

<b>Braithwaite v Francois</b>
2022 NY Slip Op 32380(U)
July 14, 2022
Supreme Court, New York County
Docket Number: Index No. 654162/2020
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. LOUIS L. NOCK **PART** **38M**

*Justice*

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PAUL BRAITHWAITE and ANTHONY GORDON,

Plaintiffs,

- v -

SHAUN FRANCOIS, as President of NEW YORK CITY BOARD OF EDUCATION EMPLOYEES LOCAL 372, etc., and YVETTE ELLIOT, or her successor in office, as Chairperson of the ELECTION COMMITTEE OF THE NEW YORK CITY BOARD OF EDUCATION EMPLOYEES LOCAL 372, etc.,

Defendants.

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**INDEX NO.** 654162/2020

**MOTION DATE** 11/12/2021

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77

were read on this motion for ATTORNEYS' FEES.

LOUIS L. NOCK, J.

Upon the foregoing documents, and after due deliberation, it is ordered that the motion by plaintiffs for an award of their reasonable attorneys' fees, or the value of same, in connection with this action, is granted, per the following memorandum.

***Background:***

The facts, circumstances, and key holdings of this matter are found in this court's decision and order in this action ("This Action") filed March 2, 2021 (NYSCEF Doc. No. 55 in This Action), and in this court's decision and order filed March 2, 2021, in an interrelated action (the "Interrelated Action") titled *Gordon, et al. v Francois, et al.* (index No. 654437/2020 [Sup Ct NY County] [Nock, J.]) (NYSCEF Doc. No. 59 in the Interrelated Action). Familiarity with those decisions and orders will be presumed.

As thoroughly described in the two actions, these matters concern labor disputes among members of the New York Board of Education Employees Local 372 (“Local 372”), which is a local labor union representing non-pedagogical employees at the New York City Department of Education. Local 372 is affiliated with the American Federation of State, County and Municipal Employees (“AFSCME”), and is a constituent of AFSCME’s administrative subdivision, District Council 37 (“DC 37”). Local 372 has 22,000 members.

This Action sought an injunction and related relief in connection with Local 372’s election for officers and union delegates. A simplified description of the nature of This Action is that the plaintiffs herein sued to vindicate the interests of all 22,000 members of Local 372 in regard to what plaintiffs perceived as an unfair election process being orchestrated by incumbent officers of Local 372 (*see*, Complaint [NYSCEF Doc. No. 2 in This Action], *passim*). Based on preliminary showings, this court had granted a temporary restraint of the allegedly unfair election of union officers by order to show cause filed September 2, 2020 (NYSCEF Doc. No. 28 in This Action). This court thereafter extended that restraint in its aforesaid Decision and Order filed March 2, 2021 (NYSCEF Doc. No. 55 in This Action).

Ultimately, and as a direct result of plaintiffs’ efforts in This Action, the defendants agreed to make ballot adjustments which resulted in the inclusion of the proposed slate of officer-candidates who had been denied access to the ballot for the reasons stated by the incumbent management of Local 372 (*see generally*, NYSCEF Doc. No. 55 in This Action, *passim*), and which had spawned the prosecution of This Action (*see*, NYSCEF Doc. No. 59 in This Action [this court’s order acknowledging defendants’ said agreement and declaring This Action “disposed”]).<sup>1</sup>

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<sup>1</sup> The Interrelated Action, commenced by the same union members as the plaintiffs in This Action, sues more generally on allegations of breach of fiduciary duty by Local 372’s management, alleging overspending of union

Counsel for the plaintiffs herein – “Advocates for Justice, Chartered Attorneys,” by its member, Arthur Z. Schwartz, Esq. – now moves for an order granting plaintiffs an award of their reasonable attorneys’ fees, or the value thereof, casting the aforesaid disposition of This Action as a “100%” success in vindication of the free and fair election rights of the 22,000-member union underlying This Action (and the Interrelated Action), Local 372 (*see*, NYSCEF Doc. No. 68 in This Action [Affirmation of Arthur Z. Schwartz, Esq.] ¶ 11).

Counsel for the defendants opens his opposition to the motion by stating, generally, that:

Under the prevailing rule in New York, known as the “American Rule,” attorneys’ fees are considered incidental to litigation and may not be recovered unless supported by statute, court rule or written agreement of the parties. Hooper Assoc., Ltd. v. AGS Computers, 74 N.Y.2d 487, 491, 549 N.Y.S.2d 365 [1989].

(NYSCEF Doc. No. 70 in This Action [Affirmation of Roger V. Archibald, Esq.] ¶ 9.)

