

1992 WL 551568
Only the Westlaw citation is currently available.
United States District Court, W.D. Missouri, Western Division.

Kalima JENKINS, et al., Plaintiffs,
v.
STATE OF MISSOURI, et al., Defendants.

No. 77-0420-CV-W-4.

|
June 25, 1992.

ORDER

RUSSELL G. CLARK, Senior District Judge.

*1 Before the Court is the AFT's proposal for desegregation funding for teacher salary increases for fiscal years 1992-93 through 1994-95. The KCMSD filed a separate salary proposal for 1992-93. The State filed a response to both proposals. The parties filed subsequent replies and responses to the proposals. The Court set this matter for a hearing on June 9-12, 1992 and will approve a teacher salary package as set forth below.

At the end of the current fiscal year, desegregation funding for both the 1987 teacher salary package and the 1990 salary increase settlement will expire. If desegregation funding for salaries is not extended, teacher salaries will roll back to 1986-87 levels. The AFT has proposed a salary increase to keep the KCMSD competitive with the national urban market. The KCMSD has proposed to maintain salaries at their current levels with moderate equity adjustments. The State has proposed that this Court roll back teacher salaries to their 1986-87 levels because the salary increases have not met the goals set by the Court.

AFT SALARY PROPOSAL

The AFT's salary proposal requests that continued and increased desegregation funding of teacher salaries is necessary in order to assure equitable and effective implementation of the desegregation plan. The AFT proposes to raise salaries to levels that are competitive with the national urban market. Specifically, the AFT requests that the Court establish teacher salary schedules for the next three years at a level at least equal to the projected national urban average teacher salaries. The AFT also suggests that the KCMSD redirect under-expended resources out of other desegregation programs and into the budget for teacher salaries.

The AFT and the KCMSD assert that the most relevant market for setting teacher salaries in the KCMSD is the national urban school market. The AFT and KCMSD suggest that urban districts throughout the country provide a more meaningful comparison with the KCMSD in terms of size of budget, enrollment, employees, inner-city working conditions, minority/non-minority enrollment patterns, socio-economic levels and special needs of urban versus suburban student bodies. The surrounding local suburban school districts do not provide this same type of useful comparison.

The AFT asserts that setting salaries that are competitive with the national urban market is necessary so that the District can retain and attract high quality teachers. The AFT stresses that high quality teachers are essential to successful implementation of the desegregation plan. The AFT proposes that current KCMSD teacher salaries be restructured and increased so that the District will be comparable to or higher than average salaries paid in urban school districts throughout the United States.

The State disagrees that the national urban market is the most relevant market for purposes of comparison. The State of Missouri argues that the relevant labor market for teachers in the KCMSD is the "regional market." The "regional market" is

defined as Missouri and the eight states contiguous to Missouri: Kansas, Nebraska, Iowa, Illinois, Kentucky, Tennessee, Arkansas, and Oklahoma. The State's view is based on the origin of actual hires.

*2 Recruitment efforts by the KCMSD indicate that the District recruits on a national level and the pool of certified applicants indicate that the District competes at a national level. After the 1990 salary order, 20.9 percent of the applicants were from Missouri, 23.2 percent of the applicants were from the eight contiguous states, 35.3 percent of the applicants were from other States and 20.7 percent of the applicants were from unknown origin. *See* AFT Ex. 28. This Court does not accept the State's contention that in order to find that the District competes in the national urban market, the District must show that it actually hires a substantial number of teachers or personnel from the national urban market. Also, Kansas City, Missouri is a part of the national urban market and other national urban cities are competing for Kansas City's teachers and staff. Therefore the Court agrees with the AFT and KCMSD that the national urban market is the most relevant market for purposes of comparing salaries in the KCMSD.

The AFT recommends that the best measure of the national urban market for teachers is the Department of Defense ("DOD") salary schedule which is based upon the average salaries of all urban school systems in cities of 100,000 or more population in the United States. Each year the DOD compiles a database of teacher salaries paid in approximately 170 urban school districts in the United States.

