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

PEOPLE WHO CARE, et al., Plaintiffs,
v.
ROCKFORD BOARD OF EDUCATION, SCHOOL DISTRICT # 205, et al., Defendants.

No. 89 C 20168. | May 22, 1992.

**Attorneys and Law Firms**

Robert C. Howard, Chicago, Ill., for plaintiffs.

Anthony G. Scariano, Chicago, Ill., John Schmidt, Rockford, Ill., for defendants.

Stephen G. Katz, Chicago, Ill., for intervenor.

**Opinion**

***ORDER***

ROSZKOWSKI, District Judge.

***1** Before the court is Defendant's motion for temporary relief relative to the renovation of Roosevelt School and the issuance of bonds. For the reasons set forth herein, Defendant's motion is denied.

***BACKGROUND***

On April 29, 1992, Defendant filed with this court a motion for relief. That motion contains two parts. First, Defendant seeks relief from renovation in relation to Roosevelt School. Second, Defendant seeks relief from the issuance of bonds in the amount of ten million dollars.

The Second Interim Order entered in this case on April 23, 1991, provides as follows:

> C.6.e.... [T]he programs presently located at Wilson will be relocated to Roosevelt prior to the beginning of the 1992–93 school year. The District will make necessary physical repairs and improvements to the Roosevelt building in such amount as is determined ... to be necessary to render the Roosevelt building serviceable.
>
> D.4. *Roosevelt* For the *duration of this Order* the Roosevelt School shall be used to house the following District program (presently located at Wilson) and such other programs as are determined under § G.7.b:
>
> *a. Nursing program.*
>
> *b. Adult Education program.*
>
> *c. Special education machine shop.*
>
> *d. Drop-out Prevention program.*
>
> *e. Evening programs previously scheduled for Jefferson and East High Schools.*
>
> *f. Park district program.*
>
> *g. Rock Valley College extension program.*
>
> *h. RACC programs.*

Pursuant to Section G.7.b. of the Second Interim Order, the parties have estimated the cost of renovating Roosevelt School to be $3,400,000.00 of which $2,900,000.00 was appropriated by the sale of $15,000,000.00 Tort Immunity Bonds. The remainder of the estimated cost of Roosevelt School rehabilitation is to be paid from the second bond issue of $10,000,000.00.

Defendant now seeks to delay the opening of Roosevelt School under the guise of studying the feasibility of various alternatives that may or may not save the district money. Defendant contends that it owns facilities sufficient to house the Wilson programs for the 1992–1993 school year, thereby eliminating the need to renovate the Roosevelt School and thus obviating the necessity to expend $3,400,000.00 through the issuance of bonds. In short, under Defendant's current plan, the programs scheduled to be housed at Roosevelt School would be housed at Wilson School and the Wilson School programs would be housed at Haight School. Haight School is currently owned by Defendant and leased to Family Christian Fellowship. Defendant asserts that the relocation of the Wilson programs to Haight School would not interfere with the integrative provisions of the Second Interim Order and would not adversely affect the constituents of such programs.

Plaintiffs oppose such a request by Defendant. Plaintiffs argue that the request is made solely for the purposes of delay and alleged financial savings, two impermissible grounds for modification of the Second Interim Order. Plaintiffs further contend that Defendant's proposal actually costs money rather than saves money and that the proposal has significant adverse educational and desegregation consequences.

***2** Defendant's second request involves reducing the second bond issue from $10,000,000.00 to $5,000,000.00.[1] The Board of Education has recently approved the issuance of $10,000,000.00 in bonds with the caveat that a lesser amount would be issued if this court so approves. Defendant states that if this court would require the renovation of the Roosevelt School at some point in the future then Defendant would fully fund such renovation by the issuance of further bonds.

Plaintiffs also oppose this request contending that it is a recipe for financial and jurisprudential disaster. In so arguing, Plaintiffs point out that the Board of Education has failed to even once consult the district's own financial consultant on this matter. Plaintiffs assert that Defendant's request fails to provide adequate funding for the Second Interim Order, disrupts agreements concerning the allocation and management of the proceeds of the second bond issue, wastes money instead of conserving money and engenders unnecessary future litigation.

***DISCUSSION***

Section G.3.d. of the Second Interim Order sets forth the criteria under which Defendant may seek modification of the Order. This Section provides, in pertinent part:

> If in any instance the District believes that it is impossible to comply with the Order, or that a different but equally effective method of compliance should be permitted, the District shall fully present the matter to plaintiffs, and if necessary to the Monitor and the Court, and obtain either the concurrence of the plaintiffs or approval under § G.7 or § G.8 before adopting such a course of conduct.

