

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID POWELL, et al. : CIVIL ACTION
 :
 v. :
 :
 THOMAS J. RIDGE, et al. : NO. 98-1223

MEMORANDUM AND ORDER

HUTTON, J.

September 9, 1998

Presently before the Court is the motion by Movants Philadelphia Federation of Teachers Local 3, AFT AFL-CIO and Ted Kirsch, as Guardian Ad Litem, for Intervention Pursuant to Federal Rule of Civil Procedure 24(a) and (b) (Docket No. 3). For the reasons stated below, the motion is **GRANTED**.

I. BACKGROUND

On March 9, 1998, Plaintiffs¹ filed the instant action "against officials of the Commonwealth of Pennsylvania who are responsible for the public education of children in the Commonwealth, including those in Philadelphia." (Pls.' Compl. ¶ 1).

1. The Plaintiffs include: "Students who attend public school in Philadelphia, their parents and guardians, and organizations that represent their interests ('Students and Organization Plaintiffs'); the School District of Philadelphia, the Board of Education of the School District of Philadelphia, and officials who lead the School District ('School District Plaintiffs'); and the Mayor of the City of Philadelphia and the City of Philadelphia ('City Plaintiffs')". (Pls.' Compl. ¶ 1).

Plaintiffs charge Defendants² with violating Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-4a (1994), the regulations that implement Title VI requirements, 34 C.F.R. § 100(3)(b)(1), (2) (1997) and the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1994). The Federal Government provides the states with financial assistance to benefit public schools. The Commonwealth distributes these funds to Commonwealth public school districts, including the Philadelphia School District, based on a statutory funding formula. Plaintiffs allege that Defendants' statutory funding formula discriminates against the students of Philadelphia based on race, color and national origin. (Pls.' Compl. ¶ 2). Consequently, Plaintiffs seek declaratory, injunctive and other appropriate relief to stop further alleged discrimination. (Pls.' Compl. ¶ 3).

In this action, the Philadelphia Federation of Teachers ("PFT") and Ted Kirsch, President and Guardian Ad Litem of the PFT, have moved to intervene as of right as party-plaintiffs pursuant to Fed. R. Civ. P. 24(a) or, in the alternative, permissive intervention pursuant to Fed. R. Civ. P. (24(b). PFT is "the collective bargaining representative for approximately 20,000 employees of the School District of Philadelphia, including

2. The Plaintiffs have named the following parties as Defendants: 1) Thomas J. Ridge, the Governor of the Commonwealth of Pennsylvania; 2) Dr. James Gallagher, Chairperson of the Board of Education for the Commonwealth of Pennsylvania; 3) Dr. Eugene Hickok, the Secretary of Education for the Commonwealth of Pennsylvania; and 4) Barbara Hafer, the Treasurer of the Commonwealth of Pennsylvania.

teachers and other professional and paraprofessionals whose function is to provide an education for the school children of Philadelphia." (See Pet'r Mot. ¶ 1). The motion, filed March 25, 1998, is granted for the following reasons.

II. DISCUSSION

Unless there is an unconditional statutory right to intervene,³ Rule 24(a)(2) of the Federal Rules of Civil Procedure governs "Intervention of Right". Fed. R. Civ. P. 24(a)(2), 28 U.S.C.A. Rule 24(a)(2) states as follows:

Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). The Third Circuit has interpreted this rule to require satisfaction of the following four criteria: (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation. Brody v. Spanq, 957 F.2d 1108, 1115 (3d Cir. 1992)(citing Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir.), cert. denied, 484 U.S. 947 (1987)).

3. See Fed. R. Civ. P. 24(a)(1), 28 U.S.C.A.

The applicant bears the burden of establishing its right to intervene. Olden v. Hagerstown Cash Register, Inc., 619 F.2d 271, 273 (3d Cir. 1980) (citing Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10, (1972), and Pennsylvania v. Rizzo, 530 F.2d 501, 505 (3d Cir.), cert. denied, 426 U.S. 921 (1976)). Failure to satisfy any one of the criteria justifies denial of the application to intervene. See Harris v. The City of Philadelphia, No. CIV. A.97-3666, 1997 WL 343597, at *1 (E.D.Pa. Aug. 14, 1997)) (citing Harris v. Reeves, 946 F.2d 214, 219 (3d Cir. 1991). Defendants have contested only the element concerning inadequate representation, nonetheless Movants must satisfy all four requirements.

