

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case Nos. UP-38/41-08

(UNFAIR LABOR PRACTICE)

EUGENE POLICE EMPLOYEES' ASSOCIATION,)	
Complainant,)	
v.)	FINDINGS AND ORDER
)	ON RESPONDENT'S
CITY OF EUGENE,)	PETITION FOR
)	REPRESENTATION COSTS
Respondent.)	
_____)	

The Eugene Police Employees' Association (Association) filed two separate unfair labor practice complaints against the City of Eugene (City). The Board consolidated the complaints for hearing and decision because they involved the same parties, had many facts in common, and raised related legal issues. On October 27, 2010,¹ this Board issued an Order dismissing the complaints. 23 PECBR 972. On November 17, the City filed two separate petitions for representation costs, one for each complaint. On December 1, the Association objected to both petitions.

Pursuant to ORS 243.676(3)(b) and OAR 115-035-0055, this Board finds:

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

¹All dates are 2010 unless stated otherwise.

Board rules limit representation costs to a maximum of \$3,500 in most circumstances. OAR 115-035-0055(1)(a). The City filed two petitions for representation costs, each seeking the maximum award. The Association objects on grounds that the Board issued only one Order, and it argues that the City is therefore entitled to only one award. We agree. In consolidated cases such as this one, “we make only a single award that is subject to the rule’s limitations on amount.” *Portland Association of Teachers v. Portland School District No. 1J*, Case Nos. UP-35/36-94 (unreported Rep. Cost Order, May 1995); *Cascade Bargaining Council v. Jefferson County School District No. 509J*, Case Nos. UP-29/43-85 (unreported Rep. Cost Order, April 1987) (“because only one order was issued, the costs to be awarded are limited to \$3,500”). Accordingly, we will combine the City’s petitions and treat them as a single petition for purposes of awarding representation costs.

3. According to the affidavit of counsel, the City incurred representation costs of \$20,650.40 in Case No. UP-38-08. This represents 112.9 hours of attorney and paralegal time billed at various rates ranging from \$96 to \$205 per hour. According to the affidavit of counsel, the City incurred representation costs of \$18,748.70 in Case No. UP-41-08. This represents 106 hours of attorney and paralegal time billed at various rates ranging from \$96 to \$205 per hour. The total of both petitions is \$39,399.10 based on 218.9 hours. The average hourly rate charged here is \$180.

The Association objects to both the number of hours spent and the hourly rate. This case required two days of hearing. An average case requires approximately 45-50 hours of representation for each day of hearing. *Oregon AFSCME Council 75 v. State of Oregon, Department of Corrections*, Case No. UP-5-06, 22 PECBR 479 (2008) (Rep. Cost Order); *Blue Mountain Faculty Association/Oregon Education/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 853 (2007) (Rep. Cost Order). In fashioning our award, we will consider the time spent by a paralegal. See *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections and AFSCME*, Case No. UP-16-05, 22 PECBR 51 (2007) (Rep. Cost Order) (paralegal time can be recovered as a representation cost if it is not duplicative). The City spent more than double the average number of hours for a case requiring two days of hearing, a factor we will consider in determining the appropriate award.

The hourly rate is slightly higher than average, another factor we will consider in fashioning the award. *Dallas Police Employees Association v. City of Dallas*, Case No. UP-33-08, 23 PECBR 510 (2010) (Rep. Cost Order) (\$165-170 per hour is an average rate).

4. The complaint in Case No. UP-38-08 arose from the City's decision to refer a ballot measure to the voters. The measure would authorize a police auditor to participate in investigatory interviews of bargaining unit members. The Association alleged that the referral violated ORS 243.672(1)(e), (f) and (g). We dismissed the claims as premature and without merit.

The complaint in Case No. UP-41-08 arose from the City's implementation of the ballot measure after the voters passed it. The Association alleged that changing the police auditor's role to include participation in internal affairs interviews with bargaining unit members constituted bad faith bargaining, a violation of ORS 243.672(1)(e), and breached the parties' agreements, a violation of ORS 243.672(1)(g). We held that the change did not violate the parties' agreements or unlawfully change the *status quo*.

5. 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 make an average award in subsection (1)(e) unilateral change cases. *Northwest Education Association/OEA/NEA v. Northwest Regional Education Service District*, Case No. UP-23-06, 22 PECBR 482 (2008) (Rep. Cost Order). We also make average awards in cases involving breach of contract. *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 189 (2005) (Rep. Cost Order). We typically reduce the award in cases that present novel legal issues so that parties are not deterred from litigating novel issues. *Department of Corrections*, 22 PECBR 479 (2008) (Rep. Cost Order). Here, as the City points out, the issues concerning ballot measures were novel.²

We balance these various policy considerations and conclude that a slightly smaller-than-average award is appropriate in these circumstances. Even a smaller-than-average award here would exceed the \$3,500 cap, so we will award the maximum amount permitted by Board rules.

²Novel legal issues can be a two-edged sword in representation cost decisions. They can lead to slightly higher awards because we recognize that it may take longer to research and brief novel issues. It can also lead to smaller awards because, as explained above, we do not want to deter parties from raising novel issues.

Having considered the purposes and policies of the Public Employee Collective Bargaining Act (PECBA), our awards in prior cases, and the reasonable cost of services rendered, this Board awards the City representation costs in the amount of \$3,500.

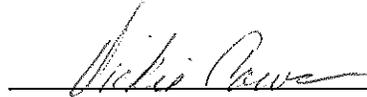
ORDER

The Association will remit \$3,500 to the City within 30 days of the date of this Order.

SIGNED AND DATED this 2 day of June, 2011.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.