

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

JOHN F. HUNTER, et al. : CIVIL ACTION
 :
v. :
 :
CITY OF PHILADELPHIA, et al. : NO. 98-4598

MEMORANDUM

Dalzell, J.

June 9, 1999

Plaintiffs in this class action are non-union City of Philadelphia firefighters in the bargaining unit that defendant Local 22, International Association of Fire Fighters, AFL-CIO (hereinafter "Local 22") represents. Prior to the parties' negotiation of a settlement agreement on April 7, 1999, the City deducted agency fees (also known as "fair share fees") from the paycheck of any employee who elected not to join the union. As of April 19, 1998, the amount deducted was \$14.25 per pay period, or 95% of current regular union dues.

Plaintiffs allege that defendants' seizure of agency fees is unconstitutional because they have not complied with the notice and procedural safeguards the Supreme Court mandated in Chicago Teachers Local No. 1 v. Hudson, 475 U.S. 292 (1986).¹

¹ In Hudson, the Court held that non-union employees can be forced to share in the expenses a union incurs in its role as exclusive bargaining representative (to avoid free-rider problems). However, as the Court noted in Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977), requiring non-union employees to support their collective bargaining representative "has an impact on their First Amendment interests," id. at 222, and therefore non-members cannot be forced to pay for expenses related to political and ideological activities unrelated to the costs of representation. Hudson, 475 U.S. at 302; see also Ellis v. Brotherhood of Ry. Clerks, 466 U.S. 435, 447 (1984).

(continued...)

On January 29, 1999, upon the unopposed motion of the plaintiffs, we certified as a class:

All former, current, and future members of the City of Philadelphia Fire Department who are, have been, or will be represented exclusively for purposes of collective bargaining by Local 22, but who are not, were not, or will not be members of Local 22, and were (within the limitations period), are, and/or will be nevertheless required to pay agency fees to Local 22 as a condition of continued employment.

The class has ninety-three members, and its representatives in this action are John F. Hunter and David Casper.

We held a Rule 16 conference on February 11 and set a schedule for the parties' cross-motions for summary judgment. Thereafter, Local #22 filed a motion (which we granted on March 24) to revise our scheduling Order and to refer the case to Magistrate Judge Jacob P. Hart for settlement discussions.

As a result of Judge Hart's patient mediation efforts, the parties in principle resolved their differences on April 7. After the compromise was memorialized in a formal Settlement Agreement, we on May 21 approved the method of notice to the class (first class mail to each class member's last known address) and ordered that all objections to the settlement should

¹(...continued)

To protect the First Amendment rights of non-union employees, the Court in Hudson outlined three procedural prerequisites to the collection of fair share fees. The union must provide an adequate explanation for the basis of the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending. Hudson, 475 U.S. at 310-11.

be received by June 1. On May 26, plaintiffs filed a "notice of mailing to the class" that confirmed the mailing of the notices before 5:00 p.m. on May 21.² No objections have been filed, and it was represented at the hearing that no class member has communicated any dissent to the proposed settlement.

The Settlement

The settlement has three main components. First, class members will receive \$55,000 (a net refund to the class members constituting 83.1% of the \$66,167.50 withheld from August, 1996 through April 9, 1999), to be distributed in proportion to the amount of agency fees deducted from August 26, 1996 to April 9, 1999. Second, class counsel will receive \$25,000 in attorneys' fees. Third, the City will, as of the first pay period after April 9, cease deducting any fair share fees and will not resume such deductions until Local 22 adopts procedures which comply with Hudson, an event which to date has not occurred.

Under the agreement, the City of Philadelphia bears the costs (not to exceed \$2500) of notifying the class members and distributing the proceeds. The parties also contemplate that this Court will retain jurisdiction to enforce the settlement.

Legal Standard

² We were advised at the hearing that only one mailing was returned for non-delivery, but that class member was found, given notice, and did not object to the settlement.

Under Fed. R. Civ. P. 23(e), "[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Before we may grant final approval to the settlement of a class action, we must determine that the settlement is "fair, adequate, and reasonable." Walsh v. Great Atl. & Pac. Tea Co., 726 F.2d 956, 965 (3d Cir. 1983).

