

No. 01-55182

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CITY OF LOS ANGELES, BOARD OF POLICE COMMISSIONERS,  
LOS ANGELES POLICE DEPARTMENT,

Defendants-Appellees

LOS ANGELES POLICE PROTECTIVE LEAGUE,

Applicant in Intervention-Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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UNITED STATES' OPPOSITION TO LOS ANGELES POLICE  
PROTECTIVE LEAGUE'S MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

1. This case arises out of a suit filed on November 3, 2001, by the United States Department of Justice against the City of Los Angeles, California, the Los Angeles Board of Police Commissioners, and the Los Angeles Police Department ("LAPD"). The suit alleges that the defendants engage in a pattern or practice of depriving individuals of constitutional rights through the use of excessive force, false arrests, and improper searches and seizures (Mot. for Stay, Exh. A at 2). The suit was filed under 42 U.S.C. 14141, which makes it unlawful for "any

governmental authority \* \* \* to engage in a pattern or practice of conduct by law enforcement officers \* \* \* that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,” and gives the Attorney General of the United States the power to bring a civil action to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.”

The parties opted to settle the dispute through the mechanism of a consent decree, which they lodged in the district court the same day the United States filed the Complaint. The stated purpose of the Consent Decree is to “provide for the expeditious implementation of remedial measures, to promote the use of the best available practices and procedures for police management, and to resolve the United States’ claims without resort to adversarial litigation” (Decree, attached as Exh. 1, at ¶ 6). The decree has not yet been entered by the district court.

2. The proposed decree specifically incorporates provisions intended to protect the bargaining rights and bargained-for rights of the Los Angeles Police Protective League (“League”) and other collective bargaining units. Paragraph 8 of the proposed decree states:

Nothing in this Agreement is intended to: (a) alter the existing collective bargaining agreements between the City \* \* \* and LAPD employee bargaining units; or (b) impair the collective bargaining rights of employees in those units under state and local law. The parties acknowledge that as a matter of state and local law the implementation by the City of certain provisions of this Agreement may require compliance with the meet and confer process or consulting process. The City shall comply with any such legal requirements and shall do so with a goal of concluding any such processes in a manner that will permit the City’s timely implementation of this Agreement. The City shall give appropriate notice of this Agreement to affected employee bargaining units to allow such processes to begin as to this Agreement as filed with the Court.

Paragraph 184 of the proposed decree further explicates the manner in which the state and local law collective bargaining rights of LAPD bargaining unit employees will be protected. Initially,

paragraph 184(a) explains the procedures by which the City and the League shall determine whether specific provisions of the proposed decree are subject to the “meet and confer” or “consulting” processes mandated by state labor law. See Cal. Gov’t Code §§ 3504.5, 3505. As part of that procedure, the proposed decree provides that, if the City and the League cannot reach an agreement on this issue, “the City shall seek declaratory relief from this Court to resolve such issue, provided that such bargaining unit shall receive notice and an opportunity to be heard by the Court on this issue” (Decree at ¶ 184(a)). The remaining subparts of paragraph 184 instruct that the City “shall continue” with the meet and confer process as mandated by state law, and provide a mechanism through which the City and the United States may jointly move the district court to modify the consent decree if the collective bargaining process or any agreements reached or actions taken pursuant to that process will “significantly impact the City’s ability timely to implement” any provision of the decree (Decree at ¶ 184(b)). Paragraph 184 further provides that, in the event that the collective bargaining process, or any agreements reached or actions taken pursuant to that process, will impair the City’s ability timely to implement provisions of the decree, and the City and the United States are unable to agree on a proposed decree modification, the City or the United States may “seek appropriate declaratory relief” from the district court (Decree at ¶ 184(c)). The decree instructs that, in resolving such disputes, the district court should consider “whether the City has satisfied its labor relations obligations under state and local law” (Decree at ¶ 184(d)). Finally, if the results of the collective bargaining process will preclude meaningful implementation of provisions of the consent decree, and the parties are unable to agree on an appropriate decree modification, the United States may move for dissolution of the decree and proceed with the underlying law suit (Decree at ¶ 184(e)).

3. On December 11, 2000, the League moved to intervene in this action, claiming a right (1) to dispute the underlying allegations in the Complaint, (2) to protect the collective bargaining agreement between the City and the League against infringement by the Decree, and (3) to prevent violations allegedly imposed by the decree of officers' constitutional rights and certain rights under state laws (Mot. to Intervene, attached as Exh. 2, at 12).

After holding a hearing on the motion on December 19, 2000, the district court denied the motion to intervene on January 5, 2001. The League filed a notice of appeal on January 17, 2001.<sup>1</sup> On the same day, the League filed a motion for a stay pending appeal in the district court, which was denied on February 9, 2001. On February 20, 2001, the district court formally granted the League amicus curiae status and invited it to submit a memorandum to the court "addressing any issue(s) that they see fit regarding the negotiated consent decree" (Order re: Amicus Briefing, attached as Exh. 3, at 2). The League presented its concerns to the district court in the form of an amicus brief on March 16, 2001. On March 12, 2001, the League filed a motion for a stay pending appeal in this Court. For the reasons stated below, the League's stay motion should be denied.

