

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-033-03

(UNFAIR LABOR PRACTICE)

ASSOCIATION OF OREGON)
CORRECTIONS EMPLOYEES,)
))
Complainant,)
))
v.)
))
STATE OF OREGON,)
DEPARTMENT OF CORRECTIONS,)
))
Respondent.)
_____)

FINDINGS AND ORDER ON
COMPLAINANT’S PETITION
FOR REPRESENTATION COSTS

On December 13, 2014, the Court of Appeals affirmed this Board’s order, which had concluded that the State of Oregon, Department of Corrections (Department), violated ORS 243.672(1)(e) by refusing to bargain over changes to employee days off and start-stop times. Although this case has an extensive and complicated procedural history¹, this petition concerns only representation costs incurred by the Association of Oregon Corrections Employees (Association) for the above-mentioned (1)(e) violation after the first remand from the court.

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

1. The Association filed a timely petition for representation costs, and the Department did not file objections to the petition.
2. The Association is the prevailing party.²
3. The case required one day of hearing on remand.

¹For a brief overview of that history, see *Assn. of Oregon Corrections Emp. v. State of Oregon*, 353 Or 170, 295 P3d 38 (2013).

²Because the Association only seeks representation costs related to the Board proceedings on remand from the first Court of Appeals decision, and the Association alone prevailed in those proceedings, we consider the Association the sole prevailing party for the purposes of this petition.

4. Counsel for the Association submitted affidavits stating that she spent 50.9 hours of legal work on the case on remand, billed at \$225 per hour, for a total cost to the Association of \$11,425.50. The Association's petition requests an award of representation costs in the amount of \$3,500.

5. The Association's requested hourly rate of \$225 per hour is above the average rate charged. *See Oregon School Employees Association v. North Clackamas School District*, Case No. UP-017-13, 26 PECBR 129 (2014) (Rep. Cost Order) (the average rate for representation costs is between \$165 and \$170 per hour). The number of hours claimed (50.9) is nominally higher than average for a single-day hearing. *See id.* (cases generally require an average of 45 to 50 hours per day of hearing). However, the remand stage of the proceedings also included a motion for reconsideration filed by the Department. Therefore, we conclude that the claimed number of hours is reasonable.

6. 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).³ Having considered the purposes and policies of the Public Employee Collective Bargaining Act, 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 \$2,884.

ORDER

The Department shall remit \$2,884 to the Association 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.

³Effective 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.