

This case has an unusual procedural history. After a hearing, the Administrative Law Judge (ALJ) recommended that the parties be ordered to resolve their dispute through arbitration. Both parties objected to the recommended order and urged this Board to decide the merits of the case. After oral argument, this Board issued an Interim Order which, in accordance with the parties' wishes, remanded the matter to the ALJ for a decision on the merits. 20 PECBR 823. After a supplemental hearing, we issued a Final Order which concluded that Respondent breached its contract with Complainant, a violation of ORS 243.672(1)(g).

The case thus required Complainant to participate in two separate days of hearing, file two post-hearing briefs, and conduct two oral arguments before this Board. Respondent does not object to either the number of hours spent or the hourly rate charged. In these circumstances, we find both the number of hours and the hourly rate to be reasonable.

4. The complaint alleged that Respondent breached the collective bargaining agreement when it laid off a member of the bargaining unit without following the procedures specified in the agreement. Respondent did not dispute that it failed to follow the agreement. It argued instead that the employee was not covered by the agreement and was therefore not entitled to its protections. We examined the facts, the contract language, and the pertinent legal context and concluded that the employee was covered by the contract. We further concluded that Respondent violated ORS 243.672(1)(g) when it laid off the employee without following the contract procedures.

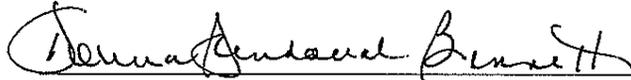
We typically make an average award (*i.e.*, roughly one-third of the reasonable representation costs) in breach of contract cases. *McMinnville Education Association v. McMinnville School District #40*, Case No. UP-4-97 (Unpublished Rep. Cost Order, April 1998); *Construction and General Laborers' Union Local No. 320 v. City of Willamina*, Case No. UP-37-00 (Unpublished Rep. Cost Order, February 2001). There are no factors present that would cause us to make an award that is above or below average. Because an average award would exceed the \$3,500 maximum allowed by OAR 115-035-0055(1)(a), we will award that amount.

Having considered the purposes and policies of the Public Employee Collective Bargaining Act (PECBA), our awards in prior cases, and the reasonable cost of services rendered, this Board awards Complainant representation costs in the amount of \$3,500.

ORDER

Respondent will remit \$3,500 to Complainant within 30 days of the date of this Order.

SIGNED and ISSUED this 28th day of November 2005.



Donna Sandoval Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.

