



were to be appointed by Local 542's Business Manager and four of whom were to be "minorities" affiliated with Local 542. The minority members of the Civil Rights Committee served three-year terms and could only be nominated and elected by minority members of Local 542. Although the term "minority" was not defined in paragraph 25 of the Consent Decree, the initial injunctive decree in this civil rights litigation defined "minorities" to include "blacks, Spanish-surnamed Americans, Asians and American Indians." Pennsylvania v. Local Union 542, Int'l Union of Operating Eng'rs, 502 F. Supp. 7, 8 (E.D. Pa. 1979) (Higgonbotham, J.).

From 1982 to 1989, females were not considered as minorities for purposes of the Civil Rights Committee. However, on April 26, 1989, the Civil Rights Committee adopted by-laws which defined the term "minority" to include "all females, regardless of race." (Ex. D at ¶ 7.)<sup>1</sup> The by-laws were approved by all eight members of the Civil Rights Committee, including all four minority members. In August, 1989, the first Civil Rights Committee nomination and election process under the new by-laws occurred. At this nomination and election, those eligible to vote for the minority members on the Civil Rights Committee were not notified that females were to be considered minorities. (Ex. F.)

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<sup>1</sup> All references in this Memorandum to Exhibits are to Exhibits filed with the court by the Special Master with his report on November 5, 1997.

In the 1992 and 1995 elections, however, notice was sent to all eligible voters that all females, regardless of race, were included in the definition of minorities. (Exs. G & H.) No union member objected to this provision of the notice. Also in the 1992 and 1995 elections, the names of all nominees for membership on the Civil Rights Committee were listed, including both black and white females. Although a formal procedure for objecting to the eligibility of any nominee existed, no union member made such objection.

In the 1989, 1992 and 1995 elections, all females, regardless of race, were permitted to vote for the minority members of the Civil Rights Committee. In 1992 and 1995, a black female was elected. Then, in 1995, a white female was elected. Plaintiffs challenged this election. First, plaintiff John Huggins, a minority male and unsuccessful nominee for the Civil Rights Committee, claimed that Local 542 improperly altered the results of the election, causing him to lose his election to the Civil Rights Committee. Plaintiffs failed on this claim, as the Special Master found no evidence that the election results were improperly calculated. Second, Plaintiffs asserted that a white female could not serve as a minority member of the Civil Rights Committee. Plaintiffs prevailed on this issue, as this court by Order of July 20, 1998 held that "minority members must be nominated and voted for by minority members of the union with 'minority' meaning males or females that are Black, Spanish-surnamed American, Asian or American-Indian." Memorandum and

Order of July 20, 1998, at 29. Plaintiffs then filed the instant motion for attorney's fees.

**II. DISCUSSION**

The court will initially address Plaintiffs' status as a prevailing party entitled to attorney's fees in this case. Next, the court will address the special circumstances in this case which warrant a 25% reduction in Plaintiffs' award. Then, the court will calculate Plaintiffs' award of attorney's fees according to the lodestar method. Last, the court will compute Plaintiffs' overall award of attorney's fees in this case.

**A. Attorney's Fees Under 42 U.S.C. § 2000e-5(k)**

Under the relevant statute, "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee (including expert fees) as part of the costs." 42 U.S.C. § 2000e-5(k). A prevailing plaintiff "ordinarily is to be awarded attorney's fees in all but special circumstances." New York Gaslight Club, Inc. v. Carey, 447 U.S. 54, 63 (1980); see also Newman v. Piggie Park Enterprises, 390 U.S. 400, 402 (1968) (holding that prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust").

**1. Prevailing Party**

The court finds that Plaintiffs are a prevailing party under 42 U.S.C. § 2000e-5(k). Plaintiffs prevailed on their argument that white females were ineligible to serve as minority

members on the Civil Rights Committee. See Memorandum and Order of July 20, 1998, at 29. As such, they are a prevailing party and are entitled to attorney's fees under 42 U.S.C § 2000e-5(k) unless special circumstances exist that would render such an award unjust.

## **2. Special Circumstances**

The court finds that special circumstances exist in this case which warrant a 25% reduction in Plaintiffs' claimed attorney's fees. Courts that find special circumstances justifying the denial of attorney's fees to prevailing plaintiffs usually point to some conduct by plaintiffs which unnecessarily caused or lengthened the litigation. See, e.g., Sobel v. Yeshiva Univ., 619 F. Supp. 839, 845 (D.C.N.Y. 1985) (finding special circumstances and denying motion for attorney's fees where claim on which plaintiffs ultimately prevailed was not raised in initial complaint, but in opposition to motion for summary judgment filed four years later); Greenside v. Ariyoshi, 526 F. Supp. 1194, 1198 (D. Haw. 1981) (finding special circumstances and denying motion for attorney's fees where plaintiff filed suit against state challenging constitutionality of statute despite state's voluntary suspension of enforcement of statute and its willingness to negotiate and settle question of enforcement of statute without resort to suit).

