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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.

|
July 30, 1993.

ORDER

RUSSELL G. CLARK, Senior District Judge.

*1 The Court has pending before it several motions regarding the desegregation programs in the KCMSD. The first matter is the joint motion of the KCMSD and plaintiffs for approval of next two years of *Milliken II* desegregation plan. Also before the Court is the motion of the KCMSD for approval of final FY92 costs for temporary relocation of students and programs ("Staging"). Lastly, the KCMSD has filed a motion to alter or amend the Court's Order of June 30, 1993 ("Salary Order").

The AFT has responded to the KCMSD's motion to alter or amend the Salary Order. Additionally, the State has responded to the motion as well. The Court has previously indicated to the parties through informal communications that it intended to issue an order clarifying the Salary Order and will do so in response to the KCMSD's motion to alter or amend. The Court will grant the KCMSD's motion in part and deny it in part.

With respect to the motion for approval of final FY92 staging costs, the parties have informally made known to the Court that there was no opposition to the District's motion. A response has not been filed by any party. The Court having duly considered the merits of the KCMSD's motion for final FY92 staging costs will grant the KCMSD's motion as proposed.

The State has responded to the joint motion with respect to the *Milliken II* component of the desegregation program. A joint stipulation was filed in this matter resolving many of the components of the *Milliken II* program. On July 7, 1993, the Court held a hearing on the remaining disputed items in the joint proposal. Upon consideration of the evidence presented at the hearing and the arguments made by the parties in pleadings previously submitted, the Court will grant the joint motion in part and deny it in part in accordance with the following discussion.

MILLIKEN II

The remaining *Milliken II* components for which the State has alleged factual disputes are (1) inclusion of additional special education teachers in the Base Budgets; (2) use of the 1986-87 level for determination of the appropriate level of maintenance spending; (3) enhancements to the security program currently in effect; (4) extension of the Effective Schools program; (5) inclusion of the Full-Day Kindergarten program without offset for monies received as a result of S.B. 380. The State further argues that the Court should reject the joint motion *in toto* because the KCMSD has attained the sufficient levels of desegregation called for under *Freeman v. Pitts*, 112 S.Ct. 1430 (1992). Based on this argument the State urges the Court to deny any additional funding of *any* of the *Milliken II* components requested in the joint motion. Lastly, the State again calls for an order of the Court expressly establishing a right of contribution in the State for monies expended under the previous orders of the Court allowing for joint and several liability for desegregation expenses in the KCMSD.

*2 The Court will first address the State's argument that the desegregation programs called for under the *Milliken II* component have reached the necessary level of compliance with the desegregation decree in this case. The State offers the findings of the United States Supreme Court in *Freeman v. Pitts*, 112 S.Ct. 1430 (1992) in support of its arguments. In *Pitts* the Court held that where a district court's desegregation order has been substantively complied with in certain areas the court may withdraw desegregation supervision of those areas even though the program has not been fulfilled in its entirety. The Court has heard evidence presented by the State in several recent hearings offered to show that the desegregation program in the KCMSD has been a complete failure. In the LRMP renewal hearing held early in this year the State repeatedly argued that the District has failed to show sufficient signs of improvement as a result of the magnet program to justify continuation of that program. The State has repeatedly taken the position that the desegregation programs ordered by the Court have been of absolutely no benefit to the school children of the KCMSD.

It appears now that the State is arguing that all is cured. The State, as it has in the previous *Milliken II* hearings, has argued that the programs covered under this component have attained the necessary levels of desegregative effect and should therefore be turned over to the KCMSD for continued implementation. The Court has previously ruled as a result of the LRMP renewal process that the KCMSD has not met the goals and standards set by the Court in establishing the desegregation remedy. The *Milliken II* component is an integral part of the overall desegregation remedy and the Court finds that the State's arguments that these components have attained unitary status are unpersuasive. The State should not be heard to complain that the desegregation plan is a complete failure on the one hand and that the *Milliken II* components are completely successful on the other. The Court finds that the State has made fundamentally flawed arguments in pursuit of an order determining unitary status in the KCMSD. The Court does find that the *Milliken II* components have been partially successful in implementing the goals and standards of the desegregation remedy. However, these components have not yet met these goals in their entirety. The Court finds that it would be wholly inappropriate to deem the KCMSD unitary or partially unitary at this time. Therefore, the Court will order the continued implementation and funding of the *Milliken II* components for which the joint stipulation was entered for two years.

