

1993 WL 546576
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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 30, 1993.

ORDER

RUSSELL G. CLARK, Senior District Judge.

*1 This matter comes before the Court on the American Federation of Teachers, Local 691's ("AFT") motion for desegregation funding for certified and classified employee salary increases in Fiscal Years 1993-94 through 2002-3; AFT's motion for desegregation funding for operating, warehouse, maintenance, mailroom, and food service employee wage increases in fiscal years 1993-94 through 1995-96; the Kansas City Missouri School District's ("KCMSD") motion for desegregation funding of its salary proposal for 1993-94 through 1995-96; the State of Missouri's ("State") motion for an order expressly establishing the State's right of contribution; and the State's motion to strike the plaintiffs' pleading filed post-hearing or in the alternative for leave to file a response to said pleading. This matter has been the subject of extensive briefing by the parties. The State has responded by way of its consolidated response in opposition to AFT's and KCMSD's salary motions. The KCMSD and AFT have each replied to the State's memorandum in opposition to the motions. A hearing was held on June 1-3, 1993 and the Court received evidence on the issues presented in the above referenced pleadings. The plaintiffs filed a post-trial memorandum in support of desegregation funded salary increases for KCMSD employees. The State has filed a motion to strike plaintiffs' pleadings or in the alternative for leave to file a response. The Court, after reviewing the evidence presented at trial and after a thorough examination of the pleadings submitted by the parties, will grant the AFT's motion in part and deny it in part; grant the KCMSD's motion in part and deny it in part; deny the State's motion to strike; grant the State's motion for leave to file a response to plaintiffs' post-hearing memorandum; and defer ruling on the State's motion for an order establishing a right of contribution as set out herein.

The Court has previously addressed the issue of "law of the case" to the extent that it applies to the evidence presented herein. The Court announced to the parties at the trial of these issues that the "law of the case" doctrine applies only where the district court has decided an issue and that issue has been presented to and resolved by an appellate court. The same issues as those presented this year in the salary hearing were presented last year and are currently on appeal to the Eighth Circuit Court of Appeals. That being the case, the "law of the case" doctrine will not operate to bar the Court from considering the evidence and deciding the issues again this year. However, the Court is not inclined to make a different ruling where the evidence presented is substantially unchanged. The Court has reviewed the evidence in its entirety and finds that the evidence presented this year is strikingly similar to the evidence presented last year. Therefore, the Court will not change its rulings with respect to the issues contested by the State in this year's hearing. There is no basis to find that the KCMSD is no longer in the national urban market nor that salaries of KCMSD personnel are not appropriately considered to be a desegregation expense. The Court does have inherent authority to modify its remedy in this matter. It is the intention of the Court to modify the salary component of the desegregation remedy as set out below.

*2 Due to the insignificant, if any, change in the evidence from last year to this year the Court will not elaborate on the evidence adduced at the trial on this issue. Rather, it is the Court's intention to fashion a salary order which is appropriate under the continued climate in the district. The one glaring problem made obvious by the testimony at this year's hearing is the absence of the step increases over the last three years. The inequality created by the missed step increases is a fundamental flaw in the compensation package in the KCMSD. It is the purpose of this Order to rectify the inequality and

allow those missing steps to be recompensed. The proposal of the AFT was to reinstate the lost steps over a period of three years. While this proposal would reduce the initial outlay of funds, it would not immediately correct the inequality in the salary package. The Court also notes that the immediate adjustment for lost steps would lessen the long-run costs in the salary component, albeit by a relatively small amount. Therefore, the Court will order that the KCMSD make reparation to those individual employees currently employed by the district who have not been afforded step increases due to the structure of the salary package.

The next issue raised in this litigation was whether the KCMSD participated in the national urban market. The Court has previously held that the KCMSD did, in fact, compete in the national urban market for teachers. The State, again this year, sought to present evidence to the contrary. However, if anything, the State's expert witnesses supported the proposition that the District did compete in a national urban market. The Court finds no reason to alter its previous findings and would therefore reaffirm its finding that the KCMSD competes in the national urban market for teachers.

The Court has found that the underlying issues of whether the national urban market is correctly applied, whether the salary component is properly a desegregation expense, and whether salary increases have a positive impact on the desegregation effort should be resolved again this year in the same manner as last. The Court, having found that the salary increases are a necessary component of the desegregation program, must now determine the extent to which a raise would be appropriate this year.

