

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-13-181
	)	
JO desMARETS,	)	ORDER NO. 1770
	)	
Complainant,	)	ORDER GRANTING, IN PART, AND
	)	DENYING, IN PART, COMPLAIN-
and	)	ANT'S MOTION FOR REIMBURSE-
	)	MENT OF ATTORNEY'S FEES
JOHN WAIHEE, Governor, State of	)	
Hawaii and DEPARTMENT OF PUBLIC	)	
SAFETY, State of Hawaii,	)	
	)	
Respondents.	)	
	)	

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ORDER GRANTING, IN PART, AND DENYING, IN PART,  
COMPLAINANT'S MOTION FOR REIMBURSEMENT OF ATTORNEY'S FEES

On December 19, 1997, Complainant, by and through her counsel, filed a motion for reimbursement of attorney's fees with the Hawaii Labor Relations Board (Board). Complainant requested a payment of attorney's fees of \$95,850 plus general excise tax (GET) of \$3,994.07, and costs of \$6,416.36.

Thereafter, on February 28, 1998, Respondents filed objections to Complainant's motion for reimbursement of attorney's fees with the Board. Respondents first contend that the Complainant's request for attorney's fees and costs should be denied. Alternatively, Respondents contend, inter alia, that although Complainant did not request fees for services and costs pertaining to the Union's case, Complainant contends that 29.50 hours of work and \$124.00 in costs are being charged to the Respondents for work pertaining to the Union's case. In addition, Respondents object to amounts paid prior to Complainant's counsel's

appearance in this case. Therefore, Respondents object to 69 hours of fees and \$171.50 in costs. Moreover, Respondents contend that matters unrelated to the instant case should not be chargeable to the Respondents amounting to 12.00 hours and \$2.50 in costs. In addition, Respondents seek clarification of amounts requested for services to contact the staff of the DEPARTMENT OF PUBLIC SAFETY, which may violate disciplinary rules, amounting to 9.25 hours and \$ .57 of costs. Accordingly, the Respondents object to \$17,962.50 in attorney's fees and \$298.57 in costs.

On February 12, 1998, Complainant filed a reply to Respondents' objections with the Board. Complainant contends that developmental work prior to the appearance of her counsel on April 20, 1993 is properly compensable under the applicable law. Complainant also contends that matters claimed by Respondents to be unrelated to the instant case are nevertheless compensable because they involved consultation with other counsel associated with related cases. Complainant further contends that she did not contact employees represented by the Attorney General's Office but rather, those persons contacted Complainant's counsel when they received subpoenas. Complainant also concedes that amounts after July 25, 1994 pertaining to the Union's case should not have been included, and therefore withdrew her claim for 22 hours and costs of \$87.25. Accordingly, Complainant requests reimbursement of \$93,550, plus GET of \$3,856.56 and costs of \$6,379.61.

After reviewing Complainant's motion and the record and considering the arguments of counsel, the Board finds first that Decision No. 379, dated July 26, 1996, provides only for an award

of attorney's fees in this case. Complainant, in her motion, as amended, requests reimbursement of fees of \$93,550, plus GET of \$3,856.56 and costs of \$6,379.61. Although Respondents do not object specifically to the assessment of costs, the Board finds that its remedial order does not specifically include such an award. Accordingly, the Board hereby denies Complainant her costs of \$6,379.61.

With respect to Respondents' arguments that the time spent prior to counsel's appearance before the Board is not compensable as well as the time spent communicating with departmental employees, the Board finds these amounts to be properly chargeable as fees in preparation for the Board litigation. The Board, however, agrees with Respondents that the time expended on the Union's case is not compensable and in addition to the amounts conceded by Complainant, the Board also reduces Complainant's award by 7.5 hours expended on 8/29/93 regarding the issue of the dual grievance tracks as well as .25 hours spent on 7/8/93 in a telephone call to Dennis Chang, Esq., regarding an EEOC filing. The Board also reduces the amount of the award for time spent consulting with other counsel and observing potential witnesses in other proceedings considered by the Respondents to be unrelated to this case and totalling 12 hours. Thus, the Board reduces Complainant's amended claim for fees by 19.75 hours.

In addition, the Board further notes that Complainant's counsel states that she agreed with her client to an hourly billing rate of \$150.00 per hour which is not challenged by Respondents as

unreasonable. Respondents further do not challenge the amount of time charged in the preparation of Complainant's case against the Respondents. According to Complainant's counsel's affidavit, her time statement is conservative and excludes many routine matters that ordinarily could be billed.

In reviewing the amounts of time spent by Complainant's counsel to determine the reasonableness of fees, the Board finds that in many instances Complainant's counsel billed for time in excess of 10 hours per day. In one instance on July 14, 1993, Complainant's counsel charged 19.5 hours to prepare Complainant for her testimony. The Board finds that 10 billable hours per day is a reasonable maximum for attorney's fees. Thus, the Board reduces Complainant's counsel's award by 57.75 hours as exceeding a reasonable amount of billable time per day.<sup>1</sup>

Accordingly, the Board hereby awards Complainant attorney's fees for 539.50 hours @ \$150.00 per hour or \$80,925.00 and GET of \$3,372.14.

DATED: Honolulu, Hawaii, September 14, 1999.

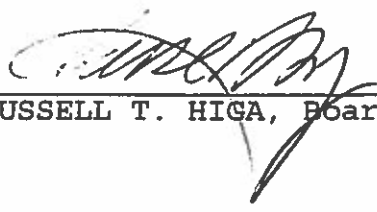
HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

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<sup>1</sup>Complainant's counsel exceeded 10 hours of billable time on 3/31/93 (by .25 hours); 4/1/93 (by 1.5 hours); 6/3/93 (by 2.5 hours); 7/8/93 (by 8 hours); 7/11/93 (by 3 hours); 7/12/93 (by 5.5 hours); 7/13/99 (by 9 hours); 7/14/93 (by 9.5 hours); 7/15/93 (by 4.25 hours); 7/22/93 (by 3.5 hours); 8/29/93 (by 3 hours); 8/30/93 (by 1.75 hours); 7/15/94 (by 2 hours); 7/16/94 (by 2 hours); and 7/18/94 (by 2 hours).

JO desMARETS and JOHN WAIHEE, Governor, State of Hawaii, et al.  
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FOR REIMBURSEMENT OF ATTORNEY'S FEES

  
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RUSSELL T. HIGA, Board Member

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