#### ARGUMENT

The standard this Court employs when evaluating a motion for a stay pending appeal "is similar to that employed by the district courts in deciding whether to grant a preliminary injunction." *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983). Under that standard, the Court considers stay requests along a "continuum." At one end, "the moving party is required to

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<sup>1</sup> The denial of a motion to intervene is appealable as of right. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 375-376 (1987).

show both a probability of success on the merits and the possibility of irreparable injury;” at the other end, “the moving party must demonstrate that serious legal questions are raised and that the balance of hardships tips sharply in its favor.” *Ibid.* (citing *Los Angeles Mem’l Coliseum Comm’n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980), and *Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1134 (9th Cir. 1979)). The burden is on the moving party to demonstrate that it satisfies one of these standards. *Los Angeles Mem’l Coliseum Comm’n*, 634 F.2d at 1203. The League has failed to satisfy either iteration of the requirements for meriting a stay pending appeal.

**I. The League Cannot Demonstrate Either A Probability Of Success On The Merits Of Its Motion To Intervene Or The Possibility Of Irreparable Injury**

*A. Success On The Merits Of The Motion To Intervene*

This Court will review the district court’s denial of the League’s motion to intervene as of right *de novo*, and its denial of the League’s motion for permissive intervention for an abuse of discretion. *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996). An applicant wishing to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) must demonstrate that:

(1) it has a “significant protectable interest” relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant’s interest.

*Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Although this Court generally

interprets these requirements broadly, *ibid.*, the League has failed to satisfy this standard<sup>2</sup> and thus likely will not be able to demonstrate that the district court's denial of the motion to intervene was error.

1. *Intervention As Of Right Regarding Implementation Of The Proposed Decree*

We agree with the district court's finding that, to the extent that the decree may affect the League's collective bargaining agreement with the City, the League has a legally protectable interest in the implementation of the consent decree. The League has rights, guaranteed by state laws and general contract principles, to negotiate about terms and conditions of the employment of rank and file police officers in Los Angeles and to rely on the collective bargaining agreement that results from those negotiations. See *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 771 (1983); Cal. Gov't Code §§ 3504.5, 3505. To the extent that the consent decree might affect those legally protected rights, there is a sufficient "relationship" between those rights and the suit filed by the United States.

However, the League has failed to demonstrate that the proposed consent decree will impair the League's ability to protect its legally protectable rights, as is required for intervention as of right. It is clear that parties to a consent decree may not bargain away the rights of third parties. *Local 93 v. City of Cleveland*, 478 U.S. 501, 529 (1986) ("Of course, parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and *a fortiori* may not impose duties or obligations on a third party, without that party's agreement.").

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<sup>2</sup> The United States does not dispute the district court's finding that the League's motion to intervene was timely filed.

The parties to this proposed consent decree have not attempted to harm or dispose of the rights of any third party, particularly collective bargaining agreement signatories like the League, and in fact have endeavored to protect those rights explicitly in the terms of the decree itself.

As the district court found (Mot. for Stay, Exh. B at 10-11), the League has not shown that the proposed decree would directly modify or invalidate its collective bargaining agreement. Instead, the League argues that implementation of the decree may affect its future rights. As explained above, however, according to the very terms of the proposed decree, the League is entitled to participate to the full extent provided under state law in order to safeguard its legally protected collective bargaining rights. In addition, the League has been granted amicus curiae status, was invited by the court to submit a brief “addressing any issue(s) that they see fit regarding the negotiated consent decree” (Order re: Amicus Briefing at 2), and in fact filed an amicus brief with the district court on March 16, 2001. If the League ultimately believes, at the point at which the provisions of the decree are to be implemented, that its legally protected collective bargaining rights will in fact be jeopardized by implementation of the decree and have not been satisfactorily protected by the district court, it may move to intervene in the action at that time. Given the extensive protections provided to the League within the decree, the League’s motion to intervene at this point is clearly premature. Because the League cannot demonstrate now that its legally protected interests in the collective bargaining process and in its existing collective bargaining agreement will be impaired by implementation of the proposed consent decree, it has failed to demonstrate a reasonable likelihood of success on the merits of its motion to intervene.

2. *Intervention As Of Right In The Merits Of The Underlying Action*

We also agree with the district court's finding that the League has no legally protectable interest in the merits of the underlying suit filed by the United States under 42 U.S.C. 14141. That suit was filed against the City, the Police Department, and the Board of Police Commissioners; it was not filed against the League or any of the individual officers it represents. Nor can the consent decree be enforced against any individual officers. The decree specifically enjoins "[t]he City" from "engaging in a pattern or practice of conduct by law enforcement officers of the LAPD that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States" (Decree at ¶ 12). Indeed, the district court specifically found that individual officers would not be subject to contempt under the decree (Mot. for Stay, Exh. B at 8 n.3). This Court has held that an "applicant has a 'significant protectable interest' in an action if (1) it asserts an interest that is protected under some law, and (2) there is a 'relationship' between its legally protected interest and the plaintiff's claims." *Donnelly*, 159 F.3d at 409. To the extent that the League might have a right to protect individual officers from any allegations of misconduct that might arise in a full trial on the merits, that right is not implicated at this point because the parties intend to settle this litigation with a consent decree, obviating the need to address any actions of individual officers.

