

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-40-08

(UNFAIR LABOR PRACTICE)

TEAMSTERS LOCAL 670,)
)
 Complainant,)
)
 v.)
)
 CITY OF ONTARIO,)
)
 Respondent.)
 _____)

FINDINGS AND ORDER
 ON COMPLAINANT'S
 PETITION FOR
 REPRESENTATION COSTS

On June 26, 2009,¹ this Board issued an Order which held that the City of Ontario (City) violated ORS 243.672(1)(g) when it refused to proceed to arbitration on four grievances. 23 PECBR 210. On July 10, Teamsters Local 670 (Union) filed this petition for representation costs. On August 3, the City filed objections to the petition.

Pursuant to ORS 243.676(2)(d) and OAR 115-035-0055, this Board makes the following findings:

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

¹All dates are in 2009 unless otherwise indicated.

²Under Board rules, the City's objections were due on July 31, 21 days after the petition. OAR 115-035-0055(3). On July 29, the Board granted the City's request for an extension of time to August 3 to file its objections.

3. The Union requests a representation cost award of \$3,500, the maximum award permitted when no civil penalty is appropriate. OAR 115-035-0055(1)(a). According to the affidavit of counsel, the Union incurred \$4,977 in representation costs for 35.4 hours of attorney time billed at rates between \$140 and \$155 per hour.

4. We first consider the number of hours reasonably expended and the reasonableness of the hourly rate.

The parties submitted this matter on a joint stipulation of facts in lieu of an evidentiary hearing. The average time spent on a stipulated fact case of normal complexity is 16-25 hours. *Benton County Deputy Sheriff's Association v. Benton County*, Case No. UP-24-06, 22 PECBR 46 (2007) (Rep. Cost Order); *AFSCME Local 189 v. City of Portland*, Case No. UP-1-05, 21 PECBR 527 (2006) (Rep. Cost Order). The legal and factual issues here were not unusually complex, and the procedures were less complex and time consuming than normal because neither party objected to the Recommended Order. The Union spent significantly more time than the average in similar cases, a factor we will consider in determining the Union's reasonable representation costs.

The hourly rate charged for attorney time is reasonable. *AFSCME Local 189 v. City of Portland*, Case No. UP-7-07, 23 PECBR 133, 134 (2009) (Rep. Cost Order) (an hourly rate of up to \$155 is reasonable). We will also consider this factor in determining the amount of representation costs the Union reasonably incurred.

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*, 22 PECBR at 47. We adjust that percentage up or down based on various policy considerations described in our rules and cases.

This dispute arose when the City refused to arbitrate four contract grievances the Union filed. The City asserted that the grievances were not substantively or procedurally arbitrable. We disagreed. We concluded that the City's refusal violated ORS 243.672(1)(g) and ordered the City to proceed to arbitration.

In cases like this that involve a refusal to comply with an arbitrator's award, we typically increase the normal percentage awarded because the Public Employee Collective Bargaining Act (PECBA) favors the resolution of contract disputes through arbitration. *Washington County Police Officers' Association v. Washington County*, Case No. UP-76-99 (Rep. Cost Order Sept. 2003). Conversely, we reduce the percentage in cases

that present novel legal issues so that parties are not deterred from litigating novel issues. *Oregon AFSCME Council 75 v. State of Oregon, Department of Corrections*, Case No. UP-5-06, 22 PECBR 479 (2008) (Rep. Cost Order). This case presented novel legal issues concerning arbitrability based on contract language unlike any we had previously interpreted.

We balance these competing policies and conclude that an average award of representation costs is appropriate.

After considering 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 \$940.

ORDER

The City will remit \$940 to Teamsters Local 670 within 30 days of the date of this Order.

DATED this 13th day of October 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.