

2013 WL 12176996

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United States District Court, S.D. Mississippi,
Jackson Division.

UNITED STATES of America, Plaintiff
[Cynthia Fletcher](#), et al., Plaintiffs-Intervenors
v.
State of MISSISSIPPI, et al. (Simpson County
School District), Defendants

CIVIL ACTION NO. 3:70-cv-4706-WHB-LRA
|
Previously J-4706 (L)
|
Signed 09/26/2013

Attorneys and Law Firms

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OPINION AND ORDER

[William H. Barbour, Jr.](#), UNITED STATES DISTRICT JUDGE

*1 This cause is before the Court on the Motion of Simpson County School District for Unitary Status ("Motion"). Having considered the pleadings as well as supporting and opposing authorities, the Court finds Intervenors' claims are not moot because they are proceeding in this lawsuit as a certified class. The Court additionally finds that Intervenors have not shown that discovery is warranted on the Motion for Declaration of Unitary Status that has been filed by Simpson County School District. Finally, the Court finds that the Motion for Declaration of Unitary Status should be granted to the extent it requests a fairness hearing as to that Motion. The fairness hearing will be scheduled at a time convenient to the parties and the Court, and at a time so as to provide

proper notice to any other interested party.

I. Factual Background and Procedural History

In July of 1970, the United States of America ("Government") filed a Complaint against several Mississippi school districts, including Simpson County School District ("District"), alleging they had violated the Fourteenth Amendment to the United States Constitution by engaging in racial discrimination in their public school systems. On August 10, 1970, an Order ("1970 Order") was entered by which the District was enjoined from discriminating against students on the basis of race. See Mot. [Docket No. 65], Ex. 4. The Order provided a detailed plan regarding the actions the District was required to take to end discrimination in its public schools. The required actions related to: (1) desegregation of faculty and other staff; (2) majority to minority transfers; (3) transportation; (4) school construction; (5) attendance of out-of-district students; and (5) desegregation in the classroom and in extra-curricular activities. Id. The Order also required the District to submit annual reports to the Court that contained information regarding, *inter alia*: (1) the number of students, by race, enrolled in the District and in each school therein; (2) the number of students, by race, enrolled in each classroom; (3) the number of teachers, by race, employed by the District and in each school therein; and (4) the desegregation status of the transportation system and non-classroom facilities. Id.

On June 4, 1982, with leave of Court, Cynthia Fletcher, Gloria Barnes, and David Barnes ("Intervenors"), who identified themselves as "minor ... students enrolled in the schools of the Simpson County School District", filed a class action Complaint in Intervention "on behalf of all present and future black children of school attendance age residing in Simpson County, Mississippi. See Ex. 1 (Compl. in Intervention), at ¶¶ 3-4.¹ In their Complaint, the Intervenors alleged that, notwithstanding the 1970 Order, the District had continued to engage in racially discriminatory practices by permitting white students to attend schools outside of their designated school zones thereby creating a higher ratio of black to white students within certain zones. Id. at ¶¶ 8, 11-14. The Intervenors also alleged that the District continued to engage in discrimination with respect to employment decisions,

student discipline, and student placement in special education and/or gifted student programs. Id. at ¶¶ 15-17. Through their Complaint, Intervenor requested (1) injunctive relief requiring the District to “strictly comply with the zone school assignments” as required by the 1970 Order, and (2) declaratory relief to “proscribe employment discrimination in all of its aspects and discrimination in the administration of discipline and in the operation of gifted and special education programs of the [District].” Id. An Order certifying the Intervenor Class was entered on August 19, 1982. See Ex. 2.

*2 On August 22, 1983, another Consent Order (“1983 Consent Order”) was entered that again outlined procedures the District was required to take with regard to student transfers and employment practices. In October of 2005, on motion of the District, unitary status was declared in the areas of student body composition, transportation, extracurricular activities, and facilities. See Mot., Ex. 1 at 2-3. Unitary status was denied, however, in the areas of faculty and staff assignments. Id., Ex. 1 at 3. The decisions of the district court regarding unitary status were affirmed on appeal. See [United States v. Mississippi](#), 2006 WL 3821530, at *1 (5th Cir. Dec. 22, 2006).

