

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : David L. Rose, Chief
Employment Section

DATE: February 26, 1971

GFG:kam

FROM : Gerald F. George
Attorney

SUBJECT: Proposed Intervention in the case
of Southern Illinois Builders
Association et al. v. Ogilvie, et al.,
C.A. No. 4748 (S.D. Ill.)

RECOMMENDATION

I recommend that we intervene in the above suit pursuant to Section 902 of the Civil Rights Act of 1964 and Rule 24(a) of the Federal Rules of Civil Procedure.

I. Facts

This case was filed in the United States District Court in Springfield, Illinois 1/ on January 29, 1971, seeking a declaratory judgment on the legality and constitutionality of the Ogilvie Plan and the priority to be given to the provisions of the various agreements and consent decrees relating to the Plan.

Plaintiffs in the action are the Southern Illinois Builders Assn. (SIBA) and Southern Illinois Contractors Assn. (SICA) which are bargaining agents for the contractors involved with the Plan. Defendants are the

1/ Springfield is seat of the Southern District of Illinois, which includes Madison and other counties which are within the unions' jurisdiction.

State of Illinois, through Governor Ogilvie and the state officials responsible for highway construction, the three trade unions (Ironworkers, Operating Engineers and Cement Masons) with whom we have consent decrees from Title VII suits, and the Metro-East Labor Council.

Essentially, the contractors seek either to avoid entirely their obligations under the Ogilvie Plan by having it declared illegal and unconstitutional or to have the court define the obligations of the parties involved so that the Plan can be effectively administered.

The contractors allege that the Plan is in violation of Title VII of the Civil Rights Act of 1964, and the Fifth and Fourteenth Amendments, and that they, therefore, have no obligation to the State under it.

The contractors allege in addition that Metro-East has refused to register trainees with the union and that the unions have been frustrating the contractors' efforts to comply with the Plan by requiring that the trainees and contractors comply with their labor agreements in matters of wage rates and referral and membership procedures. The contractors ask the Court to interpret the terms of the agreements, consent decrees and the Plan and to determine which shall prevail where a conflict occurs. The relief sought is the dilution insofar as possible of the Ogilvie Plan i.e. they ask that the Plan be declared illegal, or if it is not, that the consent decrees rule over the agreements, and that the labor agreements and decrees take precedence over the Plan's provisions. Finally, they ask that if the Plan is void, a declaration be made that the State cannot cut off funds, and if it is not entirely void that the court should declare that the Plan and labor agreements require that Metro-East and

and the unions comply with the Plan insofar as it is not voided by the decrees and labor agreements.

II. Reasons for Intervention

1. We can intervene as a matter of right under Rule 24(a) because of our interest in the Ogilvie Plan and as parties to the consent decrees (I suppose we could also intervene pursuant to Section 902 of the Civil Rights Act: the complaint alleges that the Ogilvie Plan is a violation of Title VII ~~and the 14th Amendment~~).

2. We certainly want the Ogilvie Plan upheld, and our presence as a party in the case may aid in obtaining a favorable decision from the court. At any rate we would be better off appealing an unfavorable decision as a party than as amicus.

3. The issues involved are legal and thus do not require the expenditure of resources which our trials generally entail, and the issues are not that difficult, with two district court decisions supporting this type of plan.

4. Our presence in the suit might forestall attempts to dilute the consent decree provisions on the Ogilvie Plan, and we might be able to strengthen with a court decree the general language of the Operating Engineers decree. We're better off, I presume, before this judge than before Judge Jurgens in any matter, including the decrees, involving the Ogilvie Plan.

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