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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.
|
Oct. 12, 1993.

MEMORANDUM OPINION

KOCORAS, District Judge:

***1** Presently before this court are various motions to intervene and motions requesting amicus status.[1] The motions to intervene will be discussed first, followed by a discussion of the amicus curiae motions.

I. MOTIONS TO INTERVENE

Intervention is governed by Federal Rule of Civil Procedure 24. That rule provides for intervention as of right and permissive intervention. Intervention as of right shall be granted if four requirements are met:

> (1) the application must be timely; (2) the applicant must have a direct and substantial interest in the subject matter of the litigation; (3) the applicant's interest must be impaired by disposition of the action without the applicant's involvement; and (4) the applicant's interest must not be represented adequately by one of the existing parties to the action.

Keith v. Daley, 764 F.2d 1265, 1268 (7th Cir.1985), *cert. denied*, 474 U.S. 980 (1985), (*citing* Fed.R.Civ.Pro. 24(a)(2)). On the other hand, permissive intervention may be granted "when an applicant's claim or defense and the main action have a question of law or fact in common." Fed.R.Civ.Pro. 24(b)(2). Permissive intervention under Rule 24(b) is wholly discretionary with the court. *Keith*, 764 F.2d at 1272.

A. *The Application of Mary Alcantar, Sabina Villasana and Parents United for Responsible Education*

Mary Alcantar seeks intervention as of right as mother and next friend of Rogelio and Guadalupe Alcantar, who are Chapter 1 eligible students in the Chicago Public Schools. Likewise, Sabina Villasana, mother and next friend of Sabina and Jose Villasana, seeks intervention. Parents United for Responsible Education ("PURE") also requests intervention as of right. PURE is a named plaintiff in *Noyola v. Chicago Board of Education*, 88 CH 16571, a pending state court case. These applicants seek intervention "for the limited purpose of opposing the Board's request to use Chapter 1 funds for expenditures not authorized by [state law]."

The application was timely filed, as this Court orally granted leave to file an application for intervention on September 23, 1993, and the application was filed that day.

The interest that these applicants claim will be impaired by the disposition of the present case is their interest in the pending state court case, *Noyola v. Chicago Board of Education*. That case alleges that the Chicago Board of Education, the State Board of Education, and the Chicago School Finance Authority have used Chapter 1 funds in manners that are not permitted by the Chapter 1 statute. The Board here is seeking Court authorization to use Chapter 1 funds contrary to the statute. Thus, *Noyola* plaintiffs do have an interest in the subject matter of this action that could be impaired by the disposition of this case. However, only PURE is a plaintiff in the *Noyola* case. Thus, Alcantar and Villasana do not meet the second and third requirements for intervention as of right.

***2** The final requirement is that other parties do not

adequately represent the applicant's interest. Here, we find that this requirement is met for *Noyola* plaintiffs, as none of the other parties before the Court is a plaintiff in that litigation. However, we again find that Alcantar and Villasana do not meet this requirement, as they are not parties to *Noyola* and PURE will adequately represent their interests. For these reasons, we deny the applications of Alcantar and Villasana and we grant PURE's application to intervene as of right, for the limited purpose of opposing the Board's request to use Chapter 1 funds in ways not authorized by state law.

B. *The Application of Chicago Urban League and Chicago United*

These two organizations have moved to intervene pursuant to Rule 24(b)(2), permissive intervention. Chicago Urban League is the oldest and largest organization devoted to improving race relations in Chicago. Its mission is to eliminate racial discrimination and segregation and to work for equal opportunities for African Americans and other minorities. The League has been continuously active in advocating the educational rights of its members and their children, and was amicus curiae in the proceedings leading to the 1980 Consent Decree. Some members of the League are parents of children in Chicago Public Schools. It seeks to represent the interests of the school children, which are not fully represented by any other party in the litigation. The Court grants the application of the Chicago Urban League.

However, we find that the interest of Chicago United is more attenuated. Chicago United is a corporate membership organization comprised of major companies in the Chicago area and it recognizes, rightfully, the impact on businesses of the educational opportunities provided to children in the public schools. Because this interest is somewhat attenuated, and because we believe that Chicago Urban League shares the concerns of Chicago United and will represent them before the Court, we find that amicus curiae status is better suited for this organization than party intervention.

C. *The Application of Chicago Association of Local School Councils and Centro Sin Fronteras*

The Chicago Association of Local School Councils ("CALSC") and Centro Sin Fronteras filed a "Motion to File Memorandum on Behalf of Amicus Curiae CALSC and Centro Sin Fronteras or Alternatively for Leave to Intervene" on September 21, 1993. Despite this styling of their motion, these organizations did not discuss intervention in their motion or memorandum. Because they have not presented a true motion to intervene, we will not make them parties at this time.

D. *The Application of John S. Nichols, Jr.*

Turning to John S. Nichols, Jr.'s application for intervention, we see that he requests intervention based on his status as an Illinois citizen and a member of the Chicago Teachers' Pension Fund. Nichols' Petition for Leave to Intervene, para. 5(a), (b). Further, he identifies an employment dispute he is engaged in with the Board of Education. *Id.* para. 5(c), (d). He claims that "the continued operation of the schools is essential to continuing with the progress toward resolution of applicant's problems with the defendant." *Id.* para. 5(d).