On April 5, 2011, on joint motion of the Government and the District, and with no objection having been made by Intervenor, a third Consent Decree was entered by the Court (“2011 Consent Decree”), which modified the obligations of the District with respect to faculty and staff hiring and assignment.² See 2011 Consent Order [Docket No. 28]. The 2011 Consent Decree provided, in detail, the employment and reporting procedures the District was required to follow to obtain unitary status with respect to the remaining areas of faculty and staff assignments. Id. at 2-10. The Decree also provided:

This Consent Decree sets forth in detail the areas to be addressed and the actions to be undertaken by the District. In other words, this Consent Decree represents “a roadmap to the end of judicial supervision” of the Simpson County School District. See [NAACP v. Duval County Sch. Bd.](#), 273 F.3d 960 (11th Cir.2001).

The District may move for a declaration of complete unitary status no sooner than thirty (30) days after the United States receives the October 15, 2011 report. At that time, in the absence of a pending motion by the United States or private plaintiffs for further relief, or a ruling by this Court as to the District’s noncompliance with this Consent Decree or federal law, the United States and private plaintiffs-intervenors shall not object

to the District’s motion.

Id. at 10-11.

On November 14, 2011, following the filing by the District of its October 15, 2011, bi-annual Report, the Government moved to enjoin the District from violating the 2011 Consent Decree, and to have the duration of that Decree extended. See Mot. for Further Relief [Docket No. 35]. The Court granted the Motion based on the admission by the District that it had not “completely satisfied the technical requirements for reporting information required by the 2011 Consent Decree.” See Opinion and Order [Docket No. 48], 2. In so doing, the term of the Consent Decree was extended up to October 15, 2012. Id. at 3-4. The Court also indicated: “As provided in the April 5, 2011, Consent Decree, the District may move for a declaration of complete unitary status no sooner than thirty (30) days after the Government receives the October 15, 2012, report, which shall be compiled in accordance with Section II of the Consent Decree.” Id. at 4.

The District filed its October 15, 2012, Report. See Report [Docket No. 55]. Thereafter, on January 30, 2013, the District filed its Motion for Declaration of Unitary Status. On March 1, 2013, Intervenor filed a Response in opposition to that Motion (“Response”). See Resp. [Docket No. 70]. In their Response, Intervenor object to the entry of an Order of Unitary Status by challenging whether the District has complied with the prior Court Orders regarding faculty assignment and employment. Id. at ¶ 5. Intervenor also request discovery and a hearing on the Motion. Id.

*3 After briefing on the Motion was completed, the Court *sua sponte* questioned whether it could hear Intervenor’s objections. See Order [Docket No. 80], 1-2 (“As more than thirty years has transpired since the date on which [Intervenor] intervened, ... they would no longer be minors or students in the Simpson County School District at this time. As such, the Court questions whether the claims they alleged when they were permitted to intervene have become moot, or whether they have continued standing to assert their claims.”). The Court thereafter ordered the parties to submit additional briefing on the issues of mootness and standing. Id.³

As all briefing has now concluded, the Court considers the issues before it.

II. Discussion

A. Mootness/Standing

On the issues of mootness and standing, the United States Court of Appeals for the Fifth Circuit has held that “a school desegregation case can become moot if it is not certified as a class action, the named plaintiffs have graduated from school, and there is no other factor which avoids mootness.” See [Tasby v. Estes](#), 643 F.2d 1103, 1106 (5th Cir. 1981)(citing [Pasadena City Bd. of Educ. v. Spangler](#), 427 U.S. 424, 429-30 (1976)). Here, archived documents obtained from the Federal Record Center show that the Complaint in Intervention was filed as a class action, and that the Court certified the class proposed in that Complaint. See Exs. 1 and 2. As Intervenor’s Complaint was certified as a class action, the Court finds that their claims are not moot and they have not lost standing. See e.g. [Graves v. Walton Cnty Br. of Educ.](#), 686 F.2d 1135, 1138 (5th Cir. 1982)(“It is firmly established that where a class action exists, members of the class may intervene or be substituted as named plaintiffs in order to keep the action alive after the claims of the original named plaintiffs are rendered moot.”).