The AFT presented evidence that teacher salaries in the District lag significantly below the national urban average. According to the most recent statistics, teacher salaries in the national urban market have increased approximately 6.71% each year in the last eighteen years. In terms of the dollar differences, the gap between KCMSD teacher salaries and the national urban average today is close to the gap that existed in 1986-87, before any desegregation funding for salaries was provided by the Court. *See* AFT Proposal at 21.

Thus, in the current 1991-92 school year, the gap between KCMSD teacher salaries and the actual and projected urban average salaries is considerable and will worsen unless significant salary increases are authorized and funded. For example, KCMSD salaries for beginning teachers in the B.A. and M.A. salary lanes are currently below the national urban average by approximately 4%. *See* AFT Ex. 14. At the top end of the B.A. and M.A. lanes the KCMSD's most experienced teachers are currently earning, respectively, about 19% and 14% less than the national urban average. *See* AFT Ex. 14. The AFT cautions that if teachers are paid at the same level in 1992-93, the KCMSD's ability to compete in the marketplace for teaching talent will be diminished even more severely.

Moreover, if the current salary increase orders are allowed to expire on June 30, 1992, teacher salaries for the 1992-93 school year will fall from a starting salary of \$22,215 to just over \$17,000. The net result of a roll back would be that the KCMSD would be forced to compete in the national urban market for beginning teachers at a 40-45% disadvantage. *See* AFT Ex. 31. The AFT warns that if current salaries are allowed to expire, salaries will revert to a level which will result in intolerable consequences for the desegregation plan. Such a roll back would place the KCMSD teacher salary schedule thousands of dollars behind any comparable school district and would devastate the District's ability to attract and retain teachers. The AFT fears that a roll back would essentially paralyze the District's ability to recruit and retain quality teachers who are vital to the desegregation program.

*3 Art Rainwater, Associate Superintendent for Instruction, testified that a roll back would cause a number of teachers to defect to other markets and would definitely hurt the desegregation program. A salary decrease of this proportion could cause a mass exodus of District employees. Those teachers who could not leave the system would likely suffer from internal morale problems which might be passed on to the schoolchildren. A salary roll back would inevitably affect the attitudes of teachers who stayed in the District.

The AFT's proposal would remedy other inequities in the current KCMSD salary schedule. In the current KCMSD teacher salary schedule there are a number of non-uniform salary steps. For example, when a teacher in the B.A. salary lane moves from step to step, he or she normally receives a raise of \$778.00. However, when moving from step four to step five in the B.A. lane, the teacher receives a raise of \$888.00. When moving from step five to step six the teacher gets a raise of \$667.00. There has been no explanation for these arbitrary differences between steps.

The AFT also urges that adoption of the DOD national urban market teacher salary schedule would permit the KCMSD to reform its current salary schedule by adding step increases for years of experience or "longevity" steps. Longevity steps are found in most urban salary schedules. The AFT proposes that the Court remedy disparities at the top end of the salary schedule by adding longevity steps. Longevity steps would account for additional salary shortfalls as compared to the

national urban average.

Another problem with the absence of step increases in the KCMSD salary schedule is that there are salary inequities among similarly-situated teachers. Teachers within the District have been frozen at their current levels for two years. For example, a teacher who began her teaching career in the KCMSD and has taught for ten years would be paid at step nine instead of step eleven. However, a teacher who taught for ten years in another school before being hired to teach in the KCMSD this year would be paid at step eleven. A two-step differential could result in a pay scale difference of \$1,444 to \$2,443 per year. Testimony at the hearing indicated that these types of inequities cause morale problems within the District and lead to internal dissatisfaction with the system. In turn, this leads to ineffective implementation of the desegregation program.