The Court will next consider the individual programs with which factual issues have been raised regarding their further implementation as part of the *Milliken II* component of the desegregation remedy. The first issue is inclusion of additional special education teachers in the Base Budgets. The State opposes the additional special education teachers on the basis that this expense is incurred as a result of an accounting mistake on the part of the District and the State argues that it should not be made to bear this burden. The Court finds that the teachers at issue herein are necessary to meet the special needs of some students who choose to attend magnet programs. The fact that these positions have been the subject of a previous accounting error is irrelevant to the future consideration of desegregation expenses as a result of the need to provide these services. The Court finds that these positions are legitimate desegregation expenses and their inclusion in the Base Budgets is appropriate. Therefore, the Court will approve the requested addition to the Base Budget component.

*3 Next, the Court will consider the use of the 1986-87 square footage level for determination of the appropriate level of maintenance spending. Mr. Robert Brogi, Deputy Superintendent, testified to the appropriate measurement of maintenance attributable to the desegregation program. In order to calculate this amount, Mr. Brogi compared the pre-remedy square footage to the post-remedy square footage and determined that the difference was the amount attributable to desegregation. He further testified that he believed that the maintenance in the KCMSD was getting better but there were some areas which could use improvement. The Court has reviewed the maintenance component submitted as a part of the *Milliken II* program and finds that the Maintenance plan is an appropriate component to the overall desegregation remedy. It is imperative that the District be able to maintain the programs made available as a result of the desegregation remedy and the Court will do everything in its power to see that this goal is met. However, the concept of using the 1985-86 as the base year for attributing desegregation expenses presupposes that the KCMSD would never have incurred any growth in its physical plant over the time period contemplated. The Court does not have an exact method of determining the precise amount of square footage attributable to desegregation. However, it is the belief of the Court that the District should be responsible for some of the growth in the district and finds that the recommendation of the DMC to use August 1991 as the base year is the appropriate method for calculation. The Court will therefore order the extension of the maintenance component of the *Milliken II* component as proposed by the District with the modification that the base year for comparison be August 1991.

The Court will next consider the proposed enhancements to the security program offered by the District in the *Milliken II* proposal. Captain Livingston testified that the security of the KCMSD was a legitimate expense to be incurred by the desegregation program and that to fully implement the security plan it would need to be expanded as proposed. The Court concurs with Captain Livingston's assertion that the Security Component is a primary consideration in the implementation of the desegregation remedy. Moreover, the Court finds that the security of the school children and the staff of the schools is of utmost importance to the Court in fashioning the remedy in this case.

The Court does not wish to express its concern over the submission of expenses for security as desegregation related expenses when there is no such relationship. These allegations were made during the hearing, but not fully substantiated. The Court would suggest to the district that it use all due diligence in tracking such expenses and ensuring that there is no opportunity for misapplying already scarce resources. The Court will not look favorably on a return of such claims. The Court does not believe that it is imperative to have the additional officers as requested by the reorganization of the security department. While it is the Court's opinion that there is no question that the additional personnel would heighten security the Court does not believe that the changes, as proposed, are fiscally sound. Therefore, the Court will deny the request for additional staffing.

*4 It is appropriate at this point for the Court to note that the City has a vested interest in the school system being rebuilt. The Court has gone to great lengths to provide the KCMSD with facilities and opportunities not available anywhere else in the country. The City must take some responsibility in maintaining these schools. The City receives the benefit of the attractiveness and acclaim of these schools. However, it appears to the Court that the City has shirked its responsibility in maintaining the school system being provided to it. It is entirely appropriate for the Police Department of Kansas City, Missouri to supply security to schools that are in need. The police in Kansas City have the responsibility of protecting its citizens and the many thousands of school children are just as deserving as any other citizen. The Court urges the District to approach the City and attempt to coordinate some provision of security by the police department whether it be in the form of sub-stations or some other alternative. It is incumbent on the City to be responsible for *all* of its citizens.

