

1990 WL 170195

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United States District Court, E.D. Louisiana.

Larry WILLIAMS, et al.
v.
CITY OF NEW ORLEANS, et al.

Civ. A. No. 73-629.
|
Oct. 30, 1990.

MEMORANDUM AND ORDER

MINUTE ENTRY

SEAR, District Judge.

*1 Martin Venezia and James Howley, New Orleans Police Department officers, filed a motion to intervene in the captioned matter pursuant to Fed.R.Civ.P. Rules 70 and 71 and to enforce the consent decree entered May 26, 1987. Venezia is a lieutenant who participated in the 1989 examination for promotion to captain. Howley is a captain who participated in the 1990 examination for promotion to major. Both were limited intervenors in the fairness proceedings conducted prior to entry of the consent decree. The fairness proceedings were conducted to ensure that the decree fairly protected the interests of New Orleans policemen not parties to the suit.

Venezia and Howley now complain that the promotional examinations in which they participated did not comply with Paragraph IX of the consent decree governing development of new selection procedures. They claim that Paragraph IX requires that a separate written examination be given prior to an oral test using an assessment center technique, and that the promotional examinations in

which they participated did not comply with this asserted requirement.

John Payne, Donald Bell, Warren Roberts, Jr., Maxie Gagnard, William Townsend, and William Heller, III (the "Payne group"), are New Orleans Police Department lieutenants who participated in the 1989 examination for promotion to captain. They too were limited intervenors in the fairness proceeding conducted prior to entry of the consent decree. They seek to intervene to enforce a stipulation they allege the New Orleans Police Department agreed to, and has failed to abide by, to maintain the ratios of rank positions (sergeants, lieutenants and captains) to total positions that existed on October 1, 1981. They allege that sufficient promotions to maintain the existing ratios were not made within the 9-month grace period. They allege a right to intervene under Rules 70 and 71. As with Howley and Venezia, such a right exists if at all under Rule 71.¹

To intervene under Rule 71 a party must have had standing to sue in the original action. *Moore v. Tangipahoa Parish School Bd.*, 625 F.2d 33 (5th Cir.1980). In turn, standing depends on whether the interest the party seeks to vindicate is " 'arguably within the zone of interests to be protected or regulated by the [statute or] constitutional guarantee in questions.' ". *Id.* at 34, quoting *Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184, 188 (1970). In *Moore*, a white female school teacher sought to enforce a court order that had established objective criteria for selection of principals. The criteria were intended to ameliorate the racially-biased principal selection methods that had been employed in the past and to aid in achieving a unitary school system. The teacher in *Moore* did not allege that she was intervening to prevent discrimination against herself on the basis of race or to vindicate her interest in working in a unitary school system. The court held she had no standing under Rule 71 to enforce the court order.

*2 The interest that Howley and Venezia and the Payne group seek to vindicate is their interest in receiving promotions. They allege the City of New Orleans is harming this interest by failing to comply with promotion procedures allegedly required by the consent decree. Howley and Venezia and the Payne group allege neither that they are black, nor that they are being prevented from receiving a promotion on account of race, nor that the City's alleged non-compliance harms an interest in working in a non-discriminatory police force. As in

Moore, the mere interest in receiving a promotion is not arguably within those to be protected by the anti-discrimination laws invoked in the underlying matter. Furthermore, allowing a limited intervention in the fairness proceeding simply recognized that the limited intervenors would be affected by the decree. It did not and could not create standing in the underlying action. There is no standing under Rule 71 to seek to vindicate a mere interest in receiving a promotion.

The motions to intervene of Howley and Venezia and of Payne, Bell, Roberts, Gagnard, Townsend and Heller are DENIED.

All Citations

Not Reported in F.Supp., 1990 WL 170195

Footnotes

- ¹ Howley and Venezia and the Payne group assert that Rule 70 grants them a right to intervene. In normal course, Rule 70 is invoked by a party in whose favor judgment ran. Neither Howley and Venezia nor the Payne group were parties to the original proceeding. Furthermore, even assuming that a non-party might in certain circumstances invoke Rule 70, standing to do so could not be broader than standing under Rule 71.