

1993 WL 379453

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United States District Court, N.D. Illinois, Eastern
Division.

UNITED STATES of America, Plaintiff,
v.
BOARD OF EDUCATION OF THE CITY OF
CHICAGO, Defendant.

No. 80 C 5124.
|
Sept. 17, 1993.

SUPPLEMENTAL MEMORANDUM OPINION

KOCORAS, District Judge:

*1 This case is before the Court on a motion by the Board of Education of the City of Chicago ("the Board") requesting a temporary restraining order enjoining the application of section 34A-406 of the Illinois School Code (105 ILCS 5/34A-406) for a period of ten days. Section 34A-406 prohibits most expenditures of funds by the Board unless the school district's budget is balanced as defined by section 34A-402. The School Finance Authority has rejected the latest proposed budget submitted to it to date; thus, there is no balanced budget in place. The Board requests this order to allow it to make expenditures necessary to open the Chicago public schools. For the reasons stated below, the Board's motion is granted.

BACKGROUND

This motion is the latest arising out of a case dating back to 1980. In 1980, the Board entered into a Consent Decree with the United States Department of Justice requiring the Board to implement a school desegregation plan. That plan implements compensatory programs designed to

remedy constitutional violations in the treatment of minority students in public schools. The case is back before the Court because the federal constitutional obligation to minority students contained in the Consent Decree cannot be satisfied when school doors are locked.

LEGAL STANDARD

The party seeking a temporary restraining order bears the burden of satisfying five criteria, which are as follows:

- the lack of an adequate remedy available at law;
- irreparable harm if the motion is denied;
- that the harm to be suffered if the motion is denied is greater than the harm to be suffered if it is granted;
- that the public interest is served by granting the motion; and
- that the moving party has a likelihood of succeeding on the merits.

Ecologix Inc. v. Fansteel, Inc., 676 F.Supp 1374, 1378 (N.D.Ill.1988) (citing *Roland Machinery Co. v. Dresser Indus.*, 749 F.2d 380, 386-87 (7th Cir.1984)). The Seventh Circuit has held that the likelihood of success" criterion is met if the moving party shows a better than negligible likelihood of succeeding on the merits. *Roland*, 749 F.2d at 387 (quoting *Omega Satellite Products v. City of Indianapolis*, 694 F.2d 119, 123 (7th Cir.1982)). We review the facts of this case with these principles in mind.

DISCUSSION

1. *Lack of Adequate Legal Remedy*

The legal remedy of damages is deemed to be inadequate where it is "seriously deficient as a remedy for the harm suffered." *Roland*, 749 F.2d at 386. Here, the failure of the public schools to open is resulting in the loss of important educational and social opportunities to minority students and all other students enrolled in the Chicago

public schools. Further, the minority students of the schools are being deprived of the desegregation remedy secured by the Consent Decree. The social and educational ramifications of having the schools closed are immeasurable by any legal standard for damages. Thus, the legal remedy of damages is not an adequate remedy for these types of harm.

2. Irreparable Harm

*2 The Board has alleged that the failure of the schools to open has thwarted the implementation of the Consent Decree, thereby constituting a violation of constitutional rights guaranteed by the 14th Amendment. While this issue has not yet been fully briefed to establish such a violation, the Court finds there is evidence suggesting such a violation. Because the continuing violation of constitutional rights constitutes irreparable harm, *Walker v. Thompson*, 615 F.Supp. 330, 341 (N.D.Ill.1985), we find that this criterion has also been satisfied. Moreover, is Court is aware of the harms suffered by students and parents during each day the schools remain closed. Although it was suggested during the hearing that the school year could be extended to “make up” the weeks lost, it is worth noting that a school day made up next summer is not truly equivalent to a school day lost today.

3. Harm to Other Parties

None of the parties present at the hearing identified any harm to other parties that would occur as a result of the granting of this motion, and this Court is not aware of any. At the hearing, the representative for the Chicago Teachers’ Union expressed concerns over the use of the pension funds. We note, however, that this alleged harm will arise, if at all, from the substantive relief if it is granted. That topic will be addressed in briefs to be submitted to the Court at a later date. Accordingly, since no harm to any party has been identified, the third criterion for granting a temporary restraining order has been met.

4. The Public Interest

Again, no harm to the public interest has been identified. On the contrary, opening the schools will allow hundreds of thousands of “dislocated” schoolchildren to return to

school, and, likewise, will allow their parents to return to work. The public interest in having the schools open is clear. Thus, this criterion has also been satisfied.

5. Likelihood of Success on the Merits

The Seventh Circuit holds that the likelihood of success criterion is satisfied if the moving party shows a better than negligible likelihood of succeeding on the merits. *Roland*, 749 F.2d at 387, quoting *Omega Satellite Products v. City of Indianapolis*, 694 F.2d 119, 123 (7th Cir.1982). The Board has cited *Missouri v. Jenkins*, 110 S.Ct. 1651 (1990), in support of its argument that this Court has the power to grant the relief it requests in its substantive motion. In short, its substantive motion asks this Court to override state law and redirect monies to the general operating budget. The motion does not ask this Court to impose any taxes.

Jenkins concerned the funding of desegregation remedies for the Kansas City, Missouri school system. In *Jenkins*, the Supreme Court held that the District Court had the power to enjoin the operation of state tax laws that hindered the Kansas City school district from funding the desegregation remedies ordered by the federal courts. *Jenkins*, 110 S.Ct. at 1663. While the applicability of *Jenkins* to the instant case has not yet been briefed by the parties, it is clear that this case provides an adequate basis to find that the Board has a better than negligible likelihood of succeeding on the merits. For this reason, this Court holds that the final criterion for issuing a temporary restraining order has been met.

CONCLUSION

*3 For the reasons stated above, we find that all of the criteria for issuing a temporary restraining order have been satisfied in the present case. Therefore, the Board’s motion for a temporary restraining order is granted.

We add as a final note that this Court is sensitive to the comity issue implicated when a federal court is asked to suspend state law to vindicate federal constitutional rights. The current order is a minimal intrusion upon state powers and provides an opportunity for normalcy and reason to prevail in the legislative and labor relations discussions which are also aimed at re-opening the schools.

Not Reported in F.Supp., 1993 WL 379453

All Citations