In Girsh v. Jepson, 521 F.2d 153, 156-57 (3d Cir. 1975), our Court of Appeals, quoting the Second Circuit case of City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974), outlined a list of factors that are relevant to our determination of the fairness of a settlement:

- (1) The complexity, expense and likely duration of the litigation;
- (2) The reaction of the class to the settlement;
- (3) The stage of the proceedings and the amount of discovery completed;
- (4) The risks of establishing liability;
- (5) The risks of establishing damages;
- (6) The risks of maintaining the class action through the trial;
- (7) The ability of the defendants to withstand a greater judgment;
- (8) The range of reasonableness of the settlement fund in light of the best possible recovery;
- (9) The range of reasonableness of the settlement fund to a possible recovery

in light of all the attendant risks of litigation.

These factors are a guide, and the absence of one or more of them does not automatically render the settlement unfair. Rather, we "must look at all the circumstances of the case and determine whether the settlement is within the range of reasonableness under Girsh." In re Orthopedic Bone Screw Prods. Liab. Litig., 176 F.R.D. 158, 184 (E.D. Pa. 1997). Also, "significant weight should be attributed 'to the belief of experienced counsel that settlement is in the best interest of the class.'" Id., quoting Austin v. Pennsylvania Dep't of Corrections, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995). However, because of the risk of a collusive settlement that fails to satisfy the class members' best interests, we must conclude that the settlement was the product of "'good faith, arms' length negotiations'" before granting approval. Id., quoting Pozzi v. Smith, 952 F. Supp. 218, 222 (E.D. Pa. 1997).

The Fairness of the Settlement

After a hearing this day, we have no difficulty concluding that this settlement is fair, adequate and reasonable to the class. Indeed, the settlement is so positive for the class that we need not rehearse the reasons for our holding at any length.

Suffice it to say that the settlement may actually exceed "the best possible recovery" when one bears in mind that the class under Hudson was never entitled to a free ride at the

union's expense. All Hudson did was provide procedural protections before Local 22 could collect fair share fees. Thus, had the union complied with Hudson, it could have lawfully withheld the lion's share of the funds withheld during the class period. To this very meaningful extent, therefore, the \$55,000 net recovery represents almost entirely found money for the class members.

It is also worth noting again that the net class recovery constitutes 83.1% of the maximum loss. The \$80,000 total settlement fund represents 121% of the loss. In the future, Local 22 may not withhold any fair share fees until it complies with Hudson's requirements. As of this date, those protections have not been instituted, and thus since April class members have had no fair share fee deductions.

It is therefore not surprising that no class member has objected to this settlement.³

With respect to the counsel fees to be taken from the \$80,000 total payment, we have elsewhere held, see In re U.S. Bioscience Sec. Litig., 155 F.R.D. 116, 119 (E.D.Pa. 1994), that a 30% share of recovery is a reasonable fee for amounts far greater than involved here, and so the 31.25% fee from the \$80,000 base seems to us indisputably reasonable, especially

³ It is clear from the economic realities alone that there is no "risk of a collusive settlement," Pozzi, supra at 222, and there was never any serious risk in this regard in view of Judge Hart's active participation, which the parties reported took the better part of a day.

considering that the class recovers 83.1% after these well-earned fees are paid.

We therefore have no hesitation in approving the settlement in all respects.

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ORDER

AND NOW, this 9th day of June, 1999, upon consideration of the parties' Settlement Agreement, and class counsel having complied with this Court's Order of May 21, 1999 regarding notice of the proposed settlement and of the date of the settlement hearing, and there being no objection to the proposed settlement, and after a hearing this day and for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. The Settlement Agreement is APPROVED;
2. This action is DISMISSED WITH PREJUDICE, with each party to bear his or its own costs;
3. Without derogating the finality of this Order, the Court shall retain jurisdiction over any and all matters relating to the administration and enforcement of the terms of the

Settlement Agreement; and

4. The Clerk shall CLOSE this matter statistically.

BY THE COURT:

Stewart Dalzell, J.