

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-016-08

(UNFAIR LABOR PRACTICE)

THREE RIVERS EDUCATION )  
ASSOCIATION, SOBC/OEA/NEA, )  
) )  
Complainant, )  
) )  
v. )  
) )  
THREE RIVERS SCHOOL )  
DISTRICT, )  
Respondent. )  
\_\_\_\_\_ )

SUPPLEMENTAL ORDER

On August 8, 2013, this Board issued an order (on remand from the Court of Appeals) holding that the Three Rivers School District (District) violated ORS 243.672(1)(e) when it unilaterally decided to increase student contact time for high school teachers represented by the Three Rivers Education Association, SOBC/OEA/NEA (Association). 25 PECBR 712 (2013). As a remedy, we ordered the District to cease and desist from that conduct.<sup>1</sup> We also ordered the parties to bargain over an additional remedy. In the event that the parties were unable to agree on a remedy after bargaining in good faith for 60 days, we directed them to submit their latest remedy proposals to this Board so that we could determine an appropriate remedy.<sup>2</sup> Although the parties bargained in good faith over an appropriate additional remedy, they were unable to ultimately reach an agreement. Consistent with our prior order, both parties submitted their last proposals to this Board.<sup>3</sup> We turn to those proposals.

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<sup>1</sup> As recognized by both parties' proposals, the District returned to the *status quo ante* as of October 15, 2013.

<sup>2</sup> At the parties' mutual request, we expanded our initial 60-day timeline in order for the parties to continue bargaining over a remedy.

<sup>3</sup> Although not requested in our order, both parties also filed submissions in support of their respective final proposals. Those submissions engendered a motion by the Association to partially strike the submission of the District on the grounds that some of the information included in the District's submission was improper. We deny the Association's motion to strike, but also note that we have not reopened the record to receive the extraneous submissions by the parties as "evidence," but merely as argument in support of their respective positions.

The District's final proposal offered the following: (1) \$1,000 to each high school teacher who was working in the 2008-2009 school year (when the unilateral change took place); and (2) the ability of all high school teachers to work from home on "clerical days" from the current school year through June 2016 (when the parties' current collective bargaining agreement expires). With respect to the \$1,000 payment, the District proposed to pay that in two installments: \$500 in November 2013 and \$500 in November 2014.

The Association's final proposal offered the following: (1) compensate all high school bargaining unit members for student contact time worked in excess of 312 minutes per day; (2) compensate full-time teachers in an amount equal to 10.5 days at a per-diem rate applicable to each teacher for each year that the unilateral change was in effect; (3) compensate part-time employees and employees who worked less than a full year on a pro-rated basis; and (4) pay interest of nine percent on the proposed compensation.<sup>4</sup>

Having considered both parties' proposals, the circumstances of this case, and the policies and purposes of the Public Employee Collective Bargaining Act (PECBA), we conclude that neither proposal provides the type of affirmative action that best effectuates the purposes of the PECBA. *See* ORS 243.676(2)(c); *see also* ORS 243.656 (describing the policies and purposes of the PECBA). Therefore, consistent with our prior order, we will order our own remedy, albeit one that incorporates several features and a general framework taken from the parties' proposals.<sup>5</sup>

As an initial matter, we agree with both parties that some form of economic compensation is warranted due to the increased student contact time. However, the District's proposal of a one-time payment of \$1,000 for only high school teachers who worked in the 2008-2009 school year does not sufficiently remedy the severity and longevity of the unilateral change. It also does not sufficiently extend to all high school teachers who were affected by the change.<sup>6</sup>

On the other hand, the Association's proposal overstates the remedy necessary to effectuate the purposes of the PECBA. That proposal is premised on an assumption that the actual working hours of each teacher increased proportionally to the increased student contact time, an assumption not established by the record. Moreover, because the circumstances of this particular type of unilateral change do not comfortably correspond to a traditional "back pay" scenario (*e.g.*, when a discriminatee is terminated on a certain date or when an employee is unlawfully required to work

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<sup>4</sup> The Association also presented what it calls a "hybrid proposal" that contained "non-economic concepts." The Association acknowledges that this "hybrid proposal" was never explored, and the Association has not asserted that this "hybrid proposal" constitutes "the last proposal that was submitted to [the District]" under the terms of our order. Therefore, we do not consider that "hybrid proposal."

<sup>5</sup> In our prior order, we expressly reserved the right to fashion a remedy of our own. Therefore, the cases cited by the Association, in which the Board expressly committed to picking only one proposal, are inapposite.

