

1976 WL 13344
United States District Court, N.D. Ohio.

The Shield Club, et al.
v.
The City Of Cleveland, et al.

No. 72-1088.
|
Oct. 21, 1976.

Attorneys and Law Firms

Edward R. Stege, Jr., Cleveland, Ohio, for plaintiff.

Malcolm C. Douglas, Cleveland, Ohio, for city defendants.

Nike Z. Schwartz, Cleveland, Ohio, for Richard J. Faragher and Fraternal Order of Police.

Opinion

WILLIAM K. THOMAS, District Judge:--

*1 The defendants, Ralph J. Perk (Mayor), James T. Carney (Safety Director), and Lloyd F. Garey (Chief of Police), move this court for an order staying, pending appeal

. . . the injunctive relief ordered by this Court on September 27 and September 29, 1976, and set forth in Items IV, 3, 4 and 5(d) respectively, of this Court's Memorandum and Order of September 27, 1976, requiring and establishing a timetable for the announcement of job openings, applications for announced positions, assignments from qualified pools, establishment of screening tests and eligible pools, and transfer of minority personnel to the First and Second Police Districts of the City of Cleveland.

While the motion does not state what, if any, of the remaining items of the court's order are being appealed, the defendants do make clear that Mayor Perk

. . . has issued an order to the City's Chief of Police requiring him to implement those segments of this Court's Order including the required statement with respect to equal employment opportunity policy, the preparation of job descriptions, and the assignment of minority personnel to three specified units within the Division of Police.

[LAST REASON]

The last reason given by the defendants for requesting a stay of Item IV-3 ("announcement of job openings and applications for announced positions") and Item IV-4 ("assignments from qualified pools and screening and eligibility tests"), states in part:

As the Court's advisory panel wrote, "the cornerstone of public personnel management is a system of job identification and description." (Report, p.9.) It appears to these moving parties that it is important to lay that cornerstone before proceeding to the establishment of approximately two hundred screening procedures and the implementation of job announcement procedures.

Items IV-3 and IV-4 are dependent upon and closely related to Item IV-2 (job descriptions), which defendant Mayor Perk has ordered Chief Garey to prepare. Item IV-2 states in its opening sentence:

The target date for completion of the remedy ordered in part III-B (job descriptions) shall be 15 months from the date of this order.

Assuming, as this court does from the motion of the defendants, that Mayor Perk, as of October 12, 1976, ordered Chief Garey to immediately undertake the preparation of job descriptions, the 15-month period will expire about January 15, 1978. Realizing that the most effective implementation of Items IV-3 and IV-4 should await the completion of the job descriptions, it is concluded that a stay of Items IV-3 and IV-4 is fully warranted while defendants pursue their unquestioned right to appeal the validity and correctness of these central remedies ordered by this court. A stay of these items is granted.

[ASSIGNMENT]

*2 Item IV-5(d), which defendants also seek to stay, pending appeal, provides:

The assignment of minority personnel ordered in part III shall take place no later than . . .

(d) Transfers to 1st and 2nd Districts:

60 days from the date of this order. Reasons, if any, for inability to meet this date shall be reported to the court and parties within 45 days from the date of this order.

Were the defendants reporting, pursuant to the provisions of Item IV-5 (d), “[r]easons, if any, for inability to meet [the 60-day] date” for making the directed transfers to the 1st and 2nd Districts, this court would address itself to a possible adjustment of the order. For example, consideration might be given to extending time for execution of the ordered assignment of minority officers or to a lesser minimum number of officers to be assigned to each of these police districts. However, the defendants have not filed a report nor have they requested any modification in the ordered relief.

Instead, the defendants seek to stay the effect of Item IV-5(d) while appealing that order. In support of this last request for a stay, defendants make these assertions:

It is Defendants’ position that the assignment of minority police personnel to predominantly minority districts is justified because it has resulted in improved law

enforcement in these areas of the City and better interrelationship between the police force and the minority community.

The advantages inherent in such placement benefit both the minority policeman and the community served. Minority officers provide efficient and effective law enforcement in minority areas. Experience dictates that they are more in touch with community attitudes, and, therefore, are better able to deal with those concerns which may lead eventually to anti-social and/or criminal behavior. From the community standpoint, black officers elicit a high degree of trust, and this leads to a cooperative effort between the police department and the community in the detection and prevention of crime. Therefore, the Court’s Order requiring the transfer of minority personnel to non-minority districts, if not stayed, will result in irreparable injury to the minority community and to effective law enforcement.

These assertions do not go to the implementation of Item IV-5(d), a proper subject of a motion to stay. Rather, these assertions relate to the findings and conclusions of this court, particularly in part II-B. However, the record in this case contains no evidence to justify these mixed assertions of opinion and fact. Moreover, the defendants have chosen not to file a motion pursuant to Rule 59 (new trials; amendments of judgments), F.R.Civ.P., in connection with which defendants might have attempted to offer evidence to support such assertions, or to request alteration of this court’s findings and conclusions. Hence, this court is unable to consider, let alone evaluate, the assertions previously quoted.

*3 For the foregoing reasons the motion to stay Item IV-5(d) is respectfully denied.

IT IS SO ORDERED.

All Citations

The Shield Club v. City of Cleveland, Not Reported in F.Supp. (1976)

13 Fair Empl.Prac.Cas. (BNA) 1399

Not Reported in F.Supp., 1976 WL 13344, 13 Fair
Empl.Prac.Cas. (BNA) 1399
