

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

UNITED STATES OF AMERICA

Plaintiffs,

v.

**STATE OF MISSISSIPPI, ET AL.,
(Simpson County School District)**

Defendants.

**Civil Action No.:
J-4706(L)**

**UNITED STATES' MEMORANDUM IN SUPPORT OF ITS
AMENDED MOTION TO ENFORCE CONSENT DECREE**

The United States provides this memorandum in support of its Amended Motion to Enforce Consent Decree in the Hiring of Replacements for Principals Sidney Lee, Ernest Jaynes and Maggie Thompson. The District is in clear violation of this Court's 1983 Consent Decree requiring that the District advertise employment positions outside of the District and make efforts to recruit black applicants. Instead, the District is ignoring the 1983 Consent Decree and filling vacancies by promoting current employees without advertising the positions or recruiting qualified black applicants. The United States therefore requests that the Court order the District and its Superintendent to comply with the 1983 Consent Decree in filling the vacancies created by the retirements of Sidney Lee, Ernest Jaynes and Maggie Thompson.

STATEMENT OF THE CASE

In 1970, after the United States brought a complaint alleging that the defendants, including the Simpson County School District (“the District”) and its Superintendent, operated a racially dual system of public education in violation of the Fourteenth Amendment, this Court ordered the District to implement a desegregation plan. See Motion to Enforce Consent Decree, Exhibit 2. In 1982, a group of black parents intervened in the case, alleging, inter alia, that the District’s employment practices violated the court order. At the request of the Court, the United States joined the intervenors in investigating this allegation and, after negotiations, reached an agreement with the Defendants regarding the District’s employment practices. That agreement is the subject of the Consent Decree entered by this Court on August 22, 1983.

In the 1983 Consent Decree, the Court enjoined the District from failing to implement the commitments set forth therein. See Consent Decree, C.A. J4706(R), at 3, pt. III.D.1 (S.D. Miss. Aug. 22, 1983) (attached as Exhibit 1 to United States’ Motion to Enforce Consent Decree). Among those commitments, the Court ordered the District “not to fill any vacancy unless it has been advertised publicly for at least three weeks prior to the final date for submitting applications.” Id. at 8, pt. III.D.2. The Consent Decree also requires that “at least three weeks prior to the final date for any application, each vacancy shall be registered with the State Employment Office and announced in the Jackson Advocate as well as other newspapers.” Id., pt. III.D.3. Further, the Consent Decree provided that “a list of current openings shall be posted conspicuously wherever vacancy notices are posted and wherever application forms are provided to the public.” Id. at 9, pt. III.D.4. The Consent Decree also requires the District to recruit black applicants for administrative positions. See id., pt. III.D.5. “In particular, whenever school officials become aware that there is to be a vacancy in a position as administrator . . . the

Personnel Director shall send a notice . . . to education school placement officials at each public university in Mississippi.” Id. Such notice is to be sent at least five weeks before the final date for submitting applications. Id.

In 1992, the United States received a complaint that the District violated the 1983 Consent Decree by making offers of employment for three principal positions to lesser qualified white applicants and by failing to employ a better qualified black applicant. After investigating the allegations, the United States determined that the District had discriminated against the black applicant on the basis of his race and filed a Motion to Compel Enforcement. The parties thereafter agreed upon settlement terms, which this Court approved. The Court’s order allowed that, for settlement purposes, the District would not be required to advertise a particular vacancy in an assistant principal position, but it “recognize[d] the uniqueness of this particular opening” and stated that “future vacancies will be filled in accordance with the 1983 Consent Decree.” Consent Order, at 7 (March 3, 1993) (attached as Exhibit 3 to Motion to Enforce Consent Decree).

In November 2001, the District moved for unitary status. On April 4, 2002, the Court granted the United States’ motion to conduct discovery, and on February 14, 2003, the Court entered a Stipulation and Order that granted the parties until July 1, 2003, to complete discovery, by which date the United States is to inform the Defendants of any objections it has to the District’s Motion for Unitary Status. The parties then have sixty days to confer and an additional thirty days to provide written objections to the Court.

In conducting discovery, the United States has learned that the District’s current employment practices violate the provisions of the 1983 Consent Decree. Instead of advertising the positions as required by the 1983 Consent Decree, the District is filling vacancies by first soliciting applications from current employees of the District. Contrary to the procedures stated

in the 1983 Consent Decree, the District only advertises outside the District if it cannot locate a qualified applicant among its employees. Before the beginning of the 2003-04 school year, three of the District's principals will have retired, leaving only one black principal in the District. Through the District's internal hiring procedures, the school board has approved three white principals to fill the vacancies. None of these persons, however, has received or signed employment contracts. Conversely, pursuant to the 1983 Consent Decree, the school board recently ordered the Personnel Director to advertise an assistant principal position outside of the District. This advertisement resulted in the hiring of a black applicant. However, the school board continues to ignore its obligations under the 1983 Consent Decree with regard to the three principal vacancies.

Mindful that the District must act before the scheduled negotiating period and any unitary status hearing to fill the vacancies for the coming school year, we request that the Court order the District to comply with the terms of the 1983 Consent Decree in filling the vacancies created by the three principals' retirements.

