

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-066-12

(UNFAIR LABOR PRACTICE)

OREGON AFSCME COUNCIL 75,)
 LOCAL 974,)
)
)
 Complainant,)
)
 v.)
)
 STATE OF OREGON, ACTING THROUGH)
 ITS DEPARTMENT OF ADMINISTRATIVE)
 SERVICES & DEPARTMENT OF)
 CORRECTIONS (TRCI),)
)
 Respondent.)

FINDINGS AND ORDER ON
COMPLAINANT’S PETITION
FOR REPRESENTATION COSTS

On July 18, 2014, this Board issued an order holding that the State, acting through the Department of Corrections (Department), violated ORS 243.672(1)(e) when it failed to bargain with Oregon AFSCME Council 75, Local 974 (AFSCME) regarding the impact of the Department’s decision to change the procedure used to assign overtime at the Two Rivers Correctional Institution. On August 6, 2014, AFSCME filed a petition for representation costs. On August 20, 2014, the Department filed objections to the petition.

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

1. AFSCME filed a timely petition for representation costs and the Department filed timely objections to that petition.
2. AFSCME is the prevailing party.
3. This case required four days of hearing.
4. Counsel for AFSCME submitted an affidavit and exhibit reflecting total representation costs of \$10,807.50, based on 65.5 hours of legal work at a “reasonable value” of \$165 per hour. *See* OAR 115-035-0055(1)(c)(B). In the absence of a civil penalty, the maximum

amount of representation costs awardable by this Board is \$3,500. *Former OAR 115-035-0055(1)(a)*;¹ *Oregon School Employees Association v. North Clackamas School District*, Case No. UP-017-13, 26 PECBR 129 (2014) (Rep. Cost Order).

The requested hourly rate is average. *See North Clackamas School District*, 26 PECBR at 130 (the average rate for representation costs is between \$165 and \$170 per hour). The number of hours claimed is below average for a case requiring four days of hearing. *See id.* (cases generally require an average of 45 to 50 hours per day of hearing). We conclude that the claimed \$10,807.50 reflects AFSCME's reasonable representation costs.

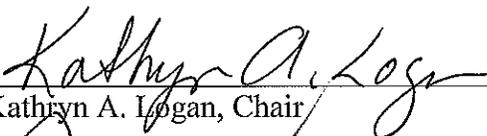
5. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the \$3,500 cap in OAR 115-035-0055(1)(a). *Id.* The Department requests that we adjust our award downward to one-fourth (or less) of \$10,807.50 because the case purportedly presented novel legal issues. *See Association Of Engineering Employees v. State Of Oregon, Department Of Administrative Services*, Case No. UP-043-11, 25 PECBR 941, 943 (2014) (Rep. Cost Order) (in "novel-issue" cases, we generally decrease the award to one-fourth of the prevailing party's reasonable costs, so that parties will not be deterred from litigating novel issues). Here, however, we do not find that the Department's bargaining obligation presented a novel legal issue for this Board to decide, but rather concerned longstanding precedent applied to the particular facts of this case. Consequently, we will order our average award.

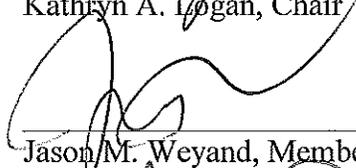
6. Having considered the purposes and policies of the Public Employee Collective Bargaining Act, our awards in prior cases, and the reasonable costs of services rendered, this Board awards AFSCME representation costs of \$3,500.

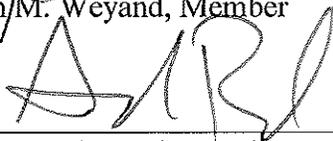
ORDER

The Department will remit \$3,500 to AFSCME within 30 days of the date of this Order.

DATED this 10 day of October, 2014.


Kathryn A. Logan, Chair


Jason M. Weyand, Member


Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.

¹Effective 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.