***3** Nichols does not meet the requirements to qualify for intervention as of right. He has not demonstrated a direct, substantial, legally protectable interest in the main action. *See Keith*, 764 F.2d at 1269. Nichols' status as an Illinois citizen does not provide a sufficient interest in the main action to allow him to intervene as of right. *See Asarco, Inc. v. Kadish*, 490 U.S. 605, 616 (1989) (stating that "generalized grievances brought by concerned citizens ... have consistently [been] held [to be] not cognizable in the federal courts"). Further, parties already before the Court more than adequately represent the interest in keeping the schools open, and the Teachers' Pension Fund fully represents Nichols' interests as a member of that fund.

Permissive intervention is also unavailable here. Rule 24(b)(2) requires that the applicant's claim share a common question of law or fact with the main action. Here, Nichols' "problems with the defendant" stem from his dismissal and do not share common questions of law or fact with the main action. Adding Nichols as a party would distract from the issues in the main action. For these reasons, we deny Nichols' petition for intervention.

II. THE AMICUS CURIAE MOTIONS

A federal district court's decision to grant amicus status to an individual, or an organization, is purely discretionary. *Leigh v. Engle*, 535 F.Supp. 418, 420 (N.D.Ill.1982); *see*

also United States v. Louisiana, 751 F.Supp. 608, 620 (E.D.La.1990). Relevant factors in determining whether to allow an entity the privilege of being heard as an amicus include whether the proffered information is "timely, useful, or otherwise." *Leigh,* 535 F.Supp. at 420. In exercising its broad discretion, a court may deny a movant amicus curiae status upon determining that the movant's proposed contribution is unnecessary. *Elm Grove v. Py,* 724 F.Supp. 612, 613 (E.D.Wis.1989). We turn to the various amicus motions with these principles in mind.

A. *CALSC and Centro Sin Fronteras' Motion*

The Chicago Association of Local School Councils ("CALSC") and Centro Sin Fronteras ("CSF") request leave to file a joint memorandum as amicus curiae on behalf of the Local School Council members, and the parents of children attending the Chicago Public Schools.

CALSC, an association of the Chicago Local School Councils, bears the statutory mandate of developing a Local School Improvement Plan, as well as adopting an annual budget. According to CALSC, the Chapter 1 funds in issue are designated by law to be used by the Local School Councils to improve the education of poor students in their schools. CSF, on the other hand, is an organization of Hispanic Local School Council Members and parents with children in the Chicago Public Schools. Both organizations oppose the School Board's proposed use of State Chapter 1 funds for general school expenses.

While we deny their motion to intervene for the reasons set forth in our preceding discussion, we grant their request to file an amicus curiae memorandum. We find that both CALSC and CSF represent interests that will be significantly affected by the resolution of this matter, particularly by any decision of this Court with respect to the use of Chapter 1 funds. Thus, the Court welcomes their proffered information and concerns regarding the School Board's proposed use of Chapter 1 funds.

B. *The Chicago Teachers Union*

***4** The Chicago Teachers Union ("the CTU"), has filed a brief entitled "Memorandum of Amicus Curiae." Although the CTU has not filed a formal motion for leave to file an amicus curiae brief, we grant the CTU amicus curiae status. It goes without saying that the CTU's interest in these proceedings is substantial. Thus, the CTU may have relevant data that will be instrumental to a resolution of this matter.

C. *Designs for Change, et. al.*

Three independent community and social service organizations, Designs for Change, Schools First, and West Side Schools and Communities Organizing for Restructuring and Planning (WSCORP), have collectively filed an amici memorandum expressing concerns over the School Board's proposed use of the Chapter 1 funds. These organizations apparently include members of local school councils, and parents and educators who are active in Chicago school reform. Since their information and concerns may be useful in the resolution of the matter, we grant them collective amicus status.

D. *Business and Professional People for the Public Interest*

Business and Professional People for the Public Interest ("BPI") has filed a "suggestion" with the court as an interested organization. BPI has neither entitled its document an "amicus" memorandum, nor has it moved to file an amicus brief. If BPI decides to file a motion for leave to file an amicus curiae brief, we will entertain such a motion at that time.

CONCLUSION

In sum, Chicago Urban League's motion to intervene is granted, while John Nichols, Jr.'s motion to intervene and CALSC and CSF's motion to intervene are denied. PURE's motion to intervene is partially granted, limited to their involvement in any Chapter 1 proceedings.

With respect to the amici filings we grant the following organizations amici status: CALSC and CSF; the Chicago Teachers Union; Designs for Change, Schools First and WSCORP; and Chicago United.

All Citations

Footnotes

[1] At a hearing on September 23, 1993, this Court granted the respective motions to intervene of the School Finance Authority and the Teachers Pension Fund. In addition, we note that Senator James Philip's motion was granted in court.