EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-077-11

(UNFAIR LABOR PRACTICE)

OREGON SCHOOL EMPLOYEES ASSOCIATION, Complainant, v. MEDFORD SCHOOL DISTRICT #549C, Respondent.	)	FINDINGS AND ORDER ON RESPONDENT'S PETITION FOR REPRESENTATION COSTS

On November 21, 2011, the Oregon School Employees Association (Association) filed an unfair labor practice complaint alleging that the Medford School District #549C (District) violated ORS 243.672(1)(b) and (e). On May 23, 2013, we dismissed the complaint. 25 PECBR 506 (2013). The District submitted its petition for representation costs on June 12, 2013. On July 1, 2013, the Association filed its objection to the District's petition.

Pursuant to ORS 243.676(2)(d) 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 the prevailing party, as the Board dismissed the complaint.

3. A single day of hearing was held on May 14, 2012. The District submitted an affidavit showing that 71.5 hours were spent on the case, with 62 hours billed at $135 per hour and 9.5 hours billed at $160 per hour. The total amount of representation costs was $9,905. The District's petition requests payment of $3,500 in representation costs, which is the maximum amount that this Board awards in the absence of a civil penalty. *American Federation of State, County and Municipal Employees Council 75, Local 88 v. Multnomah* County, Case No. UP-22-10, 25 PECBR 150, 151 (2012) (Rep. Cost Order); OAR 115-035-0055.

4. The requested hourly rate is below average. The average rate for representation costs is between $165 and $170 per hour. *Clackamas County Employees' Association v. Clackamas County/Clackamas County District Attorney,* Case No. UP-7-08, 24 PECBR 769, 771

(2012) (Rep. Cost Order). The number of hours claimed is above average. Cases generally require an average of 45 to 50 hours per day of hearing. *See AFSCME Council 75, Local 3694 v. Josephine County,* Case No. UP-26-06, 24 PECBR 720, 723 (2012) (Rep. Cost Order).

5. The Association objected to the petition in its entirety, claiming that a representation cost award would not further the policies of the Public Employee Collective Bargaining Act (PECBA). The Association further asserted that if some award was reasonable, the hours claimed by the District were excessive. Finally, the Association stated that if the Board issued an award, it should be no more than 25 percent of the District's reasonable costs because, as asserted by the Association, this case involved a matter of first impression.

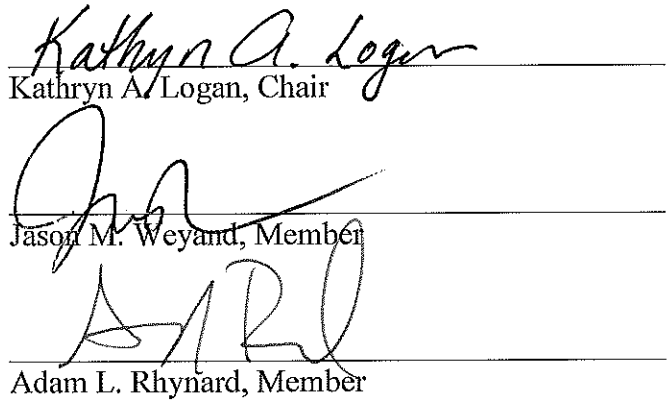
It is appropriate to award representation costs. Although we may agree that the facts in this matter had some unique qualities, this was neither a case of first impression (OAR 115-035-0055(4)(a)(A)) nor one involving novel legal issues that would cause us to reduce the award. *Oregon AFSCME Council 75 v. State of Oregon, Department of Corrections,* Case No. UP-5-06, 22 PECBR 479, 480 (2008) (Rep. Cost Order). However, we will take into account that the number of hours claimed was above average.

6. An average award is generally one-third of the reasonable representation costs of the prevailing party, subject to the $3,500 cap contained in OAR 115-035-0055(1)(a). *Oregon AFSCME Council 75,* 22 PECBR at 480. Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards representation costs to the District in the amount of $2,250.

ORDER

The Association will remit $2,250 to the District within 30 days of the date of this Order.

DATED this 23 day of August 2013.



Kathryn A. Logan, Chair

Jason M. Weyand, Member

Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.