

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 ATTORNEY FEES ON APPEAL

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). The appellate judgment was entered on October 11, 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 attorney fees on October 25, 2011. On October 27, 2011, the District filed its objection to the Association's petition.<sup>1</sup>

Pursuant to ORS 243.676(2)(e) and OAR 115-035-0057, this Board finds:

1. The Association filed a timely petition for attorney fees and the District filed timely objections to the petition.
2. The appellate judgment names the Association as the prevailing party.

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<sup>1</sup>The Association submitted a separate petition for representation costs. That petition will be addressed in a separate order on this date.

3. Counsel for the Association submitted affidavits showing that 48.8 hours were spent on the case, with 40.5 hours of work billed at \$145 per hour and 8.3 hours of work billed at \$150 per hour. The total amount of fees billed was \$6,967.50.

4. The requested hourly rate is below average. The average rate for attorney fees is between \$165 and \$170 per hour. *Portland Police Association v. City of Portland*, Case No. UP-05-08, 25 PECBR 116 (2012) (Attorney Fees Order). The number of hours claimed is above average. Cases generally require an average of 35 hours on appeal. *Id.* at 117.

5. The District objected to the petition in its entirety, arguing that it was untimely. The District further argued 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.

6. OAR 115-035-0057(1) requires a party to file a petition for attorney fees within 21 days of the entry of the appellate judgment. The appellate judgment was entered October 11, 2011. The Association filed its petition 14 days later. As a result, the petition was timely.

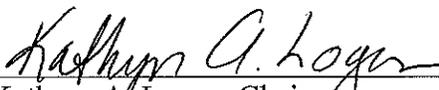
7. Under OAR 115-035-0057(3), we may consider whether a significant modification was made on remand when issuing attorney fee awards. In this matter, the Board initially dismissed the matter as untimely. On remand, after the Court of Appeals clarified that a discovery rule was applicable, we held that the District violated ORS 243.672(1)(g). This is a significant modification. As a result, we will award a lower-than-average award in this matter.

8. 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 attorney fees in the amount of \$1,312.

ORDER

The District will remit \$1,312 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.