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STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT, McHENRY COUNTY, ILLINOIS

JAMES M. SWEENEY, AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO, Plaintiffs, vs. ALGONQUIN TOWNSHIP ROAD DISTRICT, Defendant.	17 CH 482
ANDREW GASSER, ALGONQUIN TOWNSHIP ROAD COMMISSIONER, ALGONQUIN TOWNSHIP ROAD DISTRICT, Third-Party Plaintiff, vs. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, Third-Party Defendant.	

REPORT OF PROCEEDINGS of the above-entitled cause before the Honorable DANIEL JASICA, Judge of said Court, at the Lake County Courthouse, 18 N. County Street, Waukegan, Illinois, on Tuesday June 11, 2019, at the hour of 1:30 o'clock p.m.

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APPEARANCES:

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 150 - LEGAL DEPARTMENT, by
MR. ROBERT A. PASZTA and
MR. BRYAN P. DIEMER,
appeared on behalf of the Plaintiff and
Third-Party Defendant;

ZUKOWSKI, ROGERS, FLOOD & McARDLE, by
MR. R. MARK GUMMERSON,
appeared on behalf of the Plaintiff and
Third-Party Defendant;

LAW OFFICES OF ROBERT HANLON & ASSOCIATES by
MR. ROBERT HANLON,
appeared on behalf of the Defendant and
Third-Party Plaintiff.

THE COURT: On the record. Sweeney and International Union of Operating Engineers Local 150 versus Algonquin Township Road District, Case 17 CH 482 from out of the 22nd Judicial Circuit, McHenry County.

Counsel, go ahead and introduce yourselves, please.

MR. PASZTA: Rob Paszta on behalf of the plaintiffs.

MR. DIEMER: Bryan Diemer on behalf of the plaintiffs.

MR. GUMMERSON: Mark Gummerson on behalf of the plaintiffs as well.

MR. HANLON: Robert Hanlon on behalf of the defendants, counter-plaintiffs.

THE COURT: All right. The case comes before the Court for hearing on Local 150's petition for attorney's fees relating to its renewed petition for rule to show cause.

I have received and reviewed the petition, as well as the response, as well as the amended reply. To the extent that counsel want to make any supplemental arguments you may do so starting with the movant or petitioner.

MR. PASZTA: We don't have any supplemental argument, your Honor.

MR. HANLON: This is going to make this a quick hearing then today, Judge, because I only have one real teeny-tiny one, but it's a really important one.

On May 22nd in this case before the Appellate Court, my opposing counsel wrote in the appellate belief that they are providing their services at no cost to their members. This says performed work in the case for its members at no cost. It's on Page 42 of the appellate brief. And to the extent that they're in-house counsel, I cited in our response the Uptown Law Center case.

There was a representation that my opposing counsels, with the exception of Mr. Gummerson, and for purposes of this argument I'm excluding Mr. Gummerson because he's outside counsel. He has some contractual relationship with them, and I'm really not getting that, and he's not the meat of what's at issue here today anyhow.

But opposing counsel articulated

that they have standard rates that implement the Lodestar analysis, and the Lodestar analysis is predicated upon the general economic theory that an attorney's standard rate is the market for his services. Well in this particular case we don't have a market for the services, because those rates are determined internally by Local 150 as this applies.

More importantly, since they don't -- the parties to this lawsuit have not paid these attorneys dime one, and they've acknowledged that in the brief. I'm happy to show opposing counsel their own brief if they would like to take a look at it. I'd like to offer it into evidence for the Court to take into consideration, and the citation is on Page 42 of the brief.

THE COURT: Any objection to the admission of what we'll call Respondent's Exhibit 1?

MR. PASZTA: No objection to the admission of the document, but I would like to read --

THE COURT: Well, I'll certainly give you an opportunity to respond to it, to make whatever arguments you want, but if you can go ahead and

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mark that Respondent's Exhibit No. 1.
Respondent's Exhibit No. 1 is admitted.

MR. HANLON: Judge, and then I would also like to point out that while they cite to some authority in a separate federal labor case, we're here about a state case, and I'm sure they're going to want to read from that. That's all I really have. If I need to reply to something I'll ask.

THE COURT: All right. Any reply?

MR. PASZTA: May I approach? I'd like to --

THE COURT: Just to tender that to me or --

MR. PASZTA: Yes.

THE COURT: Sure.

MR. PASZTA: And I've got a copy electronically.

