



Pursuant to OAR 115-35-057, this Board makes the following findings:

1. Complainant filed a timely petition for attorney fees on appeal.<sup>2</sup> Respondent filed timely objections to the petition.
2. The Appellate Judgment names Complainant as the prevailing party.
3. Complainant requests an award of \$3,500, the maximum amount allowed under our rules.<sup>3</sup> According to the affidavit of counsel, the request is based on legal services valued at \$175 and \$200 per hour. The information submitted in support of this petition includes work performed before this Board as well as work performed on appeal. In the companion order on representation costs, we issued an award based on the work performed in proceedings before this Board. In this petition for attorney fees, we consider only those hours related to the appeal. In analyzing the documents submitted, we have identified 28.75 hours of legal services that are relevant to the appeal.

The hours are slightly more than the average of 25 hours on appeal. *Eugene Police Employee Association v. City of Eugene*, Case No. UP-5-97, 18 PECBR 97 (1999) (Attorney Fees Order) (25 hours is the average claimed on appeal). See *Portland Association of Teachers and Poole v. Multnomah School District No. 1*, Case No. UP-72-96, (Unpublished Attorney Fees Order, July 2001) (74.6 hours is about three times the number of hours claimed in similar appeals). The hourly rate is considerably higher than the maximum we have recently found reasonable in an attorney fees award. E.g., *Hillsboro Education Association v. Hillsboro School District*, Case No. UP-7-02, 20 PECBR 731 (2004) (Attorney Fees Order) (finding \$135 per hour a reasonable rate on appeal). We will consider these factors and will adjust the request for reasonable attorney fees accordingly.

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<sup>2</sup>OAR 115-35-057(1) requires a party to file a petition for attorney fees "within 21 days of the date of the appellate judgment." Complainant filed this petition after the Court of Appeals issued its decision, but before it issued an Appellate Judgment. We will not dismiss a petition for attorney fees as premature so long as the opposing party suffers no prejudice and the other provisions of the rule are met. *Chenowith Education Association v. Chenowith School District 9*, Case No. UP-104-94, 17 PECBR 21 (1996) (Attorney Fees Order). On this record, we consider the filing timely.

<sup>3</sup>Documents accompanying Complainant's petition indicate that counsel billed for photocopying, faxes, postage, long-distance phone calls and other similar expenses. It is unclear whether Respondent seeks reimbursement for these items. Such expenses are not properly part of a representation cost award, *Coos County Board of Commissioners v. Coos County District Attorney*, Case No. UP-32-01, 20 PECBR 650 (2005) (Rep. Cost Order), and we will not consider them in making our award.

4. This dispute arose when Respondent changed the minimum qualifications for promotion to sergeant without first notifying Complainant and bargaining over the impacts of the change. The parties agreed that the qualifications for a position is a permissive subject for bargaining. We found, however, that the change had an impact on mandatory subjects and that Respondent was therefore required to notify Complainant and bargain over those impacts. We unanimously concluded that Respondent's failure to do so violated ORS 243.672(1)(e). A unanimous Court of Appeals panel affirmed our decision.

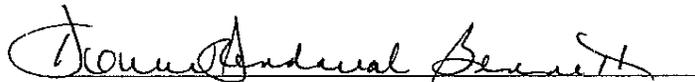
We typically make an average award (approximately one-third of the adjusted representation costs) in unilateral change cases. *Hillsboro Education Association v Hillsboro School District*, Case No. UP-7-02, 20 PECBR 731 (2004) (Attorney Fees Order). No other factors favor an award that is either above or below average.

Having considered the purposes and policies of the Public Employee Collective Bargaining Act (PECBA), our awards in prior cases, and the reasonable cost of services rendered, this Board awards Complainant attorney fees in the amount of \$1,100.

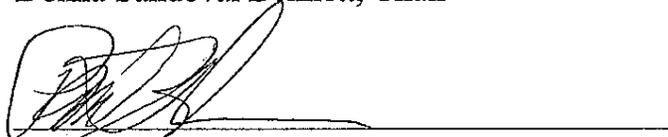
ORDER

Respondent will remit \$1,100 to Complainant within 30 days of the date of this Order.

SIGNED and ISSUED this 22<sup>nd</sup> day of November 2005.



Donna Sandoval Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.

