

IN THE MATTER OF THE ARBITRATION,  
BETWEEN :

NATIONAL COUNCIL OF EEOC            X  
LOCALS, NO. 216, AFL-CIO.  
JUDY NAVARRO et al

-AND-

FMCS CASE NO. 02 -12164

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, BALTIMORE  
FIELD OFFICE

\_\_\_\_\_ X

**SUPPLEMENTAL DECISION AND OPINION  
ON THE MATTER OF ATTORNEY FEES**

(MATTER LITIGATED ON THE BRIEFS)

ARBITRATOR:    WALTER H. POWELL, Esq.

**APPEARANCES**

**ON BEHALF OF THE UNION**

**ON BEHALF OF THE COMMISSION**

MICHAEL SNIDER, Attorney  
REGINA ANDREW, Esq. Union Rep.

JAMES M. SOBER, Attorney

The parties mutually selected the undersigned arbitrator from the National List of the Federal Mediation and Conciliation Service for hearings regarding four Issues, including "Whether the Agency violated the CBA and FLSA when Grievant and other employees performed (suffered and permitted) overtime since January 1999. If so, what is the appropriate remedy?" The Union prevailed on this issue as well as on another issue, whether Grievant Navarro's PIP violated the CBA. The Union did not prevail on two issues: Privacy Act and legality of performance standards.

As noted in my initial Decision and Opinion, this case was developed over many days of hearings, scheduled as needed. During the course of the hearings, each party was given the opportunity of presenting witnesses and cross-examining the witnesses presented by the opposing side. The Grievant took the stand in her own behalf and testified and was cross-examined thoroughly by the representative of the Agency. This matter was fully litigated by both sides, with able counsel engaging in numerous rounds of direct, cross, redirect and re-cross examination.

The Agency took an Exception to the initial Decision and Opinion, which was upheld in large part by the Federal Labor Relations Authority (FLRA or Authority). The matter of attorney fees was remanded by the Authority for consideration by this Arbitrator. Hours devoted exclusively to the PIP issue are not compensable, according to the FLRA. The Issue before this Arbitrator, therefore, is: Whether the Union is entitled to attorney fees and, if so, what is a reasonable amount?

## **ISSUES**

- 1. WHETHER THE UNION IS ENTITLED TO ATTORNEY FEES AND, IF SO, WHAT IS  
A REASONABLE AMOUNT?**

The Union prevailed on its claim involving Fair Labor Standards Act Overtime. Fees are due, since one who prevails on a claim under the Fair Labor Standards Act (FLSA) is entitled to "a reasonable attorney's fee." 29 U.S.C. § 216(b). In addition, this Arbitrator previously noted the Union's entitlement to attorney fees and costs in the prior Decision and Opinion.

The question is, therefore, what is a reasonable amount? The Agency contests in its submission the hours generally and a few entries in particular. The Agency contests some of the Union Counsel's claims as far as a reasonable hourly rate. This Arbitrator has read both submissions and considered them fully. The Arbitrator has considered the Agency's supplemental objection, and the Union's response.

The Arbitrator finds that the Adjusted Laffey Matrix, as adopted by the Court in **McDowell v. District of Columbia**, 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001) and **Salazar v. District of Columbia**, 123 F. Supp. 2d 8 (D.D.C. 2000), is a reasonable measure for the services of Union Counsel. Union counsel in this case ably presented a heavily litigated and contested case, Agency representations notwithstanding. Both sides vigorously and zealously set forth their client's case and engaged in questioning at hearing that was obviously well-prepared. Counsel for the Union has been practicing law for "8-10 years" and has devoted his practice exclusively to labor and employment law for 5 ½ years. His affidavit, attachments to the fee petition and the supplemental submission of the Union show a history of receiving attorney fees from the federal government at the rates claimed in this case. It is concluded that his qualifications entitle the Union to recover fees for his services at the rates set forth in the Adjusted Laffey Matrix.

In contrast, not only has the Agency failed to provide any evidence that the requested hourly rates are unreasonable, but it has further failed to provide any evidence as to what would be a reasonable rate, prior history of awards or settlements for this Union attorney at those rates, or any other persuasive basis for not adopting the Adjusted Laffey Matrix. The

rates provided in the Adjusted Laffey Matrix are therefore to be used in calculating Union counsel's fees.

With regard to the reasonableness of hours claimed, the Arbitrator notes the Union's voluntary reduction of 25%. Also noted is the fact that the Agency has not provided a listing of its Counsel's hours. The conclusion drawn is that Agency counsel spent numerous hours on the facts, briefing and other work of this case, and that those hours may very well have equaled or exceeded the claimed Union hours.

Mr. Snider's hours clearly were devoted, in the main, on facts and arguments that were mostly either devoted solely to the overtime issue, or that were applicable to all issues. One is not to parse out fractions of hours of hearing transcript and reduce reasonable fees thereby. The Agency's approach is a continuation of the picayune methodology used in the prior proceedings.

The Arbitrator notes the Agency's objection regarding alleged excessive entries. No real detail was provided as to why particular entries were unreasonable and, again, the Agency failed to provide its own hourly attorney records. Some reduction may be in order due to an exercise in billing judgment, and therefore the pre-Award fees will be adjusted downward by an additional 5%. A lesser reduction, however, seems appropriate for hours subsequent to the date of the Award since no indication is given that a disproportionate number of hours were spent defending the non-overtime part of the Award. The Union was fully successful before

the FLRA on the issue of overtime. Further, the time devoted to the fee petition is fully compensable. The Award takes all of this into consideration.

The Arbitrator is much concerned that the attorney's fee was denied in part by the FLRA because there was no correlation between the fee requested and a Back Pay Award. My findings were that the adverse personnel action against the complainant (being placed on a PIP) was so demoralizing that not only was the PIP reversed, but the Agency was enjoined from continuing hostile adverse actions. Unfortunately the collective bargaining agreement makes no provision for personal damages. The failure to provide for damages does not lessen counsel's responsibilities and preparations.

Regarding costs, the Agency does not oppose costs conditioned upon the Union providing evidence of its payments to the court reporter.

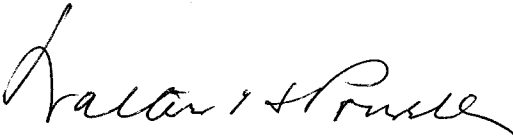
#### AWARD

The Union's petition is GRANTED, and fees are awarded as follows:

201.8 hours - 30% (60.5)	= 141.3	x \$267 per hour	= \$37,727.10
37.3 hours - 20% (7.5)	= 29.8	x \$405 per hour	= \$12,069.00

Total attorney fees awarded: \$49,796.10. Costs are awarded in the amount of \$2,617.50 contingent upon the Union's submission of proof of payment for the hearing transcripts.

JUNE 22, 2003

  
\_\_\_\_\_  
WALTER H. POWELL, Arbitrator