Prior to the instant litigation, Plaintiffs had several opportunities to resolve the issue of whether all females, including white females, could be considered eligible to serve as

minority members of the Civil Rights Committee. The problem first surfaced when the Civil Rights Committee unanimously enacted the by-law which changed the definition of "minority" to include all females. At that time, Plaintiffs could have challenged the by-law by requesting prompt action from the Special Master. However, Plaintiffs took no such action. Also, the 1992 and 1995 election notices which included a provision that all females were considered minorities presented additional opportunities for challenging the by-law. Plaintiffs could have objected to this definition of minorities. However, they took no such action. Furthermore, the 1989, 1992 and 1995 nominee sheets listing the names of potential Civil Rights Committee members, including both black and white females, provided yet more opportunities for Plaintiffs to challenge the eligibility of a white female to serve as a minority member of the Civil Rights Committee. Plaintiffs could have used the formal objection procedures to challenge the eligibility of a particular nominee. However, they took no such action.

Moreover, it should be noted that the by-law was not an insignificant administrative adjustment to the composition of the Civil Rights Committee. Instead, the by-law affected the very heart of the relief provided in this ongoing civil rights litigation by broadening the base of "minorities" protected by the court's jurisdiction. This 1989 by-law was in place, published and known to the Civil Rights Committee that adopted it unanimously, to the union leadership, and most significantly, to

the entire union membership, including Plaintiffs. Yet, six years and three elections passed between 1989 and 1995 until Plaintiffs finally acted upon the by-law in challenging it.

Despite these six years of opportunities for challenging the by-law and through either lack of vigilance or interest, Plaintiffs neglected to challenge the definition of minority as it applied to eligibility for service on the Civil Rights Committee. It was not until the application of the by-law produced an outcome Plaintiffs did not like--the election of a white female to the Civil Rights Committee--that they raised a challenge to the Civil Rights Committee's by-law.<sup>2</sup> Had Plaintiffs been more vigilant in addressing the "minority" issue at one of the previously indicated opportunities for doing so, the instant litigation might have been rendered unnecessary. See Jackson v. Philadelphia Hous. Auth., 858 F. Supp. 464, 472 (E.D. Pa. 1994) ("[A]s officers of the court, lawyers not only owe allegiance to their clients, but have a duty to spare the courts from unnecessary litigation. When possible, they should serve as 'gatekeepers' to the legal process by diverting disputes 'into mediative channels rather than translating them into adversary

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<sup>2</sup> Plaintiffs argue that the "election of [the white female] in 1995 made the issue ripe for resolution of the dispute; before then, the issue had little practical significance." (Pls.' Reply to Opp. to Mot. for Atty. Fees at 4.) The court rejects this argument. The "minority" issue had practical significance as soon as the by-law came into effect because it defined not only those who could serve as minority members of the Civil Rights Committee, but also those who were eligible to vote for those members.

claims.'") (citations omitted); Naprstek v. City of Norwich, 433 F. Supp. 1369, 1371 (N.D.N.Y. 1977) ("[W]e think that neither Congress nor the Supreme Court intended that private attorneys general need be encouraged to make mountains out of molehills."). Rather than nip the "minority" issue in the bud, Plaintiffs allowed it to lay dormant until it mushroomed into the present controversy.

As a result, Plaintiffs' delay substantially added to the litigation for which they currently request attorney's fees. Specifically, Plaintiffs failure to object at an earlier juncture allowed a history to develop which allowed all females, regardless of race, to be eligible to vote for and serve as members of the Civil Rights Committee. Thus, the instant litigation was compounded because the history of the 1989, 1992 and 1995 nomination and election procedures became relevant evidence in considering the "minority" issue. For example, the Special Master's hearing and exhibits pertaining thereto included evidence of the formal notices sent to eligible voters for the minority members of the Civil Rights Committee, the formal objection procedures established for challenging the validity of a nominee and the results and propriety of the 1995 elections. In addition, the litigation was only further inflamed because, by the time of their challenge in 1995, a white female had already been elected to serve on the Civil Rights Committee.

Even if Plaintiffs had challenged the by-law as soon as they were aware of it, some litigation still might have been

necessary. However, the only relevant issue would be whether Judge Higgonbotham's definition of minority in the original injunctive decree applied to the Consent Decree. Instead, Plaintiffs' delay expanded the instant litigation by requiring the court to consider additional history pertinent to the "minority" issue between 1989 and 1995 that could have been avoided if the challenge to the by-law had been mounted before the 1992 or 1995 elections, or, for that matter, at anytime between 1989 and the 1995 election of the white female. This litigation also became more complex and contentious because the intervening 1989, 1992 and 1995 election results were based on the challenged by-law which Plaintiffs accepted, acted upon and plainly understood. Yet, for whatever reason, Plaintiffs apparently concluded that no challenge to the by-law was in order until the outcome did not suit them. Upon a reading of the proceedings, including the testimony, exhibits and the briefs by the parties, the court concludes that, due to Plaintiffs' delay in challenging the by-law, the litigation was expanded in content and intensity as it progressed before the Special Master and the court. The court finds that Plaintiffs' delay, as it has been articulated in this opinion, constitutes a special circumstance which warrants a reduction of their claimed fees by 25%.

