

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-013-14

(UNFAIR LABOR PRACTICE)

PORTLAND STATE UNIVERSITY)	
CHAPTER OF THE AMERICAN)	
ASSOCIATION OF UNIVERSITY)	
PROFESSORS,)	
)	
Complainant,)	FINDINGS AND ORDER
)	ON COMPLAINANT’S PETITION
v.)	FOR REPRESENTATION COSTS
)	
PORTLAND STATE UNIVERSITY,)	
)	
Respondent.)	
_____)	

On April 17, 2015, this Board issued an order holding that Portland State University (University) violated ORS 243.672(1)(a) by announcing two days before its employees were scheduled to vote on a strike that it would disable the log-in credentials of those employees who exercised their right to strike. The Complainant, Portland State University Chapter of the American Association of University Professors (Association), filed a timely petition for representation costs. The University did not file objections.

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

1. The Association is the prevailing party.
2. This case required one day of hearing.
3. The Association requests an award of \$5,000, which is the maximum amount that we award in the absence of a civil penalty. *See* OAR 115-035-0055(1)(a). In support of that request, the Association submitted an affidavit and petition reflecting \$26,755.55 in representation costs.¹ The majority of that time was billed at \$155 per hour, with approximately 10 hours billed at \$165 and 1.5 hours billed at \$85.

¹Although the Association’s affidavit reflected representation costs of \$39,963.50, the Association explained that approximately one-third of that amount was attributable to a claim that was settled by the parties. The Association, therefore, does not seek those additional costs in this petition.

4. The Association's hourly rate of \$155 per hour is slightly lower than 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 (approximately 173)² is greater than the average for a single-day hearing. *See id.* (cases generally require an average of 45 to 50 hours per day of hearing). We will adjust our award accordingly.

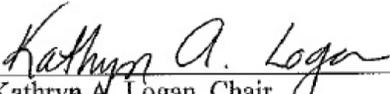
5. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the \$5,000 cap in OAR 115-035-0055(1)(a). However, this case presents two competing factors for awarding representation costs. We typically increase representation costs in cases involving a violation of ORS 243.672(1)(a) because such violations strike at core Public Employee Collective Bargaining Act (PECBA) rights. *American Federation of State, County and Municipal Employees Council 75, Local 88 v. Multnomah County*, Case No. UP-22-10, 25 PECBR 150, 151 (2012) (Rep. Cost Order). We also, however, generally decrease representation costs in cases involving a novel issue, which this case presented. *Oregon AFSCME Council 75 v. State of Oregon, Department of Corrections*, Case No. UP-5-06, 22 PECBR 479, 480-81 (2008) (Rep. Cost Order). Because we are presented with factors that increase and decrease our average award, we will adhere to the average award of one-third of the reasonable representation costs, subject to the \$5,000 cap. *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).

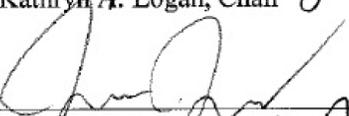
6. Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable costs of services rendered in this case, this Board awards representation costs to the Association in the amount of \$2,583.

ORDER

The University shall remit \$2,583 to the Association within 30 days of the date of this Order.

DATED this 17 day of July, 2015.


Kathryn A. Logan, Chair


Jason M. Weyand, Member


Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.

²This number of hours is consistent with the Association's acknowledgment regarding the appropriate costs allocated to this petition, as explained in footnote 1 of this order.