In summary, the AFT requests that this Court adopt the national urban average as the relevant market in which the KCMSD competes for teachers, administrators and staff. The AFT proposes to raise salaries, eliminate step inequalities and add step increases for teachers. The AFT also proposes to raise salaries of all categories of classified personnel: paraprofessionals, administrators, professionals, technical, clerical, security, nurses, food service, operating, building managers, cafeteria managers, information systems, miscellaneous schedule five employees, part-time workers, operating, maintenance, and parent educators.

*4 The AFT urges this Court to order funding that will allow teachers to earn their regular hourly rate of pay for participating in workshops and inservice training outside of their regular work schedule. The AFT disagrees with the KCMSD that if current salary levels are maintained for 1992–93, the salaries will be roughly competitive with the national urban market. Finally, the AFT foresees particularly drastic consequences if salaries are rolled back to their 1986–87 levels.

KCMSD SALARY PROPOSAL

Due to the dire fiscal constraints currently facing the District, the KCMSD submitted a one-year proposal instead of supporting the AFT's three-year proposal. The KCMSD believes that the salary increases proposed by the AFT are larger than the District can responsibly propose at this time. The KCMSD teacher salary proposal requests that this Court maintain current salaries and provide for minor equity adjustments for those positions which are paid substantially below relevant market rates.

The KCMSD proposes to maintain inservice programs for teachers in the 1990 salary package and continue inservice training for paraprofessionals. The District strongly believes that inservice training provides a valuable opportunity to develop theme-related expertise and to share teaching innovations which enhance the quality of curriculum offerings. The KCMSD's salary proposal would extend the work year for elementary principals by fifteen days to provide additional time for leadership and magnet theme training. In the past, many elementary principals have spent several uncompensated days addressing the needs of their schools. In addition, the KCMSD salary plan proposes to continue paying substitutes \$75.00 per day, continue compensation for supervision of extra-curricular activities and maintain a reserve fund in the amount of \$500,000.

The District's proposal offers a fiscally conservative, yet roughly competitive compensation plan for 1992–93. The KCMSD is confident that its proposal would enable District personnel to continue to attract and retain highly qualified personnel necessary to implement the desegregation plan.

STATE SALARY PROPOSAL

The State of Missouri responded to the salary proposals with a request that this Court discontinue desegregation funding for teacher salaries. The State asserts that its analysis of the effect of the 1990 salary increase demonstrates that the salary increase did not achieve its objectives. For instance, the State submits that the increase had virtually no effect on increasing the quality of new hires or decreasing the quality of staff who left the District. The State claims that the AFT and the KCMSD have virtually ignored the evaluative criteria approved by the Court.

The State concludes that the salary increases have had no demonstrable effect on improving the KCMSD's ability to implement the desegregation remedy and therefore the Court should allow salaries to roll back to the 1986–87 levels. The State suggests that continuation of salary increases would constitute an unauthorized upgrade of District operations under the guise of desegregation. The State submits that to the extent KCMSD resident taxpayers wish to support the school system, they should be given an opportunity to show that support by approving an operating levy increase sufficient to support the existing salary levels.

*5 The State adds that quite apart from its position that increasing salaries is not desegregation related, the AFT has presented no evidence that the KCMSD is having any great difficulty recruiting nurses. The State maintains that health care for students is not related to the desegregation effort and that the school nurse issue is beyond the parameters of the resolution the DMC passed regarding the salary issue.

For that matter, the State maintains that all other categories of classified personnel for whom the AFT seeks salary increases are also non-instructional personnel, with the possible exception of paraprofessionals. The State argues that there is no data that the KCMSD is having difficulty attracting and retaining these personnel.

RESULTS OF THE SALARY INCREASES

Pursuant to this Court's previous orders, the KCMSD agreed to collect and report appropriate data regarding the results of the District's recruiting efforts and to implement reorganization of personnel recruiting efforts by adopting a personnel recruitment plan and schedule. The Court also approved the use of eighteen evaluative criteria as a means to assess the effects of the salary increases approved in the July 23, 1990 Order. The Court noted that the evaluative criteria, which were designed to identify trends, should not be construed as setting "absolute numerical requirements or bright lines." *Id.* at 6.

