

1995 WL 301375
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United States District Court,
E.D. Louisiana.

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

Civ.A. No. 73-629.
|
May 17, 1995.

MEMORANDUM AND ORDER

SEAR, Chief Judge.

Background

*1 This City of New Orleans (“the City”) entered into a consent decree (“the Decree”) in this action on May 27, 1987.¹ The Decree governs the hiring and promotional practices and policies of the New Orleans Police Department (“NOPD”). Section X of the Decree provides,

Residency

In accordance with present law, no applicant for Police Recruit shall be hired by the NOPD unless he or she is a resident of the Parish of Orleans. In order to be eligible for promotion to the ranks of Police Sergeant, Police Lieutenant, Police Captain or Police Major, an officer shall establish that his or her residence is in the Parish of Orleans, unless he or she can show that this requirement was waived as to him or her and that such waiver is still in effect. The Decree at 22.

The City now moves to amend this section of the decree and substitute the requirement of “domicile” for

“residence”. Louisiana law defines domicile as one’s principal residence. Accordingly, a person may have many residences, but only one domicile. *Gowins v. Gowins*, 466 So.2d 32, 34 (La. 1985), L.S.A.C.C. art. 38.

Analysis

The United States Supreme Court has recently addressed the standard that a District Court must apply to a motion to amend a consent decree in institutional reform litigation. *Rufo v. Inmates of Suffolk County Jail*, 112 S.Ct. 748 (1992). The Supreme Court has provided,

A party seeking modification of a consent decree may meet its initial burden by showing either a significant change in factual conditions or in law. *Id.* at 760.

The Supreme Court explained the type of factual change that could justify a modification:

Modification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous... Modification is also appropriate when a decree proves to be unworkable because of unforeseen obstacles [citations omitted] or when enforcement of the decree would be detrimental to the public interest. *Id.*

The City has offered no evidence of factual changes since 1987 related to the residency requirement.

The Supreme Court has also explained the type of legal change that could justify a modification:

A consent decree must of course be modified if, as it later turns out, one or more of the obligations placed

upon the parties has become impermissible under federal law. But modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent. *Id.* at 762.

The City cannot argue that the residency requirement has become impermissible under federal law, or that a domicile requirement was unavailable in 1987. There have not been any changes in federal law related to Section X of the Decree.

The City has simply failed to “establish that a significant

change in facts or law warrants revision of the decree”, *id.* at 765, as required by United States Supreme Court and United States Court of Appeals for the Fifth Circuit precedent. See *Cooper v. Noble*, 33 F.3d 540 (5th Cir. 1994).

*2 Accordingly,

IT IS ORDERED that the City of New Orleans’ motion to amend the consent decree is DENIED.

All Citations

Not Reported in F.Supp., 1995 WL 301375

Footnotes

- ¹ See the Memorandum and Order dated January 26, 1995 awarding attorney’s fees for a detailed history of this now 23 year old litigation.