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United States District Court, M.D. Alabama, Northern Division.

Sallie WILLIAMS and Johnie Love, Plaintiffs,
v.
MONTGOMERY COUNTY SHERIFF'S DEPARTMENT, et al., Defendants,
Albert B. DODSON, et al., Defendant–Intervenors.

No. Civ.A. 82–T–717–N. | Aug. 10, 1999.

Attorneys and Law Firms

M. Wayne Sabel, Sabel & Sabel, P. C., Montgomery, AL, for Sallie Williams, individually and on behalf of all persons similarly situated, plaintiff.

M. Wayne Sabel, (See above), for Johnie Love, individually and on behalf of all persons similarly situated, plaintiff.

David George Flack, Montgomery, AL, for Albert Dodson, intervenor-plaintiff.

David George Flack, (See above), for Steven R. Parker, intervenor-plaintiff.

David George Flack, (See above), for Jon M. Highland, intervenor-plaintiff.

David George Flack, (See above), for Mark C. Thompson, intervenor-plaintiff.

David George Flack, (See above), for William H. Mills, intervenor-plaintiff.

David George Flack, (See above), for Travis A. Parker, intervenor-plaintiff.

David George Flack, (See above), for Gregory D. Beidleman, intervenor-plaintiff.

David George Flack, (See above), for Robert L. Ingram, intervenor-plaintiff.

David George Flack, (See above), for Robert A. Stone, intervenor-plaintiff.

Cynthia Williams Clinton, Tyrone Carlton Means, Kenneth Lamar Thomas, Robert M. Weinberg, John W. Adams, Jr., Thomas, Means, Gillis, Devlin, Robinson & Seay, PC, Montgomery, AL, for Montgomery County Sheriff's Department, defendant.

Cynthia Williams Clinton, Tyrone Carlton Means, Kenneth Lamar Thomas, Robert M. Weinberg, (See above), for Dan Jones, as Sheriff of the Montgomery County Sheriff's Department, defendant.

Cynthia Williams Clinton, Tyrone Carlton Means, Kenneth Lamar Thomas, Robert M. Weinberg, (See above), for Calvin Huggins, as Chief Deputy of the Montgomery County Sheriff's Department, defendant.

Cynthia Williams Clinton, Tyrone Carlton Means, Kenneth Lamar Thomas, Robert M. Weinberg, (See above), for Willie McKitt, Jr., as Administrator of the Jail, Montgomery County Sheriff's Department, defendant.

Cynthia Williams Clinton, Tyrone Carlton Means, Kenneth Lamar Thomas, Robert M. Weinberg, (See above), for R.E. Singleton, as Assistant Administrator of the Jail, Montgomery County Sheriff's Department, defendant.

Thomas T. Gallion, III, Haskell, Slaughter, Young & Gallion, Montgomery, AL, FTS, Robert M. Weinberg, (See above), for Montgomery County Commission, defendant.

Thomas T. Gallion, III, Robert M. Weinberg, (See above), for David Stockman, defendant.

Cynthia Williams Clinton, Tyrone Carlton Means, Kenneth Lamar Thomas, Robert M. Weinberg, (See above), for

Montgomery City–County Personnel Board, defendant.

Opinion

OPINION

THOMPSON, J.

***1** This long-running sex-discrimination class action against the Montgomery County Sheriff's Department and county officials is before the court on the defendants' amended motion, filed March 11, 1999, to modify permanent promotion plan and for approval of random selection procedure for selections from within bands. The motion has an aspect to which the plaintiffs agree (random selection in general) and an aspect to which they object qualified candidates and the establishment of panels of officers to decide promotions from within the bands. Under the terms of the decree, the defendants were to establish fair, objective, consistent, and job-related procedures for use by the 'captain's panel' in making promotion decisions.