The Security proposal included the request for additional vehicles. Captain Livingston testified that should the request for additional personnel be denied that there would be no need for additional vehicles. The Court, having found that the additional personnel will not be provided, further finds that the request for additional vehicles will also be denied. The KCMSD has proposed the addition of walk-thru metal detectors for purposes of security. The Court finds that the climate of activity in the KCMSD is such that this is a reasonable expense. The Court will therefore grant the request for walk-thru metal detectors. The Court will extend the Security component of the *Milliken II* program for a concurrent two-year time period with the other components but the Court will deny the requested additions to the Security component with the exception of the walk-thru metal detectors.

The Court will next consider the proposed extension of the Effective Schools program. The State has taken the position that the District failed to present any evidence for evaluation of the Effective Schools program and that the motion for extension of that component should therefore be denied. The District and plaintiffs argue that there exists no evidence of success or failure as the data has not been available for evaluation. The data will be available at the end of the 1993-94 school year to measure the impact of the Effective Schools program. The plaintiffs further argue that the Court, in its previous order, adopted the Effective Schools program for two years but funded it for only one. The plaintiffs argue that it was implicit in the Court's previous order that it would extend funding for the second year even though it would be impossible to evaluate the program as the data would not yet be available. The Court finds that the Effective Schools program should be extended for one additional year per its previous order. The District is directed to continue to collect data to evaluate the impact of the Effective Schools program. The Court, in considering the appropriateness of a further extension of the Effective Schools program at the end of FY93-94, will expect that the District be able to submit a detailed analysis of the impact of this program for the Court's review at that time. The Court will therefore grant the District's motion for extension of the Effective Schools component and appropriate funding for FY93-94.

*5 The Court will next consider whether the inclusion of the Full-Day Kindergarten program without offset for monies received as a result of S.B. 380 is an appropriate component of the *Milliken II* program. The Court has previously found that the Full-Day Kindergarten was a benefit to the desegregation effort in the KCMSD and an essential part of the remedy. The Court finds that the evidence presented at the hearing on this issue did nothing to change the Court's perception of this program. It is fundamental that the school children of the KCMSD be given every advantage at the earliest possible age and this program addresses that need. The State argues that the District is receiving a windfall because Full-Day Kindergarten is a qualifying requirement for certain monies under the new school foundation formula known as S.B. 380. The Court finds that the fact that the district receives additional resources from the State's formula because a portion of the formula recognizes the benefits of the Full-Day Kindergarten program is of no consequence when determining whether to include that program as part of the remedy. The Court has found that the State is a constitutional violator and is required to fund the remedy as ordered by the Court. The fact that the District is going to receive additional revenues under the new foundational formula is irrelevant to the consideration of obligations due the plaintiff school children as a result of the constitutional violations of the State. The Court will not allow the offset of Full-Day Kindergarten monies by any additional amount received under S.B. 380. The Court will grant the joint motion with respect to the Full-Day Kindergarten component as proposed.

SALARY ORDER

With respect to the KCMSD's motion to alter or amend the Salary Order the Court has previously indicated its inclination to issue an order clarifying its original opinion. The Court has fully considered the arguments presented by the parties and finds that there exist two major issues to be addressed. First, is the issue of whether there is to be an actual cash outlay to current teachers in compensation for lost steps. It was the original intention of the Court to put the teachers in FY93-94 on the step where they would have been had there been consistent step increases in the past. The Court by its June 30, 1993 Order did not intend to have the District make a cash outlay to the teachers for foregone step increases. However, the teachers currently in the district will receive the prospective benefit of lost step increases by being placed on the higher steps for which they are eligible.

The next issue addressed by the KCMSD's motion to alter or amend the Salary Order is in the area of step increases for administrators. In its Order of June 30, 1993 the Court intended to restore lost step increases *only to teachers*. The Court granted a two percent pay increase to the administrators and it was the intention of the Court that such pay increase be a flat rate increase. As a matter of illustration, an administrator who made \$100 in FY92-93 would receive \$102 in FY93-94 and a similar two percent increase in each of the other years covered by the Salary Order. The Court did not intend to adopt the salary proposal of the District which allowed for step increases for administrators. It was the sole intention of the Court that the administrators receive a two percent flat rate increase.