***Discussion:***

Defense counsel’s aforesaid reference to the “American Rule” is, most assuredly, the appropriate starting point for discussion. But it is not the end. As plaintiffs’ counsel points out, courts have found attorney fee awards to be otherwise appropriate in prevailing dispositions which inured to the mass benefit of a numerous group of individuals who are all aligned in interest (such as the 22,000 members of Local 372 in this case). One such court was the Supreme Court of the United States in *Hall v Cole* (412 US 1 [1973]), a labor union case, which, after taking express note of the American Rule, held that “courts, in the exercise of their equitable powers, may award attorneys’ fees when the interests of justice so require” (*id.*, at 4-5). The Court included in that genre of instances “cases in which the plaintiff’s successful litigation confers ‘a substantial benefit on the members of an ascertainable class’” (*id.*, at 5). The Court

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funds, failure to make required financial disclosures to union members, and related allegations of managerial misconduct or neglect (*see*, NYSCEF Doc. No. 59 in the Interrelated Action). The Interrelated Action is ongoing.

concluded that the prevailing party in that labor union case, “by vindicating his own right . . . necessarily rendered a substantial service to his union as an institution and to all of its members” (*id.*, at 8).

In another labor union case, involving DC 37, the Supreme Court of the State of New York, County of New York (per Hon. Carol R. Edmead, J.), prevailing party attorneys’ fees were awarded on the similar basis of the attainment of a “substantial benefit on the members of an ascertainable class” (*Sbar v District Council 37 Health & Security Fund Trust*, 12 Misc 3d 1176, 2006 NY Slip Op 51246 at \*4 [Sup Ct NY County 2006]).

This court has already recognized the efforts of the plaintiffs in This Action as stewards of “the rights of union members who desire to participate in what is supposed to be a fair and democratic process for elective governance over many fellow union members” (NYSCEF Doc. No. 55 in This Action at 13). Plaintiffs herein have attained widely-shared success by inducing a disposition of This Action by way of ballot access for competing officer-candidates. This court finds that such success, affording electoral choice to all 22,000 members of Local 372’s electorate, merits application of the foregoing exception to the American Rule, and, accordingly, grants the motion for an award of reasonable attorneys’ fees.

***The Quantum of Fees:***

Plaintiffs’ counsel has asked for the court to apply the 600-dollar hourly rate which has already been found reasonable for his representational skill, by the United States District Court for the Eastern District of New York, in an unrelated federal action titled *Lawton v Success Academy* (2021 WL 1394372 [ED NY] [Gold, U.S.M.J], *adopted in pertinent part* 2021 WL 911981 [ED NY 2021 [Block, U.S.D.J.]). Said counsel has supplemented that request by detailing his vast experience with the law applicable to This Action, as well as his vast

understanding of the labor union underlying This Action, and also, the various procedural and substantive stations this action has had to travel to till the point was reached where final success was ultimately attained in April 2021, when defendants, on behalf of Local 372, acceded to the ballot inclusion advocated for by the plaintiffs in This Action (*see*, NYSCEF Doc. No. 59 [Order] in This Action; NYSCEF Doc. No. 68 in This Action [Schwartz Aff.], *passim*).

Per the aforesaid hourly rate, which this court finds reasonable (as did the United States District Court, *supra*), and per the Attorney Time Report submitted in support of the motion (NYSCEF Doc. No. 69), found to be substantially reasonable by this court, the requested fee comes to \$62,310, plus an added sum of \$395 for expenses.

Regarding the Attorney Time Report: the court has examined it carefully, and makes the following adjustments as to reasonableness of hours spent:

The 9/1/2020 entry for “Research and draft Order to Show Cause,” etc., is reduced from 10.75 hours to 7.75 hours;

The 9/18/2020 entry for “Review Notice of Removal,” etc., is reduced from 5.25 hours to 3.25 hours;

The 9/21/2020 entry for “Prepare OSC for Remand,” etc., is reduced from 6.50 hours to 4.50 hours; and

The 10/6/2020 entry for “Prepare Supplemental Affirmation,” etc., is reduced from 4.75 hours to 2.75 hours.

The foregoing adjustments reduce the fee to \$56,910 from the requested \$62,310. The adjusted fee of \$56,910, plus the added sum of \$395 for expenses, aggregates a total reasonable attorney fee awardable of \$57,305. The court awards that aggregate amount as plaintiffs’ reasonable attorneys’ fees, payable by Local 372.

**Conclusion:**

Accordingly, it is

ORDERED that plaintiffs' motion for an award of reasonable attorneys' fees herein is granted to the extent that plaintiffs, jointly, shall have judgment against New York Board of Education Employees Local 372 in the principal sum of \$57,305.

This will constitute the decision and order of the court.

ENTER:



<u>7/14/2022</u> DATE		<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE