

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-33-04

(UNFAIR LABOR PRACTICE)

LEBANON ASSOCIATION OF	)	
CLASSIFIED EMPLOYEES	)	
	)	
Complaint,	)	
	)	FINDINGS AND ORDER ON
v.	)	COMPLAINANT'S PETITION
	)	FOR REPRESENTATION COSTS
LEBANON COMMUNITY,	)	
SCHOOL DISTRICT,	)	
	)	
Respondent.	)	
<hr/>		

On October 24, 2005, this Board issued an Order which held that the District violated ORS 243.672(1)(e) when it contracted out bargaining unit work without first completing the 150-day bargaining process in ORS 243.712. One member dissented in part. 21 PECBR 71 (2005). On November 14, 2005, the Association petitioned for representation costs. On December 2, 2005, the District objected to the petition.

As part of the remedy, the Board ordered the District to make the employees whole for their losses. The parties were unable to resolve several disputes regarding back pay and returned to us for guidance. On October 13, 2006, this Board issued a Supplemental Order that resolved the issues in the Association's favor. 21 PECBR 534 (2006). On October 23, 2006, the Association filed a supplemental petition for the representation costs it incurred in obtaining the Supplemental Order. On November 9, 2006, the District objected to the supplemental petition.

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

1. The Association filed a timely petition for representation costs and a timely supplemental petition. The District filed timely objections to both petitions.

2. The Association prevailed in both the initial Order and the Supplemental Order.

3. The Association seeks an award of \$3,500, the maximum generally available under our rules. *See* OAR 115-035-0055(1)(a). According to the affidavit of counsel, the Association incurred \$7,937 in representation costs related to the initial Order. The amount represents 60.8 hours of legal services billed variously at \$65, \$135, and \$140 per hour.

The District does not object to the hourly rates, and we find them reasonable.

The District objects to the number of hours. The initial Order was based on a partial fact stipulation and a hearing that lasted less than a full day. The parties submitted briefs and objections, and they participated in oral argument before this Board.

The District argues that we typically allow 16-25 hours when the parties reach a fact stipulation. That is correct when there is a full stipulation in lieu of a hearing. Here, however, the stipulation was only partial; the parties also participated in a hearing that lasted less than a day. The hours spent in hearing plus the hours spent negotiating and drafting the stipulation are equivalent to a full-day hearing. *Enterprise Education Association v. Enterprise School District No. 21*, Case No. UP-16-04, 21 PECBR 413, 414 (2006) (Rep. Costs Order). The average time spent in a case that requires a full day of hearing is 45-50 hours. *Id.* The Association's request exceeds the average, and we will adjust the request accordingly.

4. The Association seeks an additional \$2,436 in its supplemental request. The request is based on 17.4 hours of legal services billed at \$140 per hour.

The parties submitted the back pay issues directly to the Board on a full fact stipulation and written arguments. The average time spent in similar cases is 16-25 hours. *Ashland Police Association v. City of Ashland*, Case No. UP-50-05, 21 PECBR 552 (2006) (Rep. Costs Order); *City of Portland Professional Employees Association v. City of Portland*, Case No. UP-49-02 (October 2003 Rep. Costs Order). The Association's hours are at the low end of the range. The hourly rate is reasonable.

5. This case involved the District's obligation to bargain before it could contract out certain bargaining unit work. The parties agreed they had an obligation to bargain; they disagreed about the nature of that obligation. The District asserted that the 90-day bargaining period in ORS 243.698 applied. It contracted out the work after completing the 90-day process. The Association asserted that the 150-day process in ORS 243.712 applied. We agreed with the Association and held that the District's implementation of its contracting out proposal was premature. We ordered the District to cease and desist, to reinstate the laid-off employees, and to make the employees whole, including back pay.

The parties had several back pay disputes they could not resolve, so they returned to the Board. We issued a Supplemental Order that clarified the District's back pay obligation.

The District urges us to award nothing because it acted reasonably, albeit mistakenly, in contracting out. The District's position is not well-taken. This Board is required to award representation costs if any were incurred. *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, 52 Or App 881, 896, 630 P2d 1304 (1981). In any event, in a unilateral change case such as this, the District's motive and intent are irrelevant. See *Amalgamated Transit Union, Division 757 v. Rogue Valley Transportation District*, Case No. UP-80-95, 16 PECBR 559, 583 (1996).

The District also argues that we should make a smaller than average award because the case presented novel issues. We disagree. Our decision followed prior Board precedent that described how we determine which bargaining period applies. *Joint Petition for Declaratory Ruling Filed by Medford School District 549C and OSEA Chapter 15*, Case No. DR-2-04, 20 PECBR 721 (2004). The application of settled law to various fact situations generally does not present the type of novelty

that warrants a reduced award.

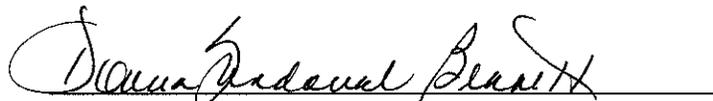
In unilateral change cases such as this, we typically make an average award (approximately one-third of the adjusted representation costs). *Beaverton Police Association v. City of Beaverton*, Case No. UP-10-01, 21 PECBR 183 (2005). No other factors here favor an award that is above or below average.

Having considered the purposes and policies of the PECBA, our awards in prior cases, and the reasonable cost of services rendered, this Board awards the Association representation costs in the amount of \$3,100.

**ORDER**

The District will remit \$3,100 to the Association within 30 days of the date of this Order.

DATED this 20<sup>th</sup> 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.