*6 The Court, by this Order, does not intend to disparage the administrators and other non-represented personnel of the KCMSD and finds specifically that the proper administration of the district is imperative to the continued success of the desegregation program. However, as a matter of fiscal conservatism in the face of the budget constraints faced by the District the Court finds that it is appropriate only to allow for a small increase in compensation at this time. The Court believes that the District may have opportunity to provide further increases through the operating budget for administration but further finds that a sufficient level of support is currently provided through desegregation funding.

The KCMSD next queries whether it was the Court's intent to disallow the equity adjustments previously provided by the Court in its Order of June 25, 1992. The Court finds that this equity adjustment for administrative and non-represented personnel was previously approved by the Court but not fully implemented by the District. While this adjustment would result in an initial increase of over two percent in FY93-94 it is the intention of the Court that this equity adjustment be allowed. The Court having previously allowed such an adjustment is not inclined to subsequently disallow it. The Court considered the flat rate two percent per year incremental adjustment ordered on June 30, 1993 to be made in addition to the equity adjustments approved in the June 25, 1992 Salary Order. Therefore, the Court will disallow the step increases for those persons contemplated by the District's motion but the Court will again approve the equity adjustments allowed in the June 25, 1992 Salary Order.

The last issue for consideration by the Court is the State's motion for an order expressly establishing a right of contribution both retroactively and prospectively. The matter was originally brought before the Court as a part of the Salary dispute previously resolved by the Court's Order of June 30, 1993. The Court is currently in the process of evaluating the submissions of the parties on this issue and expects that a ruling will issue in the near future. However, as of this date, the Court will not announce its findings as to the contribution issue. The Court will defer ruling on this issue at this time.

Accordingly, it is hereby

ORDERED that the KCMSD's motion for approval of final FY92 staging costs is approved; and it is further

ORDERED that the KCMSD's motion to alter or amend the Court's June 30, 1993 Salary Order is granted in part and denied in part; and it is further

ORDERED that the step increases for administrators and other non-represented personnel contemplated by the KCMSD's motion to alter or amend the Salary Order of June 30, 1993 are not allowed by the Court; and it is further

ORDERED that the equity adjustments previously ordered by the Court in its June 25, 1992 Salary Order are again approved for inclusion in the Salary Order of June 30, 1993 as amended herein and that the administrators and other non-represented

personnel are to receive a flat two percent per year increase in compensation; and it is further

*7 ORDERED that the joint motion for approval of *Milliken II* funding is granted in part and denied in part; and it is further

ORDERED that the joint motion with respect to those items subject to the joint stipulation is granted; and it is further

ORDERED that the joint motion with respect to the adjustment for special education teachers in the Base Budget component is granted; and it is further

ORDERED that the joint motion with respect to the maintenance component is granted except that the District is directed to use August 1991 as the baseline for calculation of desegregation related maintenance expenses; and it is further

ORDERED that the joint motion with respect to the security component is granted in that the current budget is ordered extended but the Court denies the motion for additional personnel or equipment except the Court will allow the expenditure of desegregation funds for walk-thru metal detectors as proposed; and it is further

ORDERED that the joint motion with respect to the Effective Schools is granted and funding is approved for FY93-94 and the District is directed to submit to the Court a complete evaluation of the program in the event the District returns to the Court for renewal of funding; and it is further

ORDERED that the joint motion with respect to Full-Day Kindergarten is granted and the State's request for offset of S.B. 380 monies is denied; and it is further

ORDERED that the Court approves the budgets as submitted except as modified herein with joint and several liability; and it is further

ORDERED that the District shall use the AAA minimum standard; and it is further

ORDERED that the motion of the State for an order expressly establishing a right of contribution is deferred pending further analysis by the Court.

All Citations

Not Reported in F.Supp., 1993 WL 566488

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