The AFT, KCMSD and the State have interpreted the results of the data differently. The AFT and KCMSD contend that the data generally indicate that the salary increases assisted the KCMSD in becoming more attractive to higher quality personnel needed to implement the desegregation orders. The KCMSD emphasized that the results should be viewed in the context that the 1990 salary package did not provide a competitive salary advantage to the District but instead helped to alleviate a substantial and growing competitive disadvantage.

One issue of major contention was whether or not the salary increase had an effect on the District's ability to recruit and retain teachers. The District maintains that while salary may not be the sole factor in the KCMSD's recruiting and retention experience, no data are required to support the sound and logical conclusion that if salaries had lagged more than twenty percent below their current levels, it would have been considerably more difficult to attract and retain even nominally qualified and experienced personnel.

The KCMSD asserts that since the salary increase, more new hires have cited salary as their reason for selecting the KCMSD. *See* KCMSD Exs. 12, 14 and 15. However, the State's expert, Dr. Gold, asserts that the primary selection criteria for choosing to work at the KCMSD was "non-salary based." The District submits that this claim is not supported by the survey data which show that salary was identified as the number one reason newly hired certified personnel selected the KCMSD. *See* KCMSD Ex. 11. More newly hired classified, administrative and professional staff also identified salary as their reason for selecting KCMSD after the salary increase. *See* KCMSD Exs. 12 and 13.

*6 The KCMSD argues that Dr. Gold's conclusion is a result of the manner in which he combined certain reasons for selecting the KCMSD. The survey provides eight reasons for selecting the KCMSD: salary, family relocation, location, magnet plan, specific magnet program, benefits, KCMSD reputation and other. Dr. Gold combined "family relocation" with "location" and he combined "magnet plan" with "specific magnet program." He also separated "salary" and "benefits." Dr. Gold's results indicated that location and program-related interests are the primary selection criteria.

Regardless of whether salary is the primary reason for selecting the KCMSD, the results show that salary is a significant factor in the selection process. In light of the growing disparity between KCMSD salaries and salaries in the national urban market, it is no surprise that location and program-related interests are also significant factors which attract teachers to the KCMSD.

At the hearing, the State also presented evidence regarding the results of other data as applied to the eighteen evaluative criteria. The State's experts generally concluded that the salary increase did not produce statistically significant effects or trends. One aspect of the State's analysis used a "quality index" which combined years of experience, degree and most recent degree grade point average as a basis to determine the quality components included in some of the eighteen evaluative criteria.

The "quality index" was criticized for its limited value in measuring objective quality criteria. The AFT and the KCMSD emphasized that the index could not measure quality factors such as personality, charisma, motivation or enthusiasm. Nor did the quality index account for a teacher's entire undergraduate grade point average, the prestige of a particular university, other

interests, honors or publications. Therefore, while the parties agreed that the quality index is comprised of important factors in determining the quality of a teacher, it is by no means representative of the whole spectrum of desirable teacher “qualities” that are considered in the hiring process.

The “quality index” does not necessarily demonstrate that the District was unsuccessful in hiring and retaining quality staff. Instead it may show that it is impossible to evaluate the true quality of teachers with three objective criteria. The quality index formula measures quantifiable factors of acknowledged relevance. Yet, these factors alone are an imperfect yardstick by which to measure the quality of thousands of individual teachers at the KCMSD.

The State concludes that the salary increase has not met the goals set by the Court and the salary increase should not be continued or expanded. The State insists that the lack of statistically significant trends in improvement signals the death knell for continued Court-ordered funding.

FUNDING PROPOSALS

Logic and empirical data show that in the absence of desegregation funding for salaries, the District will not be able to implement its desegregation plan. The AFT and KCMSD agree that the salary proposal adopted by the Court should be approved as a desegregation expense. The AFT requests that this Court impose joint and several liability with the State to pay 75% of the cost and the KCMSD to pay 25% of the cost. The AFT requests a three-year extension of the existing 96-cent property tax. The KCMSD urges the Court to approve its proposal as a desegregation expense with the State contributing 75% and the District contributing 25%. The KCMSD proposes to fund its share with a continuation of the 96-cent tax levy. The KCMSD’s proposal would cost approximately \$49.7 million and the AFT’s proposal would add another \$17.5 million for a total proposal of approximately \$67.2 million.

