

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-17-08

(UNFAIR LABOR PRACTICE)

ROGUE RIVER EDUCATION)
ASSOCIATION/SOUTHERN OREGON)
BARGAINING COUNCIL/OEA/NEA,)
)
Complainant,)
)
v.)
)
ROGUE RIVER SCHOOL DISTRICT NO. 35,)
)
Respondent.)

FINDINGS AND ORDER
ON COMPLAINANT'S PETITION
FOR REPRESENTATION COSTS

On May 6, 2008, the Rogue River Education Association/Southern Oregon Bargaining Council/OEA/NEA (Association) filed an unfair labor practice complaint against the Rogue River School District No. 35 (District) alleging that the District violated ORS 243.672(1)(g). The Board initially dismissed the complaint as untimely. 22 PECBR 577 (2008). The Association then filed a petition for review with the Court of Appeals, and on October 11, 2011, the Court of Appeals reversed our order and remanded the matter to us for reconsideration. 244 Or App 181, 260 P3d 619 (2011). On November 13, 2012, we issued our Order on Remand, 25 PECBR 230 (2012), finding that the District had violated ORS 243.672(1)(g). The Association submitted its petition for representation costs on December 3, 2012. On December 5, 2012, the County filed its objection to the Association's petition.¹

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 District filed timely objections to the petition.
2. The Association is the prevailing party. We concluded that the District violated ORS 243.672(1)(g), the sole claim at issue in the complaint.
3. A single day hearing was held on February 16, 2012, before ALJ Peter Rader. Counsel for the Association submitted affidavits showing that 43.3 hours were spent on the case,

¹The Association submitted a separate petition for attorney fees on appeal. That petition will be addressed in a separate order on this date.

with 41.3 hours being legal work billed at \$150 per hour and 2 hours being travel time billed at \$75 per hour. The total amount of fees billed was \$6,345.00. The Association's petition requests payment of \$3,500 in representation costs, which is the maximum amount that this Board awards in the absence of a civil penalty. *American Federation of State, County and Municipal Employees Council 75, Local 88 v. Multnomah County*, Case No. UP-22-10, 22 PECBR 150, 151 (2012) (Rep. Cost Order); OAR 115-035-0055.

4. The requested hourly rate is below average. The average rate for representation costs is between \$165 and \$170 per hour. *Clackamas County Employees' Association v. Clackamas County/Clackamas County District Attorney*, Case No. UP-7-08, 24 PECBR 769, 771 (2012) (Rep. Cost Order). The number of hours claimed is also slightly below average. Cases generally require an average of 45 to 50 hours per day of hearing. *See AFSCME Council 75, Local 3964 v. Josephine County*, Case No. UP-26-06, 24 PECBR 720, 723 (2012) (Rep. Cost Order).

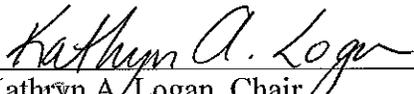
5. The District objected to the petition in its entirety, noting that the Board had initially ruled that the complaint was untimely and that our case law was unclear about whether a discovery rule or an occurrence rule applied when judging the timeliness of complaints. In cases involving novel legal issues such as this, this Board typically issues lower than average representation cost awards. *Oregon AFSCME Council 75 v. State of Oregon, Department of Corrections*, Case No. UP-5-06, 22 PECBR 479, 480 (2008) (Rep. Cost Order). In recognition that our case law was unclear before the Court of Appeals' decision, we will adjust the award downwards.

6. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the \$3,500 cap contained in OAR 115-035-0055(1)(a). 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 the Association representation costs in the amount of \$1,586.

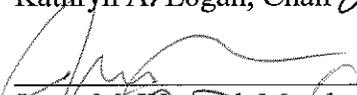
ORDER

The District will remit \$1,586 to the Association within 30 days of the date of this Order.

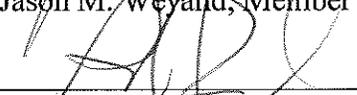
DATED this 21 day of June 2013.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.