

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-56-04

(UNFAIR LABOR PRACTICE)

LINCOLN COUNTY)	
EDUCATION ASSOCIATION,)	
)	
Complainant,)	FINDINGS AND ORDER ON
)	RESPONDENT'S PETITION FOR
v.)	REPRESENTATION COSTS
)	
LINCOLN COUNTY SCHOOL)	
DISTRICT,)	
)	
Respondent.)	
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This Board issued an Order in the above-captioned case on December 23, 2005. Respondent filed a Petition for Representation Costs on January 12, 2006. Complainant filed objections to the petition on January 18, 2006. Pursuant to OAR 115-35-055, this Board makes the following findings:

1. Respondent filed a timely petition for representation costs. Complainant filed timely objections to the petition.
2. Complainant is the prevailing party.
3. Complainant seeks costs of \$5,000. OAR 115-35-055(1)(a) allows for a maximum award of \$3,500, “* * * except such limitation shall not apply in cases where civil penalties would be appropriate.” In the Order, Respondent was directed to pay Complainant a \$1,000 civil penalty. Therefore,

we are not restricted to the \$3,500 maximum award.

4. According to council's affidavit, Complainant was billed for 37.3 hours of attorney time at \$135 per hour for a total of \$4,902. Complainant's counsel asserts that additional time was expended in preparing the Petition for Representation Costs which are not reflected in the legal bill.

5. This case was submitted to an Administrative Law Judge (ALJ) on stipulated facts. Besides developing the fact stipulation, counsel filed a brief and argued the matter before this Board. We find that the hours worked, the hourly rate and the amount requested are reasonable.

6. This case involved Respondent's refusal to implement a November 4, 2004 arbitration award. However, Respondent exhibited an on-going pattern of conduct which caused this Board to issue a civil penalty. That history is relevant in ruling on representation costs.

On May 22, 2002, Complainant filed an unlawful labor practice complaint alleging that Respondent violated ORS 243.672(1)(g) by refusing to arbitrate medical insurance coverage grievances. The complaint was heard before an ALJ on February 21, 2003. The parties subsequently were ordered by this Board to proceed to arbitration.¹ The matter was arbitrated and an award was issued on November 4, 2004. Respondent refused to implement the award and Complainant filed an unlawful labor practice complaint on November 18, 2004.

Respondent argued that the award was not enforceable because, (1) the arbitrator created a contract for which the parties had never bargained; and (2) implementation would violate public policy. We rejected both arguments and in reviewing the procedural history of this case found that Respondent's conduct was "repetitive" and "egregious." We, therefore, ordered Respondent to pay a \$1,000 civil penalty to Complainant, the maximum allowed under OAR 115-35-075.

In a typical case, we award a prevailing party approximately one-third

¹*Lincoln County Education Association v Lincoln County School District*, Case No. UP-27-02, 20 PECBR 571 (2004)

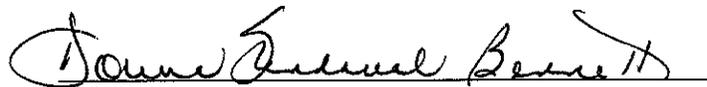
of its reasonable representation costs. However Respondent's initial refusal to proceed to arbitration, short of a directive from this Board, and its continued refusal to implement the November 4, 2004 arbitration award cause us to conclude that a larger than average award is appropriate. Additionally, we also factor into our consideration, the fact that a civil penalty was awarded. We therefore, will half the total fees.

Having determined that the time Complainant's counsel expended and the hourly rate are reasonable, considering our awards in similar cases and the policies and intent of PECBA, we award representation costs in the amount of \$2,500.

ORDER

Respondent is ordered to remit \$2,500 to Complainant within 30 days of the date of this Order.

DATED this 21st day of June 2006.


Donna Sandoval Bennett, Chair

*Paul B. Gamson, Board Member


James W. Kasameyer, Board Member

*Member Gamson is recused from this matter.

This Order may be appealed pursuant to ORS 183.482.