A recent United States Supreme Court case has also shed light on the subject of modification of a consent decree. In *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 112 S.Ct. 748, 760 (1992), the Court held:

> Although we hold that a district court should exercise flexibility in considering requests for modification of an institutional reform consent decree, it does not follow that a modification will be warranted in all circumstances. Rule 60(b)(5) provides that a party may obtain relief from a court order when "it is no longer equitable that the judgment should have prospective application," not when it is no longer convenient to live with the terms of a consent decree. Accordingly, a party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree. If the moving party meets this standard, the court should consider whether the proposed modification is suitably tailored to the changed circumstance.[2]
>
> A party seeking modification of a consent decree may meet its initial burden by showing either a significant change in factual conditions or in law.

The court finds it obvious that there has been no change in law necessitating a modification of the Second Interim Order. The Supreme Court explained that:

> A consent decree must of course be modified if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under federal law. But modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent.

***3** *Id.* at 762. Clearly, such in not the case here. Desegregation has been the law in this land for four decades. The question thus becomes whether there has been a significant change in the factual conditions surrounding the Second Interim Order.

In considering a change in factual conditions, the Supreme Court's decision in *Rufo* is again instructive. The Court explained:

> Modification of a consent decree may be warranted when changed factual conditions make compliance with the decree substantially more onerous.... Modification is also appropriate when a decree proves to be unworkable because of unforeseen obstacles ... or when enforcement of the decree without modification would be detrimental to the public interest....
>
> Ordinarily, ... modification should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree.... If it is clear that a party anticipated changing conditions that would make performance of the decree more onerous but nevertheless agreed to the decree, that party would have to satisfy a heavy burden to convince a court that it agreed to the decree in good faith, made a reasonable effort to comply with the decree, and should be relieved of the undertaking under Rule 60(b).

*Id.* at 760–61 (citations omitted). The court finds that Defendant has not met its burden of showing a significant change in factual conditions necessitating a modification

of the Second Interim Order.

This court has personally visited the schools at issue; namely, Roosevelt School, Haight School, Wilson School and Garrison School. The court has also personally talked with a variety of school administrators, educators, financial consultants, architects and building maintenance personnel and has reviewed numerous reports and documents submitted by these individuals. Finally, the court's own monitor has investigated and reported to the court concerning the matters at hand. The court finds that there are no factual conditions necessitating delaying the renovation of Roosevelt School or reducing the amount of the bonds to be issued. In fact, the court finds that such a delay and reduction would be counter-productive for the following reasons.

***I***

Defendant first moves this court for temporary relief relative to the renovation of Roosevelt School. In relation to this motion, Defendant sets forth several "temporary alternative proposals." The court finds no reason to continue to delay the renovation of Roosevelt School.

Defendant relies heavily on Haight School as an alternative to Roosevelt School for housing three programs. The court finds Haight School to be totally inappropriate as an alternative to Roosevelt School for several reasons. First, and most important, the court finds that Haight School is not a viable alternative to Roosevelt School in terms of desegregation, the trust of the Second Interim Order. The location of Haight School is the main reason. Haight School is in a majority neighborhood and the programs to be implemented at Roosevelt School under the Second Interim Order aim at minority students.[3] Moreover, Haight School is located exactly three miles north of Roosevelt School. No mass transportation services the area around Haight School and the mass transit authority is unwilling to service the area.[4] The location of Haight School would simply add one more hurdle to already burdened minorities, making it difficult to attract students into these programs. Accordingly, the school district would have to absorb the costs of transportation, which is estimated to be $137,700.00 annually. This cost is totally avoided by reopening Roosevelt School, a school centrally located and within easy walking distance of community services such as public libraries, museums, parent centers and the Health Department.

***4** Furthermore, Haight School is an elementary school and, as such, renovation would be required in order to accommodate adult students (e.g., restrooms, drinking fountains). Haight School is also a "pod" school, a concept popular in the 1960's but soon found to be unworkable and unmanageable. The money spent in this renovation would be lost dollars should Roosevelt School become the permanent site for the housing of the programs. In addition, the School District would also lose $18,000.00 in revenue dollars from the tenant currently occupying Haight School. While the court recognizes that Haight School is large enough to accommodate the programs proposed to be housed there and the building is in good condition, the court finds that a movement of the programs to Haight School diminishes the educational and desegregative efforts of the Second Interim Order as the individuals using the programs that would be housed at Haight School would have difficulty travelling to the school.

The court also finds that Garrison School is not a viable alternative to Roosevelt School.[5] Garrison School was erected in 1887 and would require a lot of basic renovation work, including wiring, window replacement and heating system renovation. The estimated cost of this basic renovation of Garrison School is $850,000.00 to $950,000.00. This estimate does not include asbestos removal. Parking is also insufficient at Garrison School. The money that would be required to be put into the renovation of Garrison School would, in short, be a total waste of taxpayer dollars.