On November 12, 1997, the plaintiffs in this lawsuit filed a motion for further relief alleging that the promotional procedure was not being administered in conformity with the court-ordered promotion plan. On June 18, 1998, the court found that the defendants had failed to comply with the court-ordered promotion plan's requirements for establishment of procedures for selections from within bands because, among other reasons, the procedures employed by the Sheriff's Department were so subjective and unrelated to job responsibilities that they were essentially meaningless. *See* Order, entered June 18, 1998, at 2. The court ordered the defendants to bring the in-band selection procedure into compliance with the court-ordered promotion plan and noted that the (the manner in which the random procedure is to be implemented). To the extent the motion has an aspect to which the plaintiffs agree, the court has treated the motion as one for approval of a partial settlement. For reasons to follow, the court will grant the defendants' motion in its entirety.

I. BACKGROUND

On July 3, 1995, this court approved a consent decree settling this lawsuit and a companion lawsuit charging the Montgomery County Sheriff's Department with race discrimination.[1] *See Sims v. Montgomery Cty. Commission,* 890 F.Supp. 1520 (M.D.Ala.1995) (Thompson, J.), *aff'd,* 119 F.3d 9 (11th Cir.1997) (table). One provision of the consent decree set forth a procedure, called a 'captain's panel,' for making promotions in the Sheriff's Department. The 'captain's panel' promotion plan involved the classification of employees into 'bands' of equally defendants could propose an alternative plan if all parties agreed.

On March 11, 1998, the defendants submitted a proposal for a new promotion procedure utilizing random computer selection of candidates within bands of equally qualified candidates. In a conference with the court, counsel for the plaintiffs indicated that the plaintiffs agreed to the implementation of some form of random-selection plan. The court thus treated the defendants' motion as a joint motion for approval of a partial settlement, ordered notification of the class, and set a fairness hearing on the proposed partial settlement.

***2** The plaintiffs thereafter submitted a proposal utilizing random computer selection from within bands in a manner different from that proposed by the defendants. The key difference between the two proposals is that the defendants want to rank all employees randomly within each band every two years, make the ranking public, and promote candidates in order of their computer-generated rank during that two-year period. The plaintiffs, on the other hand, want the defendants to select randomly one person and an alternate from the top band each time a position becomes available and not to have a standing, public ranking of all employees.

II. DISCUSSION

The court will explain first its decision to approve the proposed partial class-action settlement to adopt the use of random

selection within bands. The court will then explain its decision to adopt the defendants' proposed modification to the consent decree to select promotees from a randomly ranked list of promotion candidates.

A. Approval of the Partial Class–Action Settlement

The parties agree that the court should modify the earlier ordered consent decree to replace the "captain's panel" procedure with one whereby promotion candidates are randomly selected from within bands of equally qualified candidates. Because the proposed modification to the promotion procedure is a product of settlement in a class action, the court must measure it against the legal requirements for class-action settlements. Judicial policy favors voluntary settlement as the means of resolving class-action cases. *Cotton v. Hinton,* 559 F.2d 1326, 1331 (5th Cir.1977).[2] However, "the settlement process is more susceptible than the adversarial process to certain types of abuse and, as a result, a court has a heavy, independent duty to ensure that the settlement is 'fair, adequate, and reasonable." ' *Paradise v. Wells,* 686 F.Supp. 1442, 1444 (M.D.Ala.1988) (Thompson, J.) (quoting *Pettway v. American Cast Iron Pipe Co.,* 576 F.2d 1157, 1214 (5th Cir.1978), *cert. denied,* 439 U.S. 1115, 99 S.Ct. 1020 (1979)). This abuse can occur when, for example, "the interests of the class lawyer and the class may diverge, or a majority of the class may wrongfully compromise, betray or 'sell-out' the interests of the minority." *Id.* Besides evaluating the fairness of the settlement agreement, the court has the duty to make sure that the settlement is not illegal or against public policy. *See Piambino v. Bailey,* 757 F.2d 1112, 1119 (11th Cir.1985), *cert. denied,* 476 U.S. 1169, 106 S.Ct. 2889 (1986).

