

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case Nos. UP-52/62-03

(UNFAIR LABOR PRACTICE)

SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 503,)
OREGON PUBLIC EMPLOYEES UNION,)

Complainant,)

v.)

STATE OF OREGON,)
JUDICIAL DEPARTMENT,)

Respondent.)
_____)

FINDINGS AND ORDER
ON RESPONDENT'S
PETITION FOR
REPRESENTATION COSTS

Service Employees International Union, Local 503 (SEIU) filed two separate complaints that alleged the State of Oregon, Judicial Department (Department) violated ORS 243.672(1)(a) by interfering with employees' protected union activity during an SEIU organizing campaign. We consolidated the cases for hearing and decision. By Order dated October 31, 2005, this Board dismissed the complaints. 21 PECBR 98 (2005). One member concurred and one member dissented in part.

On November 21, 2005, the Department petitioned for representation costs. SEIU did not object to the petition.¹ We followed our usual practice and held the petition in abeyance until completion of the appeals process. OAR 115-035-0055(5).

¹A certificate attached to the Department's petition indicates it was properly served on the attorney of record for SEIU.

The Court of Appeals affirmed this Board's decision² and the appellate process is now complete.

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

1. The Department filed a timely petition for representation costs, and SEIU did not object to the petition.
2. The Department is the prevailing party.
3. According to the affidavit of counsel, the Department incurred \$17,885.10 in representation costs. The amount represents 177.3 hours of attorney time at \$98 per hour, and 7.4 hours of paralegal time at \$69 per hour.

The case required one day of hearing, briefs, objections to the Administrative Law Judge's Recommended Order, and oral argument to this Board. Cases take an average of 45-50 hours per day of hearing. *Gibson-Boles v. Oregon AFSCME Council 75*, Case No. UP-46-01, 20 PECBR 982 (2005) (Rep. Cost Order). The Department seeks more than two-and-a-half times the average, a factor we will consider in our award. The hourly rate is well below the average, a factor we will also consider in the award. See *Union-Baker ESD Association v. Union-Baker Educational Service District*, Case No. UP-2-05, 21 PECBR 808 (2007) (Rep. Cost Order) (hourly rate of \$135-\$140 is reasonable).

The Department seeks reimbursement for paralegal time. Paralegal time can be recovered as a representation cost so long as it is not duplicative. *IBEW, Local 48 v. School District No. 1, Multnomah County*, Case No. UP-69-03, 21 PECBR 13 (2005) (Rep. Cost Order). We have reviewed the billing information and see no duplication of services.

4. In Case No. UP-52-03, SEIU alleged the Department violated ORS 243.672(1)(a) when it prohibited its employees from using the office e-mail system to communicate about union-related matters while allowing them to use the system to discuss other topics not related to work. The Board dismissed this complaint. One member separately concurred and one member dissented. In Case No. UP-62-03, SEIU alleged the Department again violated subsection (1)(a) when it prohibited employees from discussing union-related matters at a staff meeting while allowing them

²209 Or App 497, 149 P3d 235 (2006).

to discuss other topics not related to work. The Board unanimously dismissed this complaint.

This Board typically awards a prevailing party approximately one-third of its reasonable representation costs, up to the \$3,500 cap established in OAR 115-035-0055(1)(a). We adjust the percentage up or down in circumstances identified in our rules and cases. One such circumstance is for cases that present novel issues. We generally reduce the award to one-fourth of the reasonable costs so that parties will not be deterred from litigating novel issues. *Benton County Deputy Sheriff's Association v. Benton County Sheriff's Department*, Case No. UP-36-02, 21 PECBR 176 (2005) (Rep. Cost Order).

This case presented novel and difficult legal issues concerning the use of new technology in union organizing campaigns. One Board member concurred and one dissented. In these circumstances, we will make a less-than-average award.

Having considered the purposes and policies of the Public Employee Collective Bargaining Act, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the Department representation costs in the amount of \$1,400.

ORDER

Complainant will remit \$1,400 to Respondent within 30 days of the date of this Order.

DATED this 4th day of May 2007.



Paul B. Gamson, Chair



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.