State's Plan

The State submitted to the Court a plan by which the KCMSD classroom teachers and other instructional personnel would receive a 1% increase of their base salary for FY1994 + \$400. The Court, again, finds that the State has failed to bring to the Court a serious proposal for the issue currently pending. This proposal is reminiscent of "patch and paint" or "OBE in three schools in place of the magnet program". The State's proposal is simply not consistent with the meaningful implementation of the desegregation program. The State has argued repeatedly and currently on appeal that the salary component is not a valid component of the desegregation remedy. The State has every right to maintain its position. However, the State has the ability to offer a reasonable alternative while not jeopardizing its legal arguments currently on appeal. The proposals of the State have been of little or no benefit in the past and are of painfully little aid to the Court in this instance, as well. Therefore, it is left to the Court to craft a viable alternative given the constraints facing the district at this point in time.

*3 The Court will note that the testimony at trial reflected that the Missouri Legislature has had five years to pass legislation which would enable the KCMSD to fund its share of the desegregation expenses. While the State has not passed such legislation, as of this date, the Legislature has inserted a line item in this fiscal year's budget to reflect the anticipated costs of a salary increase. The Court notes with approval the State's effort to maintain its fiscal responsibility in this area.

The Court has previously found that the AFT's proposal for 1992-93 was not economically feasible at the time but that the Court, if able, would provide for much of the salary increases proposed by the AFT. Additionally, the Court specifically rejected "the State's proposition that 'to tie salaries for employees to an asserted national market would be a gross misuse of public funds.'" (June 25, 1992 Order, at 16). Here again, the Court is compelled to consider the same alternatives. There is one major difference. The persons for whom raises are sought have foregone yet another year without salary adjustments.

AFT's Plan

The AFT has submitted a proposal for certified and classified personnel to receive additional compensation as per the following scenarios. First, it is suggested that the Court adopt the 1992-1993 DOD salary schedule in 1993-94. Additionally, the AFT suggested that the Court also include Longevity Steps and make up the lost steps which current teachers have previously foregone. The estimated costs of these respective alternatives were presented in AFT Exhibit 32 and are set out below:

ESTIMATED COST PROJECTIONS				
AFT SALARY PACKAGE				
1993-94 TO 1995-96				

	Current			
	Amount	1993-94	1994-95	1995-96
	Allocated	Proposed	Proposed	Proposed
Maintain proposed teacher salary for teachers currently budgeted	35,016,077	54,867,436	67,083,995	80,213,547
Maintain proposed salaries and work year of other employees	8,055,509	11,759,051	14,247,767	16,894,576
Provide proposed salary increases for additional employees	564,715	1,328,859	2,289,441	3,217,861
Maintain inservice days for new teachers	261,746	277,451	294,098	311,744
Maintain substitute rate at \$75 per day	621,130	621,130	621,130	621,130

Maintain extracurricular pay rates	568,911	568,911	568,911	568,911
Regular hourly rate for magnet inservice	0	2,394,576	2,573,532	2,765,862
Reserve	500,000	500,000	500,000	500,000
TOTAL	45,588,168	72,317,414	88,178,874	105,093,431

ANALYSIS OF AFT SALARY PROPOSAL

ANALYSIS OF AFT SALARY PROPOSAL			

	1993-94	1994-95	1995-96
Proposal	Estimated	Estimated	Estimated

	Cost	Cost	Cost

1992–93 DOD Implement in 1993–94 Includes all Lost Steps and Longevity	72,317,414	88,178,874	105,093,431
1992–93 DOD Implement in 1993–94 Includes all Lost Steps—No Longevity	68,308,205	83,798,440	100,325,951
1992–93 DOD Implement in 1993–94 No Lost Steps—No Longevity	63,642,828	78,726,048	94,827,515
Annual Incremental Costs:			
Cost to Make Up Lost Steps and Grant Longevity (1992–93 DOD in 1993–94)	8,674,586	9,452,826	10,265,916
Cost of Longevity Steps (1992–93 DOD in 1993–94)	4,009,209	4,380,434	4,767,480
Cost to Make Up Lost Steps (1992–93 DOD in 1993–94)	4,665,377	5,072,392	5,498,436

*4 The Court must consider the fiscal realities in which the District is forced to operate. Also, the Court must consider the need to have successful implementation of the desegregation program. It has repeatedly been decided by this Court that the salaries at issue herein are a proper expense under the desegregation program. Therefore, the question, as correctly stated by the District, the AFT and the plaintiffs at the beginning of the trial on this issue, is not whether to give a raise to those included in these programs, but rather how much of an increase is appropriate.

The Court views the fiscal horizon as changing for the district. The Legislature has adopted a new educational funding package which appears to result in a substantial gain for the KCMSD in terms of a net increase in state non-desegregation funding. The Court has further noted that there has been some activity in the Legislature towards allowing the KCMSD some

viable alternatives in financing its share of the desegregation expense. Moreover, the Legislature, anticipating the salary increase contemplated herein, included an increase in this year's budget item for salaries over last year's. Moreover, the Court in April of this year adopted a two-year extension of the LRMP with certain minor modifications. The Court adopted what was most certainly a less expensive plan than that offered by the KCMSD. It is expected that this cost savings would be used to the benefit of the desegregation program in general and specifically there should be some added ability of the District to fund its share of the salary increases. The Court finds that the fiscal climate in the District is changing for the better and that there is a substantial need to address the inequalities in teachers' salaries created in the past.

