

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-18-06

(UNFAIR LABOR PRACTICE)

AFSCME LOCAL 88,)	
)	
Complainant,)	
)	
v.)	FINDINGS AND ORDER ON
)	COMPLAINANT'S PETITION FOR
)	REPRESENTATION COSTS
MULTNOMAH COUNTY,)	
)	
Respondent.)	
_____)	

On February 7, 2008, this Board issued an Order in which we held that Multnomah County (County) did not unilaterally change the status quo in violation of ORS 243.672(1)(e) when it gave the media information about AFSCME Local 88 (AFSCME) bargaining unit members' sick leave usage, overtime pay, and discipline. AFSCME moved for reconsideration. We granted reconsideration, and adhered to our original Order except for one modification: we concluded that the County violated subsection (1)(e) when it gave a reporter disciplinary records for AFSCME bargaining unit member C.P. and the address of AFSCME bargaining unit member S.S.

On April 29, 2008, AFSCME petitioned for representation costs. On May 20, 2008, the County objected to the petition.

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

1. AFSCME filed a timely petition for representation costs. The District filed timely objections to AFSCME's petition.
2. Both parties partially prevailed. Only the Association petitioned for representation costs, however. In such circumstances, we adjust the request to reflect

only the percentage of charges on which the petitioning party prevailed *Lebanon Education Association v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 623 (2008) (Rep. Cost Order). In order to determine this percentage, we consider the following factors: the total number of separate issues in the case, the number of issues on which the petitioner prevailed, the relative importance of each issue, and the amount of time reasonably spent on each issue. *Id.*

Here, AFSCME alleged that the County unilaterally changed the *status quo* in violation of ORS 243.672(1)(e) by releasing confidential information about bargaining unit members. We dismissed charges that the County violated subsection (1)(e) when it gave the media information about bargaining unit members' use of sick leave and overtime pay. We held that the County violated subsection (1)(e) when it gave the media copies of disciplinary action taken against bargaining unit member C.P., and the address of bargaining unit member S.S.

Accordingly, the County prevailed on two charges and AFSCME prevailed on one. We conclude that the issues have approximately equal significance, and that roughly the same amount of time was spent on each. Thus, we hold that AFSCME prevailed on 33 percent of the case, and will adjust its request to reflect this percentage

3. AFSCME requests an award of \$3,500, the maximum amount permitted under our rules. OAR 115-035-0055(1)(a). According to the affidavit of counsel, AFSCME incurred a total of \$12,018 in representation costs which included 78.20 hours of attorney time billed at various rates between \$75 and \$155 per hour. We find hourly rates of \$145 or less to be reasonable. *David Hadley, et al. v. Multnomah County Deputy Sheriff's Association and Multnomah County*, Case No. FR-1-08, 22 PECBR 627 (2008) (Rep. Cost Order).

The hearing in this case lasted one day. In addition, AFSCME moved for reconsideration and orally argued its motion before us. Cases normally take an average of 45-50 hours of attorney time for each day of hearing. Here, the brief and oral argument on reconsideration required additional time and expense which are not typically part of a case before this Board. Under these circumstances, the total number of hours AFSCME spent on this case is reasonable.

4. In our Order, we concluded that the District unlawfully changed the *status quo* in violation of subsection (1)(e). In cases involving an unlawful unilateral change, we normally make an average award which is one-third of the prevailing party's representation costs, up to the \$3,500 limit

The County does not object to the hourly rate or the number of hours claimed by the Association. Instead, it urges us to either deny the petition entirely or, in the alternative, reduce the award because we dismissed most of the allegations in AFSCME's complaint. We are required to award representation costs if any are incurred. *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, 52 Or App 881, 896, 630 P2d 1304 (1981).

Having considered the purposes and policies of the Public Employee Collective Bargaining Act, our awards in prior cases, and the reasonable cost of services rendered, this Board awards AFSCME representation costs in the amount of \$1,241

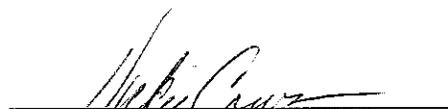
ORDER

The County will remit \$1,241 to AFSCME within 30 days of the date of this Order.

DATED this 28th 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.