B. Motion for Declaration of Unitary Status

The District has moved to be declared fully unitary with respect to faculty and staff assignment and with all of its other obligations under the 2011 Consent Decree. See Mot. at ¶ 2. The District has advised that the Government does not object to its Motion. *Id.* at ¶ 12. The District has also moved for the Court to schedule a fairness hearing on its Motion “so that [it] may give public notice and an opportunity for comment to the public in advance of the fairness hearing.” *Id.* at 5.

Intervenors, following a telephonic conference with the Court, were permitted to file an objection to the Motion. Although the Court has found that Intervenor’s claims are not moot, it questions whether their right to object to the Motion has been waived. Specifically, the 2011 Consent Decree, which was entered with no objection from the Intervenor, provides:

The District may move for a declaration of complete unitary status no sooner than thirty (30) days after the United States receives the October 15, 2011 report. At that time, in the absence of a pending motion by the United States or private plaintiffs for further relief, or a ruling by this Court as to the District’s noncompliance with this Consent Decree or federal law, the United States and private plaintiffs-intervenors shall not object to the District’s motion.

See 2011 Consent Order [Docket No. 28]. The term of the 2011 Consent Decree was later extended up to October 15, 2012, and District was granted leave to move for a declaration of complete unitary status no sooner than thirty days after the filing of its October 15, 2012, Report. See Opinion and Order [Docket No. 48].

*4 Here, the Docket shows that, within the thirty days following the filing by the District of its October 15, 2012, Report, there were no pending motions by either the Government or Intervenor for further relief from the Court. The Docket also shows that there were no rulings by this Court that the District had not complied with the Consent Decree during the one-year period of time that that Decree had been extended. Absent any pending motions or additional rulings by the Court, the Court questions whether any objections by Intervenor have been waived under the express terms of the 2011 Consent Decree. As this issue was not specifically addressed by the parties in their pleadings, the Court will presently hold it in abeyance. The parties will be directed to submit additional briefs on the issue of waiver, and the Court will hear oral arguments as to that issue as necessary, immediately preceding the fairness hearing.

As the issue of waiver will not be addressed herein, the Court considers Intervenor’s Response. In their Response, Intervenor challenge whether the District has complied with the Court Orders regarding faculty assignment and employment. See Resp. at 2. On the issue of faculty assignment, Intervenor argue that the District has not complied with the Consent Decree because it has hired more whites than blacks in the preceding two-year period. Intervenor also argue that they should be permitted to engage in discovery as to this issue before the Court holds

the required fairness hearing.

The Court finds Intervenors' argument that the District has hired more whites than blacks does not support a showing that it has failed to comply with the 2011 Consent Decree. Under the express terms of that Decree, the District is required to "attract and hire the most highly qualified personnel without regard to race." See Consent Decree [Docket No. 28] at I(A)(2)(emphasis added). Thus, the fact that more whites than blacks were hired, on its face, does not establish non-compliance by the District because, under the express terms of the Decree, it is required to hire the most highly qualified personnel regardless of their race. As such, the Court finds that the claim that more whites than blacks have been hired is not, in and of itself, relevant to the issue of whether the District has failed to comply with the 2011 Consent Decree. Accordingly, the Court finds Intervenors have failed to show that discovery on this issue is warranted.

In their Response, Intervenors also challenge whether the District has complied with the Court Orders regarding hiring. First, Intervenors challenge several hiring decisions that were documented in the March 2011 and October 2011 Reports filed by the District, and request discovery as to those decisions. The Court, however, has already found, based on those Reports, that the District was not in compliance with the 2011 Consent Decree. See Order [Docket No. 48]. Upon that finding, the Court ordered the Decree to be extended for one additional year. Id. As the Court has already found that the District had not complied with the 2011 Consent Decree based on its March 2011 and October 2011 Reports, the Court finds Intervenors have failed to show that discovery on this issue is warranted.

Next, Intervenors challenge the hires documented in the March 2012 Report, and request discovery of the applicants' score sheets, interview scores and notes, and references. With regard to the March 2012 Report, Intervenors argue that it reflects "many instances the reason given for passing over an applicant, who was top rated even after an interview, was a 'bad reference.'" Resp. at 4. According to the Report, however, only two individuals had received unfavorable references, both of these individuals were white, and neither of them was hired. Reply [Docket No. 77], 4-5. Accordingly, the Court finds Intervenors have failed to show that discovery is necessary on the issue of whether the decision to not hire because of bad references was motivated by discrimination.