<sup>6</sup> High school teachers who were not employed during that year nevertheless were subjected to the unilateral change of increased student contact time, even though they did not have a direct "before/after" experience.

in a lower-paid classification), we conclude that the type of calculation proposed by the Association is not appropriate in this case.

Consequently, we conclude that a flat annual amount is the best form of compensation to remedy this particular complaint. We further conclude that \$1,000 is an appropriate annual amount; however, that amount shall be paid to each high school teacher represented by the Association who worked in each school year that the unilateral change was in effect: 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13.<sup>7</sup> In other words, the number of school years from 2008-2013 that a high school teacher worked will determine the number of \$1,000 payments that the teacher is entitled to (*e.g.*, a high school teacher who worked in all five of those school years will receive five payments of \$1,000 each, a teacher who worked in four of those years will receive four payments, and so forth).<sup>8</sup> For the current school year through October 15, 2013, the date on which the District took sufficient action to return to the *status quo ante*, the District shall pay \$100 to each high school teacher represented by the Association who worked during that period. Except as otherwise set forth in this order, no interest is due on these payments.

We further agree with the District that it is appropriate to make the above-required payments in installments. Consistent with the District's final proposal, it shall pay \$500 of any owed amounts in November 2013. Also in November 2013, the District shall make a \$100 payment to any high school teacher who is *only* entitled to the \$100 payment for work performed this school year before October 15, 2013.<sup>9</sup> In November 2014, the District shall pay one-half of any remaining balance to each affected high school teacher.<sup>10</sup> In November 2015, the District shall pay any remaining balance to each affected high school teacher.<sup>11</sup> If the District fails to timely make these

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<sup>7</sup> The Association estimated that its proposal, which also provided that a payment be made for each year in which the unilateral change was in effect, would cost approximately \$3,000 per high school teacher per year.

<sup>8</sup> The payments shall be made regardless of how many days a high school teacher worked in any given year. In other words, if a high school teacher worked in a subject school year, that teacher is entitled to \$1,000 for that year, even though that teacher may have arrived or left during that year.

<sup>9</sup> In other words, high school teachers who are newly hired as of this school year will receive their \$100 payment-in-full in November 2013. All other high school teachers will receive their payments in installments as set forth in this order.

<sup>10</sup> Nothing in this Order prohibits the District from making payments earlier than set forth in this order or from paying off any owed amounts before the dates provided in this order. The dates that we have provided only establish the outside time by which the District must make the required payments.

<sup>11</sup> By way of example, a high school teacher who worked in all five relevant years plus the beginning of the current school year would be entitled to a total of \$5,100 (\$1,000 for each of the five full school years plus \$100 for the current year), to be paid as follows: \$500 in November 2013; \$2,300 in November 2014; and \$2,300 in November 2015.

payments, any unpaid amounts will be subject to nine-percent interest from the date that the payment was due until such payments are made.<sup>12</sup>

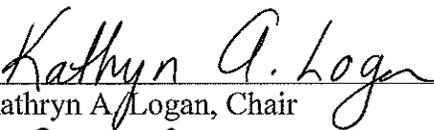
ORDER

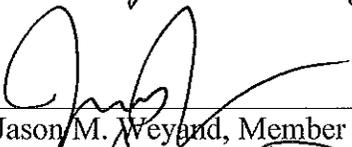
1. The District shall pay each high school teacher who worked during the 2008-09, 2009-10, 2010-11, 2011-12, or 2012-13 school years \$1,000 for each of those school years worked, consistent with this order.

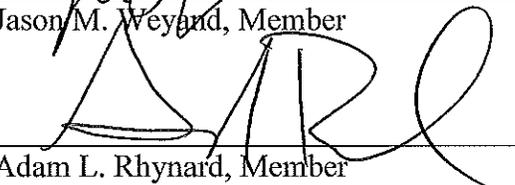
2. The District shall pay each high school teacher who worked through October 15, 2013, during the current school year (2013-14) \$100 each, consistent with this order.

3. If the District fails to timely make a payment required by this order, any unpaid amounts will be subject to nine-percent interest from the date that the payment was due until such payment is made.

DATED this 5<sup>th</sup> day of November, 2013.

  
Kathryn A. Logan, Chair

  
Jason M. Weyand, Member

  
Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.

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<sup>12</sup> The District's payments will be considered timely so long as they are made by the last day of each month specified in this order.