Under the terms of the Second Interim Order, Wilson School is to be a full-site magnet school housing the Science and Technology Academy. Defendant proposes that six other programs also be located at Wilson School.[6] Numerous problems exist with this aspect of Defendant's proposal. Both the monitor and educators agree that a full-site magnet school is necessary if full realization of magnet educational and desegregative outcomes are to occur. One must have a clear identity with a magnet program in a magnet school and this identity would be lost if the magnet program would become mixed with other programs at the site. Consolidating other programs into Wilson limit the expansion of the Science and Technology program.

Educators are also concerned with the potential disciplinary problems that may arise when high school age students are mixed with elementary students. Dissimilar ages and types of students within the same building is not an educationally sound alternative. Furthermore, additional expenses would have to be incurred in adjusting classroom locations to allow for a multiple use facility. For example, approximately $20,000.00 would have to be spent to improve the lighting and lower the ceiling in the area where the Rockford School of Practical Nursing would be housed. Accordingly, the court finds that Defendant has not shown a significant change in factual conditions in order to modify this major portion of the Second Interim Order.

***5** As stated earlier, this court has personally viewed the schools at issue in this matter. The court must say that it was quite impressed with Roosevelt School. The court was assured by experts, including architects and construction engineers, that Roosevelt School is "structurally sound" and easily worth renovating. Such a school could not be built today and anything similar in size[7] would cost approximately $20,000,000.00 to $25,000,000.00. While Roosevelt School has not been used to house classrooms since 1981, the building has a new roof[8] and is very clean as it has been used for janitorial training. Roosevelt School also has an auditorium that was remodeled one year before the school was closed and which the court views as a community asset.[9] The Auditorium seats approximately 800 individuals and can be used daily by the nursing program and at least once per month by the Teacher Development Center as well as any other large group activity. In short, Roosevelt School is an extremely versatile building. The court has also been informed that Roosevelt School is one of the most economical schools in the district to operate. The school has two boilers, both of which are in good operating condition.

Defendant's main concern is for more time to study the alternatives to renovating Roosevelt School. The court finds such a delay would accomplish nothing and would cost the district more money in the long run. Numerous experts, as well as the court, have studied the situation, both prior to the entry of the Second Interim Order and again at this juncture, and have found no suitable alternative to Roosevelt School. In fact, delaying the opening of Roosevelt School will actually cost the district money. Utility and maintenance costs on an empty building are estimated at $50,000.00 to $60,000.00 per year. Vandalism is also always a concern when attempting to maintain an empty building. Furthermore, construction costs will certainly increase due to inflation the longer the project is delayed. Finally, increased attorney's fees would certainly result from challenges by Plaintiffs to Defendant's continued non-compliance with the Second Interim Order.

Costs have already been incurred under the Second Interim Order in anticipation of the reopening of Roosevelt School. The architect has estimated that his planning fees for work already performed is $130,000.00. Asbestos removal planning has incurred expenses ranging from $16,000.00 to $32,000.00 depending on the final bid for asbestos removal. These costs would be lost if Roosevelt School is not renovated as planned. Moreover, the court notes that there will be costs with relocating programs wherever they may be housed. For example, moving expenses, telephone expenses, overtime and computer hookups expenses will be incurred. These costs are estimated to be between $25,000.00 and $50,000.00. This expense occurs every time a program is moved.

The court does find it interesting to note that since the April 23, 1991 Interim Order was entered, Defendant wasted no time in implementing those provisions that Defendant wanted to complete. The court points out that the Second Interim Order represents a negotiated settlement agreement, negotiated in good faith, with benefits to all parties to this action. Some parts of the Second Interim Order have already been carried out. However, now that the time has come to expend monies in order to renovate Roosevelt School Defendant is reluctant to carry out it obligations under the Order. A full year has passed since the entry of the Second Interim Order in this case, any alternatives to renovating Roosevelt School should have been brought to light long before now. Defendant's suggested temporary alternatives fly in the face of the educational and desegregative efforts of the Second Interim Order.

Accordingly, Defendant's motion for temporary relief in relation to Roosevelt School is denied. The court finds that Defendant's proposal fails to meet the modification criteria set forth in the Second Interim Order and set forth by the United States Supreme Court in *Rufo v. Inmates of Suffolk County, supra.* Furthermore, the court finds that Defendant merely seeks delay and presents no viable alternatives to Roosevelt School. As outlined above, Defendant's proposal actually wastes money rather than saves money[10] and, most importantly, has significant adverse educational and desegregation consequences. Defendant's alternatives burden the minority district and diminishes the provisions of the Second Interim Order. Accordingly, Defendant's proposal does not, as Defendant argues, "do the same thing only cheaper." When all is done, Defendant's proposals have not solved the problem that the Second Interim Order addresses. Therefore, the court orders Defendant to immediately take whatever steps are necessary to renovate Roosevelt School in line with the terms of the Second Interim Order.