*7 The State claims that the Court should not approve desegregation funding for salaries because such funding would be beyond the scope of the Court’s remedial authority. However, the Supreme Court has recently stated that “[t]he essence of a court’s equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action.” *Freeman v. Pitts*, 112 S.Ct. 1430 (1992). It is well-settled that a district court may require the expenditure of funds to implement a desegregation remedy. *See Milliken v. Bradley*, 433 U.S. 267 (1977).

This Court and the Eighth Circuit have “made abundantly clear ‘that the constitutional violations must be remedied and these remedies fully funded.’” *Jenkins v. Missouri*, 931 F.2d 470, 476 (8th Cir.1991), *cert. denied*. 112 S.Ct. 437 (1991). “[A] court is entitled to require money for programs that materially aid the success of the overall desegregation effort.” *See Arthur v. Nyquist*, 712 F.2d 809, 813 (2d Cir.1983).

In 1989, this Court concluded that the KCMSD’s difficulty in hiring and retaining qualified personnel adversely affected the desegregation plan. This Court previously expressed concern about the District’s ability to implement the desegregation plan in light of its salary structure. July 5, 1989 Order at 23. In approving the 1990 salary package, this Court found that the salary increases for KCMSD personnel were “essential to comply with the Court’s desegregation orders.” July 23, 1990 Order at 6.

High quality personnel are necessary not only to implement specialized desegregation programs intended to “improve educational opportunities and reduce racial isolation” *Jenkins v. Missouri*, 855 F.2d 1295, 1301 (8th Cir.1988), *aff’d in part, rev’d in part on other grounds*, 495 U.S. 33 (1990), but also to “ensure that there is no diminution in the quality of its regular academic program.” *Jenkins v. Missouri*, 672 F.Supp. 400, 410 (Mo.1987), *aff’d*, 855 F.2d 1295 (8th Cir.1988).

The KCMSD asserts that funding of the 1992–93 salary package as a desegregation expense is premised on the Court’s findings that the District has difficulties “hiring and retaining qualified personnel” which, in turn, negatively affect implementation of the desegregation remedy. There is no question but that a salary roll back would have effects that would drastically impair implementation of the desegregation remedy.

1992–93 TEACHER SALARY PACKAGE

The Court will adopt the KCMSD’s salary proposal to maintain salaries for the 1992–93 school year, provide moderate equity adjustments, add fifteen days to the school year for elementary principals, maintain inservice training, maintain substitute pay, maintain extra-curricular pay rates and maintain a reserve fund. The Court will approve a joint and several funding

allocation of 50%/50% between the State and the KCMSD.

*8 The KCMSD salary proposal is as follows:

		CURRENT	ADDITIONAL
		AMOUNT	FUNDS
	<i>PROPOSED</i>	<i>ALLOCATED</i>	<i>NEEDED</i>

Maintain Current Teacher Salary			
Level for Teachers Currently			
Budgeted	35,016,077	33,417,873	1,598,204
Provide Current Teacher Salary			
Level For Teachers Projected			
For Year VIII	564,715	0	564,715

Maintain Current Salaries of			
Other Employees	10,654,870	9,166,659	1,488,211
Provide Equity Adjustments	1,102,388	0	1,102,388
Lengthen School Year for			
Elementary Principals	231,866	0	231,866
Maintain Inservice Days for			
New Teachers	261,746	213,638	48,108
Provide Five Days of Para-			
professional Inservice	220,688	220,688	0
Maintain Substitute Rate at			
\$75 Per Day	621,130	450,000	171,130
Maintain Extra–Curricular			

Pay Rates	568,911	675,000	(106,089)
Reserve	500,000	656,142	(156,142)
TOTAL	49,742,391	44,800,000	4,942,391

The additional funds needed for current teacher salary levels are for the cost of two summer school sessions, current vacancies, lane changes and fringe benefit increases. The District also estimates that there will be approximately 53 new teacher positions. These figures could change based on actual enrollment. The budget for maintenance of current salaries for other employees is increased slightly to include vacancies, new positions, overtime costs and revised fringe benefits rates.

