EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-11-09

(UNFAIR LABOR PRACTICE)

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| SEIU LOCAL 503, OPEU,<br><br>Complainant,<br><br>v.<br><br>STATE OF OREGON, DEPARTMENT OF TRANSPORTATION,<br><br>Respondent. | ) | FINDINGS AND ORDER ON COMPLAINANT'S PETITION FOR REPRESENTATION COSTS |

On October 18, 2010,[1] this Board issued an Order which held that the State of Oregon, Department of Transportation (ODOT) violated ORS 243.672(1)(a) when it disciplined a member of the SEIU Local 503, OPEU (Union) bargaining unit. 23 PECBR 939. On November 8, the Union petitioned for representation costs. On November 24, ODOT objected to the petition.

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

1. The Union filed a timely petition for representation costs and ODOT filed timely objections to the petition.

2. The Union is the prevailing party.

[1]Unless otherwise stated, all dates are in 2010.

3 The Union asserts that it incurred representation costs of $7,650. According to the affidavit of counsel, this represents 45 hours valued at $170 per hour.

4. ODOT failed to file a timely answer to the complaint. Under OAR 115-035-0035, it was therefore precluded from cross-examining Union witnesses or presenting its own witnesses. As a consequence, the hearing on this matter took less than a full day.

Both the number of hours devoted to the case and the requested hourly rate are reasonable. *Blue Mountain Faculty Association/Oregon Education Association/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 853, 855 (2007) (Rep. Cost Order)(cases typically take an average of 45-50 hours for each day of hearing); *Dallas Police Employees Association v. City of Dallas*, Case No. UP-33-08, 23 PECBR 510, 511 (2010) (Rep. Cost Order) ($165-170 per hour is an average rate)..

5. ODOT disciplined a Union bargaining unit member by reducing his salary by one step for one month. ODOT relied on two separate incidents as the basis for the discipline. First, the employee, acting as a Union steward, e-mailed a copy of a tape recording of a grievance meeting to three private attorneys, seeking legal advice on behalf of the Union. We determined that the employee was engaged in protected union activity and that ODOT violated ORS 243.672(1)(a) when it disciplined him for that activity.

The second incident occurred at a joint Labor-Management Committee meeting. The Union steward requested an ODOT manager's resignation. Although we found the employee's conduct rude and ill-considered, and thus not activity we would encourage, we nevertheless determined that the conduct was protected union activity. We concluded that ODOT violated ORS 243.672(1)(a) when it disciplined the employee for that conduct.

An average award is approximately one-third of a prevailing party's reasonable representation costs, up to the $3,500 cap. *Benton County Deputy Sheriff's Association v. Benton County,* Case No. UP-24-06, 22 PECBR 46, 47 (2007) (Rep. Cost Order); OAR 115-035-0055(1)(a). We adjust that percentage up or down based on various policy considerations described in our rules and cases. We generally adjust the award upward when an employer violates subsection (1)(a) because the employer's conduct strikes at core rights protected by the Public Employee Collective Bargaining Act (PECBA). *Service Employees International Union, Local 503, Oregon Public Employees Union v. State of Oregon, Judicial Department*, Case No. UP-3-04, 21 PECBR 179, 181 (2005) (Rep. Cost Order). We will do so here.

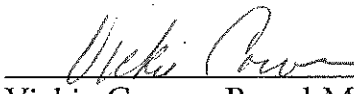
Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the Union representation costs in the amount of $2,800.

ORDER

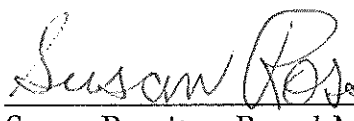
ODOT will remit $2,800 to the Union within 30 days of the date of this Order.

DATED this 19 day of January, 2011.

Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.