

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-16-05

(UNFAIR LABOR PRACTICE)

ASSOCIATION OF OREGON)	
CORRECTIONS EMPLOYEES,)	
Complainant,)	
)	FINDINGS AND ORDER
v.)	ON RESPONDENT'S
)	PETITION FOR
STATE OF OREGON,)	REPRESENTATION COSTS
DEPARTMENT OF CORRECTIONS,)	
Respondent,)	
)	
and)	
)	
AFSCME,)	
Intervenor.)	
_____)	

On April 6, 2005, the Association of Oregon Corrections Employees (AOCE) filed an unfair labor practice complaint which alleged that the State of Oregon, Department of Corrections (DOC), violated ORS 243.672(1)(e) and (g) when it transferred a group of employees out of the AOCE bargaining unit. On April 13, 2007, this Board issued an Order which dismissed the complaint. 21 PECBR 793 (2007). On May 2, 2007, DOC petitioned for representation costs. On May 17, 2007, AOCE objected to the petition.

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

1. DOC filed a timely petition for representation costs and AOCE filed timely objections to the petition.
2. DOC is the prevailing party.

3. DOC requests an award of \$3,500 in representation costs, the maximum permitted under Board rules. OAR 115-035-0055(1)(a). According to the affidavit of counsel, DOC incurred \$20,344.60 in representation costs for 173.7 hours of attorney time billed at \$98 and \$111 per hour; 6 hours of paralegal time billed at \$69 per hour; and 19.3 hours of law clerk time billed at \$46 per hour.

AOCE does not object to the hourly rates, and we find them reasonable. See *Lebanon Association of Classified Employees v. Lebanon Community School District*, Case No. UP-33-04, 21 PECBR 557 (2006) (Rep. Costs Order) (\$140 is a reasonable hourly rate for an attorney). Neither does AOCE object to the use of a law clerk and a paralegal, and we will consider their time in fashioning our award. See *IBEW, Local 48 v. School District No 1J*, Case No. UP-69-03, 21 PECBR 13 (2005) (Rep. Costs Order) (law clerk and paralegal time can be recovered as a representation cost if it is not duplicative).

AOCE objects to the total number of hours expended. The hearing on this matter lasted for just several hours. Cases take an average of 45-50 hours for each day of hearing. See *Blue Mountain Faculty Association v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 853 (2007). This case was not unusually complex. DOC spent four times the average number of hours for a hearing of this length and complexity, a factor we will consider in determining DOC's reasonable representation costs.

4. The complaint alleged that DOC violated ORS 243.672(1)(g) and (e) when it transferred a group of employees out of the AOCE bargaining unit. Specifically, AOCE asserted that the transfer violated an express agreement to include the employees in the AOCE bargaining unit and that DOC acted in bad faith when it refused to bargain the impacts of its decision to transfer the employees. We dismissed the complaint. We concluded that there was no agreement to include the employees in the AOCE bargaining unit and therefore rejected the subsection (1)(g) claim. We rejected the subsection (1)(e) claim because, under this Board's prior rulings, the employees should not have been in the AOCE bargaining unit in the first place, so there was nothing to bargain over when DOC transferred the employees back to the appropriate unit. Although we dismissed the complaint, we do not find it frivolous. In these circumstances, we will make an average award. See *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 189 (2005) (Rep. Costs Order) (an average award is roughly one-third of the representation costs reasonably incurred).

Having considered the purposes and policies of the Public Employee Collective Bargaining Act, our awards in prior cases, and the reasonable cost of services rendered, this Board awards DOC representation costs in the amount of \$1,700.

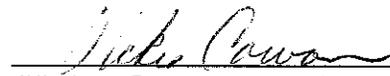
ORDER

Complainant will remit \$1,700 to Respondent within 30 days of the date of this Order.

DATED this 19th day of September 2007.



Paul B. Gamson, Chair



Vickie Cowan, Board Member

This Order may be appealed pursuant to ORS 183.482.