The internal equity study cost projections for 1992–93 are as follows:

Executive Secretaries	69,564
Secretary A's	479,176
Secretary B's	263,205
Clerks	216,179
Admin. Staff	44,498
Nurses	29,765

	1,102,388
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The State declares that, with the proposition of a salary roll back, “[the State] is not so naive as to believe” that the Court will not consider “the discomfort of those whose salaries would be reduced.” State Post–Hearing Brief at 34. However, the basis for this Court’s ruling is grounded in remedying the vestiges of segregation by improving the desegregative attractiveness of the KCMSD. In order to improve the desegregative attractiveness of the KCMSD, the District must hire and retain high quality teachers, administrators and staff.

The success of the prior salary orders has been described as “qualified.” Yet, the Court agrees with the KCMSD and the AFT that the results must be viewed in the context of how KCMSD teacher salaries actually compared with the national urban average teacher salaries. The State argues that the AFT and the KCMSD have improperly focused on the effect of a roll back. However, this is a relevant consideration. The success of the desegregation program rests in great measure upon those charged with implementing the plan.

In light of the District’s current financial crisis, this Court will maintain salaries at their current levels for the 1992–93 school year and continue the 96–cent levy increase for an additional year. At this time, the AFT’s proposal is simply not economically feasible. However, this Court rejects the State’s proposition that “to tie salaries for employees to an asserted national urban market would be a gross misuse of public funds.” State Post–Hearing Brief at 5. Instead, the substantial increase sought by the AFT should be deferred.

***9** The State’s proposal would cause severe harm to the desegregation effort. It is critical to the success of the desegregation plan that the employees who carry it out are compensated at or near the relevant market rates of compensation so that the District can attract and retain employees with the training and experience necessary to implement the Court’s plan. A salary roll back would result in excessive employee turnover, a decline in the quality and commitment of work and an inability of the KCMSD to achieve the objectives of the desegregation plan.

Accordingly, it is hereby

ORDERED the KCMSD’s salary proposal for 1992–93 is approved as follows:

		CURRENT	ADDITIONAL
		AMOUNT	FUNDS
<i>PROPOSED</i>	<i>ALLOCATED</i>	<i>NEEDED</i>	

Maintain Current Teacher Salary			
Level for Teachers Currently			
Budgeted	35,016,077	33,417,873	1,598,204
Provide Current Teacher Salary			
Level For Teachers Projected			
For Year VIII	564,715	0	564,715
Maintain Current Salaries of			
Other Employees	10,654,870	9,166,659	1,488,211
Provide Equity Adjustments	1,102,388	0	1,102,388
Lengthen School Year for			
Elementary Principals	231,866	0	231,866

Maintain Inservice Days for			
New Teachers	261,746	213,638	48,108
Provide Five Days of Para-			
professional Inservice	220,688	220,688	0
Maintain Substitute Rate at			
\$75 Per Day	621,130	450,000	171,130
Maintain Extra-Curricular			
Pay Rates	568,911	675,000	(106,089)
Reserve	500,000	656,142	(156,142)
TOTAL	49,742,391	44,800,000	4,942,391

and it is further

ORDERED that the KCMSD is authorized to maintain its property tax levy at a rate of \$4.96 per \$100 assessed valuation for the 1992-93 tax year; and it is further

ORDERED that funding for the 1992-93 salary package will be 50%/50% joint and several liability between the State and

the KCMSD.

All Citations

Not Reported in F.Supp., 1992 WL 551568

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