Before resolving these concerns, the court must ensure that all interested parties were informed of the settlement and had the opportunity to voice their objections. As required by Rule 23(e) of the Federal Rules of Civil Procedure, the court ordered the parties to provide notice of the partial settlement of the promotion-procedure issue to the plaintiff class. The notices advised recipients of the proposed modification; they advised of the date, time, and place of the fairness hearing and the deadline for filing objections to the proposed modification; and they included specific information about how to present objections in writing and at the fairness hearing. The notices and proposed modifications were posted on bulletin boards of various divisions of the Sheriff's Department and were given to employees when they picked up their paychecks. All but two employees, one of whom was in Kosovo and the other of whom was on extended vacation, received the notices. The court conducted a fairness hearing on June 28, 1999.

***3** The notices were adequate to inform all the interested parties about the provisions of the partial settlement. The fairness hearing and opportunity for written objections were adequate to solicit and determine the views of the class members. In sum, the notices and fairness hearing were sufficient under Rule 23(e).

"In determining whether a settlement is fair, adequate, and reasonable, the obvious first place a court should look is to the views of the class itself." *Paradise,* 686 F.Supp. at 1444. Determining those views and quantifying them in a manner that enables the court to determine whether the settlement is fair is, however, not always easy. The court should be careful "not [to] allow a majority, no matter how large, to impose its decision on the minority," *Pettway,* 576 F.2d at 1217; the court should be certain "that the burden of the settlement is not shifted arbitrarily to a small group of class members." *Id.* However, where the settlement provides for structural changes, with each class member having a virtually equivalent stake in the changes, and where there are no conflicts of interest among class members or among definable groups within the class, then the decision to approve the settlement "may appropriately be described as an intrinsically 'class' decision in which majority sentiments should be given great weight." *Id.*

No class members appeared at the fairness hearing or submitted written objections. However, plaintiff-class counsel has informed the court of the following: (1) that the majority of the class members who attended the meetings with class counsel are in favor of random selection by computer; (2) that one class member expressed the opinion that she would prefer an improved version of the captain's panel; and (3) that some members of the female class expressed the view that they would prefer to have selections within bands determined by a performance appraisal system.[3] The court concludes that the majority of the class approves of the random-selection process.

"In addressing whether a settlement is fair, adequate, and reasonable, a court should also consider the judgment of experienced counsel for the parties." *Paradise,* 686 F.Supp. at 1446. Here, counsel for the plaintiffs believes that "some form of random selection process is probably in the best interest of the female class."[4] There is no reason to question counsel's dedication to the class he represents. Cf. *Pettway,* 576 F.2d at 1215 (court should be sensitive to potential conflict between class and its attorneys, particularly where large attorney fees may also be at stake).

"Finally, with the above considerations in mind, the court should itself assess whether the consent decree is fair, adequate, and reasonable," *Paradise,* 686 F.Supp. at 1446, as well as legal. *Id.* at 1448. The court finds that the proposed partial settlement meets these requirements. The implementation of random-selection procedures will decrease the opportunity for illegal discrimination to play a role in promotion decisions and is a relatively simple and feasible way of achieving the ultimate goal of preventing discriminatory promotion decisions. The court also finds that the proposal complies with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §§ 1981a, 2000e through 2000e–17, and the equal-protection clause of the fourteenth amendment to the United States Constitution, as enforced through 42 U.S.C.A. § 1983.

B. Method of Implementation

***4** The parties ask the court to decide between the two proposed methods of implementing the random-selection plan. The defendants contend that as long as their proposal complies with Title VII and the equal-protection clause, the court must accept it. The court agrees.

