

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-23-06

(UNFAIR LABOR PRACTICE)

NORTHWEST EDUCATION)
ASSOCIATION/OEA/NEA,)
)
Complainant,)
)
v.)
)
NORTHWEST REGIONAL)
EDUCATION SERVICE DISTRICT,)
)
Respondent.)
_____)

FINDINGS AND ORDER ON
COMPLAINANT'S PETITION FOR
REPRESENTATION COSTS

On January 30, 2008, this Board issued an order which held that the Northwest Regional Education Service District (District) violated ORS 243.672(1)(e) when it unilaterally adopted a signing bonus policy and a hiring incentive pay plan. 22 PECBR 247.

On February 19, 2008, the Northwest Education Association /OEA/NEA (NWEA) petitioned for representation costs. On March 5, 2008, the District objected to this petition.

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

1. NWEA filed a timely petition for representation costs, and the District filed timely objections to the petition.
2. NWEA is the prevailing party.

3. NWEA requests an award of \$3,500 in representation costs. According to the affidavit of counsel, NWEA incurred a total of \$6,458 in representation costs which included 44.7 hours of attorney time billed at \$140 per hour and 2.8 hours of attorney travel time billed at \$70 per hour.

We find NWEA's hourly rates reasonable. See *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-33-06, 22 PECBR 456 (2008) (Rep. Cost Order), quoting *Lebanon Association of Classified Employees v. Lebanon Community School District*, Case No. UP-33-04, 21 PECBR 557 (2006) (Rep. Cost Order) (hourly rates of up to \$140 per hour for attorney time are reasonable). Because this case involved one day of hearing, we also find that the number of hours counsel for NWEA spent on this case is reasonable. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, 22 PECBR 456 (a case normally involves 45-50 hours of attorney time for each day of hearing).

4. The complaint alleged that the District unilaterally adopted a signing bonus policy in February 2006, subsequently repealed this policy, and unilaterally adopted a hiring incentive pay policy in April 2006. We concluded that the District violated subsection (1)(e) when it adopted both policies without first completing the statutorily mandated bargaining process with NWEA.

In unilateral change cases, we normally make an average award which is one-third of the representation costs. *Lebanon Association of Classified Employees v. Lebanon Community School District*, 21 PECBR 557.

The District objects neither to the number of hours nor the hourly rate claimed by NWEA. Instead, the District contends that the average award should be reduced for policy reasons. According to the District, the award should be reduced because in our Order, we found no civil penalty appropriate, ordered no reimbursement of filing fees, and did not require the District to post a notice admitting that it violated the law. The District also contends that the award should be reduced because its unlawful actions had no detrimental effect on any bargaining unit member: the only effect of the District's conduct was to increase compensation for a few bargaining unit members.

The District's arguments are not well taken. Although an award of a civil penalty is a basis for increasing an award of representation costs,¹ we have never

¹*Blue Mountain Faculty Association/OEA NEA v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 853 (2007) (Rep. Cost Order).

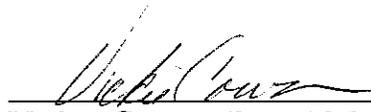
concluded that lack of a civil penalty is a valid reason for *reducing* an award. Nor have we ever held that any of the other factors cited by the District—failure to order filing fee reimbursement, posting of a notice, or lack of an adverse effect on bargaining unit members—are valid reasons for reducing an award. We find no compelling policy reasons for adopting the District’s reasoning. The presence of the factors the District identifies may be reasons for a larger-than-average award; their absence does not warrant a smaller-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 service rendered, this Board awards NWEA representation costs in the amount of \$2,150.

DATED this 29th day of April 2008.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.