

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-061-09

(UNFAIR LABOR PRACTICE)

EAGLE POINT EDUCATION	)	
ASSOCIATION/OEA/NEA,	)	
	)	
Complainant,	)	
	)	
v.	)	FINDINGS AND ORDER ON
	)	COMPLAINANT'S PETITION
JACKSON COUNTY SCHOOL	)	FOR REPRESENTATION COSTS
DISTRICT NO. 9,	)	
	)	
	)	
Respondent.	)	
	)	

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On June 25, 2012, this Board issued an Order dismissing the Eagle Point Education Association/OEA/NEA's (Association) complaint that claimed the Jackson County School District No. 9 (District) violated ORS 243.672(1)(a), (b), and (e) when it created the Collaborative System Initiative (CSI). On July 16, 2012, the District petitioned for representation costs. On August 6, 2012, the Association objected to the petition.

Pursuant to ORS 243.676(3)(b) and OAR 115-035-0055, this Board finds:

1. The District filed a timely petition for representation costs and the Association filed timely objections to the petition.
2. The District is a prevailing party.
3. The District seeks a total of \$14,080 in representation costs. According to affidavit of counsel, this amount represents 55 hours of attorney time valued at \$210 per hour, and 11.5 hours of attorney time valued at \$220 per hour.

The Association objects to both the hourly rate and the number of hours claimed. The requested rate is above average. *Clackamas County Employees' Association v. Clackamas County/Clackamas County District Attorney*, Case No. UP-7-08, 24 PECBR 769 (2012) (Rep. Cost Order) (the average rate for representation costs is \$165-170 per hour). The case involved two days of hearing. The number of hours claimed is slightly below average. *See AFSCME Council 75, Local 3694 v. Josephine County*, Case No. UP-26-06, 24 PECBR 720 (2012) (Rep. Cost Order) (cases

typically take an average of 45-50 hours for each day of hearing). We will consider these factors in determining the District's reasonable representation costs.

4. This case concerned the District's actions in creating and implementing the CSI, which was a committee composed of Association bargaining unit members and other District employees that served as an advisory committee to the District Superintendent on day-to-day operational issues. We concluded that the District's actions did not interfere with bargaining unit members in or because of their exercise of rights protected under the Public Employee Collective Bargaining (PECBA) in violation of ORS 243.672(1)(a). We also held that the CSI did not constitute an employer-controlled employee organization that constituted unlawful employer domination in violation of ORS 243.672(1)(b). Finally, we concluded that the creation of the CSI was not a unilateral change in the *status quo* in violation of ORS 243.672(1)(e).

An average award of representation cost is typically one-third of the prevailing party's reasonable representation costs, up to the \$3,500 limit. OAR 115-035-0055(1)(a) (this Board's award of representation costs will not exceed \$3,500, except this limitation does not apply in a case where a civil penalty is appropriate). *Lebanon Education Association/OEA v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 623 (2008) (Rep. Cost Order). We generally adjust the award downward when a case involves a novel legal issue so that parties are not deterred from litigating these types of issues. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections and AFSCME*, Case No. UP-16-05, 22 PECBR 51 (2007) (Rep. Cost Order). Here, as the Association points out, the issue of what constitutes unlawful employer domination under subsection (1)(b) is novel. Accordingly, we will make a downward adjustment in our award.

After considering the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the District representation costs in the amount of \$3,200.

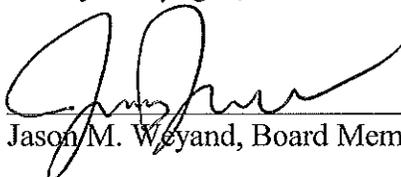
ORDER

The Association will remit \$3,200 to the District within 30 days of the date of this Order.

DATED this 29 day of October, 2012.

  
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Susan Rossiter, Chair

  
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Kathryn A. Logan, Board Member

  
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Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.