

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-60-02

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

Complainant,)

v.)

STATE OF OREGON, DEPARTMENT)
OF ADMINISTRATIVE SERVICES, the)
HOMECARE COMMISSION, and the)
DEPARTMENT OF HUMAN SERVICES,)

Respondents.)

FINDINGS AND ORDER
ON COMPLAINANT'S
PETITION FOR
REPRESENTATION COSTS

On May 29, 2003, this Board, with one member dissenting, issued an Order which held that Respondents violated ORS 243.672(1)(a). 20 PECBR 363 (2003). On June 11, 2003, Complainant petitioned for representation costs. On July 1, 2003, Respondents objected to the petition.

Respondents appealed our Order. We followed our usual practice under OAR 115-035-0055(5) and held the representation cost petition in abeyance until the appellate process was complete. On November 9, 2005, the Court of Appeals reversed our Order. 202 Or App 469, 123 P3d 30 (2005). The Supreme Court denied Complainant's petition for review, 341 Or 140, 139 P3d 258 (2006), and on July 28, 2006, the Court issued its Appellate Judgment.

Pursuant to OAR 115-035-0055, this Board finds as follows:

1. Complainant's petition and Respondents' objections to the

petition are timely.

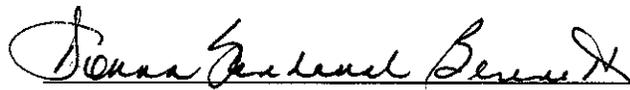
2. Complainant is not the prevailing party. Under this Board's rules, the prevailing party "is the party in whose favor a Board Order is issued." OAR 115-035-0055(1). Although we initially found in Complainant's favor, the Court reversed that Order. For purposes of representation costs, we determine the prevailing party after all appeals of an Order have been exhausted, or the time for further appeal of the Order has expired. Here, after all appeals of this Order were exhausted, Complainant did not prevail.

Under ORS 243.676(2)(d) and (3)(d), only a "prevailing party" is entitled to representation costs. Because Complainant is not a prevailing party, we must dismiss its petition for representation costs. *See Portland Fire Fighters' Association, Local 43 v. City of Portland*, Case No. UP-58-99 (Rep. Cost Order, October 2002) (dismissing the representation cost petition of a party that prevailed on a Board Order that was later reversed by the Court of Appeals).

ORDER

Complainant's petition is dismissed.

DATED this 5th day of December 2006.



Donna Sandoval Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.