



In the Matter of:

MILTON TIMMONS,

ARB CASE NO. 97-141

COMPLAINANT,

ALJ CASE NO. 97-SWD-2

V.

DATE: February 2, 1999

FRANKLIN ELECTRIC COOPERATIVE,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

SUPPLEMENTAL ORDER AWARDING ATTORNEY'S FEES

This case arises under the employee protection provision of the Solid Waste Disposal Act (SWDA) (also known as the Resource Conservation and Recovery Act), 42 U.S.C. §6971 (1994). On December 1, 1998, the Board issued a Final Decision and Order (Order) finding in favor of Complainant Milton Timmons (Timmons). The Order directed Respondent Franklin Electric Cooperative (Franklin) to provide various forms of relief, including payment of attorney fees and costs incurred during the earlier phases of the litigation. Order at 15-16. The Order also directed Timmons to submit an itemized petition for attorney's fees and other litigation expenses incurred on or after August 5, 1997, and provided Franklin a thirty-day period in which to respond to the fee petition. *Id.*

On December 16, 1998, an Affidavit of Attorney's Fees (Affidavit) from Kevin C. Gray, Timmons' attorney, claiming an additional fee entitlement of \$725 (5.8 hours of effort at an hourly rate of \$125) was received. No reimbursement of expenses is sought. Franklin has not objected to the fee petition.^{1/}

^{1/} The Affidavit and accompanying attachments did not reflect service upon Franklin, and on December 21, 1998, the Board issued an Order to Show Cause, to which a copy of the Affidavit was appended. Order to Show Cause at 1. The show cause order provided a January 10, 1999 deadline for the filing of objections to the petition. *Id.* at 1-2.

The December 1, 1998 Order approved the Administrative Law Judge's award of attorney's fees for work performed below, which was based on a hourly rate of \$125. We also approve the hourly rate of \$125 as reasonable for work performed by Mr. Gray before this Board. Based on review of the fee petition in light of the record in the case before us, we conclude that the specified fees represent expenses reasonably incurred in the pursuit of the complaint in this case. *See* 29 C.F.R. §24.8(d)(2) (1998).

ORDER

Accordingly, Franklin Electric Cooperative is ordered to reimburse Milton Timmons \$725.00 in attorney's fees for the services of Kevin C. Gray, rendered during the period of August 5, 1997 - December 9, 1998.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Acting Member