*5 Second, Intervenors argue that black applicants were

rejected for subjective reasons, namely that Sylonjia Stubbs ("Stubbs") was rejected because of "poor grammar during interview" and Lidina Rankin ("Rankin") was rejected because of "poor communications skills." Resp. at 4-5. As to these applicants, the District responds that Stubbs had applied for two positions, data clerk and instructional assistant. Reply at 5. As regards the data clerk position, Stubbs was not the highest-rated candidate, the top rated candidate was black, and top-rated candidate was recommended for the position. Id. As regards the instructional assistant position, Stubbs was the highest rated candidate, she was not recommended because of poor grammar skills, and the four candidates recommended for position were all black. Id. As regards Rankin, the District responds that even if she had received a perfect interview score, she would not have been the top rated candidate for the principal position. Id. Additionally, all of the candidates that were hired by the District were approved by the Department of Justice ("DOJ"). Id. Based on the pleadings before it, the Court finds Intervenors have failed to show that discovery is necessary on the issue of whether the decision to not recommend a candidate for hire to the DOJ based on subjective criterion was motivated by discrimination.

Finally, Intervenors challenge several specific hires documented in the October 2012 Report, and request discovery in the form of document review and depositions. For example, Intervenors argue that Billy Brown ("Brown") and Charline Browning ("Browning") were the top rated applicants for the positions they sought, but were rejected because of a bad recommendations from their former administrators, which, "upon information and belief", were erroneous. Resp. at 5-6. The District responds that documentation regarding Brown shows that his former principal indicated she would not recommend him for re-hire, his test scores were below average, and he was not an effective teacher. As regards Browning, the District responds that her negative references were provided to the DOJ, and that the DOJ approved the candidate who had been recommended to the vacant position. Based on the pleadings before it, the Court finds Intervenors have failed to show that discovery is warranted on the issue of whether the decision to not recommend Brown or Browning because of bad references was motivated by discrimination. Likewise, the Court finds Intervenors have failed to show that discovery is warranted on the issue of whether the decision to not recommend other identified candidates, including Bobby Dixon, Carol Marshall, the Lead Teacher at Simpson Central, Karla Turner, and Konya Johnson, because of bad references was motivated by discrimination.

Next, Intervenor argue that Spurgeon Baynard (“Baynard”) was not recommended to the position of Deputy Superintendent because one of the other candidates had greater knowledge regarding Early Learning Success Initiatives (which they claim was specifically included in the job description in order to “fit” that candidate’s background) because such knowledge is not necessary for the position of Deputy Superintendent. Resp. at 6-7. The District responds that Early Learning Success Initiatives is specifically identified by the Board of Education as one of the areas that the Deputy Superintendent must oversee and coordinate. Reply at 7. The District also provided the DOJ additional information regarding Baynard including documentation regarding past incidents of student abuse, embezzlement, and that he failed to disclose his prior termination by two other school districts on his application. Based on the pleadings before it, the Court finds Intervenor have failed to show that discovery is warranted on the issue of whether the decision to not recommend Baynard based on his lack of experience (or for prior misconduct) was motivated by discrimination.

Intervenor also challenge the failure to recommend Earlene Bradford (“Bradford”) to the position of Assistant Principal at Simpson Central. Intervenor argue that the failure to recommend Bradford is suspect because one of the other candidate’s spouses was a member of her interview panel. Resp. at 7. The District responds that the other candidate’s spouse was not a member of the interview panel, but instead performed the clerical duty of note taker. Reply at 7.

*6 Next, Intervenor challenge the failure to recommend Jeffrey Fletcher (“Fletcher”) to a position of Head Football Coach on the grounds that the District relied on negative recommendations from individuals who were not his immediate supervisors, and that his suspension for having playing an ineligible player should not have been considered a “serious violation”. Resp. at 9. The District responds that it provided the DOJ with additional documentation from Fletcher’s principal, which indicated that he had been terminated as Head Football Coach at Mendenhall Junior High School for knowingly playing ineligible students and “other serious concerns”. Reply at 9. Based on the pleadings before it, the Court finds Intervenor have failed to show that discovery is warranted on the issue of whether the decision to not recommend Fletcher was motivated by discrimination.

