

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED TRANSPORTATION UNION, LOCAL 1745, et al.

Plaintiffs,

v.

No. CIV 96-0716 LH

CITY OF ALBUQUERQUE, et al.,

Defendants,

and

JIMMY S. ANDERSON, et al.,

Plaintiffs,

v.

**No. CIV 99-0208 MV
(Consolidated with No. CIV 96-716)**

CITY OF ALBUQUERQUE, et al.,

Defendants.

PLAINTIFFS' RESPONSE TO OBJECTIONS

Plaintiffs, through their counsel, hereby respond to the two objections filed with the Court to the Motion to Approve Settlement and Distribution of Settlement Proceeds.

Objection by Plaintiff Ron Otero:

Plaintiff Ron Otero filed an objection stating:

that the distribution of reimbursed costs to the NMTU (New Mexico Transportation Union) as enumerated in Section III (B) (1) should not be made without first receiving an itemized accounting of allowable expenditures from NMTU verifying that these expenses were incurred directly by NMTU's prosecution of this lawsuit and that they are not expenses already paid by the United Transportation Union Local 1745 at the outset of the case.

Mr. Otero's objection is reasonable and Plaintiffs have responded by sending a memo to Mr. Otero detailing the expenses that have been incurred (and that it is anticipated will be incurred) pursuant to the litigation, settlement, and distribution of proceeds in this lawsuit. The amount in question, to which Mr. Otero's objection pertains, is an estimated \$11,400.00. Of this amount, about \$7,500.00 has been expended within the past three years, eliminating any possibility that they are "expenses already paid . . . at the outset of the case." Another \$928.92 is being paid to John Barnes for his work on contacting drivers. That leaves approximately \$3,000.00, which is estimated to be the cost of retaining a fiduciary and distributing the settlement proceeds. A detailed listing of those expenses is being provided to Mr. Otero

Objections by Michael Paul Froonjian

Mr. Froonjian falsely claims to be a party, and he rashly contends that:

The deletion of Froonjian from any and all settlements records has been done solely by design and political bias by Plaintiff attorney's and the Union committee.

In fact, Mr. Froonjian never signed or filed a consent form to opt in to either of the two consolidated cases, nor was he ever considered by the plaintiffs or the defendants to be a party. The first time Mr. Froonjian expressed a desire to be included in the cases was after the settlement, when he asked to be added to the list of plaintiffs.

While it is true that Mr. Froonjian testified before the Special Master as an "Extra Board" driver with knowledge and information about City practices, it was made clear at

the time of his testimony that he was not a party in either of the cases. When Mr. Froonjian was introduced to the Special Master, plaintiffs' counsel referred to him as follows:

. . . an employee like Paul Froonjian, who's sitting over there . . . (has no) idea how or why or in what part of his work on the extra board he's getting paid, now, today, and he's not in either of the two consolidated cases . . .

Transcript of May 6, 2002, hearing at page 337.

And when plaintiffs' counsel questioned a management official about Mr. Froonjian's testimony, defendants' counsel objected:

Q. And you have not heard that Mr. Froonjian was raising questions about his standby time and about his travel time and what he was being compensated for?

MR. BERGMANN:

At this point I'm going to object. Mr. Froonjian is not a plaintiff in this case. Now, he may raise questions in this, but he's not a plaintiff in this case, and so I do believe that questions related to him, what he's doing, are beyond the purview of this proceeding, Your Honor.

Id. at page 442.

Thus, not only does Mr. Froonjian lack standing and capacity to make any objections, but there is also no substantive basis for his objections, as he is not now and never was a plaintiff in the cases. Mr. Froonjian's objection is unreasonable and without merit; it should be stricken or denied. Mr. Otero's objection, although reasonable, has been responded to and an accounting of the amounts paid by the NMTU that will be

reimbursed has been provided to Mr. Otero. Accordingly, neither objection presents any reason to alter or delay the approval of the settlement and distribution of proceeds.

Respectfully submitted,

Signed Electronically

Paul Livingston
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I hereby certify that I sent a copy of the foregoing to attorneys for defendants, Ed Bergmann and Michael Garcia by fax and/or e-mail and to objectors Ron Otero and Michael Paul Froonjian on or before March 14, 2005.

Signed Electronically

Paul Livingston