

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-5-07

(UNFAIR LABOR PRACTICE)

GRANTS PASS ASSOCIATION OF	)	
CLASSIFIED EMPLOYEES/OEA/NEA	)	
AND SHARON BULLINGTON,	)	
	)	
Complainant,	)	
	)	FINDINGS AND ORDER
v.	)	ON COMPLAINANT'S
	)	PETITION FOR
GRANT PASS SCHOOL DISTRICT,	)	REPRESENTATION COSTS
NO. 7,	)	
	)	
Respondent.	)	
_____	)	

On November 4, 2008, this Board issued the underlying Order in this matter. We held that the Grants Pass School District No. 7 (District) violated ORS 243.672(1)(a) when it took certain employment-related actions against Sharon Bullington because she engaged in protected union activities. 22 PECBR 806.

On November 25, 2008, the Grants Pass Association of Classified Employees/OEA/NEA and Bullington (collectively, the Association) petitioned for representation costs. On December 17, 2008, the District objected to the petition.

Pursuant to ORS 243.676(2) and OAR 115-035-0055, this Board finds:

1. The Association filed a timely petition for representation costs. The District filed timely objections to the Association's petition.
2. The Association is the prevailing party.

3. The Association requests an award of \$3,500, the maximum generally permitted under Board rules. OAR 115-035-055(1)(a). According to the affidavit of counsel, the Association incurred a total of \$21,568 in representation costs for 147 hours of attorney time billed at \$140 or \$145 per hour, and 13 hours of travel time billed at \$70 per hour. We find an hourly rate of \$145 or less to be reasonable. *Lebanon Education Association v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 623 (2008) (Rep. Cost Order).

This case involved three days of hearing. Both parties filed, and subsequently withdrew, objections to the Recommended Order. We find that the amount of attorney time spent on this case is reasonable. *Northwest Education Association/OEA/NEA v. Northwest Regional Education Service District*, Case No. UP-23-06, 22 PECBR 482 (2008) (Rep. Cost Order) (a case normally involves 45-50 hours of attorney time for each day of hearing).

Although the District agrees that the hourly rate is reasonable, it objects to the number of hours claimed by the Association. According to the District, 16 of the hours claimed by the Association are directly related to attempts to reach a settlement. The District observes that OAR 115-035-0055(1)(c) permits reimbursement only for services “directly connected with prosecuting or defending against the unfair labor practice charge.” According to the District, time spent attempting to settle an unfair labor practice complaint is not this type of service, and we should not award costs for any time spent trying to settle the case. We disagree.

Attempts to settle are a normal part of good-faith litigation. They are therefore subject to reimbursement under our rules. We reject the District’s assertion that, in determining the appropriate award of representation costs, we should not consider any time spent attempting to settle the case.

We understand the District’s challenge to be aimed solely at our authority to consider time spent pursuing a settlement. The District does not challenge the reasonableness of the number of hours the Association spent pursuing a settlement and we therefore do not reach that issue.

4. The complaint alleged that the District took a number of adverse employment actions against Bullington—it changed her job description, removed her from her office, put a memorandum in her personnel file, and threatened to put her on a plan of assistance and discharge her—all because she engaged in activities protected under the Public Employee Collective Bargaining Act (PECBA). We found that the District engaged in the conduct alleged and concluded that the District’s actions violated subsection (1)(a).

An average award is approximately one-third of the prevailing party's reasonable representation costs, up to the \$3,500 limit. OAR 115-035-0055(1)(a). We adjust this percentage for various policy reasons described in our rules and cases. When an employer violates subsection (1)(a), we typically adjust the award upward because the employer's conduct strikes at core PECBA rights. *Lebanon Education Association v. Lebanon Community School District*, 22 PECBR at 625. We will do so here. Applying this standard would result in an award in excess of the \$3,500 limit. We will therefore award the maximum amount permitted by our rules.

Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the Association representation costs in the amount of \$3,500.

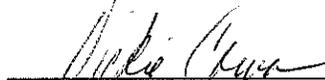
ORDER

The District shall pay \$3,500 to the Association within 30 days of the date of this Order.

DATED this 13<sup>th</sup> day of April 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482