

1999 WL 34870222 (D.D.C.) (Verdict, Agreement and Settlement)
United States District Court, District of Columbia.

Jessie BERGER, et al., Plaintiffs,
v.
IRON WORKERS REINFORCED RODMEN, LOCAL 201, et al., Defendants.

No. 75-1743 (J.G.P.).
December 8, 1999.

Settlement Agreement

For the Plaintiff Class: John L. Oberdorfer, Patton Boggs, LLP, 2550 M Street, N.W., Washington, D.C. 20037.

John F. Dienelt, Hogan & Hartson, LLP, 555 13th Street, N.W., Washington, D.C. 20004.

Roderic V.O. Boggs, Executive Director, Avis Buchanan, Washington Lawyers' Committee for Civil Rights and Urban Affairs, 11 Dupont Circle, N.W., Suite #400, Washington, D.C. 20036.

For the Defendants: Michael B. Roger, Van Bourg, Weinberg, Roger & Rosenfeld, 180 Grand Avenue., Suite e1400, Oakland, CA 94612.

Laurence E. Gold, c/o Office of the President, International Association of Bridge, Structural and Ornamental Iron Workers, 1750 New York Avenue, N.W. Suite 700, Washington, D.C. 20006.

Sally M. Tedrow, O'Donoghue & O'Donoghue, 4748 Wisconsin Avenue, N.W., Washington, D.C. 20016.

This Agreement is entered into by and between the plaintiffs and the defendants in the class action captioned as *Jessie Berger, et al. v. Iron Workers Reinforced Rodmen, Local 201, et al.*, Civil Action No. 75-1743(J.G.P.). The plaintiffs are Ernest Bellamy, Jessie Berger, Randolph Jackson, Thomas Kirkland, Van Edward Lewis and Ronald Tucker individually and as class representatives. The defendants are Iron Workers Reinforced Rodmen, Local 201, and the International Association of Bridge, Structural and Ornamental Iron Workers. The named plaintiffs, the plaintiff class and the defendants collectively are "the parties." The parties' attorneys are the undersigned.

The parties agree to settle all plaintiffs' claims for back pay, compensatory damages, interest, individual counsel's attorney's fees and expenses, and adjustment of pension benefits as follows:

1. Defendants shall pay to plaintiffs, in full satisfaction of plaintiffs' claims for back pay, compensatory damages, interest and individual counsel's attorney's fees and expenses, \$1,027,824 in damages for all of the claimants listed in Group 1 on Appendix A, in the amounts there specified, and \$1,500 in damages for all of the claimants listed in Group 2 on Appendix A, in the amounts there specified. The total amounts shall be paid within six business days of the date the United States District Court for the District of Columbia (the "Court") approves this settlement. These amounts shall be made payable, and transmitted by check, to a trust account to be determined by agreement between class counsel and defense counsel. Subsequent individual payments shall be made from that trust account within ten business days of the date the Order approving the settlement becomes final after any appeals or other proceedings.

2. Defendants shall pay to each of the claimants listed in Group 3 on Appendix A who files a timely appeal of the Court's Order of Judgment dated November 22, 1999, \$1,000 in damages in full satisfaction of that claimant's claims for back pay, compensatory damages, interest and individual counsel's attorney's fees. At the time of any such payment, the parties shall voluntarily dismiss any related appeal pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure.

3. (a) The Parties agree that each claimant listed in Groups 1 and 4 on Appendix A may submit a claim to the Iron Workers

Reinforced Rodmen, Local 201 Pension Fund (“Pension Fund”) to determine whether he is entitled to a pension benefit or an adjustment of a pension benefit as a result of the hours of work determined by the Special Master, as modified by this Court and the United States Court of Appeals for the District of Columbia Circuit, and in accordance with the hours of work attributed to the claimant by agreement of plaintiffs and defendants. The fact that a claimant mitigated damages and secured work outside Local 201 (including with non-union contractors) shall not affect the hours of work to be attributed to the claimant for any year in question.

(b) The parties shall meet to determine the hours of work to be attributed to each claimant for (1) each year as to which the claimant has been determined in this case to be a member of the class eligible for relief, and (2) each year as to which the claimant’s class membership and eligibility for relief otherwise remain to be established, as a result of the remand by the Court of Appeals.

(c) Insofar as the parties cannot mutually determine the hours of work to be attributed to any claimant for any eligible year, the dispute shall be resolved through arbitration initiated by either plaintiffs or defendants before either a mutually agreeable arbitrator or before an arbitrator selected by application to the Federal Mediation and Conciliation Service (“FMCS”) in accordance with its usual labor arbitration procedures. Plaintiffs and defendants will pay for their respective attorneys’ fees and expenses related to the arbitration, and plaintiffs and defendants will divide evenly the fee and other costs charged by the FMCS and the arbitrator. Such fees, expenses and costs shall not be subject to an application by any party to the Court requesting reimbursement from any other party.

