1990 WL 145596
United States District Court, E.D. New York.

UNITED STATES of America et al., Plaintiff,
v.
NASSAU COUNTY et al., Defendants. Nassau County Guardians Association et al., Plaintiffs–Intervenors.
NASSAU COUNTY GUARDIANS ASSOCIATION, INCORPORATED et al., Plaintiffs
v.
NASSAU COUNTY and The Nassau County Police Department, Defendants. Keith Anderson et al., Applicants for Intervention.

Nos. CV 77–1881, CV 88–3836. | May 22, 1990.

Opinion

MISHLER, District Judge:

***1** Keith Anderson, Kevin Colgan, Joseph Eschmann, and Richard Purcell move pursuant to Fed.R.Civ.P. 24(b) for permission to intervene in the above-titled case.

Background

The prospective intervenors are white males who took the 1987 police officer examination administered by Nassau County. They received the following scores, respectively: 89.230, 92.377, 92.377, and 88.181. Under the rescoring method proposed in the parties' consent decrees, the four men receive the following revised scores, respectively: 81.933, 75.502, 76.954. and 80.652.

Counsel for the prospective intervenors state that they "will be bound by any judgment, decree or order to be entered in this action." (Affirmation, ¶ 14). Counsel for the intervenors also states, "The issues involving the Plaintiffs herein and my clients have questions of law and fact in common." (Aff., ¶ 14). This conclusory statement is not amplified.

The prospective intervenors request the following relief: that their original scores stand or that they be assured of appointment. In the alternative, counsel requests that the court "consider the possibility of slotting my clients into any equivalent new listing which would not impact adversely on the plaintiffs." (Aff., ¶ 19). In addition, the prospective intervenors request, "the right to review examination number 6152 and any and all scoring and rescoring thereof." Counsel for the prospective intervenors also requests that he "be advised as to the total number of letters of objection that were filed with the Court."

As the docket numbers of these two cases partially indicate, these cases have a long and complicated history. The United States filed its action against the Nassau County defendants on September 21, 1977 alleging violations of Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e, *et seq.* On December 9, 1988, the Guardians plaintiffs commenced an independent action alleging discriminatory practices by the Nassau County defendants in the hiring of black and hispanic applicants. In November, 1989, the court certified the Guardians lawsuit as a class action.

Extensive discovery with regard to the 1987 exam has been conducted by all parties. In addition, the parties have engaged in extensive document production and analyses of the test. They have also used the experience and analyses of twelve expert witnesses.

At a hearing held on April 16, 1990, the United States and Nassau County requested the court to approve a consent order, which called for the rescoring of the 1987 examination. A second proposed consent order, also calling for the rescoring of the 1987 exam, was executed by the Guardians plaintiffs and Nassau County on April 25, 1990. On April 27, 1990, the court preliminarily approved the two consent orders, subject to a further hearing. If entered, these two consent decrees will resolve all of the United States' and Guardians plaintiffs' claims of employment discrimination against Nassau County relating to the 1987 exam.

***2** Notice of the proposed consent orders was sent to all individuals who took the 1987 examination, as well as to all black and hispanic Nassau County police officers. Test applicants were sent their rescored exam results. All objectors who filed a written objection with the Clerk of Court by May 11, 1990 were allowed to present their objections at the fairness hearing held on May 14, 1990. During this hearing, counsel for the prospective intervenors, John J. Maguire, made an oral motion to intervene, which was denied by this court by letter dated May 14, 1990. In the same letter, due to the imminence of a final decision on the consent decrees, counsel was instructed to bring the instant motion on by order to show cause.

Discussion

Fed.R.Civ.P. 24(b) provides that "[u]pon timely application anyone may be permitted to intervene in an action ... when an applicant's claim or defense and the main action have a question of law or fact in common."

Fed.R.Civ.P. 24(b)(2). The Rule continues, "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed.R.Civ.P. 24(b).

Section c of rule 24 specifies the procedure that the prospective intervenor must follow: the motion must be served upon all parties, and "[t]he motion shall state the grounds thereof and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." Fed.R.Civ.P. 24(c).

"[I]t is at once apparent, from the initial words of both Rule 24(a) and Rule 24(b), that the application must be 'timely.' " *NAACP v. New York,* 413 U.S. 345, 365 (1973). "Although the suit has progressed is one factor in the determination of timeliness, it is not solely dispositive. Timeliness is to be determined from all the circumstances." *Id.* at 365–66.

The district court must assess four factors in assessing the threshold issue of timeliness:

1. the length of time during which the would-be intervenors knew or reasonably should have known of their interest in the case before they petitioned for leave to intervene;

2. the extent of prejudice to the existing parties as a result of the would-be intervenors' failure to apply as soon as they knew or reasonably should have known of their interest;

3. the extent of prejudice to the would-be intervenors if their petition is denied; and

4. the existence of unusual circumstances militating either for or against a determination that the application is timely.

Stallworth v. Monsanto Co., [14 EPD ¶ 7813] 558 F.2d 257, 264–66 (5th Cir.1977). *See also Corley v. Jackson Police Dept.,* [36 EPD ¶ 35,122] 755 F.2d 1207, 1209 (5th Cir.1985) (not abuse of discretion to deny intervention to white police officers who moved to intervene fifty months after consent decree entered in Title VII suit); *United States v. Jefferson County,* [33 EPD ¶ 33,973] 720 F.2d 1511, 1515–19 (11th Cir.1983) (not abuse of discretion to deny intervention to firefighters association and two of its members who moved to intervene the day after the fairness hearing in a Title VII action). *See generally*Wright, Miller & Kane, *Federal Practice and Procedure:* Civil 2d § 1916 (2d ed. 1986).

***3** Discounting the procedural flaw of no pleading being attached to the present motion, and assuming that if a pleading had been attached it would reveal a common question of law or fact, the court denies the motion to intervene because it is untimely under the four-factor test as demonstrated below.[1]

First, the prospective intervenors should have been aware that this case implicated their interests since 1987, when Nassau County was unable to hire from the 1987 test. Second, the prejudice to the existing parties is apparent: "A negotiated settlement of a difficult problem is put at risk, to the disadvantage of the named partiese, the class, the police department" and Nassau County. *Corley, supra,* at 1210. The intervention has the potential to "create issues which bear no relevancy to claims of the parties in this complex litigation." *Halderman v. Pennhurst State School & Hosp.,* 97 F.R.D. 522, 525 (E.D.Pa.1983).

The intervention will also lead to substantial delay in settling the claims of the parties and enabling Nassau County to hire police officers. Although the petitioners may be prejudiced by this denial of intervention, this prejudice to them is far outweighed by the prejudice to the existing parties. Finally, the court notes the absence of mitigating factors for or against allowing intervention.

Permissive intervention is wholly discretionary with the trial court. *United States Postal Service v. Brennan,* 579 F.2d 188, 191 (2d Cir.1978). Considering the untimeliness of the application, the limited nature of the prospective intervenors' interests, the lack of a certain nexus between the prospective intervenors' interests and the underlying factual issues in this Title VI suit, and the imminence of relief and resolution of this action, the motion for intervention is denied.

So Ordered.

[1] Several parties to this lawsuit do not object to the motion to intervene if certain procedural conditions are met. Their lack of objection is not dispositive, "because consent of a party does not entitle one to intervention as a matter of right, or to permissive intervention." *Wade v. Goldschmidt,* 673 F.2d 182, 184 n. 3 (7th Cir.1982). Of course, these individuals are free to bring their own action.

Parallel Citations

54 Empl. Prac. Dec. P 40,171