

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-50-05

(UNFAIR LABOR PRACTICE)

ASHLAND POLICE ASSOCIATION,)	
)	
Complainant,)	
)	FINDINGS AND ORDER ON
v.)	COMPLAINANT'S PETITION
)	FOR REPRESENTATION COSTS
CITY OF ASHLAND,)	
)	
Respondent.)	
<hr/>		

On August 23, 2006, this Board issued an Order which held that the City violated ORS 243.672(1)(e) when it refused to provide certain information to the Association. We dismissed a claim that the City unlawfully failed to provide the same information pursuant to an earlier request. 21 PECBR 512. On September 6, 2006, the Association petitioned for representation costs. On September 13, 2006, the City objected to the petition.

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

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

2. The Association seeks representation costs for the entire case. The City asserts that both parties partially prevailed and that the Association is entitled to representation costs for only the portion of the case on which it prevailed. We agree with the City.

Only a "prevailing party" is entitled to representation costs. ORS

243.676(2)(d). Board rules recognize that both parties in a case may be regarded as “prevailing” when each prevails on a separate charge. OAR 115-035-0055(1)(b). In such circumstances, each party may seek representation costs for the portion of the case on which it prevailed. *Id.* Separate charges have “clearly distinct and independent operative facts” and concern “enforcement of rights independent of the other(s).” OAR 115-035-0055(1)(b)(A). We must determine if each party prevailed on a “separate charge.”

The Association twice requested the same information and the City refused to provide it. We held that the City’s refusal in the summer of 2005 was lawful because the information was not potentially relevant to contract negotiations or contract administration. Circumstances subsequently changed when the City disciplined two bargaining unit members. The Association requested the same information in December 2005 to assist it in processing grievances challenging the discipline. We determined that the information was potentially relevant to the grievances and therefore held that the City violated ORS 243.672(1)(e) by refusing to provide it.

The two information requests gave rise to separate charges. Although some of the facts overlap, the dispositive facts are different. The crucial factual difference was the discipline of bargaining unit members and subsequent grievances that made the December request potentially relevant. Independent rights were involved. The December request asserted the right to information that would help the Association fulfill its statutory obligations; the earlier request did not. We conclude that both parties prevailed on a separate charge.

3. Only the Association petitioned for representation costs. When both parties prevail but only one seeks representation costs, we adjust the request to reflect the percentage on which the petitioning party prevailed. *Enterprise Education Association v. Enterprise School District No. 21*, Case No. UP-16-04, 21 PECBR 413 (2006) (Rep. Costs Order).¹

¹Our analysis would be different if the City had also filed a petition for representation costs. See *Arlington Education Association v. Arlington School District No. 3*, Case No. UP-65-99, 21 PECBR 193, 195 (2005) (Rep. Cost Order) (describing the methodology when both parties prevail and both file a petition for representation costs).

We reviewed the record and determined that the two charges are roughly equal in importance and in the amount of time devoted. We conclude that the Association prevailed on 50 percent of the case and is entitled to representation costs on that portion alone. We will adjust the request accordingly.

4. The Association requests \$3,180. According to the affidavit of counsel, this represents 15.9 hours valued at \$200 per hour.

5. The parties submitted this dispute directly to this Board on stipulated facts and written argument. The number of hours devoted is slightly below the average of 16-25 hours in similar cases. *City of Portland Professional Employees Association v. City of Portland*, Case No. UP-49-02 (October 2003 Rep. Costs Order). The hourly rate exceeds the average request in similar cases. See *AFSCME Local 189 v. City of Portland*, Case No. UP-1-05, 21 PECBR 528 (2006) (Rep. Costs Order) (average hourly rate is \$135-\$140). We will adjust the Association's request accordingly.

6. As described earlier, the City twice refused to provide information to the Association. We found that one such refusal violated ORS 243.672(1)(e), and we ordered the City to provide the information. We typically make an average award in cases involving a refusal to provide information. *Oregon AFSCME Local 3581 v. State of Oregon, Real Estate Agency*, Case No. UP-42-03, 21 PECBR 411 (2006) (Rep. Costs Order). An average award is approximately one-third of the representation costs reasonably incurred. *Teamsters Local 670 v. City of Vale*, Case No. UP-14-02, 20 PECBR 526, 529 n. 7 (2003 Rep. Costs Order). There is no reason to vary from that practice.

Having considered the purposes and policies of the PECBA, our awards in similar cases, and the reasonable cost of services rendered, this Board awards the Association \$375 in representation costs.

ORDER

The City will remit \$375 to the Association within 30 days of the date of this Order.

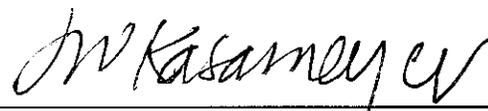
DATED this 6th day of November 2006.



Donna Sandoval Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.