

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

H(2374)83

CRATON LIDDELL, et al.,)
)
 Plaintiffs,)
)
v.)
)
THE BOARD OF EDUCATION OF)
THE CITY OF ST. LOUIS,)
STATE OF MISSOURI, et al.,)
)
 Defendants.)

No. 72-100C(4)

FILED

MAY - 6 1983

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

MEMORANDUM OF DEFENDANT MEHLVILLE SCHOOL DISTRICT

On April 29, 1983, this Defendant appeared before the Court, along with the other parties to this case, in connection with the "Fairness Hearing" held by the Court on April 28th and April 29th, 1983, and scheduled for conclusion on May 13, 1983. At the close of the proceedings on April 29, 1983, the Court ordered this Defendant to submit its memorandum in reponse to Plaintiff's objections to this Defendant's presentation of evidence at the "Fairness Hearing". This Memorandum is in response to that order.

1. On April 4, 1983, this Defendant filed its report H(2243)83 conditionally accepting the Settlement Agreement filed in this cause "as a fair and reasonable resolution of Plaintiff's interdistrict claims".

2. On April 8, 1983, this Court filed its order H(2278)83, directing parties to this litigation to file their witness lists, exhibit lists, and briefs.

3. On April 8, 1983, this Court filed its order H(2276)83, inviting interested persons to "...appear at the hearing in

person or by counsel and make an oral presentation setting forth why the proposed settlement either should or should not be approved by the Court as fair, reasonable and adequate."

4. On April 25, 1983, this Defendant filed its witness list, exhibit list, and brief in support of its position on the proposed Settlement Agreement H(2320)83, indicating its intention to present certain witnesses and evidence to the Court at the April 28, 1983 hearing.

5. At the hearing held on April 28, 1983, those parties which unconditionally accepted the Settlement Agreement made opening statements, and presented witnesses and evidence to this Court; on April 29, 1983, certain opponents of the proposed Settlement Agreement (including parties and non-parties) were permitted to present evidence in support of their opposition to the proposed Settlement Agreement. Following the presentation of evidence on April 29, 1983, the Court ordered the State of Missouri and the City of St. Louis to present their evidence in opposition to the proposed Settlement Agreement on May 13, 1983, and left open the question of the presentation of evidence by Defendant Mehlville School District and Rockwood School District, pending submission of memoranda by the parties.

6. This Defendant cannot comprehend the legal basis upon which Plaintiffs object to this Defendant's participation in these fairness hearings.

A. This Defendant is a named party in this action, and as such has an absolute legal right to participate in each and every legal proceeding having to do with the disposition of this cause.

B. The Court has permitted interested non-parties to present evidence in the form of sworn testimony and written statements. Those non-parties include representatives of various neighborhood school groups, parents associations, teachers associations, and others. The refusal to permit this named party Defendant to participate actively in these hearings would be the equivalent of relegating this Defendant to a position of stature lower than that of a non-party. Counsel for this party has been unable to locate any case which even remotely addresses this issue, for the simple reason that Plaintiffs' objection to Defendant's participation is probably unique.

7. Due process requires that Rule 23(e) proceedings afford all interested parties an opportunity to present their objections, and to be heard. Mendoza v. United States 623 F2d 1338 (9th Cir., 1980), cert. denied, 450 U.S. 912 (1981). At the Rule 23(e) hearing, the Court is required to receive evidence supporting and opposing the Settlement Agreement, to decide if the Agreement is fair, reasonable, and adequate. The Manual for Complex Litigation, Part I Section 1.46 at p. 52-53.

8. Each of the four concerns expressed by this Defendant in its position on the proposed Settlement Agreement are germane to the issue of whether that Agreement is fair, reasonable and adequate.

A. The affirmative action provisions of Section VI of the proposed Settlement Agreement will impact on black and white teachers. If the Mehlville School District's "RIF'd" teachers have contract rights superior to "new hires", this Agreement may

not be fair and adequate to the black teachers affected, or the black students to whom they are expected to teach. If the District's "RIF'd" teachers have rights inferior to the teachers to be hired under the affirmative action provisions of the proposed Settlement Agreement, this Agreement may not be fair or reasonable as to those "RIF'd" teachers. In either event, the litigation which is certain to arise when teacher vacancies are filled at the Mehlville School District on account of its participation in the Settlement Agreement will not be fair or reasonable to this Defendant.

B. The financial implications of the Settlement Agreement are a matter of utmost concern to all parties involved in this case. The evidence sought to be presented by the Mehlville School District bearing on financial costs to the District of participation in this Agreement should certainly be of the utmost interest to this Court.

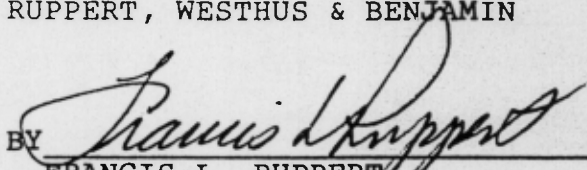
C. The Agreement is ambiguous as to the authority of the monitor to recommend involuntary interdistrict busing, and is ambiguous as to the duration, modification, or termination of the Settlement Agreement. No settlement agreement can be considered fair, reasonable, or adequate if it is susceptible of an interpretation antithetical to the interests of parties to that agreement, and particularly where interpretation to be glossed upon the agreement many years after its initial implementation may disappoint the class members who believed that a different interpretation would be applied.

For all of the foregoing reasons, this Defendant moves the Court to permit its counsel to participate in the proceedings to

be held on May 13, 1983; and in particular to permit opening statements and a presentation of evidence addressed to the issues raised in its report H(2320)83.

RUPPERT, WESTHUS & BENJAMIN

BY

A handwritten signature in cursive script, appearing to read "Francis L. Ruppert", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing were mailed, postage prepaid, to the following attorneys of record on this 6 day of May, 1983, or as shortly thereafter as may be required to receive and affix the appropriate court designation.

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