

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JUL 12 2000

CAROLEE BRADY HARTMAN, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 77-2019 (JR)
	:	
MADELEINE K. ALBRIGHT, Secretary	:	
of State	:	
and	:	
MARC B. NATHANSON, Chairman,	:	
Broadcasting Board of Governors,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER APPROVING CONSENT DECREE

Upon consideration of the comments and objections filed in advance of the fairness hearing conducted on June 27, 2000, the submissions made at that hearing, and the whole record of this case, it is the judgment and finding of this Court that the proposed settlement of this action is "fair, adequate and reasonable and is not the product of collusion between the parties." Thomas v. Albright, 139 F.3d 227, 231 (D.C. Cir. 1998). In reaching this conclusion, the Court has examined and considered: (1) the strength of plaintiffs' case on the merits balanced against the amount offered in settlement; (2) the opinion of experienced counsel on the fairness of the settlement; (3) the state of the proceedings and the amount of discovery completed; (4) the length, complexity, and expense of further litigation; and (5) the reaction of class members to the proposed

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917

settlement and the opposition (of some of them) to certain of the settlement terms. Thomas v. Christopher, 169 F.R.D. 224, 243 (D.D.C. 1996), aff'd in part, rev'd in part, 139 F.3d 227 (D.C. Cir. 1998). Each of these factors weighs strongly in favor of approving the settlement.

Strength of the plaintiffs' case. Forty-six of 48 individual class members prevailed in Teamsters hearings conducted between 1996 and 1999 and received awards that averaged approximately \$470,000. Those results have established a clear track record with which to evaluate defendants' potential liability regarding the remaining claims. In 1999, the government requested social security earnings statements for 50 randomly selected claimants to test the representativeness of the back pay awards in the first 48 claims. The government's analysis of these data confirmed that the remainder of the claims were likely to generate back pay awards roughly equal to those already tried in Teamsters hearings.

It is true that some class members received awards well in excess of \$450,000, and that some received considerably less, but conducting 1000 Teamsters hearings in order to achieve awards fine-tuned to each individual set of facts would have required years if not decades. The award of a uniform amount to each class member is less precise than individually tailored relief,

but the disadvantage of less precision is more than offset by the advantages of bringing the litigation to an end.

Opinion of experienced counsel. Plaintiffs' lead counsel has represented the plaintiff class since the inception of this action in 1977. He is intimately familiar with the merits of plaintiffs' case and has been continuously involved in every stage of the litigation. During the pendency of this litigation, he has also kept in close contact with, and taken into account the opinions of, the representative class members. His unconditional endorsement is matched by that of government counsel, and their opinions together support the Court's finding that the settlement is fair, adequate and reasonable.

State of the proceedings. This case has been actively litigated for 23 years. See Fairness Hrg. Tr., June 27, 2000, at 1-5. A full trial of liability issues and 48 individual Teamsters hearings present a highly developed record that supports the proposed settlement.

Length, complexity and expense of further litigation.

To continue this litigation to the very end would require some 1000 additional Teamsters hearings, each one followed, perhaps, by motions and objections before this Court

and then, potentially, by appeals. That prospect is unacceptable, especially if a reasonable and just settlement can be achieved at this time.

Reaction of class members. Fifty-seven class members submitted written comments or objections.¹ Forty-seven of them expressed their unqualified support for the settlement. Eight class members supported the settlement, but suggested that it could be improved in specific ways. Only two class members objected, and their objections were to portions of the settlement.

At the fairness hearing, four class members commented orally on the Consent Decree. Three offered unconditional support for the settlement; the fourth (who had been one of the two who filed written objections) objected on the grounds that the taxes on the expected award would be onerous and that she had not been adequately apprised of developments in the case.

The concerns of the ten who did not unconditionally support the settlement fall into two general categories:

(1) other benefits (including instatement and retirement) should have been provided and (2) settlement payments should not be taxable.

¹ For reasons stated in open court before the fairness hearing commenced, the Court considered and rejected the petitions of four individuals to become members of the plaintiff class.

Instatement (job placement) was a priority of class counsel at the inception of the case in 1977, but he and the class representatives came to believe that it made more sense to settle on a all-cash basis, because many class members are aging or have moved on to other careers. The Court agrees.

Class counsel attempted to negotiate retirement benefits with the government, but the complexities involved in establishing individual accounts in the various federal retirement systems made that option unworkable. An all-cash settlement yielded a higher overall settlement figure in any event,² and was preferred by the majority.

Taxation of the settlement payments is unavoidable. Moreover, in the opinion of a well-respected tax law firm retained by class counsel, taxes must be withheld from settlement payments. The idea of spreading payments over a period of years to reduce the tax burden was considered but resisted by class representatives, who preferred to have their cash as soon as possible after a 23-year wait.

"[A] settlement can be fair even though a significant portion of the class and some of the named plaintiffs object to

² Plaintiffs' counsel stated: "I would report to the Court that in each of the counter proposals made by the government, where there is a retirement component, the overall settlement proposal made by the government was less advantageous to the class than were the all-cash proposals made by the government." Fairness Hrg. Tr., June 27, 2000, at 31.

it." Thomas, 139 F.2d at 232. Thomas held that the district court did not abuse its discretion by approving a settlement where 15 percent of the class objected. See id. Here, only 10 of the 1,093 class members -- less than 1 percent of the plaintiff class as a whole -- indicated any concerns with the proposed settlement. There is overwhelming support for the settlement.

Because the settlement is a fair, adequate and reasonable one, it is this 12th day of July, 2000,

ORDERED that the Consent Decree is finally approved as written and presented.



JAMES ROBERTSON
United States District Judge

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