

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case Nos. UP-32/35-06

(UNFAIR LABOR PRACTICE)

INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS LOCAL #1431,)

Complainant,)

v.)

CITY OF MEDFORD,)

Respondent,)

Case No. UP-32-06;)

CITY OF MEDFORD,)

Complainant,)

v.)

INTERNATIONAL ASSOCIATION)
OF FIRE FIGHTERS LOCAL 1431,)

Respondent,)

Case No. UP-35-06.)
_____)

FINDINGS AND ORDER ON
CITY OF MEDFORD'S PETITION
FOR REPRESENTATION COSTS

On December 4, 2007, this Board issued an Order in these consolidated cases. In our Order, we held that the International Association of Firefighters Local 1431

(Association) committed an unfair labor practice under ORS 243.672(2)(d). We dismissed another charge against the Association and dismissed the Association's complaint. 22 PECBR 198.

On December 21, 2007, the City petitioned for representation costs. On January 18, 2008, the Association objected to the petition.

Pursuant to OAR 115-035-0055, this Board finds:

1. The City filed a timely petition for representation costs and the Association filed timely objections to the petition.
2. The City is the prevailing party.

The City seeks representation costs for both cases. The Association contends that each party partially prevailed and that the City is entitled to representation costs for only the portion of the cases on which it prevailed. We agree with the City.

Under ORS 243.676(2)(d), only a "prevailing party" is entitled to representation costs. Both parties are considered "prevailing" if each prevails on a separate charge; each party may then seek representation costs for the portion of the case on which it prevailed. OAR 115-035-0055(1)(b); and *Ashland Police Association v. City of Ashland*, Case No. UP-50-05, 21 PECBR 551 (2006) (Rep. Cost Order). A charge is considered separate if it: (1) is "based on clearly distinct and independent operative facts, i.e. the charges could have been plead and litigated without material reliance on the allegations of the other(s)"; and (2) concerns enforcement of rights that are independent of any other charges. OAR 115-035-0055(1)(b); and *Teamsters Local 670 v. City of Vale*, Case No. UP-14-02, 20 PECBR 526 (2003) (Rep. Cost Order).

In its unfair labor practice complaint, the Association alleged that the City violated ORS 243.672(1)(e) by failing to negotiate in good faith over a 40-hour-work-week proposal and by pursuing interest arbitration. In our Order, we dismissed both these charges. In its unfair labor practice complaint, the City alleged that the Association unlawfully refused to bargain over the City's 40-hour-work-week proposal in violation of ORS 243.672(2)(b), and refused to proceed to interest arbitration in violation of ORS 243.672(2)(d). We dismissed the bad faith bargaining charge, but concluded that the Association unlawfully refused to proceed to interest arbitration.

The charges in both cases are not separate. All charges involve the same set of facts: the parties' conduct during negotiations over a 40-hour work week. Although each party offered different legal theories as to why the other party's actions were unlawful, the charges are based on the same operative facts which are neither distinct nor independent. *Teamsters Local 206 v. City of Coquille*, Case No. UP-66-03, 20 PECBR 860 (2005) (Rep. Cost Order). In addition, the charges involve enforcement of the same rights under the Public Employee Collective Bargaining Act (PECBA): the right to expect that negotiations will be conducted in good faith. Because the charges are not separate, we conclude that the City is the prevailing party in both cases.

3. The City requests an award of \$3,500 in representation costs, the maximum amount allowable under Board rules OAR 115-035-0055(1)(a). According to the affidavit of counsel, the City incurred \$8,767.50 in representation costs for 50.10 hours of attorney time billed at \$175 per hour.

The City's hourly rate is higher than the rate we consider reasonable. See *Lebanon Association of Classified Employees v. Lebanon Community School District*, Case No. UP-33-04, 21 PECBR 557 (2006) (Rep. Cost Order) (\$140 is a reasonable hourly rate for an attorney). We will consider this factor in determining the City's reasonable representation costs.

The hearing in these cases lasted one day. Cases normally take an average of 45-50 hours in attorney time for each day of hearing. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-16-05, 22 PECBR 51 (2007) (Rep. Cost Order); and *Blue Mountain Faculty Association v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 853 (2007) (Rep. Cost Order).

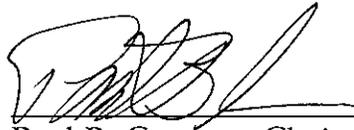
4. The City charged, and we agreed, that the Association refused to proceed to interest arbitration in negotiations over a 40-hour work week and that these actions violated ORS 243.672(2)(d). We did not find the Association's conduct to be egregious, nor its defense against the City's complaint to be frivolous. Instead, the Association appears to have disputed, in good faith, its obligations under the PECBA. Under these circumstances, we find an average award to be appropriate. An average award is approximately one-third of the representation costs reasonably incurred. *Association of Oregon Corrections Employees*, 22 PECBR at 51; and *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 189 (2005).

Having considered the policies and purposes of the PECBA, our awards in prior cases, and the reasonable costs of services rendered, this Board awards the City representation costs in the amount of \$2,340.

ORDER

The Association will remit \$2,340 to the City within 30 days of the date of this Order.

DATED this 14th day of April 2008.



Paul B. Gamson, Chair

*Vickie Cowan, Board Member



Susan Rossiter, Board Member

*Board Member Cowan is recused from this matter.

This Order may be appealed pursuant to ORS 183.482.