United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 21, 2010

BEFORE

JOEL M. FLAUM, *Circuit Judge*

KENNETH F. RIPPLE, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

JIMMY DOE, et al., Plaintiffs-Appellees, and EARL DUNLAP, Petitioner-Appellee, No. 10-2746 v. COOK COUNTY, CLARA COLLINS, Defendants-Appellees, APPEAL OF: TEAMSTERS LOCAL UNION NO. 700, Intervenor.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:99-cv-03945 James F. Holderman, Chief Judge.

ORDER

Teamsters Local Union No. 700 asks this court to stay enforcement of a district court order that approved modified staffing procedures and employee qualifications at the Cook County Juvenile Temporary Detention Center (JTDC). For the reasons stated below, the motion is denied.

Plaintiffs-appellees are current and former detainees at the JTDC who sued the county for unconstitutional conditions of confinement. The parties settled by entering into various agreements, over which the court retained jurisdiction, that required the county to "assure that all staff are properly trained" and required a plan with "appropriate hiring

standards and procedures as well as a plan for staff training." But, according to plaintiffs, the JTDC did not take appropriate action to modify the conditions of confinement and the parties ultimately entered into an order (Appointment Order) that appointed a Transitional Administrator to take over the JTDC. To bring the JTDC into substantial compliance with the parties' agreements, the Appointment Order gave the Transitional Administrator the "power to establish personnel policies; to create, abolish, or transfer positions; and to hire, terminate, promote, transfer, and evaluate management and staff of the JTDC." The Transitional Administrator subsequently proposed new employment procedures that require some staff who directly care for detainees to reapply for their positions and, in doing so, interview for the positions, pass a qualification test, and work towards getting a bachelor's degree (if they do not have one). On June 23, 2010, over the union's objection, the district court approved the plan. The union subsequently asked the district court to stay the June 23, 2010, order, but the court declined and the union now seeks a stay here.

This court reviews "the district court's findings of fact for clear error, its balancing of the factors under the abuse of discretion standard and its legal conclusions de novo." *Hinrichs v. Bosma*, 440 F.3d 393, 396 (7th Cir. 2006). The factors considered in determining whether to issue a stay pending appeal are: (1) whether the appellant has made a showing of likelihood of success on appeal, (2) whether the appellant has shown irreparable injury absent a stay, (3) whether a stay would substantially harm other parties to the litigation, and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

The union fails to show irreparable injury sufficient to warrant a stay. It argues that "a stay is required to assure that no incumbent JTDC employees are discharged under the staffing re-qualification plan who would otherwise lack any remedy against" the Office of the Chief Judge of the Circuit Court of Cook County. The Office of the Chief Judge was statutorily assigned control of the JTDC and will take over the JTDC when the Transitional Administrator leaves. *See* 55 ILCS 75/3. Because the Office of the Chief Judge is not party to the agreements (or this litigation), the union argues that any fired employees will lose recourse under the agreements once the Office of the Chief Judge takes control. In short, even if this court reverses the district court, compelling rehiring of the fired employees, if this court does so after the Office of the Chief Judge takes over, the union argues that the Office of the Chief Judge will be under no obligation to take the employees back.

But this argument, as noted by the district court when it denied the stay, presumes that this court will not decide the appeal until after the Office of the Chief Judge takes over. The district court found this unlikely. The court noted that the Transitional Administrator expects to be at the JTDC "'well into 2011,'" that the union didn't argue otherwise, and that based on the court's past experience with the litigation it did not expect the Transitional Administrator's assignment to "conclude at any point in the near future." The court agreed

with the plaintiffs that the Transitional Administrator would "'almost certainly'" be in place to implement relief if this court reverses the June 23, 2010, order. Accordingly, the district court concluded that irreparable injury was not imminent.

The union does not address this conclusion in its motion but instead claims that the district court has expressed a desire to wind down the proceedings, and has not stated that it will retain jurisdiction over this case after resolution of the appeal. But this does nothing to address that fact that no one contends that the Office of the Chief Judge will be taking over anytime soon. Without the transfer to the Office of the Chief Judge, there is no irreparable harm.

Furthermore, we are doubtful of the union's arguments that it has a likelihood of success on the merits of the appeal. Considering that the Transitional Administrator was put into place to enforce the parties' agreements, which encompassed "hiring standards and procedures," it is unlikely that the Transitional Administrator has exceeded the scope of the agreements in implementing the new staffing plan. Nor are we convinced that the Transitional Administrator is required to engage in collective bargaining over the new staffing procedures and criteria. Considering the burdens put on the management of the JTDC if it were not allowed to implement the new procedures, but instead had to collectively bargain over these employment practices, the burdens of bargaining likely outweigh the benefit. This could be dispositive. *See Cent. City Educ. Ass'n v. Illinois Educ. Labor Relations Bd.*, 599 N.E.2d 892, 897-98, 904-05 (Ill. 1992) (requiring balancing of benefits to determine if bargaining is required when employer action affects both conditions of employment, an area subject to bargaining, and managerial policy, an area not subject to bargaining).

In addition, we are not sure that the balance of harms weighs in the union's favor. The new staffing qualifications are meant to correct conduct, procedures, and practices that lead to this lawsuit in the first place. Without the new staffing procedures, the residents at the JTDC will still be subject (at least in part) to the care that the parties' agreements are meant to curtail. When considering the harm to the residents against the harm to the union and its members, inadequate (and arguably unconstitutional) care will likely trump potential job loss.

But we need not decide the likelihood of success and the balance of harms (or the public's interest for that matter) because the lack of irreparable harm is reason enough to deny the request for a stay. *See Graphic Commc'ns Union v. Chicago Tribune Co.*, 779 F.2d 13, 15 (7th Cir. 1985) ("Being likely to prevail is a necessary but not sufficient condition for obtaining a stay (or other injunctive relief) pending appeal; another necessary condition is that the appellant will suffer irreparable harm if the stay is denied."). The union is free to seek injunctive relief, if necessary, when a date is set for transfer of control of the JTDC to the Office of the Chief Judge.