***II***

***6** Defendant also seeks relief in relation to the issuance of $10,000,000.00 in bonds to fund various provisions of the Second Interim Order. The court has also intensely investigated this matter and has consulted with various experts. Again the court finds that many problems exist in relation to this part of Defendant's motion making Defendant's proposal unsatisfactory and financially irresponsible.

The biggest problem with a $5,000,000.00 reduction in the bond issuance is that a $973,824.00 deficit would result. Obviously more bonds would have to be issued almost immediately. Multiple bond issues result in unnecessary duplicative costs.[11] Moreover, the court has

been informed by various experts that the current bond market is at a five year low and therefore, represents a favorable bond market at this time.

With the issuance of $10,000,000.00 in bonds, a $776,176.00 contingency fund would result. This contingency fund serves two basic purposes. First, the fund provides additional money if the ultimate cost of any of the items under this part of the Second Interim Order exceeds the initial estimate. Second, the fund provides capital for other provisions of the Order, the cost of which have not yet been determined. Accordingly, the court views that amount in the contingency fund to be conservative in size.

Finally, the court has been informed that there is no advantage in terms of bank qualification designation, avoidance of arbitrage or rebate penalties in doing two separate bond issues. However, there is an interest rate risk involved with the postponement of $5,000,000.00 in total borrowing. The court recognizes that no one can predict, with any degree of certainty, the rise or fall of rates. The court simply points out that very attractive rates are available at the present time for issuers of municipal debt.

The court is concerned, however, that none of the money in the contingency fund be wasted. The court recognizes the tendency to spend dollars that are too easily available and not earmarked for a particular purpose. Accordingly, the court places the monitor, Dr. Eugene Eubanks in charge of the contingency fund. No contingency fund money can be expended without written permission of the monitor in order to ensure that the money is spent responsibly.

### *III*

In conclusion, the court wishes to emphasize that the sooner the Order is implemented, the less expensive it will be in terms of increased costs due to inflation and increased legal fees challenging the terms of the Second Interim Order and responding to these challenges. The court finds that delays in implementing the provision of the Second Interim Order are counterproductive and accomplish nothing. The court urges all parties to make a positive effort to commit to, and work toward, the completion of the terms of the Second Interim Order.

### *CONCLUSION*

For the reasons set forth herein, Defendant's motion for temporary relief relative to the renovation of Roosevelt School and the issuance of bonds is denied. The parties are ordered to proceed forthwith in implementing the terms and provisions of the Second Interim Order.

Footnotes

1 Although Defendant's motion asks for a reduction of $3,400,000.00 in Bonds, Defendant has stated to the court, the court monitor, Plaintiffs as well as the public that it seeks a reduction of $5,000,000.00 in bonds.

2 In a footnote, the Supreme Court noted that this standard only applies "when a party seeks modification of a term of a consent decree that arguably relates to the vindication of a constitutional right. Such a showing is not necessary to implement minor changes in extraneous details ... unrelated to remedying the underlying constitutional violation." This court finds that the enunciated standard applies to the matter at hand. What Defendant seeks to modify, as will be detailed later, in effect changes the entire desegregation decree by changing the plan for the housing of various programs necessary to the education of minority students. *Id.* n. 7.

3 Fifteen separate programs are to be housed at Roosevelt School. Defendant proposes that the adult education program, the alternative high school and the adult evening high school be housed at Haight. Sixty-one percent of the students in these programs are minorities. These students represent the least socialized, least socio-economic advantaged and least mobile individuals in the community.

4 The court was informed by the educators consulted that adult students enrolled in the adult education programs constantly stop by the school for assistance with educational issues and concerns and attend school while at the same time accommodating a work and family schedule. Thus, they comprise an extremely mobile student population.

5 Defendant proposes that the following programs be housed at Garrison School: early childhood, parent information center, staff development teacher center, source and 0–3 infant education.

6 These programs are: Rockford School of Practical Nursing, Specialized Vocational Education, Home School Counselors, Private and Parochial, SEEK/Early Childhood and Chapter 1.

7 Roosevelt School is comprised of 150,000 square feet.

8 The roof was replaced in late 1991.

9 The court is not so naive as to think that Roosevelt School is in perfect operating condition. Obviously this is not the case since renovation costs are $3.4 million. The court, however, after consulting with numerous experts finds this money to be wisely spent.

10 The costs of Defendant's temporary alternatives have been estimated to be between $600,000.00 and $180,356.86 for all annual and one time costs. This would be wasted money should no permanent alternative to Roosevelt School be found and Roosevelt School be renovated at some point in the future.

11 The cost of issuing bonds in two stages is $329,330.00. The cost of one bond issuance is $265,540.00. Accordingly, there would be an estimated additional cost of $63,790.00 if the bonds were sold in two bond sales of $5,000,000.00 each.