The Supreme Court has repeatedly made clear that, where courts are called upon to judge a local government's proposed implementation of a court decree in institutional-reform litigation, federal courts should "defer to local government administrators, who have the 'primary responsibility for elucidating, assessing, and solving' the problems of institutional reform, to resolve the intricacies of implementing a decree [ ]." *Rufo v. Inmates of Suffolk Cty. Jail,* 502 U.S. 367, 392, 112 S.Ct. 748, 764 (1992) (citing *Brown v. Bd. of Educ.,* 349 U.S. 294, 299, 75 S.Ct. 753, 755–756 (1955)). *See also Bd. of Educ. of Oklahoma City Public Schools v. Dowell,* 498 U.S. 237, 248, 111 S.Ct. 630, 637 (1991); *Missouri v. Jenkins,* 495 U.S. 33, 50–52, 110 S.Ct. 1651, 1662–1663 (1990); *Milliken v. Bradley,* 433 U.S. 267, 281, 97 S.Ct. 2749, 2757 (1977). "[P]rinciples of federalism and simple common sense require the court to give significant weight to the views of the local government officials who must implement any [decree]." *Rufo,* 502 U.S. 367, 393 n. 14, 112 S.Ct. 748, 764 n. 14. Therefore, the only issue for this court to decide is whether the defendants' proposal violates Title VII or the equal-protection clause, or otherwise violates public policy. *See Sims,* 890 F.Supp. at 1534.

The plaintiffs argue that the defendants' proposal would increase the possibility that discrimination will creep into the promotions process. The plaintiffs suggest that, if Sheriff's Department officials know who is in line for promotions, they can manipulate the promotions process to discriminate.[5] The plaintiffs contend that by forcing the Department to randomly select a candidate every time a position becomes available, such opportunities for discrimination will be minimized.

The defendants oppose the plaintiffs' proposal for two main reasons. First, they contend that it will increase administrative hassle, albeit only minimally. Second, they contend that employees prefer to have some idea of what their chances of promotion are so that they can plan accordingly.

The court agrees that the plaintiffs' proposal may lessen the possibility of illegal discrimination creeping into the promotions process in certain ways. However, the plaintiffs have not shown that illegal discrimination is likely under the defendants' proposed method of implementation or that the defendants' proposal violates Title VII or the equal-protection clause; and there is no guarantee, even under the plaintiffs' proposal, that discrimination cannot infect the process in some way. Therefore, the court concludes that the plaintiffs' concerns about the defendants' proposed method of implementing the random-selection proposal are not substantial enough to outweigh the interests protected by granting deference to local government administrators in the implementation of court-ordered institutional reforms.

***5** An appropriate judgment will be entered.

JUDGMENT AND INJUNCTION

In accordance with the memorandum opinion entered on this date, it is the ORDER, JUDGMENT, and DECREE of the court that:

(1) That the defendants' amended motion, filed March 11, 1999, to modify permanent promotion plan and for approval of

random selection procedure for selections from within bands, is granted;

(2) That the consent decree entered on July 3, 1995, is modified to the extent that the 'captain's panel' promotion procedure is replaced by one in which promotions are decided by random computer selection process, as described in the defendants' amended motion; and

(3) That the defendants, their officers, agents, servants and employees, and those persons in active concert or participation with them who receive actual notice of this order, be and they are each hereby ENJOINED and RESTRAINED from failing to comply with the consent decree entered on July 3, 1995, as modified this date.

Footnotes

[1] The race discrimination lawsuit has since been dismissed. *See Sims v. Montgomery Cty. Commission,* 9 F.Supp.2d 1281 (M.D.Ala.1998) (Thompson, J.).

[2] In *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

[3] Some class members wanted to have pure performance appraisals without banding. *See* Plaintiffs' response to Montgomery County Sheriff's Department's motion for approval of random selection procedure, filed April 5, 1999, at 5, ¶ 8 & n. 4. However, because the Sheriff's Department has not proposed eliminating banding, these class members do not advocate a viable alternative.

[4] Plaintiffs' response to Montgomery County Sheriff's Department's motion for approval of random selection procedure at 5, ¶ 10.

[5] As examples of possibilities for discrimination, the plaintiffs posit the following scenarios: (1) if a Sheriff's Department official does not like the person first in line for a promotion, but does like the second person in line, the official can fabricate disciplinary violations to attempt to disqualify the first-in-line person; or (2) if a Sheriff's Department official does not like the first person in line for promotion and knows that someone is about to retire, thereby opening up a position for promotion, the official can encourage the soon-to-retire individual to stay on until after the two-year register of candidates expires so that the first-in-line person loses her position in line for promotion.