Intervenor also challenge the decision to not recommend Margaret Sanders (“Sanders”) to a teaching position based on her accent. Resp. at 9. The District responds that

Sanders was ultimately offered the position but refused it because she had already accepted another position. Reply at 9.

Intervenor next argue that Deloris McDonald (“McDonald”) was not interviewed for the position of Administrative Intern at Magee Middle School. Resp. at 10. The District responds that McDonald was not interviewed because she was ranked 26th out of the 51 applicants who had applied for that position. Reply at 10. Intervenor also argue that William Broadhead (“Broadhead”), who was hired to the Administrative Intern position, was later hired as Assistant Principal at Magee Middle School, even though that position was never advertised. The District responds that although the October 2011 Report identifies Broadhead as “Assistant Principal”, that notation on the Report is erroneous, and Broadhead was never hired to that position. Reply at 10. Based on the pleadings before it, the Court finds Intervenor have failed to show that discovery is warranted on the issue of whether the failure to interview McDonald for the Administrative Intern position, or the alleged failure to advertise the Assistant Principal position at Magee Middle School was motivated by discrimination.

Finally, Intervenor raise several additional challenges including the failure to advertise the Associate Superintendent position. Resp. at 11. The District responds that, at the time Glenn Harris was elected Superintendent, he decided to change the title of “Deputy Superintendent” to “Associate Superintendent”, and that Thomas Duncan, who was the Deputy Superintendent, continued in the same capacity under the new title. Reply at 7 n.2. Next, Intervenor argue that the District included Lead Teacher experience in the job description for the position of Director of Federal Programs for the specific purpose of hiring the white individual it wanted in that position. Resp. at 11. The District responds that Lead Teacher experience is not required for the Director of Federal Programs position. Accordingly, the Court finds Intervenor have failed to show that discovery as to these claims is warranted.

In sum, the Court finds Intervenor have failed to show that discovery is warranted with respect to any of the employment decisions made by the District as reflected in its 2011 and 2012 Reports. Accordingly, Intervenor’s request for discovery is denied. A fairness hearing will be scheduled as to the Motion for Declaration of Unitary Status that has been filed by the District.

III. Conclusion

For the foregoing reasons:

IT IS THEREFORE ORDERED that the Motion of Simpson County School District for Declaration of Unitary Status [Docket No. 65] is hereby granted in part, and held in abeyance in part.

To the extent the Motion seeks a fairness hearing on the issue of unitary status, the Motion is granted.

To the extent the Motion seeks a declaration of unitary status, the Motion is held in abeyance until the fairness hearing is completed.

*7 IT IS FURTHER ORDERED that the request of Intervenors discovery is hereby denied.

IT IS FURTHER ORDERED that the parties, on or before October 14, 2013, are to confer as to possible dates on which a fairness hearing can be scheduled, the probable length of the hearing, and the manner in which notice of the hearing is to be directed. After conferring, the parties shall contact the Chambers of the undersigned to schedule a telephonic conference to discuss hearing dates and notice.

IT IS FURTHER ORDERED that the parties shall, on or before October 18, 2013, submit to the Court additional briefing on the waiver issue identified by the Court in this Opinion and Order.

SO ORDERED this the 26th day of September, 2013.

All Citations

Not Reported in Fed. Supp., 2013 WL 12176996

Footnotes

- 1 Presumably, based on the Order by which this case was administratively closed, see [Docket No. 2], the record was transferred to the National Record Center to be archived. As neither the Complaint in Intervention, nor the Order by which the Intervenor Class was certified appear in the Electronic Court Docket, those pleadings have been attached as exhibits to this Opinion and Order as Exhibits 1 and 2, respectively.
- 2 The Government provided Intervenors' counsel, Suzanne Keys of Byrd and Associates, with a copy of the proposed Consent Decree but, "despite numerous phone calls and emails to Ms. Keys over a three-week period, the parties were unable to obtain the [Intervenors'] position on the modified Consent Decree." See Joint Mot. [Docket No. 26], at 1 n.1.
- 3 Briefing on these issues was extended to permit the receipt of documents that had been archived at the Federal Record Center.