

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. FR-1-08

(UNFAIR LABOR PRACTICE)

DAVID HADLEY, LINDA HADLEY, )  
JEFF CORDES, BRET BURTON, )  
AND OFELIA MCMENAMY, )

Complainants, )

v. )

MULTNOMAH COUNTY DEPUTY )  
SHERIFF'S ASSOCIATION AND )  
MULTNOMAH COUNTY, )

Respondent. )

FINDINGS AND ORDER  
ON RESPONDENT  
ASSOCIATION'S PETITION  
FOR REPRESENTATION COSTS

On March 27, 2008, this Board issued an order dismissing a complaint in which David Hadley, Linda Hadley, Jeff Cordes, Bret Burton, and Ofelia McMenemy (Complainants) alleged that the Multnomah County Deputy Sheriff's Association (Association) violated ORS 243.672(2)(a) and that Multnomah County violated ORS 243.672(1)(a) and (1)(c). 22 PECBR 416.

On April 15, 2008, the Association petitioned for representation costs. Complainants filed no objections to the Association's petition.

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

1. The Association filed a timely petition for representation costs. Complainants did not object.

2. The Association is the prevailing party.

3. The Association requests an award of \$1,201. According to the affidavit of counsel, this amount is the total of the Association's legal fees which consists of 6,005 hours of attorney time billed at \$200 per hour.

The Association counsel's affidavit indicates that not all of the time claimed in the petition was spent on this matter. No hearing was held in this case. Instead, the Administrative Law Judge (ALJ) investigated the matter and we dismissed the complaint without a hearing because we concluded that no issue of fact or law existed. ORS 243.676(1)(b). Counsel's affidavit indicates that he spent 5.63 hours responding to inquiries from the ALJ, discussing the case with his client and another attorney, and preparing the affidavit submitted with this petition for representation. Additional hours of attorney time listed in the affidavit were spent defending against a lawsuit Complainants brought against the Association in federal court. Such costs cannot be recovered here.

In addition, the hourly rate for the Association's attorney is higher than average. We find a rate of up to \$145 per hour is reasonable for attorney time. *See Lebanon Education Association v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 623 (2008) (Rep. Cost Order) (rates up to \$145 per hour are reasonable for attorney time).

In a duty of fair representation complaint such as this, where complainants rely on personal resources to litigate a claim, we usually make a less than average award. OAR 115-035-0055(4)(a)(D); *Gibson-Boles v. Oregon AFSCME Council 75, and State of Oregon, Department of Public Safety Standards and Training*, Case No. UP-46-01, 20 PECBR 982 (2005) (Rep. Cost Order). We normally award approximately 10 percent of a petitioner's reasonable costs in these cases. We believe that the purposes and policies of the Public Employee Collective Bargaining Act (PECBA) are best served if bargaining unit members have access to the protection of this Board when a union allegedly fails to represent them fairly. If we impose unduly burdensome representation costs in duty of fair representation cases, we would discourage employees from seeking assistance from this Board. *Gibson-Boles*, quoting *Randolph v. International Alliance of Theatrical Stage Employees and Metropolitan Exposition Recreation Commission*, Case Nos. UP-15/16-92, 15 PECBR 337 (1994) (Rep. Cost Order).

In addition, in duty of fair representation cases, we usually allow the individuals 90 days to pay rather than the 30 days typically permitted in other cases. *Gibson-Boles*, 20 PECBR 982.

Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the Association representation costs in the amount of \$82.

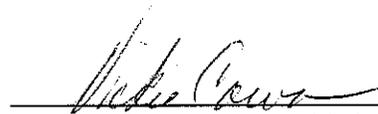
ORDER

Complainants shall remit \$82 to the Association within 90 days of the date of this Order.

DATED this 8<sup>th</sup> day of August 2008.



\_\_\_\_\_  
Paul B. Gamson, Chair



\_\_\_\_\_  
Vickie Cowan, Board Member



\_\_\_\_\_  
Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.