

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-05-08

(UNFAIR LABOR PRACTICE)

PORTLAND POLICE ASSOCIATION,)	
)	
Complainant,)	
)	FINDINGS AND ORDER
v.)	ON COMPLAINANT'S PETITION
)	FOR ATTORNEY FEES ON APPEAL
CITY OF PORTLAND,)	
)	
Respondent.)	
_____)	

On August 12, 2010, this Board issued an Order that held that the City of Portland (City) violated ORS 243.672(1)(g) by refusing to arbitrate grievances filed by the Portland Police Association (Association). 23 PECBR 856. The grievances at issue arose from changes in pension benefit calculation rules made by the City's Fire and Police Disability and Retirement Fund (Fund). The City appealed. On February 8, 2012, the Court of Appeals affirmed this Board's Order. 248 Or App 109, 273 P3d 192 (2012). The court issued its Appellate Judgment on April 11, 2012.

On April 24, 2012, the Association filed this petition for attorney fees on appeal.¹ The City did not object or otherwise respond to the petition. See OAR 115-035-0057(1) and 115-035-0055(3) (an opposing party has 21 days to object to a petition for attorney fees on appeal).

Pursuant to OAR 115-035-0057, this Board makes the following findings:

1. The Association filed a timely petition for attorney fees.
2. The Appellate Judgment names the Association as the prevailing party.
3. The Association incurred \$10,456.25 in attorney fees on appeal. According to the affidavit of counsel, this represents 59.75 hours of attorney time billed at \$175 per hour. The requested hourly rate is slightly above average. See *Gresham-Barlow Education*

¹The Association petitioned separately for representation costs for work performed before this Board. ORS 243.676(2)(d); OAR 115-035-0055. We address that petition in a separate Order issued on this date.

Association/OEA/NEA v. Gresham-Barlow School District No. 10J, Case No. UP-32-07, 24 PECBR 375 (2011) (Attorney Fees Order) (the average rate for attorney fees on appeal is \$165-170 per hour). The number of hours devoted to this appeal is above average. *Id.* (The average number of hours spent on an appeal is 35.)

4. The City refused to arbitrate grievances that the Association filed after the City's Fire and Police Disability Retirement Fund (Fund) changed the method for calculating certain pension benefits. We concluded that the parties had unambiguously agreed to arbitrate the disputes at issue and that the City's refusal to arbitrate the grievances violated ORS 243.672(1)(g). The Court of Appeals agreed with our conclusions and dismissed the City's appeal.

In cases involving a refusal to arbitrate, we typically make a larger than average award. We do so because the Public Employee Collective Bargaining Act (PECBA) favors peaceful resolution of disputes through arbitration, and because our case precedent establishes a strong presumption of arbitrability. *Teamsters Local 670 v. City of Ontario*, Case No. UP-40-08, 23 PECBR 384 (2009) (Rep Cost Order). We will make a larger than average award in this case.

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 Association representation costs in the amount of \$2,300.

ORDER

The City will remit \$2,300 to the Association within 30 days of the date of this Order.

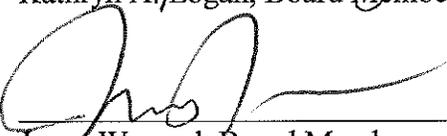
DATED this 2 day of October, 2012.



Susan Rossiter, Chair



Kathryn A. Logan, Board Member



Jason Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.