

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-16-04

(UNFAIR LABOR PRACTICE)

ENTERPRISE EDUCATION ASSOCIATION,)	
)	
Complainant,)	
v.)	FINDINGS AND ORDER
)	ON COMPLAINANT'S
ENTERPRISE SCHOOL DISTRICT)	PETITION FOR
NO. 21,)	REPRESENTATION COSTS
)	
Respondent.)	
_____)	

On October 6, 2005, this Board issued an Order. 21 PECBR 49 (2005). On October 27, 2005, Complainant filed a petition for representation costs; on November 17, 2005, Respondent filed objections to the petition.

On December 19, 2005, we issued an Order on Reconsideration that altered two conclusions of law. 21 PECBR 202 (2005). A majority of this Board concluded that Respondent committed three violations of ORS 243.672(1)(g), and we dismissed a fourth allegation. On January 9, 2006, Complainant filed a supplemental petition for representation costs arising from our Order on Reconsideration; on January 27, 2006, Respondent filed objections to the supplemental petition.

Pursuant to OAR 115-35-05, this Board makes the following findings:

1. Complainant filed a timely petition for representation costs and Respondent filed timely objections to the petition. Complainant filed a timely supplement to its petition and Respondent filed timely objections to the supplement.

2. The complaint alleged that Respondent violated ORS 243.672(1)(g) in four separate ways concerning employees who had retired or were about to retire. This Board found in favor of Complainant on three of the allegations and in favor of Respondent on the

fourth. Both parties prevailed on separate claims, but only Complainant filed a petition for representation costs. When both parties prevail but only one petitions for representation costs, our practice is to adjust the request to reflect the percentage on which the petitioning party prevailed. *Oregon State Police Officers' Association v. State of Oregon, Department of State Police*, Case No. UP-30-00, 18 PECBR 940 (2000) Rep. Cost Order).¹

We have reviewed the record and determine that the four separate claims are roughly equal in importance and time devoted. We conclude that Complainant prevailed on 75 percent of the case and is entitled to representation costs for that portion only. We will reduce the request accordingly.

3. Complainant requests an award of \$3,500, the maximum generally available under our rules. According to the affidavit of counsel, Complainant incurred representation costs of \$9,269.50 broken down as follows: 60.1 hours at \$135 per hour; 6.4 hours (including 3 hours from the supplemental petition) at \$140 per hour; and 4 hours of travel at \$65 per hour.

Respondent does not object to the hourly rate, and we find it reasonable. Respondent objects to the number of hours devoted. The parties reached a partial fact stipulation and had a hearing that lasted less than a full day. Complainant also submitted a post-hearing brief, filed objections to the Recommended Order, conducted oral argument to this Board and submitted a brief in aid of the argument, and filed a petition for reconsideration.

Respondent objects that we typically allow 16 to 25 hours when the parties reach a fact stipulation. Those cases involve complete stipulations that leave no need for a hearing. Here, the parties reached a partial stipulation but still had to participate in a hearing that lasted less than a day. The hearing, combined with the significant number of hours counsel spent negotiating and drafting the stipulation, are the equivalent of a full-day hearing. The average is 45 to 50 hours per day of hearing. Complainant's request exceeds the average, a factor we will consider in making our award.

4. The complaint alleged that Respondent violated ORS 243.672(1)(g) in four separate ways. The first involved retired teachers. We unanimously concluded that Respondent violated subsection (1)(g) when it froze the amount it contributed to health insurance premiums for qualified retirees.

¹Our analysis would be different if Respondent had also filed a petition for representation costs. *See Arlington Education Association v. Arlington School District No. 3*, Case No. UP-65-99, 21 PECBR 193, 195 (2005) (Rep. Cost Order) (describing the methodology when both parties prevail and both file a petition for representation costs).

The remaining three claims all involved the contractual rights of teachers who announced their intent to retire during the life of one labor contract, but did not actually retire until a new contract was in place that provided less generous retirement benefits. Respondent provided the benefits under the new contract. Complainant asserted that the employees were entitled to the benefits under the old contract and that Respondent's failure to provide them violated subsection (1)(g). Our task was to decide which benefits the employees were entitled to. We unanimously agreed that Respondent properly provided post-retirement insurance benefits under the terms of the new contract. A majority of the Board, with one member dissenting, concluded that Respondent violated subsection (1)(g) when it discontinued the pre-retirement stipend under the expired contract, and also when it refused to pay the stipend amount derived from the formula in the expired contract.

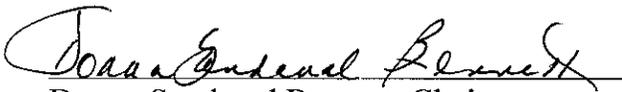
These issues presented novel and difficult questions of vesting about which the Board members did not agree. In cases that involve novel issues, we typically make a less-than-average award so that parties are not deterred from litigating such issues. *Benton County Deputy Sheriff's Association v. Benton County Sheriff's Department*, Case No. UP-36-02, 21 PECBR 176, 177 (2005) (Rep. Cost Order). We make a less-than-average award here.

Having considered the purposes and policies of the PECBA, our prior awards in similar cases, the percentage of the case on which Complainant prevailed, and the reasonable cost of services rendered, this Board awards Complainant representation costs in the amount of \$1,250.

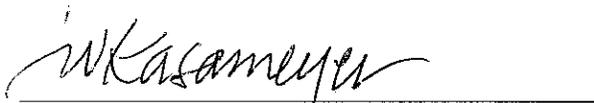
ORDER

Respondent will remit \$1,250 to Complainant within 30 days of the date of this Order.

DATED this 2nd day of May, 2006.


Donna Sandoval Bennett, Chair


Paul B. Gamson, Board Member


James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.