

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. FR-003-14

(UNFAIR LABOR PRACTICE)

ERIC SOFICH,)	
)	
Complainant,)	
)	
v.)	
)	
SALEM PROFESSIONAL FIREFIGHTERS)	FINDINGS AND ORDER ON
LOCAL 314,)	RESPONDENT’S PETITION FOR
)	REPRESENTATION COSTS
and)	
)	
SALEM FIRE DEPARTMENT/CITY OF)	
SALEM,)	
)	
Respondents.)	

On February 26, 2016, this Board issued an order holding that Respondent Salem Professional Firefighters Local 314 (Union) did not violate ORS 243.672(2)(a), as alleged in the complaint. Because we dismissed the duty of fair representation charge against the Union, we also dismissed the companion ORS 243.672(1)(g) charge against Respondent Salem Fire Department/City of Salem (City). Respondent City timely filed a petition for representation costs, and Complainant filed timely objections to that petition. Pursuant to ORS 243.676(3)(b) and OAR 115-035-0055, this Board finds that:

1. The City is a prevailing party, in that we dismissed the charge against it as a necessary result of dismissing the duty of fair representation charge against the Union. The merits of the (1)(g) claim against the City, however, were not actually litigated.
2. This case required five days of hearing.
3. The City requests an award of \$5,000, based on 208.8 hours of attorney time billed at hourly rates of “\$230 or higher.”
4. The City’s hourly rates are higher than the average hourly rate used by this Board in awarding representation costs. *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).

5. In awarding representation costs, this Board generally uses an average of 45 to 50 hours per day of hearing. *Id.* Although the City's claimed time is in line with this average, we decline to use that average in this case because the City was never required to litigate the merits of the (1)(g) claim. In such circumstances, we will use a reduced number of hours for purposes of calculating representation costs. For purposes of this case, we will use 50 total hours in calculating our award.

6. The City acknowledges that in duty of fair representation matters such as this (where a party has to rely on personal financial resources), we typically limit any award to ten percent of what we deem to be reasonable representation costs. *See, e.g., Horn v. Salem Police Employees' Union and City of Salem Police Department*, Case No. FR-002-13, 26 PECBR 348, 349 (2014) (Rep. Cost Order). We issue smaller awards in these cases because the Public Employee Collective Bargaining Act (PECBA) contemplates a number of circumstances under which individuals must rely on personal resources in order to seek protection of their PECBA rights, and it would unduly chill pursuit of those rights to assess the usual costs against such complainants. *Reinwald v. Employment Department*, Case No. UP-81-93, 16 PECBR 14, 16 n 4 (1995) (Rep. Cost Order). Complainant objects to any award, noting that he has already incurred substantial personal expenses to litigate this matter. We will take this into consideration in determining an award that is consistent with the purposes and policies of the PECBA. *See* OAR 115-035-0055(4)(a).

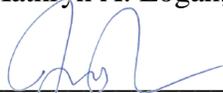
7. Under the circumstances of this case, having considered both parties' submissions, our awards in similar cases, and the purposes and policies of the PECBA, we award representation costs of \$425.

ORDER

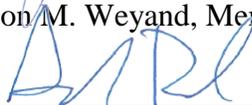
Complainant will pay the City \$425 within 90 days of the date of this order.

DATED May 11, 2016.

*Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

*Chair Logan, Concurring in Part and Dissenting in Part:

I would award \$850, which is 10 percent of the reasonable representation costs. This amount is consistent with our awards in cases involving the use of personal financial resources by a complainant.



*Kathryn A. Logan, Chair

This Order may be appealed pursuant to ORS 183.482.