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Case No. 18-CU-10-370, 19-CE-10-923**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

DANIEL EDWARD PARKER,

Complainant(s),

and

~~UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO~~ and DEPARTMENT
OF PUBLIC SAFETY, State of Hawai'i,

Respondent(s).

CASE NO(S). ~~18-CU-10-370~~

19-CE-10-923

ORDER NO. 3671A

AMENDMENT TO ORDER NO. 3761,
ORDER GRANTING COMPLAINANT'S
REQUEST FOR ATTORNEY'S FEES

AMENDMENT TO ORDER NO. 3761

On June 4, 2021, the Hawai'i Labor Relations Board (Board) filed Order No. 3671, Order Granting Complainant's Request for Attorney's Fees. Order No. 3671 contained inadvertent typographical errors and, accordingly, the Board hereby amends the relevant Findings of Fact, Conclusions of Law, Decision and Order contained in Order No. 3761 to read as follows:

1. Introduction

Complainant DANIEL EDWARD PARKER (Parker) filed a prohibited practice complaint (Complaint) against Respondents UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) and DEPARTMENT OF PUBLIC SAFETY, State of Hawai'i (PSD). After amending the Complaint twice, the Board held hearings on the merits (HOMs) on the Second Amended Complaint, and, after Parker rested his case, UPW filed a Motion for Judgment as a Matter of Law, which PSD joined in.

Parker amended his Complaint a third time, and UPW filed a Motion to Dismiss and/or for Summary Judgment, which PSD joined in. The Board granted, in part, and denied in part the Motion for Judgment as a Matter of Law, dismissing the Hawai'i Revised Statutes (HRS) § 89-13(a)(8) claim against PSD and all claims against UPW and closing Case No. 18-CU-10-370.

The Board denied PSD's joinder to UPW's Motion to Dismiss and/or for Summary Judgment and proceeded to HOMs on the remaining allegations in the Third Amended Complaint.

The Board issued Decision No. 502 on March 23, 2021 which, among other things, found that PSD violated HRS § 89-13(a)(1) and § 89-3, thereby violating HRS § 89-13(a)(7). Parker then submitted a Request for Attorney’s Fees, which the Board now considers. PSD did not submit any objections to the Request for Attorney’s Fees within the five days allowed by Hawai‘i Administrative Rules (HAR) § 12-42-8(g)(3)(iii)¹.

After the Board issued Decision No. 502 and Parker filed of the Request for Attorney’s Fees, the Board held further status conferences and scheduled hearings on the merits to address issues of PSD’s compliance with Decision No. 502.

2. Attorney’s Fees – General Principles

The U.S. Supreme Court (U.S. Sup. Ct.) and the HSC have both adopted roughly the same “lodestar” test to determine the reasonableness of attorney’s fees: consider the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *See, Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (Hensley); Kaleikini v. Yoshioka, 129 Hawai‘i 454, 469, 304 P.3d 252, 267 (2013). The party requesting fees, namely Parker, has the burden to prove that the requested fees were reasonably and necessarily incurred. *See, Sharp v. Hui Wahine*, 49 Haw. 241, 246, 413 P.2d 242, 247 (1966) (Sharp).

The Board must first consider to what level Parker succeeded in this case and perform a Hensley analysis, considering whether the unsuccessful claims are related to the successful claims and whether Parker’s level of success merits “limited” or “excellent” results. Schefke v. Reliable Collection Agency Ltd., 96 Hawai‘i 408, 444-45, 32 P.3d 52, 88-89 (2001) (Schefke).

The Board will then turn to how many hours were spent performing appropriate services in this case. DFS Grp. L.P. v. Paiea Prop., 110 Hawai‘i 217, 222, 131 P.3d 500, 505 (2006). In performing this analysis, the Board will consider whether any of the hours requested were impermissible due to issues such as clerical tasks or block billing. *See, Schefke*, 96 Hawai‘i at 458, 32 P.3d at 102; Gurrobat v. HTH Corp., 135 Hawai‘i 128, 136, 346 P.3d 197, 205 (2015) (Gurrobat).