ARGUMENT

The District is in certain violation of the 1983 Consent Decree. That Decree prescribes clear procedures that this Court ordered the District to follow in filling job vacancies, and the District does not follow those procedures. Courts have inherent power to enforce their lawful decrees, see Spallone v. United States, 493 U.S. 265, 276 (1990), and enforcement of the decree in this case would be appropriate. In addition to violating this Court's 1983 Consent Decree, the District's current employment practice subverts the goals that the orders in this case are designed to achieve. Rather than increasing the opportunities for black teachers and administrators to compete for administrative positions within the District, the District's employment practice

effectively excludes qualified black applicants from consideration if the District finds any qualified applicant from among its own employees.

I.

The 1983 Consent Decree details clear procedures that the District must follow in filling job vacancies. As described above, for each vacancy, the District must advertise the position at least three weeks in advance in newspapers and various public places. See Motion to Enforce Consent Decree, Exhibit 1, at pt. III.D.2-4. For administrative positions in particular, the 1983 Consent Decree requires the District to notify placement officials at each public university in Mississippi. See id., pt. III.D.5. Yet the District ignores these requirements. In violation of this Court's order, the District first solicits applications from current employees of the District. If it finds a qualified applicant among its own employees, the District ends its search. The District advertises vacancies outside the District, as required by the 1983 Consent Decree, only if the District can find no qualified applicants within. See Motion to Enforce Consent Decree, Exhibit 4.

The District's counsel has informed the United States that it will not change its employment practice and that the three vacant principal positions for next year already have been filled. See Motion to Enforce Consent Decree, Exhibit 4. These persons, however, only have been approved by the school board; they have not received or signed employment contracts for the 2003-04 school year. The District is planning to promote current employees into these principal positions and therefore did not advertise the vacancies outside the District as required by the Consent Decree. This Court has the inherent power to enforce its orders. See Spallone, 493 U.S. at 276. By ordering the District to select the three new principals in accordance with the 1983 Consent Decree, the Court appropriately would exercise that power. See Rambo v.

Morehouse Parish Sch. Bd., 37 F. Supp. 2d 482 (W.D. La. 1999). In Rambo, the court considered a claim against a school district that had failed to follow the employment procedures set out in a 1975 court order in hiring a new principal. The court found that the district had violated the plain language of the 1975 injunction and ordered the district to restart its hiring process for a new principal according to the procedures set out therein. See id. at 488, 490-91. This case presents an identical circumstance and calls for identical relief.

II.

Not only does the District's practice violate this Court's orders, but it frustrates their objectives as well. In the Consent Decree, the District agreed "to institute and carry on an active, ongoing program of recruitment directed at increasing substantially the number of qualified black applicants for positions as administrative personnel" Consent Decree at 9, pt. III.D.5. To that end, the District agreed to adopt the employment procedures detailed in the Consent Decree. See, e.g., id. But by initially limiting the applicant pool to the District's current employees, the District's present practice excludes qualified black applicants from the selection process. None of the District's current black employees, with the exception of one current principal and the Personnel Director, has the certification necessary for principal positions, and therefore none of the District's current black employees is eligible for principal positions. Because the District considered only current employees in filling the three new principal vacancies, it considered no qualified black applicants and therefore undermined the goals of the Consent Decree.

III.

Counsel for the District has suggested that the District will not now comply with the requirements of the Consent Decree in filling the two vacancies because the vacancies have already been filled. See Motion to Enforce Consent Decree, Exhibit 4. First, the Personnel

Director, Lillie Hardy, testified during her deposition that persons have been approved by the school board to fill these vacancies but that none of them has received or signed employment contracts for the 2003-04 school year. Second, the District's own precipitous actions in violation of the Court's orders cannot excuse it from its obligation to comply with the orders. In Rambo, the court held the defendant school board and its superintendent in civil contempt for appointing a high school principal in a manner that violated a May 1975 injunction requiring that the district appoint principals in accordance with specific procedures. The court ordered the district to choose a new principal in accordance with the procedures specified in the court order. See id. 486-88, 491. "The position is now vacant again," the court concluded, "and defendants are not free to decide who the 'person best capable of meeting the needs of Bastrop High School' is without conducting a fair and impartial . . . proceeding" according to the requirements of the injunction. Id. at 491.¹

CONCLUSION

For the reasons set forth above and in the accompanying motion and exhibits, the United States respectfully requests that the Court (1) order Defendants, Simpson County School District and its Superintendent, to comply with the provisions of the Consent Decree entered by this Court on August 22, 1983, including those requirements referenced in paragraph 2 of this Motion, in hiring personnel to replace Principals Sidney Lee, Ernest Jaynes and Maggie

¹ The District's counsel also has suggested that the United States has condoned the District's unlawful employment practice, but despite repeated requests, the District has not provided the United States with any such evidence. In any event, and more importantly, the Court has not modified the Consent Decree to permit the District's practice. See Dana Corp. v. Fireman's Fund Ins. Co., No. 3:83CV1153, 1997 WL 135595, at *3 (N.D. Ohio 1997) ("[P]arties cannot alter the terms, conditions, and effect of a court order without the court's approval . . .") (dicta).

Thompson; and (2) order the District to demonstrate its compliance by providing the Court and the United States with an affidavit of the District's Personnel Director detailing all steps that the District took to solicit applications for the two vacant principal positions; copies of all advertisements, postings and notices of the two positions; the evaluation sheets for each applicant, including the numeric score awarded to each; the race of each applicant; and the name and race of the applicants ultimately hired for the positions.

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