The Court finds that the area of foremost importance is the return to the teachers of lost step increases. As noted above, the Court believes that the best approach in this instance is to return the lost steps in year one (FY93-94). This will result in an inordinate increase in year one but in the long-run will be the least-cost approach. Therefore, the Court will order that the missed salary steps for current KCMSD teachers be restored in FY93-94.

The Court further finds that the teachers in the KCMSD have gone without a salary increase for long enough. It is essential to the success of the desegregation program that those persons charged with implementing the plan be the most qualified persons reasonably attainable. The Court has found that the KCMSD most assuredly competes in the national urban market. Therefore, it is appropriate for the Court to look to this market for guidance as to what the relevant teachers' salary should be. The DOD schedule provides an accurate representation of what the national urban market will bear in terms of teachers' salaries. The Court finds that the DOD schedule is the appropriate benchmark for the KCMSD to use in determining teachers' salaries. While the Court does find that the AFT's package would be of the greatest advantage to those represented, it is still not viable for the Court to implement at this time. However, as repeatedly announced herein, the Court does find that some increase is appropriate.

KCMSD Plan

*5 The KCMSD has proposed for 1993-94 to set teachers salaries by reference to a teacher salary schedule prepared by the DOD for 1991-92. This would result in an approximately four percent increase in entry-level pay for KCMSD teachers with a bachelor's or a master's degree. All eligible teachers would again receive regular annual step increases. The KCMSD recognizes that its proposal is not designed to allow the KCMSD to immediately be competitive in the national urban market. Rather, the plan offered by the District calls for the District to be "roughly competitive". The Court expects that the District will one day be more than "roughly competitive", however, at this date the District has offered the most fiscally sound alternative. Therefore, the Court will adopt the District's proposal with the addition of the step increases as discussed above. The package offered by the District and approved by the Court is as follows:

ESTIMATED COST PROJECTIONS *				
KCMSD SALARY PACKAGE				
1993-94 TO 1995-96				
(without step increases restored)				

	Current			
	Amount	1993-94	1994-95	1995-96
	Allocated	Proposed	Proposed	Proposed

Maintain proposed teacher salary for teachers currently budgeted	35,016,077	41,621,333	48,218,767	55,108,579
Maintain proposed salaries and work year of other employees	12,209,812	15,743,754	19,154,177	22,782,827
Provide proposed salary increases for additional employees	564,715	1,027,317	1,671,709	2,260,665
Maintain inservice days for new teachers	261,746	269,598	277,686	286,017
Maintain substitute rate at \$75 per day	621,130	621,130	621,130	621,130
Maintain extracurricular pay rates	568,911	568,911	568,911	568,911
Reserve	500,000	500,000	500,000	500,000
TOTAL	49,742,391	60,352,043	71,012,380	82,128,129

The Court will further order that the District’s proposal for a 2% per year increase for administrators and non-represented employees, as well as for classified employees (other than those listed below) be adopted for FY93–94 through FY95–96. Next, the Court is asked to consider the “group exit” program. The program offered by the District is of the type which the Court would generally support. The Court will approve the KCMSD’s proposal to develop a “group exit” program but will reserve approval of any specific program until the District brings forth the completed version of any such program.

AFT Proposal for SEIU Local 12 Bargaining Unit

The Court will next address the AFT’s motion for desegregation funding for operating, warehouse, maintenance, mailroom, and food service employee wage increases in FY93–94 through FY95–96. The evidence presented at trial reaffirmed the position that the support personnel of the district are critical to the successful implementation of the desegregation program. The AFT has put forth a proposal as follows:

	1993–94	1994–95 and 1995–96
Operating Dept.	4% Wage Increase	4% Annual Increases
	+ Step Increase	+ Step Increases
Maintenance Dept.	10% Wage Increase +	4% Annual Increases
	Equity Adjustments for Truck	
	Driver and Warehouseperson	
Warehouse Dept.	Wage Increases Based on	4% Annual Increases
	Those Given Identical Job	
	Titles in Maint. Dept.	