**B. Lodestar Calculation**

Plaintiffs request attorney's fees for 77.2 hours of work at an hourly rate of \$205.00, totaling \$15,826.00. A reasonable award is calculated using the "lodestar" method, which

requires several steps. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). First, the court must determine a reasonable billing rate. Id. Second, the court must determine how many hours are reasonable. Id. Third, the court multiplies the reasonable number of hours by the reasonable rate to obtain the lodestar. The burden is on the party seeking fees to submit evidence supporting the hours worked and the rate claimed. Id. at 433.

### **1. Rate**

Hourly attorney fee rates are to be calculated according to prevailing market rates in the relevant community taking into consideration the attorney's experience, skill and reputation. Id. at 433; Student Pub. Interest Research Group v. AT&T Bell Labs., 842 F.2d 1436, 1447 (3d Cir. 1988). The hourly rate submitted by Plaintiff's attorney is \$205.00. (Pls.' Mot. for Atty. Fees at 2.) That rate is based on her experience as indicated in Community Legal Services, Inc.'s Attorneys Fee Schedule. (Pls. Mot. for Atty. Fees at Ex. B.) Local 542 does not challenge the hourly rate submitted by Plaintiffs. The court finds that Plaintiffs' attorney's hourly rate is reasonable in light of her experience, skill and the prevailing market rates in the legal community.

### **2. Hours**

Aside from the special circumstance justifying a 25% reduction in fees, the court finds that the number of hours expended by Plaintiffs in preparation for this litigation was reasonable. The only specific objection made by Local 542 is

that two hours spent in traveling and attending a Civil Rights Committee argument was duplicative because another attorney, Harold Goodman, conducted the argument on behalf of Plaintiffs. (Opp. to Pls.' Mot. for Atty. Fees at 7 & n.3.) The court rejects this argument. The two hours are not duplicative because Mr. Goodman is not seeking any fees for his work. Local 542 also objects generally to "numerous telephone calls and review of records" which seemed "somewhat excessive under the circumstances." (Opp. to Pls.' Mot. for Atty. Fees at 7.) Upon review of Plaintiffs' attorney's fee schedule, the court finds no excessive or duplicative billing. The issue of whether all females, regardless of race, could vote for and serve as minority members on the Civil Rights Committee was hotly contested and Plaintiffs were represented by excellent counsel who made the necessary communications and reviewed the necessary records in order to advance their clients' interests. The court finds that such telephone calls and reviews of records are reasonable under the circumstances. Furthermore, to the extent that any of the work of counsel was caused by an escalated level of litigation due to Plaintiffs' delay in bringing their challenge to the by-law, counsel's fees will be reduced by 25% as a special circumstance as set forth earlier in this opinion.

**C. Summary**

In sum, the court finds that Plaintiffs' attorney's expenditure of 77.2 hours at \$205.00 per hour, totaling \$15,826.00, is a reasonable fee for Plaintiffs' attorney's work

in this matter. However, due to the special circumstance that Plaintiffs are somewhat responsible for bringing this litigation upon themselves by delaying their challenge to the Civil Rights Committee's by-law, the court will reduce their award of attorney's fees by \$3956.50, 25% of \$15,826.00. Thus, the court will award Plaintiffs attorney's fees in the amount of \$11,869.50.

**III. CONCLUSION**

For the foregoing reasons, the court will grant in part and deny in part Plaintiff's motion for attorney's fees.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CIVIL ACTION
and RAYMOND WILLIAMS, <u>et al.</u>	:	
	:	
v.	:	
	:	
LOCAL 542, INTERNATIONAL UNION	:	
OF OPERATING ENGINEERS, <u>et al.</u>	:	NO. 71-2698

ORDER

AND NOW, TO WIT, this        day of January,        1999, upon consideration of plaintiffs the Commonwealth of Pennsylvania's and Raymond Williams' motion for attorney's fees and defendants Local 542 of the International Union of Operating Engineers' response thereto, IT IS ORDERED that said motion is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that defendants Local 542 of the International Union of Operating Engineers shall, within thirty days from the date of this Order, submit payment to plaintiffs the Commonwealth of Pennsylvania's and Raymond Williams' counsel for attorney's fees in the amount of \$11,869.50.

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LOUIS C. BECHTLE, J.