

Johnson v. City of Tulsa

United States District Court for the Northern District of Oklahoma

September 26, 2003, Decided ; September 29, 2003, Filed

CASE NO. 94-CV-39-H(M)

Reporter: 2003 U.S. Dist. LEXIS 26376; 2003 WL 24015153
ROY C. JOHNSON, et al., Plaintiffs, vs. CITY OF TULSA, OKLAHOMA, a municipal corporation, and FRATERNAL ORDER OF THE POLICE, LODGE NO. 93, Defendants.

Subsequent History: Subsequent appeal at, Remanded by [Johnson v. City of Tulsa, 2007 U.S. App. LEXIS 13915 \(10th Cir. Okla., June 14, 2007\)](#)

Prior History: [Johnson v. City of Tulsa, 2003 U.S. Dist. LEXIS 26377 \(N.D. Okla., Aug. 29, 2003\)](#)

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Judges: Sven Erik Holmes, United States District Judge.

Opinion by: Sven Erik Holmes

Opinion

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE DEFENDANT CITY OF TULSA'S MOTION FOR A PRELIMINARY INJUNCTION

This matter comes before the Court on the motion of the City of Tulsa for preliminary injunctive relief against the intervenor/defendant Fraternal Order of Police, Lodge No. 93 (hereinafter the "FOP") (Dkt. #1134). On September 18, 2003 the Court conducted a hearing [*3] on the City's motion and received oral argument from the parties to supplement their briefing in respect to the issues presented by the competing briefs. Based on a review of the record in this case, as well as the applicable authorities, the Court hereby enters the following findings of fact with respect to the City of Tulsa's motion for a preliminary injunction:

FINDINGS OF FACT

1. On May 2, 2002 the FOP moved to intervene in this action. On September 10, 2002 the Court granted the FOP's motion to intervene pursuant to *Federal Rule of Civil Procedure 24(a)(2)*. In so doing, the Court found the FOP satisfied the four-factor test for intervention articulated by the United States Court of Appeals for the Tenth Circuit in *Coalition of Arizona/New Mexico Counties of Stable Economic Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996).

2. In a September 10, 2002 Order granting the FOP's motion to intervene, the Court stated that the intervention

of the FOP would not necessitate further pleadings or additional discovery as suggested by the plaintiffs. To the contrary, the FOP was granted intervenor status [*4] in this case as then pled. As a result, the FOP was to be a full participant and party to the proceedings, and was to be bound by any adjudication resulting from the plaintiffs' claims for equitable relief, as stated in their Second Amended Complaint.

3. On December 3, 2002 plaintiffs and the City filed a Joint Motion for Approval and Adoption of the Consent Decree. On January 8, 2003 the FOP filed its objections to the proposed Consent Decree. The FOP objected to the Consent Decree on three essential grounds, to-wit:

First, the Consent Decree unilaterally obligated the Tulsa Police Department to adopt and/or change policies that are subject to mandatory bargaining and thus constitute unfair labor practices under the Oklahoma Fire and Police Arbitration Act (FPAA), and the Collective Bargaining Agreement (CBA);

Second, the Consent Decree violated the FPAA and the CBA because it substituted the Court for the required mandatory arbitration process; and

Third, the Consent Decree violated principles of federalism.

4. The Court held extensive hearings pursuant to the Joint Motion for Approval and required the parties to brief issues pertaining to whether the Consent Decree [*5] violated the FOP's rights in respect to the CBA, the FPAA or the principles of federalism. Neither the FOP, nor any member of the class, objected to the fairness of those proceedings.

5. On May 12, 2003 the Court approved the Consent Decree and overruled the objections of the FOP. In that Order the Court stated:

"The Court further finds that because the FOP has had an opportunity to present its objections to the proposed decree and because the Court has thoroughly considered those objections, the FOP has been afforded 'all process that [it] was due'. Thus the Court finds that it may approve the December 2002 Decree over the FOP's objections." (Order at p. 113). The Court explained that the settlement satisfied the factors outlined in Gottlieb v. Wiles, 11 F.3d 1004, 1014 (10th Cir. 1993). Additionally, the Court determined that the Consent Decree did not violate any contractual or legal rights of the FOP.

