

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

APR 25 1983

H(2316)83

CRATON LIDDELL, et al.,)	EYVON MENDENHALL, CLERK
)	U. S. DISTRICT COURT
Plaintiffs,)	E. DISTRICT OF MO (4)
)	NO. 72-150104)
v.)	
)	Prefiling Circulation
THE BOARD OF EDUCATION)	Requirements Waived Pursuant
OF THE CITY OF ST. LOUIS,)	to H(2288)83.
STATE OF MISSOURI, et al.,)	
)	
Defendants.)	

RESPONSE OF DEFENDANTS ST. LOUIS COUNTY
SCHOOL DISTRICTS TO MOTION OF THE
CITY OF ST. LOUIS TO SET ASIDE ORDER H(2276)83
AND TO RESET FAIRNESS HEARING

Come now Defendants¹ St. Louis County School Districts and pursuant to H(2288)83, present their response to the Motion of the City of St. Louis to Set Aside Order H(2276)83 Approving Notice to Class Members, to Order Supplementation of Such Notice, and to Reset Fairness Hearing, H(2290)83. For their response, the St. Louis County School Districts state:

1. By Order H(2276)83 this court stated, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that it was appropriate to submit the pending settlement proposal between the parties in this case to the members of the classes represented

1. The Clayton, Kirkwood and Ritenour School Districts join in this motion, although they are not parties defendant, motions for their joinder having been stayed.

and to hold a hearing on the fairness of the settlement proposal, said hearing to take place on April 28, 1983 at 10:00 a.m.

2. By attachment of a form of notice, H(2277)83, this Court set forth the notice to be given and further found the notice to be a fair and adequate notice to members of the class. H(2276)83, page 3.

3. By its motion, H(2290)83, the City of St. Louis has objected to this notice on the basis that a single sentence within the portion of the notice which summarizes the terms of the agreement is so misleading as to make the entire notice defective. More specifically, the City of St. Louis regards as inaccurate the portion of the notice wherein the Court states:

"The Plan provides for funding from sources available to the State of Missouri and the Board of Education of the City of St. Louis."
H(2277)83, page 4.

The City of St. Louis, furthermore, states that "the notice in this respect appears calculated to mislead." The City of St. Louis contends this portion of the notice does not fairly apprise the taxpaying members of the affected classes of the terms of the settlement.

4. St. Louis County School Districts believe the notice, H(2277)83, is a proper notice under Rule 23(e) and does fairly inform the class members of the terms of the currently pending settlement.

5. Rule 23(e) of the Federal Rules of Civil Procedure specifically provides:

"A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." (emphasis added).

Quite properly, this provision gives the court virtually complete discretion in deciding the form of notice. Wright and Miller, Federal Practice and Procedure Vol. 7A Section 1797, Supp. page 203. The primary concern of the court under Rule 23(e) is to assure that any person whose rights would be affected by a dismissal or compromise has the opportunity to contest the proposed action and there is no single way in which the notice must be transmitted. Wright and Miller, *supra*, Section 1797, page 234, 237.

6. The Court's inclusion of a short summary of the proposed settlement is proper in the notice and is in fact recommended. Manual for Complex Litigation, 5th Edition § 1.46, page 55. As a general rule, the contents of a class action settlement notice must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings". Grunin v. International House of Pancakes, 513 F.2d 114, 122 (8th Cir. 1975); See Mendoza v. United States, 623 F.2d 1338, 1351 (9th Cir. 1980). This is accomplished by the notice given in this case. The fact that the notice does not completely set out verbatim the entire settlement agreement does not make the notice insufficient. Grunin, supra at 122. The

notice may consist of a very general description of the proposed settlement. Mendoza supra at 1351. As was said by the Eighth Circuit in Grunin, "any ambiguities regarding the substantive aspects of the settlement could be cleared up by obtaining a copy of the agreement as provided for in the . . . notice." Grunin supra at 122. In fact the Court in this case specifically stated within the notice itself that the summary of the terms of the agreement were to be in no way regarded as full and complete. The court stated:

"A general outline of the subjects contained in the proposed settlement agreement follows, but the only complete and accurate statement of the agreement's terms is contained in the complete copy of the proposed settlement agreement as submitted by the special master, H(2217)83 and the appendix . . . which are available for examination at the office of the clerk of the court." H(2277)83, p.4.

In this setting, the City of St. Louis' attack on the adequacy of the notice is without merit.

7. Further, even assuming that the notice did not somehow fully apprise the class members of the terms of the settlement agreement, more than sufficient notice has been provided to all interested persons of the complete terms of the settlement agreement through the mass media. Among the mountain of printed newspaper articles published about the impending settlement of this case are articles bearing the following headlines: St. Louis Globe Democrat, February 19-20, 1983 page 1A "Room Quotas, Tax Hike Part of School Accord"; St. Louis Post Dispatch, February 20, 1983, Page 1 "City Tax Hike is Part of School Settlement"; St. Louis Post Dispatch, February 22, 1983 page 6A

"Ferguson-Florissant Precedent for Tax Rise Under Court Order"; St. Louis Globe Democrat, February 23, 1983 page 9A "Highlights of School Agreements"; St. Louis Globe Democrat, April 1, 1983 page 1 "School Plan Called Money Bleeder"; St. Louis Globe Democrat, April 2-3, 1983 page 1 "School Plan Under Fire"; Id., page 8 "City Digs in Heels"; St. Louis Post Dispatch, April 2, 1983 page 1 "State and City Object to Desegregation Plan".

8. In addition, as of April 11, 1983 copies of the entire settlement agreement have been placed in every public school located in the City and County of St. Louis for review and inspection, pursuant to this Court's Order of April 8, 1983. H(2276)83.

9. Therefore, the City of St. Louis' motion to set aside and supplement the notice provided by this Court, H(2276) and (2277)83 is without merit and should be overruled.

9. The City, in its motion, H(2290)83, further requests the court reset the scheduled fairness hearing of April 28, 1983. As grounds for its motion the City states that it has requested informal discovery from the Board of Education of the City of St. Louis and the defendant St. Louis County School Districts with regard to financial information. The City claims it has not received such information from all parties and that accordingly the City's ability to prepare for the fairness hearing of April 28, would be seriously impeded. H(2290)83 page 2-3. Attached to its motion as Exhibit 1 and number 2 are the requests of the City of St. Louis for this financial information, which requests are respectively dated April 11 and April 8, 1983. The plain fact

is, however, that the City has long been a party to this litigation, and has been fully conversant with the issues in this case. Since the funding provisions of the proposed settlement track directly the terms of the Agreement in Principle, H(2141)83 dated February 22, 1983 the City of St. Louis has been on notice of these provisions which they dispute since at least that date. In fact, the City of St. Louis filed a response to the Agreement in Principle which directly raised its concerns over the financial aspects of the plan. H(2141)83. See also H(2234)83. To now state that it does not have sufficient time to adequately prepare for the hearing on the proposed settlement is without merit. Nearly two months have elapsed since the City first raised its objections on this basis and it has had more than sufficient time to prepare any objection. Furthermore, some of the information sought by the City of St. Louis has been voluntarily supplied and is a matter of public record.

WHEREFORE, the St. Louis County School Districts move this Court to overrule and deny, in every respect, the City of St. Louis' Motion To Set Aside Order H(2776)83, To Order Supplementation of Notice, and To Reset Fairness Hearing, [H(2290)83].

Respectfully submitted

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