

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. FR-02-10

(UNFAIR LABOR PRACTICE)

BRYAN L. SISNEY,)	
)	
Complainant,)	FINDINGS AND ORDER
)	ON RESPONDENT
v.)	EUGENE WATER AND
)	ELECTRIC BOARD'S
IBEW LOCAL 659, and EUGENE)	PETITION FOR
WATER AND ELECTRIC BOARD,)	REPRESENTATION COSTS
)	
Respondents.)	
)	

Brian Sisney filed this unfair labor practice complaint against his employer and his union. He alleged that his employer, Eugene Water and Electric Board (EWEB), violated ORS 243.673(1)(g) when it fired him without just cause, contrary to the terms of the applicable collective bargaining agreement. He further alleged that his union, IBEW, Local 659 (IBEW), violated ORS 243.672(2)(a) when it refused to pursue a contract grievance to challenge his termination. On May 14, 2010,¹ this Board dismissed the complaint as untimely. 23 PECBR 729. On June 1, EWEB petitioned for representation costs. On July 1, Sisney objected to the petition.

Pursuant to ORS 243.676(3)(b) and OAR 115-035-0055, this Board finds:

1. EWEB filed a timely petition for representation costs and Sisney filed timely objections to the petition.²

¹All dates are 2010 unless stated otherwise.

²OAR 115-035-0055(3) allows a party 21 days to respond to a petition for representation costs. Sisney requested additional time to respond to the petition, and Respondent EWEB did not object to the request. This Board determined that Sisney established good cause to extend the deadline for objections and granted his request. Accordingly, we deem Sisney's objections timely filed and will consider them.

2. EWEB is a prevailing party.

3. According to the affidavit of counsel, EWEB incurred \$1,624.50 in representation costs. This consists of 5.7 hours of attorney time billed at \$285 per hour.

This Board dismissed the complaint without a hearing. Sisney asserts the amount of time spent is excessive. Although there was no hearing, EWEB was required to review the complaint, gather facts, and begin to prepare its informal response to the complaint. In these circumstances, the time spent was reasonable. We note, however, that EWEB claims .2 hours for responding to a complaint filed with the Bureau of Labor and Industries. This time appears unrelated to the unfair labor practice complaint and therefore cannot be reimbursed as a representation cost. We will adjust EWEB's request accordingly.

Sisney also objects to the hourly rate. The average rate for representation is \$165-170 per hour. *Dallas Police Employees Association v. City of Dallas*, Case No. UP-33-08, 23 PECBR 510 (2010) (Rep. Cost Order). EWEB seeks a rate considerably higher than average, a factor we will consider in determining EWEB's reasonable representation costs.

4. This is a hybrid duty of fair representation case. *See Chan v. Leach and Stubblefield, Clackamas Community College; and McKeever and Brown, Clackamas Community College Association of Classified Employees, OEA/NEA*, Case No. UP-13-05, 21 PECBR 563 (2006), *recons den* 21 PECBR 597 (2007). Sisney asserted that EWEB terminated his employment in violation of the collective bargaining agreement and that IBEW failed to pursue a contract grievance to challenge the termination. Sisney submitted his complaint on the last day of the statute of limitations. *See* ORS 243.672(3) (establishing a 180-day statute of limitations for an unfair labor practice complaint). The complaint was accompanied by a check from Sisney's attorney for the filing fee. *See* ORS 243.672(3) (imposing a \$250 filing fee for an unfair labor practice complaint); OAR 115-035-0000(4) (requiring the filing fee to be paid at the time the complaint is filed). Unfortunately for Sisney, the bank refused to honor the check because there were insufficient funds in the attorney's account to cover it. This Board examined the applicable statute and administrative rules and determined that a complaint is not considered to be filed until the complainant pays the filing fee. Because Sisney did not pay the filing fee within the statute of limitations, the Board dismissed the complaint as untimely.

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); *Benton County Deputy Sheriff's Association v. Benton County*, Case No. UP-24-06, 22 PECBR 46, 47 (2007) (Rep. Cost Order). We adjust that percentage up or down for policy reasons

described in our rules and cases. In duty of fair representation cases such as this, where complainants rely on their personal resources to litigate the claim, we usually make a smaller-than-average award. OAR 115-035-0055(4)(a)(D); *Hadley et al. v. Multnomah County Deputy Sheriff's Association and Multnomah County*, Case No. FR-1-08, 22 PECBR 627 (2008). We typically award approximately ten percent of the petitioner's reasonable representation costs. *Randolph v. International Alliance of Theatrical Stage Employees and Metropolitan Exposition and Recreation Commission*, Case Nos. UP-15/16-92, 15 PECBR 337 (1994). It serves the purposes and policies of the Public Employee Collective Bargaining Act (PECBA) to ensure that bargaining unit members have realistic access to this Board when they believe their union has failed to represent them fairly. It would discourage employees from seeking this Board's protection if we awarded costs that were unduly burdensome to an individual who does not have the collective resources of a union or employer.

After considering the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards EWEB representation costs in the amount of \$90.

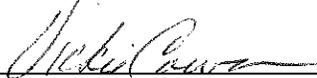
ORDER

Sisney will remit \$90 to EWEB within 90 days of the date of this Order.

DATED this 4 day of August 2010.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.