

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-013-10

(UNFAIR LABOR PRACTICE)

PORTLAND FIREFIGHTERS' )  
 ASSOCIATION, LOCAL 43, IAFF, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 CITY OF PORTLAND, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

FINDINGS AND ORDER ON  
COMPLAINANT'S PETITION  
FOR REPRESENTATION COSTS

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.<sup>1</sup> 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.

The Association filed its petition for representation costs on February 23, 2012. The City filed its objections to that petition on February 28, 2012. On January 2, 2015 (after the court

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<sup>1</sup>Thereafter, 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).

affirmed both of our orders), the Association filed a supplemental petition for representation costs.<sup>2</sup>

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

1. The Association's February 13, 2012 petition for representation costs is timely.
2. The City filed a timely objection to the Association's petition for representation costs.
3. The Association's January 2, 2015, supplemental petition for representation costs is not timely. The Association's supplemental petition seeks costs for services performed regarding this Board's December 12, 2012, Compliance Order. Under OAR 115-035-0055(2), a petition for representation costs must be filed "within 21 days of the date of the issuance of the Board Order in the case for which costs are requested." Here, the Association seeks costs regarding the December 12, 2012, Compliance Order, meaning that any petition for representation costs needed to be filed within 21 days of that order. The Association, however, filed its petition on January 2, 2015, over two years after the issuance of our Compliance Order. That supplemental petition, therefore, is not timely.<sup>3</sup>
4. The Association is the prevailing party.
5. This case required one day of hearing.
6. Counsel for the Association submitted affidavits stating that she spent 56.60 hours of legal work on the case, billed at \$165 per hour, with a total cost to the Association of \$9,339. The Association's petition requests an award of representation costs in the amount of \$3,500.
7. The Association's requested hourly rate of \$165 per hour is average. *See Oregon School Employees Association v. North Clackamas School District*, Case No. UP-017-13, 26 PECBR 129, 130 (2014) (Rep. Cost Order) (the average rate for representation costs is between \$165 and \$170 per hour). The number of hours claimed (56.6) is slightly above average for a typical single-day hearing. *See id.* (cases generally require an average of 45 to 50 hours per day of hearing). Here, however, the City filed a motion for reconsideration, and Association counsel spent nine hours responding to that motion. Thus, Association counsel spent 46.6 hours regarding our initial order and an additional nine hours on the reconsideration order. Under these circumstances, we consider the claimed 56.6 hours to be reasonable.

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<sup>2</sup>On that same date, the Association filed a petition for attorney fees on appeal, pursuant to ORS 243.676(2)(e) and OAR 115-035-0057. That petition is addressed in a separate order issued on this date.

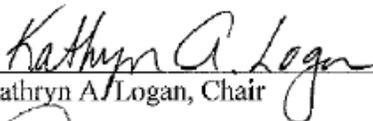
<sup>3</sup>Because the petition was not timely filed, we need not decide whether representation costs would otherwise be awardable to the Association with respect to our Compliance Order.

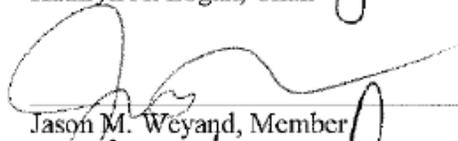
8. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the \$3,500 cap in *former* OAR 115-035-0055(1)(a).<sup>4</sup> However, we typically award a larger amount in cases involving a refusal to comply with an arbitrator's award because the 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). 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 representation costs to the Association in the amount of \$3,500.

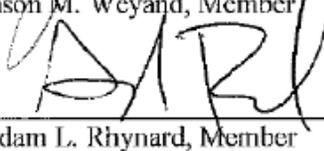
ORDER

The City shall remit \$3,500 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.

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<sup>4</sup>Effective September 10, 2014, OAR 115-035-0055(1)(a) was amended to increase the representation-costs cap to \$5,000. We apply the rule in effect at the time that the petition was filed.