So counsel for the Road District recently submitted his reply in support of his appeal in this case, which appealed every order that was entered below, and made the same argument in his reply brief. It's -- the citation is to the first paragraph on Page 42, wherein Local 150 writes, "Unlike the situation in the Uptown line of cases, Local 150's

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attorneys have not appeared in this matter pro se on behalf of their own law firm, on behalf of their own not-for-profit legal center, nor did they perform the work at issue gratuitously. Instead Local 150 performed the work on this case for its members at a cost to its members."

Counsel misquoted this in his reply brief, and just misquoted it to the Court. We're going to send counsel a Rule 137 letter, because he argued for three pages that this was an admission, these services were performed at no cost to its members, when in fact we wrote and it reads in the brief that we just tendered to the Court or Mr. Hanlon did at a cost to its members.

Your Honor's already ruled on this issue in previous matters. The misquote by the Road District doesn't change that at all in this case or in the appeal. So we would just say that our fees are reasonable, because the hours are reasonable, and our rate as previously determined is reasonable, and that's all we have, your Honor.

THE COURT: All right. Just to clarify, is there another spot on Page 42 or elsewhere in the

brief you want me to focus on or was it --

MR. HANLON: No, Judge. And if I'm in error there, I'll blame it on my vision. They can send me all the letters that they want send me.

I'd like to point out, though, that I did provide the LL2 Report, which shows that throughout this case there were no payments of any attorneys fees. I recently reviewed the most recent one that covered all the way up until December of last year. There's no payments --

THE COURT: And again my only question was was there a different --

MR. HANLON: No, Judge.

THE COURT: -- provision that I hadn't seen. Thank you.

MR. DIEMER: Your Honor, in light of that, Mr. Hanlon, are you going to correct the brief you filed --

THE COURT: No, thank you, I'm not going to hear any more arguments. You can have that discussion elsewhere.

MR. DIEMER: Okay. Very good.

THE COURT: All right. I did grant leave to Local 150 to file their petition for attorney's

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fees after I held Mr. Gasser in contempt, and they have done that. I also in that order specifically narrowed it and limited it to only those attorney's fees incurred in preparation and presentation of the renewed petition for indirect civil contempt.

I've also gone through line by line the various hours that were submitted by Local 150 in their petition for attorney's fees, and I will be awarding them some of their fees, but certainly not all of their fees.

Specifically, there's items that there's really not sufficient description in the contemporaneous time sheets for me to conclude what the time was spent on. I'm not going to be awarding those.

There appears to be some time that's relating to time spent concerning the selection of the arbitration panels. That again I didn't think was solely related to the renewed verified petition, so I'm not going to be awarding those.

There's also instances where more than one attorney showed up for the hearing.

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Again I'm fine with that, but I only award attorney's fees for one attorney. And then lastly, I don't award attorney's fees for time spent preparing a fee petition.

So looking at Exhibit 1, I guess this is Exhibit B-1 to the petition, walking through the individual line items, I will be awarding 1.25 hours on February 4th for the review of the petition; the following entry 1.0 hours for editing the petition; 2.25 hours for review and editing the petition; 2.7 hours for hearing prep; and then on 2-8 I'll be awarding the 3 hours for the presentation of the petition.

Additionally, on March 1st, there's the hearing on the rule to show cause, so I will be awarding 3 of the 6 hours for that entry. I assumed part of it was for travel, so I'm not going to be awarding those, but it will be the 3 hours. So that comes to a total of 14 -- excuse me, 11.5 hours.

I previously found and do find that the rate of 350 is reasonable and appropriate for attorneys with this level experience for this

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type of a case. So that's $4,025 relating to Mr. Paszta's time.

There's also time for Mr. Diemer. The time that I will be awarding for his involvement, on February 4th the 6.0 hours that were spent on that item; on February 5th the drafting and editing concerning the petition, the 2.0 hours; February 6th the editing of the petition for 2.5 hours; and then on February 7th for reviewing in preparation for the hearing I'll be awarding that 1 hour. So that's a total of 11.5 hours again at the rate that I find to be reasonable at 350. So that is $4,025.

So the total amount of attorney's fees that I will be awarding in favor of Local 150 and against Mr. Gasser is $8,050 for the preparation, presentation of the renewed petition for rule to show cause. So a judgment in that amount will also enter against Andrew Gasser, and counsel will prepare that order.

MR. HANLON: Your Honor, if I may, Mr. Gasser is sued here in an official capacity as Highway Commissioner, not as an individual.

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And the Court having ruled the award of attorney's fees, pursuant to the Immunities Act, public officials can't be assessed fees for their action or inaction as a result of their conduct, you know, the actions they take.