Mailroom Dept.	Wage Increases Based on	4% Annual Increases
	Those Given Same/Similar Job	
	Titles in Maint. Dept.	
Food Services	6% Wage Increase +	4% Annual Increases
	Elementary School Manager	+ Step Increases
	Equity Adjustment	
	+ Step Increases	

*6 The Court has carefully considered the AFT's proposal with respect to the employees listed above. The District has proposed a 4% annual salary increase for maintenance workers without annual step increases through FY95-96. While the Court has consistently found that the support personnel form an integral component of the desegregation program, the Court is not convinced that the increases sought by the AFT or the District are sufficiently well supported to allow for such a large increase at this time. The Court finds, however, that some increase is appropriate. The Court finds that the appropriate amount of increase in the wage rate for these departments is 2.5% for each of the periods listed above, for a total of 7.5%. The Court will not direct that the District implement the step increases as urged by the AFT. Rather, the Court finds that this matter is better left to the bargaining between the parties.

The Court finds that it is important for the KCMSD to be able to continue to contribute to the salary expense incurred due to the desegregation program. Therefore, the Court will order that the KCMSD is authorized to maintain its property tax levy at a rate of \$4.96 per \$100 assessed valuation for the 1993-94, 1994-95, and 1995-96 school years. The funding for the salary package announced herein will be 50%/50% with joint and several liability between the State and the KCMSD.

State's Additional Motions

The State has filed a motion to strike the plaintiffs' post-hearing brief or in the alternative has requested leave to file a reply to plaintiffs' memorandum. The Court does not condone haphazard disregard for the time limits which are imposed by the Court, usually after protracted negotiation between the parties. Additionally, the Court notes to plaintiffs that a discussion with the judge's law clerk is in no way seeking leave of the Court to file a pleading out of time. The Court agrees that in the further pursuit of an equitable resolution of the matters herein it is appropriate to have the position of the plaintiff schoolchildren before the Court. The position taken is of surprise to no one. The Court finds that no party is prejudiced by the filing out of time of plaintiffs' memorandum. However, in the interest of fairness the Court will grant the State's motion for leave to file a reply. The Court has considered each of the pleadings in making the decision announced herein.

Next, the State has moved the Court for an Order establishing an express right of contribution in the State. The Court has reviewed the briefs of the parties on this issue and finds them to be exemplary. It has come to the Court's attention that there may be further evidence adduced at the forthcoming hearing on this issue. Thus, the Court finds that it is appropriate to defer ruling on the issue of the State's right to contribution. The Court specifically finds that the issue for contribution with respect to the matters decided herein will be deferred pending the trial on the *Milliken II* issues on July 7, 1993.

*7 In summary, the Court has found that the salary package presented by the District is the most economically feasible at this time. There, is no basis for the Court to change its previous rulings on the issues presented herein. It is the Court's intention that the lost-steps be recompensed in FY93-94. The Court will defer ruling on the State's motion for contribution but expressly reserves any ruling on the issue of contribution for the salary package adopted herein.

Accordingly, it is hereby ORDERED that the KCMSD's salary proposal for 1993-94, 1994-95, and 1995-96 is approved as follows:

	Current			
	Amount	1993-94	1994-95	1995-96
	Allocated	Proposed	Proposed	Proposed
Maintain proposed teacher salary for teachers currently budgeted	35,016,077	41,621,333	48,218,767	55,108,579
Maintain proposed salaries and work year of other employees	12,209,812	15,743,754	19,154,177	22,782,827
Provide proposed salary increases for additional employees	564,715	1,027,317	1,671,709	2,260,665
Maintain inservice days for new teachers	261,746	269,598	277,686	286,017

Maintain substitute rate at \$75 per day	621,130	621,130	621,130	621,130
Maintain extracurricular pay rates	568,911	568,911	568,911	568,911
Reserve	500,000	500,000	500,000	500,000
TOTAL	49,742,391	60,352,043	71,012,380	82,128,129

and it is further

ORDERED that the foregone salary step increases are ordered restored for FY93–94; and it is further

ORDERED that the Court approves funding for 2% annual wage increases in FY93–94 through FY95–96 for administrators and other non-represented employees as well as for classified personnel (other than those discussed herein); and it is further

ORDERED that the Court approves a 2.5% annual wage increase for each of those persons represented by the AFT’s motion for operating, warehouse, maintenance, mailroom, and food service departments for FY93–94, FY94–95, and FY95–96 for a total of 7.5%; and it is further

ORDERED that the District’s request to develop a “group exit” program is granted; and it is further

ORDERED that the State’s motion to strike plaintiffs’ post-trial memorandum is denied; and it is further

ORDERED that the State’s motion for leave to file a reply to plaintiffs’ memorandum is granted; and it is further

ORDERED that the Court will defer ruling the State’s motion for an order establishing an express right of contribution until after the July 7, 1993 hearing on *Milliken II* issues.

All Citations

Not Reported in F.Supp., 1993 WL 546576

Footnotes	
*	This cost projection includes restoration of step increases but does not compensate for missed step increases and does not include certain longevity steps in the DOD teacher Salary schedule.

