

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-27-06

(UNFAIR LABOR PRACTICE)

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

On May 23, 2007, this Board issued an Order which held that the City of Ashland (City) violated ORS 243.672(1)(g) when it refused to comply with the terms of a written grievance settlement agreement it reached with the Ashland Police Association (Association). 21 PECBR 846 (2007). On June 5, 2007, the Association petitioned for representation costs. On June 25, 2007, the City objected to the petition.

Pursuant to ORS 243.676(2)(d) and 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 is the prevailing party.
3. The Association requests an award of \$2,390 in representation costs. According to the affidavit of counsel, this represents 11.95 hours billed at \$200 per hour.

The parties submitted this matter on stipulated facts in lieu of a hearing. The average time spent on stipulated fact cases of similar complexity is approximately

16-25 hours. *AFSCME Local 189 v. City of Portland*, Case No. UP-1-05, 21 PECBR 527 (2006) (Rep. Cost Order). The Association's request is well below the average, a factor we will consider in determining the Association's reasonable representation costs.

The Association's requested hourly rate exceeds the average in similar cases. *E.g., Lebanon Association of Classified Employees v. Lebanon Community School District*, Case No. UP-33-04, 21 PECBR 557 (2006) (Rep. Cost Order) (hourly rate of \$135-\$140 is reasonable); *Enterprise Education Association v. Enterprise School District No. 21*, Case No. UP-16-04, 21 PECBR 413 (2006) (Rep. Cost Order) (same). We will also take this factor into account in determining the Association's reasonable representation costs.

4. The City asserts that the Association failed to establish that it is entitled to an award of representation costs. It cites this Board's administrative rules and argues that the Association's petition does not demonstrate that the issue presented is one of first impression (OAR 115-035-0055(4)(a)(A)); that the City's conduct is aggravated, pervasive, or repetitive (OAR 115-035-0055(4)(a)(B)); or that the City's defense was frivolous (OAR 115-035-0055(4)(a)(C)). This misapprehends our rules. Contrary to the City's argument, a party need not demonstrate the presence of one of these factors in order to qualify for representation costs. The cited rule requires the Board to consider the purposes and policies of the Public Employee Collective Bargaining Act (PECBA) in arriving at an award of representation costs, and it lists these as examples of such considerations. The rule specifically states that the Board is not limited to these considerations alone. OAR 115-035-0055(4)(a). We conclude that the Association's petition is sufficient under the Board's rules. As such, the statute requires us to award representation costs to the prevailing party if any are incurred. *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, 52 Or App 881, 896, 630 P2d 1304 (1981).

5. The complaint alleged the City violated ORS 243.672(1)(g) when it refused to comply with a written grievance settlement agreement that required it to reinstate a discharged bargaining unit member and pay him "back wages." The City paid back wages but deducted the amount of unemployment benefits the employee received. We concluded that the plain language of the agreement as well as the controlling case law did not permit such an offset. We ordered the City to pay the employee the deducted amount together with interest.

At the time the City made the deduction, this Board's case law clearly prohibited it, but there was at least some confusion in the appellate courts regarding the treatment of unemployment benefits in a back-pay award. The Supreme Court subsequently cleared up any confusion and ruled, consistent with this Board's precedent,

that unemployment benefits may not be offset against a back pay award. *Zottola v. Three Rivers School District*, 342 Or 118, 149 P3d 1151 (2006). Under these circumstances, the City's actions were not frivolous, so 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. Cost Order) (an average award is roughly one-third of the representation costs reasonably incurred).

Having considered 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 \$700.

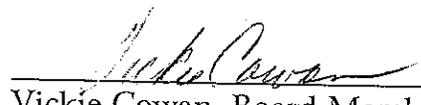
ORDER

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

DATED this 13th day of September 2007.



Paul B. Gamson, Chair



Vickie Cowan, Board Member

This Order may be appealed pursuant to ORS 183.482.