2.1 Level of Success

Unsuccessful claims are unrelated if the claims for relief are distinctly different and are based on different facts and legal theories. Schefke, 96 Hawai‘i at 444, 32 P.3d at 88. The question that the Board must consider is whether the work on the unsuccessful claim can be deemed to have been done while trying to pursue the ultimate result actually achieved. Id. If Parker’s claims for relief have a common core of facts or are based on related legal theories, then the attorney’s hours are generally dedicated to the litigation as a whole, making it difficult to divide the hours on a claim-by-claim basis. Id.

In this case, Parker prevailed against PSD and did not prevail against UPW. Despite failing to prevail against UPW, the Board believes that Parker's level of success is closer to "excellent." The Board's order provided Parker with the greatest remedies sought, including reinstatement and back pay.

Even given Parker's level of success, if certain fee requests pertained only to the case against UPW, the Board may have had pause to consider whether those fees were reasonably awardable. However, the first entry of Parker's attorneys into the case occurred when Parker sought to add PSD to the case.

Accordingly, as Parker's level of success in this case was excellent, the Board will not reduce the attorney's fees based on the level of success.

2.2 Hours Reasonably and Necessarily Incurred

Parker had two attorneys throughout this case, namely Richard B. Rost, Esq. (Rost) and Matthew N. Padgett, Esq. (Padgett). From each attorney, Parker submitted invoices which include itemizations of the time and type of legal services performed.

According to the itemizations, Rost spent 63.8 hours performing legal tasks for Parker, and Padgett performed 17.1 hours of legal tasks.

PSD did not object to any of the hours incurred by either Rost or Padgett for their services.

The Board, having conducted a review of the itemizations, finds the number of hours to be reasonably and necessarily incurred.

2.3 Reasonable Hourly Rate

The value of an attorney's time is generally reflected in the normal billing rate. Chun v. Bd. of Trustees of the Emp. Ret. Sys., 92 Hawai'i 432, 442, 992 P.2d 127, 137 (2000). In this case, Rost's billing rate was \$250.00/hour and Padgett's billing rate was \$200.00/hour.

PSD did not object to either billing rate.

The Board, having considered the evidence, finds that the charged rates are reasonable.

2.4 Total Fees Requested

Rost provided Parker with discounts on his services, bringing the total that Parker paid to \$8,110.00 in Rost's attorneys' fees.

Based on the foregoing, Parker is requesting \$8,110.00 for Rost's services, as well as taxes of 4.166% (\$337.87). Parker is further requesting \$3,420.00 for Padgett's services; this sum does not include any applicable taxes.

3. Costs

Turning to the request for costs, the Board notes that costs do not require as much consideration as attorney's fees as costs are easily proven by the actual receipts for expenditures. Porter v. Hu, 116 Hawai'i 42, 67, 169 P.3d 994, 1019 (App. 2007) (citation omitted).

Although Parker's evidence does not include actual receipts, it does provide an itemized breakdown of each cost. Based on the evidence, Parker incurred \$410.85 in costs from Rost and \$134.61 in costs from Padgett.

PSD did not object to any of the included costs.

The Board, having considered the evidence, finds that the costs are reasonable.

4. Order

Accordingly, the Board hereby orders:

1. PSD to pay to Parker a total of \$8,447.87 in attorney's fees for Rost's work on this case, which includes the taxes requested;
2. PSD to pay to Parker a total of \$3,420.00 in attorney's fees for Padgett's work on this case;
3. PSD to pay to Parker a total of \$545.46 in costs; and
4. If appropriate, Parker may submit a further request for any attorney's fees and costs incurred regarding any Board proceedings subsequent to Decision No. 502.

DATED: Honolulu, Hawai'i, June 7, 2021.

HAWAII LABOR RELATIONS BOARD



Mary R. Oshiro

MARY R. OSHIRO, Chair


SESNITA A.D. MOEPONO, Member


J.N. MUSTO, Member

Copies sent to:

Matthew Padgett, Esq.
James Halvorson, Deputy Attorney General

ⁱ Hawai'i Administrative Rules (HAR) § 12-42-8(g)(3)(iii) states, "Answering affidavits, if any...shall be filed with the board within five days after service of the motion papers, unless the Board directs otherwise."

PARKER v. ~~UPW~~ and PSD
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