 2012, we issued a Compliance Order that set forth the City's obligations under our prior order and that gave the City 30 days to comply with those obligations. On January 8, 2013, the City filed a petition for review with the Court of Appeals with respect to the Compliance Order. On December 10, 2014, the court affirmed this Board's Compliance Order. *See City of Portland v. Portland Fire Fighters' Assn.*, 267 Or App 512, 341 P3d 143 (2014). The Appellate Judgment was entered on March 16, 2015.

On January 2, 2015, the Association filed its petition for attorney fees on appeal, with respect to both court opinions.²

¹Thereafter, the City filed a motion with this Board to stay our order pending the outcome of the appellate review. On May 17, 2012, we denied that motion. 24 PECBR 809 (2012).

²The Association also submitted a petition for representation costs (and a supplemental petition for representation costs), pursuant to ORS 243.676(2)(d) and OAR 115-035-0055. Those petitions are addressed in a separate order issued on this date.

Pursuant to ORS 243.676(2)(e) and OAR 115-035-0057, this Board finds that:

1. The Association submitted a timely petition for attorney fees, and the City submitted timely objections to that petition.
2. The appellant judgments named the Association as the prevailing party.
3. Counsel for the Association submitted affidavits stating that she spent a total of 37.6 hours on both appeals, at a rate of \$165 per hour, for a total of \$6,204 in attorney fees on appeal.
7. The Association's requested hourly rate of \$165 per hour is average. *See Portland Police Association v. City of Portland*, Case No. UP-05-08, 25 PECBR 116 (2012) (Attorney Fees Order) (the average rate for attorney fees is between \$165 and \$170 per hour). The number of hours claimed for two appeals (37.6) is below the average set forth in *City of Portland*. *See id.* at 117 (each case generally require an average of 35 hours).
8. An average award is generally one-third of the reasonable attorney fees of the prevailing party, subject to the \$5,000 cap in OAR 115-035-0057(3). However, we typically award a larger amount in cases involving a refusal to comply with an arbitrator's award because the Public Employee Collective Bargaining Act (PECBA) favors the resolution of contract disputes through arbitration. *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District Of Oregon*, Case No. UP-64-03, 21 PECBR 443, 445 (2009) (Rep. Cost Order); *Salem-Keizer Association of Classified Employees v. Salem-Keizer School District 24J*, Case No. UP-83-99 (2003) (Unpublished Attorney Fees Order). Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable costs of services rendered in this case, this Board awards attorney fees to the Association in the amount of \$3,102.

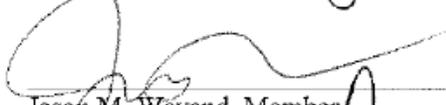
ORDER

The City shall remit \$3,102 to the Association within 30 days of the date of this Order.

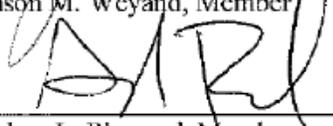
DATED this 15 day of May, 2015.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.