

1993 WL 491395

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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. 24, 1993.

*MEMORANDUM OPINION*

KOCORAS, District Judge:

**\*1** On September 13, 1993, this Court issued a 10 day temporary restraining order enjoining the operation of Section 34A-406 of the Illinois School Code which prevents expenditure of funds by the School District in the absence of a balanced budget approved by the School Finance Authority. The effect of the order was to allow the schools to open shortly thereafter. In that order, we recognized the legitimate interests of State and local officials to deal with their own affairs without the intrusion of the federal courts.

The history of federal involvement into the affairs of state and local governmental matters has been characterized by the following constraint and the following reality. The constraint is that any intrusion should be minimal and limited only to acts necessary to protect and vindicate federal constitutional rights. The reality is that federal court involvement has come only after an inability, or unwillingness, on the part of State or local officials to redress constitutional violations. It is in the face of this abdication of responsibility that federal judges have found themselves overseeing the operation of a variety of governmental institutions and activities, the range of which seems almost limitless.

No federal judge that we know is eager or anxious to take on these new assignments. Indeed, this Court has little

appetite to intrude itself and its limited resources into a situation populated by a host of experts and administered pursuant to long established statutory schemes and administrative practices. Notwithstanding that feeling, however, we have no tolerance for relegating the constitutional rights of some of Chicago's public school children to a secondary place among the variety of interests at play in the present school crisis. Innocent and powerless children should not be held hostage to the inability of our governmental and educational leaders to agree on a solution to the present crisis.

Before any federal court intervention, the date set for the opening of Chicago's public schools came and went without resolution of the recurrent and seemingly intractable problems confronting the school district. So it cannot fairly be said that this Court was somehow responsible for the relaxation of the sense of urgency otherwise created by school issues and events. And as we are on the eve of the expiration of the 10 day TRO period with no solution in sight, any argument that federal court action has somehow contributed to the stalemate is simply unsupportable.

One point should be made clear. While we may be unhappy that the crisis exists, we do not believe, or have reason to, that any party or individual has acted in bad faith in trying to resolve the differences that exist. Reasonable people can and do hold honest differences over educational policies and philosophy, over fiscal matters, over the myriad of bargaining issues, and over the subjugation of personal interests and personal welfare in favor of the public good. But what is relevant to the Court is that all of these differences have resulted in impasse, and it is that impasse which poses the threatened harm to the children affected by a closed school system.

**\*2** Most of the objections received by the Court relate to the motion for a supplemental remedial order. Before any remedial order can issue, appropriate hearings will have to be held to elucidate the financial issues and consider the breadth of possible alternative solutions. None of those objections operate to impede the issuance of a temporary restraining order and will, therefore, not be considered at this time.

The main objection to the issuance of any additional temporary restraining order is, in substance, the claimed lack of a jurisdictional base to issue it. It is argued that the present financial crisis is simply and solely an issue of state and local education funding, and that there is an absence of segregative intent, racial animus or any other improper motivation. While we recognize that the issue is debatable, the fact remains that a shuttered school system

will preclude implementation of the Consent Decree this Court has previously entered in this case. The Consent Decree was the result of the claim by the federal government that the Chicago schools were being operated in a constitutionally impermissible way and was intended to be the remedial blueprint to govern the future.

A closed school system will produce more deprivation, not only for some students, but for all of them. We believe, as before, the Board has some likelihood of success in its present action.

We also believe that the other criteria for a temporary restraining order which we found to have been satisfied on September 13, 1993 continue to exist. We adopt our prior findings. The additional requirement we confront under the rule is whether good cause exists for a 10 day extension.

We believe the value of not disrupting the lives of Chicago's school children supplies ample good cause. While we are not ordering schools to remain open, to permit the School Board to expend funds to operate the schools in the absence of an approved balanced budget will have that effect. Additionally, another 10 days will permit the parties to fully exhaust settlement talks. We are encouraged that some progress has been reported and that these developments may supply a basis for more

agreement.

As I said earlier, I have not the slightest desire to continue the federal court action over this matter. But it is simply not fair to make the children suffer the indecision we are visited with today. It is past the time to merely give lip service to the notion that our kids come first—that their welfare is paramount—while our inaction belies the truth of that expression.

I pray, as much as any of you and any of the parents, that a solution to this crisis will be forthcoming. I ask all of the decisionmakers to reconsider their prior positions and to do what is necessary to put the kids first, to return some order to their lives, and some normalcy to our own. That is not a Court order, but it is my wish.

The restraining order previously entered in this case shall continue until October 4, 1993. The matter is reset until 10:00 a.m. on October 4, 1993.

#### **All Citations**

Not Reported in F.Supp., 1993 WL 491395