

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-1-05

AFSCME Local 189,)	
)	
Complainant,)	
)	FINDINGS AND ORDER ON
)	COMPLAINANT'S PETITION
v.)	FOR REPRESENTATION COSTS
)	
CITY OF PORTLAND,)	
)	
Respondent.)	
_____)	

This Board issued an Order on March 15, 2006. 21 PECBR 273. Complainant filed this petition for representation costs on April 3, 2006. Respondent filed objections to the petition on April 24, 2006. Pursuant to OAR 115-35-055, this Board makes the following findings:

1. Complainant is the prevailing party.
2. Complainant filed a timely petition for representation costs, to which Respondent filed timely objections.
3. The petition requests an award of \$4,500. The request is based on 31.4 hours of legal services billed at \$145 an hour. Respondent asserts that the complexity of the case only warrants 16 hours of legal services.
4. This case was presented on a fact stipulation. The parties submitted briefs and conducted oral arguments before this Board. The number of

hours claimed exceeds the average of 16-25 for legal services in cases of similar complexity submitted on stipulated facts. *Oregon Education Association and Alan Moberg v. Salem-Keizer School District #24J*, Case No. UP-55-96, 17 PECBR 188 (1997)(Rep. Cost Order, June 1997). The hourly rate is somewhat higher than the average (\$135-140). We will take this into account when making our award.

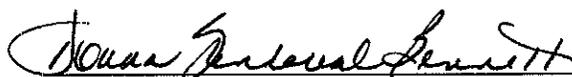
5. The issue was whether Respondent unlawfully refused to comply with an arbitration award. We concluded that Respondent's conduct violated ORS 243.672(1)(g). The Public Employee Collective Bargaining Act (PECBA) encourages voluntary resolution of labor disputes through arbitration. This Board typically makes larger than average representation cost awards when a party unlawfully refuses to comply with an arbitration decision. *Salem-Keizer Association of Classified Employees v. Salem-Keizer School District 24J*, Case No. UP-83-99, 19 PECBR 349 (2001)(Rep. Cost Order, May, 2003). But this was also a case of first impression. We had not previously considered whether the language of a last chance agreement can limit an arbitrator's authority in a subsequent contractual arbitration proceeding. We typically make lower than average awards in matters of first impression. *Benton County Deputy Sheriff's Association v. Benton County Sheriff's Department*, Case No. UP-36-02, 20 PECBR 551 (2004)(Rep. Cost Order, November 2005). Based on these competing policies, we conclude that an average cost award is appropriate.

Having considered our awards in similar cases, the appropriate charges for services rendered and the policies and purposes of the PECBA, this Board awards Complainant representation costs in the amount of \$1,150.

ORDER

Respondent shall remit \$1,150 to Complainant within 30 days of the date of this Order.

DATED this 25th day of August 2006.



Donna Sandoval Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.