UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	No.72-100C(4)
	)	
THE BOARD OF EDUCATION OF THE CITY OF CHICAGO OF ST. LOUIS, STATE OF MISSOURI, et al.,	)	

REPLY BRIEF OF THE ST. LOUIS TEACHERS UNION, LOCAL 420

NOW COMES the St. Louis Teachers Union, Local 420 and states in reply to the opposition to its motin to intervene as follows:

The Joint Memorandum of the City Board, Liddell and Caldwell in opposition to the Motion to Intervene relies heavily on the argument that intervention at this time is untimely and unnecessary because other groups involved in the litigation have protected the interests of the St. Louis teachers and staff members in the proposed settlement. Further, during oral argument on our motion, the attorney for the City Board asserted that the Motion to Intervene was deficient because it was limited to issues of concern to teachers and staff members while an attorney for the suburban districts took the position that the lack of protection for City Board employees was consistent with Supreme Court determinations.

We believe that each of the arguments is flawed, and upon review, highlights the need for protection of City Board employees.

I

THE REQUEST OF THE ST. LOUIS TEACHERS UNION TO INTERVENE IS TIMELY AND PROPERLY DIRECTED TO ISSUES OF CONCERN OF ITS MEMBERS

While the case was in the liability phase, there was no reason for involvement

by the St. Louis Teachers Union, Local 420 (herein after Local 420). Upon learning that the parties were discussing a settlement, Local 420, filed a Motion for Leave to File Suggestions in regard to the proposed settlement agreement. The court denied that motion stating:

> "The Court has endeavored, by appointment of the amicus curiae and various committes, to provide a means of input for non-party interests. Were every element of the interested public permitted a special right of input into the proposed settlement,or any phase of the litigation, there would be no progress."

At the time of the court's ruling, such may have been a reasonable position. In this regard the court had before it the Cross-Claim of the City Board H (146) 81 wherein it was affirmatively asserted at page 5:

> "Following the Supreme Court's 1954 decision in Brown v. Board of Education,347 U.S. 483 (1954), the State of Missouri and the other cross-defendants continued virtually the same patterns of racial segregation in schools throughout the metropolitan area. Since 1954, the cross-defendants have failed to discharge their constitutional duty to dismantle the dual structure of public education they created in the St. Louis metropolitan area. They have . . . assigned personnel on a discriminatory basis, and taken other comparable actions all with the effect and/or purpose of perpetuating and expanding the racially dual structure of public education in the St. Louis metropolitan area.
>
> And at page 6:
>
> "Similarly, faculty hiring and assignments continue to reflect the racial identifiability of St. Louis area school districts. Based on available data, it is estimated that approximately 91 percent of all black faculty in the metropolitan area teach in only five districts — St. Louis, Normandy, University City, Wellston, and Ferguson-Florissant. Of the remaining school districts, 34 have facilities that are less than 10 percent black, including 19 that have faculties less than 1 percent, or no black faculty at all.

Unfortunately, as the settlement has developed, no effective means of protecting the rights of the teachers and other staff members has been incorporated into the plan in the event that reductions in staffing in St. Louis occur because of the reduction of the student population in St. Louis,[1] directly related to the desegregation plan.

---

[1] We would note that if the Court adopts the approach and funding level for compensatory programs in St. Louis,the problems of dislocation may be reduced. However, the overriding problem of removing the vestiges of a dual system would remain. See Milliken v. Bradley, 433 U.S. 347, 97 S. Ct. 2749 (1977) and cases cited therein 97 S. Ct. at 2758-59.

We do not claim that this failure to protect the rights of teacher and staff members occurred as a result of bad faith on the part of the City Board, Liddell and Caldwell. However, the failure to achieve protection for St. Louis teachers and staff members is clear on the record. As set forth in the Court's own Memorandum of Concerns (H (2339) 83 at page 2):

> Additionally, the plan invokes a "best-qualified" standard as an exception to the affirmative action hiring goals contained in the agreement. This standard could potentially provide approval for schools having no black administrators, no black teachers,and no black support personnel. The phrase "best qualified" has a familiar ring — like "separate but equal," which is no longer constitutionally permissible.

Local 420 is the most appropriate group to represent the interest of the teachers and staff members. The current parties have already indicated their assent to the agreement and cannot, as a practical matter, press for any changes.[2] We believe it is preferrable to have the party directly involved attempt to resolve the matter rather than ask the court to impose a settlement or modification in the first instance.

II

THE MOTION FOR INTERVENTION PRESENTS AN ISSUE NOT RESOLVED BY THE COURTS PREVIOUS RULINGS

The City Board's opposition memorandum asserts that intervention is improper because another group (North St. Louis Committee) with similar concerns was denied intervenor status. This argument fails because the teachers and staff members have not had their interests protected and because their interests are distinct from that of any other group. In this regard, we would note that our intervention would not open this case up for intervention by other groups. The City Board's shift of position from that set forth in their cross claim is the type of circumstance which would justify the court permitting intervention now where it had not permitted other groups to inter-

---

[2] We would particularly note that our motion is directed at a legal issue and not a negative reflection of the individuals involved. Attorneys for the City Board, NAACP and Liddell plaintiffs have been accommodating in discussions with us and providing us with documents.

vene. As set forth In Re Exterior Siding and Aluminum Com., 696 F.2d 613 cited in the opposing memorandum.

> ". . .the court based its holding in large part on the important changes in circumstances which had occurred between the two rulings. It is this "charged circumstances" basis which has formed the rationale for allowing a distinct court to overrule its predecessor in most instances . . .(citations ommitted) id. 696 F.2d at 617.

Thus, even the authority cited by the City Board supports our basic position that intervenor status should be granted because of a change in the position of the current parties.

III

THE LIMITED INTERVENTION SOUGHT HERE FURTHERS THE INTERETS OF ALL PARTIES IN RESOLVING THIS CASE IN A CONSTITUTIONALLY VALID MANNER

The City Board asserts that granting limited intervenor status would be improper. If the court would prefer we would not object to intervening in all phases of this case. However, we do not believe that approach is wise. We have tried to limit our position to issues directly affecting our members. The issues we raise go to possible constitutional deficiencies with the settlement. See Milliken v. Bradley, 97 S. Ct. at 2758.

> "The dispute . . . deals with faculty and staff desegregation, a goal we have recognized to be an important aspect of the basic task of achieving a public school system wholly free from racial discrimination." (citations omitted).

We are not seeking to dismantle the settlement or to renegatiate all of its terms. We are merely seeking to fine tune it in a way that prevents the teachers and staff members who dedicated their lives to working in an integrated environment, from bearing the brunt of the sacrifice in order to have student desegregation. See Richard Kluger, Simple Justice, The History of Brown v. Board of Education and Black America's Struggle for Equality, Vantage Books, a division of Random House, 1975) particularly Chapter 27; Visible Man: An Epliogue Twenty Years After, pages 748-778, for a graphic illstration of the efforts necessary to insure that the victims of segregation are not the ones who have to pay the price of a desegregation decision.

SUMMARY

For the reasons set forth above we respectfully request the right to intervenor status and an opportunity to resolve our objections to the settlement prior to final Court approval.

Michael Radzilowsky
One of the Attorneys for
St. Louis Teachers Union, Local 420
American Federation of Teachers

Of Counsel:

Bruce S. Feldacker

Lawrence A. Poltrock
Michael Radzilowsky
DeJONG, POLTROCK & GIAMPIETRO
221 N. LaSalle St., Ste. 2600
Chicago, Illinois 60601
(312) 236-0606

Bruce S. Feldacker
705 Olive, Suite 500
St. Louis, Missouri 63101