

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-22-10

(UNFAIR LABOR PRACTICE)

AMERICAN FEDERATION OF STATE, )  
COUNTY AND MUNICIPAL EMPLOYEES )  
COUNCIL 75, LOCAL 88, )  
) )  
Complainant, )  
) )  
v. )  
) )  
MULTNOMAH COUNTY, )  
) )  
Respondent. )  
\_\_\_\_\_ )

FINDINGS AND ORDER  
ON COMPLAINANT'S PETITION  
FOR REPRESENTATION COSTS

On June 26, 2012, this Board issued an Order that held that Multnomah County (County) violated ORS 243.672(1)(a) and (c) by its actions in a December 8, 2009 meeting to discuss Leon Knaap's draft performance appraisal. On July 17, 2012, the American Federation of State, County and Municipal Employees Council 75, Local 88 (Union) petitioned for representation costs. On August 3, 2012, the County responded to the petition.

Pursuant to ORS 243.676(2)(d) and OAR 115-035-0055, this Board finds:

1. The Union filed a timely petition for representation costs and the County filed timely objections to the petition.
2. The Union is a prevailing party.
3. The Union seeks a total of \$6,253.50 in representation costs. According to affidavit of counsel, this amount represents 37.9 hours of attorney time valued at \$165 per hour.

The requested rate is average. *Clackamas County Employees' Association v. Clackamas County/Clackamas County District Attorney*, Case No. UP-7-08, 24 PECBR 769 (2012) (Rep. Cost Order) (the average rate for representation costs is \$165-170 per hour). The case involved one day of hearing. The number of hours claimed is slightly below average. *See AFSCME Council 75, Local 3694 v. Josephine County*, Case No. UP-26-06, 24 PECBR 720 (2012) (Rep. Cost Order) (cases typically take an average of 45-50 hours for each day of hearing). We will consider these factors in determining the Union's reasonable representation costs.

4. We concluded that the County violated the “because of” portion ORS 243.672(1)(a) because it made negative and inaccurate comments in Union bargaining unit member Knaap’s draft evaluation because of Knaap’s involvement in protected activity as a Union steward and because Knaap raised Union issues with his supervisor. In addition, we held that the County’s negative comments in Knaap’s draft evaluation had the natural and probable effect of deterring employees from engaging in protected activity in violation of the “in the exercise” portion of subsection (1)(a). Finally, we concluded that the causal link between Knaap’s Union activity and the County’s conduct demonstrated a violation of subsection (1)(c).

An average award of representation costs is typically one-third of the prevailing party’s reasonable representation costs, up to the \$3,500 limit. OAR 115-035-0055(1)(a) (this Board’s award of representation costs will not exceed \$3,500, except this limitation does not apply in a case where a civil penalty is appropriate); *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 623 (2008) (Rep. Cost Order). We generally adjust the award upward when an employer violates subsection (1)(a) because the employer’s conduct strikes at core Public Employee Collective Bargaining Act (PECBA) rights. *Clackamas County/Clackamas County District Attorney*, 24 PECBR at 771. We will make such an upward adjustment here.

In its response to the petition, the County objected to an award of the full amount of representation costs. The County notes that under OAR 115-035-0055(1)(a), an award of representation costs cannot exceed \$3,500 unless a civil penalty was appropriate, and also notes that we awarded the Union no civil penalty in this case. The County misunderstands the method by which we calculate representation costs. In a case where we imposed no civil penalty, we typically award a prevailing party one-third of the representation costs up to the statutory limit.

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 \$2,400.

ORDER

The County will remit \$2,400 to the Union within 30 days of the date of this Order.

DATED this 10 day of October, 2012.



Susan Rossiter, Chair



Kathryn A. Logan, Board Member

\*Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.

\*Member Weyand did not participate in the deliberations and decision in this case.