(d) The parties will request the actuary for the Pension Fund to apply the attributed hours to determine whether each claimant is entitled to a pension benefit and to calculate how each claimant’s pension benefit or credits, if any, should be adjusted. After the actuarial determination is made, if any claimant believes the determination as to him is incorrect, he may appeal the determination through the Pension Fund’s regular appeal procedures. The defendants agree that they will abide by each such determination unless they can demonstrate, through the Pension Fund’s regular appeal procedures, that the determination is actuarially unsound. The final determination on any appeal shall be conclusive and binding.

(e) If the actuary determines that additional contributions are required to the Pension Fund as a result of any adjustments in pension benefit or credits, the defendants will determine how those contributions shall be funded, and they shall effectuate that funding. The defendants agree that they will abide by the actuary’s determination of the amount of contributions required to be made to the Pension Fund and shall pay the amounts determined to be due unless they can demonstrate, through the Pension Fund’s regular appeals procedures, that the actuary’s method in calculating the amount of contributions due was actuarially unsound. The final determination of any appeal shall be conclusive and binding. In no event shall any claimant be required to fund any additional contributions, nor shall any claimant be allowed to challenge the actuary’s determination of the amount of any additional contributions from defendants that are due or the method by which the contributions are funded.

(f) It is agreed that any hours attributable to any claimant under this settlement are to be made for the purposes of this case and this settlement alone and do not necessarily reflect the obligations or practices of the Pension Fund.

(g) The parties acknowledge that the Pension Fund is not a party to this litigation. The parties agree they will use their best efforts to effectuate this paragraph 3.

4. The parties have agreed to settle all of plaintiffs’ claims for liability-phase attorneys’ fees, costs, expenses and compensation for delay in payment in accordance with the parties’ separate agreement to that effect.

5. Plaintiffs shall remain entitled to seek, and defendants shall remain entitled to oppose, an award of attorneys’ fees, costs, expenses and compensation for delay in payment for any services performed or costs or expenses incurred by class counsel for the back pay and damages phase of this litigation. Plaintiffs and defendants shall retain the right to appeal any final determination by the Court regarding any such application.

6. Plaintiffs shall also remain entitled to seek, and defendants shall also remain entitled to oppose, an award of attorneys’ fees, costs, expenses and compensation for delay in payment for any services performed or costs and expenses incurred (regardless of the date performed or incurred) in connection with the presentation and litigation of plaintiffs’ applications for awards of attorneys’ fees, costs, expenses and compensation for delay. Plaintiffs and defendants shall retain the right to appeal any final determination by the Court regarding any such application.

7. This Agreement is subject to the approval of the Court and shall be governed by the laws of the District of Columbia. The parties shall jointly submit the attached motion (Exhibit A) and the attached proposed order (Exhibit B) and shall, through their representatives, present the motion and order in person to the Court as promptly as possible after the Agreement has been fully executed.

8. Each of the signatories below affirms that he or she is authorized to execute this Agreement on behalf of the party (or parties) he or she represents.

9. Each of the signatories below affirms that he or she has fully reviewed this Agreement and fully understands the Agreement, and the fact that an attorney for one party or another drafted any part of the Agreement shall have no bearing on the interpretation or enforcement of the Agreement.

10. The date of this Agreement shall be the date upon which the last signatory to this Agreement executes the Agreement.

FOR THE PLAINTIFF CLASS:

<<signature>>

John L. Oberdorfer

PATTON BOGGS, LLP

2550 M Street, N.W.

Washington, D.C. 20037

<<signature>>

John F. Dienelt

HOGAN & HARTSON, LLP

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Roderic V.O. Boggs

Executive Director

Avis Buchanan

Washington Lawyers' Committee for Civil Rights and Urban Affairs

11 Dupont Circle, N.W., Suite #400

Washington, D.C. 20036

Dec. 8, 1999

Date

8 Dec. 1999

December 8, 1999

Date

FOR THE DEFENDANTS:

<<signature>>

Michael B. Roger

VAN BOURG, WEINBERG, ROGER & ROSENFELD

180 Grand Avenue., Suite e1400

Oakland, CA 94612

<<signature>>

Laurence E. Gold

c/o Office of the President

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Sally M. Tedrow

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4748 Wisconsin Avenue, N.W.

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