3. *Permissive Intervention*

The League has similarly failed to demonstrate a probability of success on the merits in its appeal of the district court's denial of its motion for permissive intervention. An applicant for permissive intervention must prove (1) that the issues it wishes to raise share a common question of law or fact with the main action, (2) that its motion was timely, and (3) that the court has an

independent basis for jurisdiction over the applicant's claims. *Donnelly*, 159 F.3d at 412. The district court denied the League's motion for permissive intervention because "the subject of the main action – whether the City has engaged in a pattern and practice of depriving individuals of constitutional rights – is distinct from the [League's] interest in preserving its contractual and statutory rights" (Mot. for Stay, Exh. B at 12). Because that conclusion is legally correct and is therefore unlikely to be ruled an abuse of discretion on review by a panel of this Court, the League has failed to demonstrate a likelihood of success on the merits of its claim for permissive intervention.

B. *Irreparable Injury*

The League is unable to demonstrate that it will suffer an irreparable injury absent a stay pending appeal for precisely the same reasons it is unable to demonstrate a probability of success on the merits – its rights and interests are fully recognized and protected by the terms of the proposed consent decree. Under the terms of the proposed decree, the City is required to engage in the full collective bargaining process contemplated by state law. In the event that any actions, agreements, or impasse resulting from that process will prevent the City from timely implementing any provision of the decree, the City or the United States may seek relief from the district court, at which point the decree mandates that the court consider whether "the City has satisfied its labor relations obligations under state and local law" (Decree at ¶ 184(d)). Given the extent to which the proposed decree protects the League's rights under state law, the League cannot possibly prove that it may be subject to irreparable harms at this time absent a stay.

## **II. The League Cannot Demonstrate That The Balance Of Hardships Tips Sharply In Its Favor**

Where a party moving for a stay pending appeal cannot demonstrate that it is likely to succeed on the merits of its appeal, it is sufficient to demonstrate merely that serious legal questions are raised so long as that party can prove that the balance of hardships tips “sharply in its favor.” *Lopez*, 713 F.2d at 1435. The League cannot prove that it would suffer any hardships at all absent a stay, let alone that the hardships it would suffer without a stay would “sharply” outweigh those that would be suffered by the parties and the public if a stay were issued. For the reasons stated above, the League is in no danger of suffering any hardships if the ongoing proceedings regarding entry of the proposed consent decree are permitted to proceed. Under the terms of the proposed consent decree, the League’s interests are fully protected. In fact, as the district court found in its order denying the League’s motion to intervene, in seeking to intervene at this point, the League is seeking a privilege to which it is not entitled, namely the right “to forgo the meet and confer process found at ¶ 184 [of the proposed decree] and have the Court immediately review the entire Proposed Decree” (Mot. for Stay, Exh. B at 12).

The harm to the parties and to the public that would result from the delay occasioned by a stay pending appeal, however, is significant. “Here, the question of the public interest is inseparable from the issues relating to the relative hardships suffered by the litigants.” *Lopez*, 713 F.2d at 1437. This law suit was filed by the Department of Justice after it determined, following an extensive investigation, that there was merit to allegations of widespread violations by the LAPD of the constitutional rights of individual citizens. Rather than going through protracted and contentious litigation, the United States and the City decided to cooperate in

reforming the problems in the LAPD that contribute to these constitutional deprivations (Decree at ¶ 6 (“The parties enter into this Agreement to provide for the expeditious implementation of remedial measures, to promote the use of the best available practices and procedures for police management, and to resolve the United States’ claims without resort to adversarial litigation.”)). The public certainly has an interest in not being subjected to a pattern or practice of constitutional violations at the hands of its law enforcement officers. The Department of Justice similarly has an interest in ensuring that citizens are not subject to a pattern or practice of constitutional violations in violation of 42 U.S.C. 14141. Moreover, the City and the LAPD itself have a strong interest in conducting their policing activities in such a way as to ensure that their officers can function effectively without depriving citizens of constitutionally protected rights. These interests are strong interests and any delay in the implementation of the reforms contemplated by the proposed decree will have a serious and detrimental effect on a large number of citizens, as well as on the parties to the underlying litigation.

Measured against the League’s total lack of potential hardship absent a stay pending appeal, it is clear that the balance of hardships tips sharply in favor of denying the League’s motion for a stay. Regardless of whether the League has raised serious legal questions, it is not entitled to a stay pending appeal absent a showing that the balance of hardships favors such a stay.

CONCLUSION

The League's motion for a stay pending appeal of the district court's denial of the League's motion to intervene should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2001, one copy of the foregoing United States' Opposition to Los Angeles Police Protective League's Motion for Stay Pending Appeal was served by first-class mail, postage pre-paid, on the following counsel:

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