

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-61-98

OREGON UNIVERSITY SYSTEM (OUS), )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 OREGON PUBLIC EMPLOYEES UNION, )  
 LOCAL 503, )  
 )  
 Respondent )  
 )  
 \_\_\_\_\_ )

FINDINGS AND ORDER ON  
BOTH PARTIES' PETITIONS  
FOR REPRESENTATION COSTS

This Board issued an Order in this case on April 24, 2001. Complainant requested reconsideration on May 8, 2001, and Respondent filed a petition for representation costs on May 15, 2001. On August 21, 2001, we issued an Order on reconsideration. Complainant filed a petition for representation costs on September 18, 2001, to which Respondent filed objections. We issued a Representation Cost Order on October 31, 2001. Respondent filed a motion to hold that order in abeyance on the ground that it had petitioned for judicial review.<sup>1</sup> The Court of Appeals issued a decision, reversing the Order on December 26, 2002. An appellate judgment issued on February 19, 2003. Respondent filed an amended petition for representation costs on March 10, 2003.<sup>2</sup> This Board filed an Order on Remand on March 11, 2003. Pursuant to Board Rule OAR 115-35-055, this Board makes the following findings:

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<sup>1</sup>Respondent failed to serve this Board with a copy of its petition for judicial review, as required by ORS 183.482.

<sup>2</sup>Respondent's amended petition includes requests for costs for the judicial review process, as well as those for the proceedings before this Board. Costs for attorney fees on appeal must be requested by a separate petition under Rule OAR 115-35-057. We do not consider attorney fee requests as part of a petition for representation costs.

1. Respondent is the prevailing party in the Order on Remand. Complainant's petition for representation costs was based on our Order on Reconsideration, which was reversed by the Court of Appeals.

2. Respondent's petition for representation costs is timely.<sup>3</sup>

3. Respondents seeks an award of \$3,500, the maximum allowed under most circumstances under our rules. The request is based on a claim of 151.4 hours of legal services billed at \$130 an hour.<sup>4</sup>

4. This case required two days of hearing, post-hearing briefs, oral argument before this Board, and briefing on reconsideration. The number of hours claimed exceeds the average for cases of similar complexity. The hourly rate is reasonable.

5. The complaint charged Respondent with refusing to comply with an arbitration award, and with actions that violated the parties' collective bargaining agreement. In both the original Order and the Order on Reconsideration, we concluded that Respondent did not unlawfully refuse to comply with an arbitration award. We initially concluded that Respondent did not violate the parties' contract. On reconsideration, we held that its actions violated the covenant of good faith and fair dealing. The Court of Appeals reversed that conclusion, and on remand, we dismissed the complaint. The case concerned Respondent's use of Complainant's e-mail system, and presented novel issues not previously addressed by this Board. We typically award less than average awards in cases raising novel legal issues.

Having considered the appropriate fees for services rendered, the policies and purposes of the Public Employee Collective Bargaining Act, and our awards in similar cases, this Board awards Respondent representation costs of \$3,500.<sup>5</sup>

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<sup>3</sup>Although the petition is technically premature, we have considered such petitions in the past where the opposing party is not prejudiced by the premature filing.

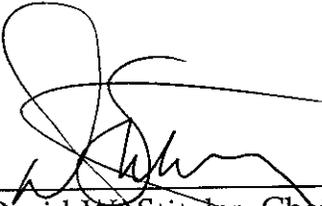
<sup>4</sup>The petition also includes a request for reimbursement of Respondent's filing fee. A request for filing fee reimbursement will not be considered as part of representation costs. It must be requested pursuant to Rule 115-35-075(3).

<sup>5</sup>Even after adjusting Respondent's cost requests for the number of hours claimed and the novelty of issue presented, the resulting costs are more than the \$3,500 maximum allowed under our rules.

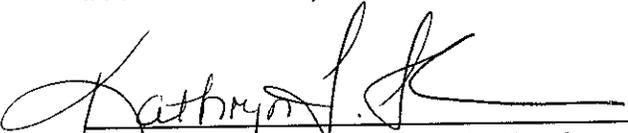
ORDER

Complainant shall remit \$3,500 to Respondent within 30 days of the date of this Order.

DATED this 24<sup>th</sup> day of April 2003.

  
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David W. Stiteler, Chair

  
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Rita E. Thomas, Board Member

  
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Kathryn T. Whalen, Board Member

This Order may be appealed pursuant to ORS 183.482.