1. Timeliness

An application for leave to intervene must be timely. Fed. R. Civ. P. 24(a). In the instant case, the Complaint has only recently been filed and no responsive pleadings have yet been filed by any of the Defendants. Intervention at such an early stage of litigation poses little, if any, prejudice on Defendants. The application for intervention is therefore timely.

2. Applicant Must Have Sufficient Interest in Action

An applicant must demonstrate "an interest relating to the property or transaction which is the subject of the action" in which the applicant seeks to intervene. Fed. R. Civ. P. 24(a)(2).

Movants are indirect beneficiaries of federal funds designated for public education in the Commonwealth. Besides the additional services which Movants will be able to provide to their students with additional funds, Movants have a direct interest in the outcome of the suit due to the effect Defendant's statutory funding scheme has on working conditions, risk of job loss and collective bargaining rights. Movants' interest in the litigation is therefore sufficient to support intervention as a matter of right under Fed. R. Civ. P. 24(a)(2).

**3. Disposition of Action Will Impair or Impede Applicant's
Ability to Protect Interest**

Once an applicant has successfully established a sufficient interest in the subject of the action, the applicant must demonstrate that "disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest." Fed. R. Civ. P. 24(a)(2). In the event that Defendants prevail in the instant action, not only will Movants' members be subjected to inadequate and unsafe working conditions, but the unavailability of sufficient funding to the School District of Philadelphia may result in the elimination of bargaining unit positions and affect their collective bargaining rights. Such impairment satisfies intervention as a matter of right under Fed. R. Civ. P. 24(a)(2).

4. Applicant's Interest Must Be Inadequately Represented by Existing Parties

The applicant bears the burden of showing that the existing parties inadequately represent his or her interests in the action. See Fed. R. Civ. P. 24(a)(2). The Third Circuit has stated that representation will be considered inadequate on any of the following three grounds: "(1) that although the applicant's interests are similar to those of a party, they diverge sufficiently that the existing party cannot devote proper attention to the applicant's interests; (2) that there is collusion between the representative party and the opposing party; or (3) that the representative party is not diligently prosecuting the suit." Brody, 957 F.2d at 1123 (citing Hoots v. Pennsylvania, 672 F.2d 1133, 1135 (3d Cir. 1982)). In the instant case, Movants do not allege that there has been any collusion between Defendants and the Philadelphia School District or that Plaintiffs have not diligently litigated this lawsuit, but they do assert that they have rebutted the presumption of representation because their interests diverge from those of the School District. This Court must agree.

A tension exists between Movants and the School District Plaintiffs as demonstrated by their divergent interests as embodied in the collective bargaining agreement. (See Pet'r Mem. at 5-6). Defendants do not contest this point, instead they argue that Movants have the same "ultimate objective" of all Plaintiffs in the instant action. (Defs.' Mem. in Opp'n at 4). The Supreme Court

stated, however, that this element is satisfied if the intervening party can show that representation of "his interest may be inadequate" and the burden of making the showing shall be treated as "minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538, n.10 (1972) (citing 3B J. Moore, Federal Practice 24.09--1 (4) (1969)). Applying this standard, Movants have shown that their interests differ from those of the School District Plaintiffs, and that there is serious possibility that representation may be inadequate. Accordingly, this Court finds that Movants have met their burden of showing inadequacy of representation.

III. CONCLUSION

For the foregoing reasons, Movants have successfully satisfied their burden under Fed. R. Civ. P. 24(a)(2). As such, this Court grants Movant's motion to intervene.⁴

An appropriate Order follows.

⁴ Because the Court granted Movants' motion for intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure, it need not consider Movants' motion for permissive intervention pursuant to Rule 24(b).

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O R D E R

AND NOW, this 9th day of September, 1998, upon consideration of the Motion by Movants Philadelphia Federation of Teachers Local 3, AFT AFL-CIO and Ted Kirsch, as Guardian Ad Litem, for Intervention Pursuant to Federal Rule of Civil Procedure 24(a) and (b) (Docket No. 3; NOTE: Docket No. 4 is a copy of Docket No. 3), IT IS HEREBY ORDERED that the Motion is **GRANTED**.

BY THE COURT:

HERBERT J. HUTTON, J.