6. On May 28, 2003 the FOP appealed the Court's May 12, 2003 Order approving the Consent Decree to the United States Court of Appeals for the Tenth Circuit.

7. Notwithstanding the Court's approval of the Consent Decree and its own appeal of this [*6] Court's Order to the Tenth Circuit, on June 9, 2003 the FOP filed 24 grievances. Three additional grievances were filed thereafter. These 27 grievances attack the Court's May 12, 2003 Order on the basis that, by entering into the Consent Decree, the City violated the Collective Bargaining Agreement which designates the FOP as the exclusive bargaining agent for the Tulsa Police Department. The relief requested by the FOP in each of these grievances is for the City to cease, desist, rescind and invalidate all actions taken to comply with the Consent Decree.

8. On May 22, 2003 the FOP filed a motion requesting that this Court stay the Consent Decree until the Tenth Circuit Court of Appeals decided the FOP's appeal of the District Court's May 12, 2003 Order approving the Consent Decree and the Consent Decree itself. The stay motion was denied by the Tenth Circuit on June 18, 2003.

9. Although the Court's May 12, 2003 Order approving of the Consent Decree expressly states that "this decision will preclude the FOP from later arguing that the entry of the Consent Decree violates its rights" (Order at p. 113), the FOP grievances seek to relitigate specific issues already addressed and ruled [*7] on by this Court.

10. On June 24, 2003 the City requested that the FOP withdraw the grievances and stated that the sole appropriate route for the FOP to challenge the Court's Order was by direct appeal to the Tenth Circuit, which the FOP had already taken.

11. On June 26, 2003 the FOP requested arbitration of all grievances. The FOP thus intends to ask a labor arbitrator to invalidate the City's agreement to the Consent Decree and this Court's approval of the Consent Decree.

CONCLUSIONS OF LAW

12. In order to obtain preliminary injunctive relief, the moving party must establish that (1) the movant will suffer irreparable injury, (2) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause to the opposing party, (3) the injunction, if issued, would not be adverse to the public interest, and (4) there is a substantial likelihood the movant will prevail on the merits. FED. R. Civ. P. 65, Walmer v. United States Dep't of Def., 52 F.3d 851, 854 (10th Cir. 1995).

13. The Court concludes that the City has satisfied each of the required elements for injunctive relief:

(i) There [*8] is clearly a potential for irreparable injury resulting from inconsistent adjudications of the federal courts, including the Tenth Circuit Court of Appeals, and an arbitrator;

(ii) The threatened injury to the movant outweighs whatever damage the proposed injunction may cause to the opposing party. Maintaining the *status quo* for resolution of the appeal (an appeal initiated by the FOP itself) will not in any way do harm to the FOP;

(iii) The preliminary injunction, if issued, would not be adverse to the public interest. Indeed, the public interest is always served when the appropriate legal processes are allowed to go forward. In this case the FOP has sought the adjudication of this matter before the Tenth Circuit Court of Appeals. Any potential for inconsistent adjudications between the Tenth Circuit and an arbitrator would undermine the appellate process; and

(iv) The likelihood of success on the merits clearly weighs in favor of the City and the plaintiffs insofar as the legal issues are involved.

14. As noted by counsel for the FOP, the first issue to be addressed is whether the Court retains jurisdiction over this action due to the pending appeal before the Tenth Circuit. [*9] The Tenth Circuit has found that a court may exercise ancillary jurisdiction over cases to "enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 379, 114 S. Ct. 1673, 1676, 128 L. Ed. 2d 391 (1996). Although a notice of appeal divests the lower court of jurisdiction over a case, lower courts retain jurisdiction after the filing of a notice of appeal over tangential matters and certain ministerial functions in aid of the appeal. Griggs, et al. v. Provident Consumer Discount Co., 459 U.S. 56, 58, 74 L. Ed. 2d 225, 103 S.Ct. 400, 402 (1982); see also 16A CHARLES ALAN WRIGHT AND ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3949.1 (3d ed. 1999). This principle is sound in light of the fact that staying the mandate or staying the effect of an order appealed does not affect the relief afforded by or the rationale of the order appealed, and therefore does not interfere with the Tenth Circuit's review of the order appealed. Applying this principle to the instant case, the Court finds that the jurisdiction over the City's motion is proper in this [*10] case.