I have no problem if the opposing parties want to have the Road District listed as the payee on that, because he was acting in his capacity in running the Road District, and this case is about the Road District, but I don't believe that it should refer to him personally. And we would wind up with more briefing and more issues if the Court -- you know, I'm happy to do as the Court wants us to do, but I think that the issues of law are very clear with respect to the immunities that are afforded to him as a public official, and that he doesn't incur that on a personal level.

And that wasn't raised within their petition. They filed a petition for fees. They didn't ask specifically that it be granted against Mr. Gasser. And so for the Court to enter it against Mr. Gasser at this point in time I think would be improper.

THE COURT: Anything Local 150 wants to say on that aspect of the proposed order?

MR. PASZTA: Two quick points, your Honor. One, will the Court be awarding the costs petitioned for by Local 150 as well, in addition to the fees? The service mailing and court reporter?

MR. HANLON: I have no objection to that, Judge.

THE COURT: No, not for -- I don't award court reporter as a court cost. So what I would look at are court costs. So unless you had a filing fee or a service of process fee, if you're just talking about mailing a FedEx or a court reporter, I'm not going to be awarding those costs.

MR. PASZTA: The service fee in this case required multiple attempts in which --

THE COURT: Oh, sure, for the service of the rule to show cause?

MR. PASZTA: Correct.

THE COURT: All right.

MR. HANLON: Judge, if I may say that with respect to the service of the rule to show case,

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even though Mr. Gasser hadn't even been served, he appeared here even absent service. So I would suggest that that not be a proper cost.

THE COURT: Well I wasn't aware of any agreement where, you know, he agreed or you agreed to waive service or anything like that. So that's fine, I will be awarding -- and those are supported on Exhibit 3, correct? Exhibit B-3 to the petition, I think?

MR. PASZTA: Yes, your Honor.

THE COURT: All right. And what are you claiming as the process servers?

MR. PASZTA: The cost was $350.

THE COURT: Then I will be awarding the $350. In terms of the issue of who the order and judgment should enter against, what is Local 150's position?

MR. PASZTA: Our position is it should be awarded against the Road District and the Highway Commissioner in his professional capacity. We characterized the petition in that regard. He was the party that was held in contempt in his capacity as Road Commissioner, and these arguments were never raised. To do so now

certainly would add additional briefing and cost if this judge -- if your Honor wants to hear it, but I think we're past that.

MR. DIEMER: I also don't think, your Honor, that failing to comply with the court order can in any way be considered to be part of his duties as a public official. He engaged in contumacious conduct. I think the idea of shifting the cost then onto the taxpayers runs afoul of the policy designed to ensure compliance with the Court's order.

I think Mr. Gasser made decisions eyes wide open, and he should bear the cost of those decisions, not the taxpayers of Algonquin Township. And so I would ask that the order be entered against Mr. Gasser individually.

THE COURT: I will give you the last word on that issue, Mr. Hanlon.

MR. HANLON: Judge, jurisdictionally that's -- he was served as the Highway Commissioner, not in any individual capacity. So if the Court were to enter an order absent the jurisdiction over him individually in that regard, it would be error, Judge.

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And so I think that what Mr. Paszta said to the Court with respect to how they sued him as the Highway Commissioner, they sued him that way, they brought the petition that way, they brought the Road District in as a party.

I have no problem if they want to have it read as in his capacity as the Highway Commissioner. I have a big problem if they want it individually against him individually.

And Judge, I would add that we didn't brief that issue, because they didn't ask for that issue within the scope of their pleadings.

THE COURT: All right. Well I think there -- you might have an issue with immunity in terms of his rights vis-a-vis the Township or the Road District. He was held in contempt, so I'm going to be awarding the judgment against Andrew Gasser, and on his behalf you can pursue, I suppose, reimbursement if you think it's justified under the law from the Township or the Road District as appropriate.

So that's what the order will read, judgment entered against Andrew Gasser. Anything

else before we go off the record?

MR. HANLON: So that would not be to the Road District at all then, Judge? I think that's what they wanted was both sides as opposed to one side. And if you just want the one and not the other --

THE COURT: Again, certainly without prejudice for him to seek whatever reimbursement or indemnity he believes he's entitled to for the Road District, but I think the award, since he is the individual that was held in contempt, the award enters against him. All right. Thank you. Off the record.

(Which were the proceedings had in said matter on said date.)

STATE OF ILLINOIS)
)
COUNTY OF McHENRY)

I hereby certify that I reported in shorthand the Reported Proceedings at the above-entitled cause, and that the foregoing reported proceedings, consisting of pages 3 through 17, inclusive, is a true, correct and complete transcript of my shorthand notes so taken at the time and place aforesaid.

_____
ELIZABETH L. NENNI
Certified Shorthand Reporter
CSR License #084-00169