

4. This case involved three and one-half days of hearing, post hearing briefs and oral argument before this Board. The number of hours billed here is lower than the average case of 45-50 hours for each day of hearing. *See Elgin Education Association and Wilson v. Elgin School District*, Case No. UP-44-90 (1991) (unpublished). Consequently we find the hours claimed and the rate billed to be reasonable.

5. Respondent argues that this was a case which warranted a civil penalty, even though one was not awarded by this Board. It claims that the Complaint was frivolously filed, alleging that the Complainant introduced no credible evidence at hearing to support his claims. In addition, Respondent argues that the Complainant misrepresented his case and as a result the parties endured multiple days of hearing instead of having the case resolved by its motion to dismiss.

In our Order we dismissed the Complaint concluding that the Complainant failed to prove that AFSCME violated his rights to fair representation under ORS 243.672(2)(a). We did not conclude, however, that the case was frivolously filed and a review of the Order indicates that indeed, there were a number of facts in dispute which warranted a hearing. ORS 243.676(1)(b).

6. Here the Complainant represented himself *pro se*. In duty of fair representation (DFR) complaints where the Complainant relies on personal resources to litigate the claim, we order less than an average award. OAR 115-35-055(4)(a)(D). *See also Houchin v. SEIU and Centennial School District*, Case No. UP-37-92, 14 PECBR 521 (1993); and *Randolph v. International Alliance of Theatrical Stage Employees and Metropolitan Exposition Recreation Commission*, Case No. UP-15/16-92, 15 PECBR 337 (1994). In *Randolph*, we noted that normally we award approximately 10 percent of a petitioner's actual costs in this type of case. Awarding less than average costs in DFR Complaints supports the purposes of the Public Employees Collective Bargaining Act (PECBA). It is important that employees have access to the protection of this Board when it is alleged that a union has failed in its duty to represent. We would discourage employees from filing for this protection if we awarded costs that were unduly burdensome to an individual who does not have the collective resources enjoyed by unions and employers to pay these costs in the normal course of their businesses.

Considering the purposes and policies of the PECBA and our awards in similar cases, this Board awards Respondent representation costs in the amount of \$1400 which is approximately 10 percent of the petitioners actual costs.

ORDER

Complainant is ordered to remit \$1400 to Respondent within 90 days of the date of this Order

DATED this 1st day of June 2005.

*Paul B. Gamson, Chair



Rita E. Thomas, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.

*Board Member Gamson recused himself from this case.