15. The Court now turns to an analysis of the doctrine of collateral estoppel, which is the legal basis advanced by the City in support of its request for injunctive relief. The doctrine of collateral estoppel "... has the dual purpose of protecting litigants from the burden of relitigating an

identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326, 58 L. Ed. 2d 552, 99 S. Ct. 645, 649 (1979). Collateral estoppel only applies when the party against whom the earlier decision is asserted has had a full and fair opportunity to litigate the issues in the earlier case.

16. To apply collateral estoppel, the following elements must be established: (a) the issue previously decided is identical with the one presented in the action in question; (b) the prior action has been finally adjudicated on the merits; (c) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication; and (d) the party against whom the doctrine is raised has had a full and fair opportunity to litigate the issues in the prior action.

17. There has been [*11] an assertion that the FOP has not had an opportunity to litigate the claims of discrimination. However, it is clear that this is not in any way sufficient to defeat the application of collateral estoppel. Indeed, the issues now presented to this Court are identical to issues previously presented in the determination of whether or not the Collective Bargaining Agreement was violated by the entry of the Consent Decree. The prior action has been finally adjudicated on the merits. The party against whom the doctrine is invoked (the FOP) was a party to that action pursuant to its own request that it intervene. The FOP'S request was granted, and it was given a full and fair opportunity to participate. Finally, the party against whom the doctrine is raised has had a full and fair opportunity to litigate. That is absolutely the case here.

18. The Court concludes that applying the doctrines of collateral estoppel and issue preclusion, the Court clearly should be able to estop the filing of grievances which undertake to relitigate the issues previously resolved. In this respect, the Court further cites as authority Miller Brewing Co. v. Fort Worth Distrib. Co., 781 F.2d 494 (5th Cir. 1986). [*12]

19. Because the law and the facts support the entry of injunctive relief, the Court would finally note as a historical matter that it granted the FOP's motion to intervene and made the FOP a party to this case. As a result, the FOP was a full participant and is bound by the results of this adjudication. Although the Court has approved the Consent Decree, that is not the final word. To the contrary, the Court's decision is subject to an appeal properly presented to the Tenth Circuit Court of Appeals. The FOP has presented such an appeal seeking review of the legal issue of whether the Consent Decree violated the provisions of the Collective Bargaining Agreement. That appeal is pending. This is our legal process and the FOP has received every right and opportunity to participate in

that process. Indeed, there can be no question that this Court has afforded the FOP its due process rights in every respect.

20. The FOP seeks to subvert this process by relitigating the same issues in a different forum before an arbitrator. The goal here is clear: The FOP seeks to avoid our judicial system in hopes of receiving an inconsistent determination from a different forum. The FOP sought this forum, [*13] litigated in this forum, and was subject to the judgment entered in this forum. The proper avenue of appeal from a judgment in this forum is an appeal to the Court of Appeals for the Tenth Circuit, which has been done in this case. It is not proper to simply start over in an alternative forum with a clear intention of subverting what has happened here.

21. In the judgment of this Court the 27 grievances, filed by the FOP, disrespect our legal system in general, as well as the Tenth Circuit Court of Appeals, where the FOP has

currently pending an appeal of precisely the same legal issues for which arbitration is now sought. Accordingly, a restraining order must issue maintaining the *status quo* until the Court of Appeals has had an opportunity to decide the appeal without being subjected to deliberate confusion and obstruction.

22. At this time the Court will enter a preliminary injunction in favor of the City of Tulsa and against the FOP. The FOP will have ten (10) days from the file date of this Order within which to withdraw the 27 grievances which were the subject of the hearing held on September 18, 2003.

DATED this 26th day of September, 2003.

Sven Erik Holmes

United [*14] States District Judge