IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF,	§	
	§	CAUSE NO. A-14-CV-533-LY
V.	§	
	§	
CITY OF AUSTIN, TEXAS, DEFENDANT.	§	

ORDER

Before the court are the Motion to Intervene by International Association of Fire Fighters, Local 975; Andrews Arreola; Andrew Blair; Caroline Bull; John Edmiston; Daniel Hatcherson; Steven Herrera; William Kana; Matthew Martin; Matthew Rettig; and Meagan Stewart (collectively referred to as "Austin Firefighters Association" or "AFA") filed June 13, 2014 (Doc. #16); United States' Memorandum in Opposition to Motion to Intervene filed June 24, 2014 (Doc. #24); Defendant City of Austin's Memorandum Opposing Motion to Intervene filed June 27, 2014 (Doc. #27); Intervenors' Reply in Support of Motion to Intervene filed July 11, 2014 (Doc. #31); United States Surreply Regarding Motion to Intervene filed July 23, 2014 (Doc. #36); and Defendant City of Austin's Sur-Reply Opposing Motion to Intervene filed July 23, 2014 (Doc. #37). Having considered the motion, response, replies, applicable law, and the record in this cause, the court determines that the AFA's Motion to Intervene should be denied for the reasons to follow.

In 2009, the AFA entered into a collective-bargaining agreement (the "Agreement") with Defendant City of Austin (the "City"). On October 1, 2013, the Agreement expired without an applicable automatic continuation provision or continued agreement. In late September 2013, Plaintiff United States of America ("United States") concluded that the City had violated Title VII

of the Civil Rights Act of 1964 ("Title VII"). Soon afterwards, the United States and the City commenced settlement discussions.

In early June 2014, the United States and the City executed a Consent Decree that, if approved by the court, will resolve the United States' allegations against the City. On June 9, 2014, the United States filed its complaint in this court, and the parties jointly moved for provisional approval of the Consent Decree and for a fairness hearing on its terms. The court granted the joint motion on June 11, 2014 (Doc. #9). On June 13, 2014, the AFA filed the motion to intervene now pending before the court.

Rule 24 of the Federal Rules of Civil Procedure allows a party to intervene as a matter of right or by permission of the court in certain circumstances. *See* FED. R. CIV. P. 24. The AFA claims the right to intervene under Rule 24(a)(2), which requires a movant to establish "an interest relating to the property or transaction that is the subject of the action." In the alternative, the AFA requests permissive intervention under Rule 24(b)(1)(B), which allows intervention if the movant "has a claims or defense that shares with the main action a common question of law or fact." "Permissive intervention is wholly discretionary with the [district] court, even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 471 (5th Cir. 1984) (citations omitted).

The four-part test for determining intervention as a right are: (1) timeliness, (2) an interest relating to the action, (3) that the interest would be impaired or impeded by the case, and (4) that the interest is not adequately represented by existing parties. *See Sierra Club v. Espy*, 18 F.3d 1202, 1204-5 (5th Cir. 1994). To support intervention as of right, the AFA must show that it has "a direct, substantial, legally protectable interest in the action, meaning 'that the interest be one which the

substantive law recognizes as belonging to or being owned by the applicant'." *Cajun Elect. Power Coop. v. Gulf States Utils., Inc.*, 940 F.2d 117, 119 (5th Cir. 1991) (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 464 (5th Cir. 1984)) (emphasis added)). Even with the requisite interest, however, a movant has no right to intervene if: (1) denying intervention would not "as a practical matter impair or impede the movant's ability to protect its interest," or (2) any of the "existing parties adequately represent that interest." FED. R. CIV. P. 24(a)(2).

The AFA asserts the following interests for purposes of Rule 24(a)(2): (1) contractual rights regarding entry-level hiring under the Agreement; (2) the individual movants' contractual seniority rights under the Agreement; (3) the state-law right to collectively bargain; (4) the asserted preclusive effect of this case on a potential suit by the United States Equal Employment Opportunity Commission ("EEOC") against the AFA; (5) the safety of incumbent firefighters working for the Austin Fire Department; and (6) the alleged impact of retroactive seniority on incumbents' promotion potential under Civil Service Law.

In response, the United States and the City argue that the AFA has no interest within the meaning of Rule 24(a)(2). Moreover, they argue, other avenues exist for raising the concerns identified by the AFA: (1) the AFA can address such matters directly with the City through negotiations for a succeeding collective-bargaining agreement and (2) the AFA can present its concerns regarding the Consent Decree to the parties and the court through the objection and fairness-hearing process before this court. The court agrees.

The AFA's alleged interests are based on an expired collective-bargaining agreement. The case law upon which the AFA relies involves collective-bargaining agreements currently in effect. The AFA offers no authority justifying intervention on the basis of a consent decree that conflicts

with an expired collective-bargaining agreement. The Fifth Circuit has held that if no such agreement is in effect, there is insufficient legal interest for intervention under Rule 24(a). *See Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977).

Even if the Agreement in this case were still in effect, the court finds that the AFA has failed to show how the Consent Decree violates its terms. The Agreement permitted the City to make hiring changes if the hiring process outcome was found to be unlawful under Title VII. In addition, the Consent Decree does not alter, eliminate, or even address the terms or conditions of employment of any incumbent Austin firefighter; nor does it affect any statutory seniority provisions. Indeed, nothing in the Consent Decree precludes the AFA from being involved in the development of future entry-level hiring processes; it simply requires that any hiring process the City uses comply with Title VII and gives the United States the ability to review proposed hiring schemes to ensure compliance. With regard to the AFA's claim that this court's approval of the Consent Decree may have a preclusive effect on future litigation brought by the EEOC against the AFA, the AFA provides the court with no authority to support its claim that the Consent Decree may have any adverse effect on nonparties to this case. Therefore, the AFA's speculative interests in safety, seniority, and promotion standards, as well as the AFA's fear of the preclusive effect on future litigation, are insufficient to establish a direct and substantial interest required for intervention under Rule 24. *See Texas v. Dep't of Energy*, 754 F.2d 550, 552 (5th Cir. 1985).

For the same reasons the court finds intervention of right inappropriate, and weighing the undue delay and prejudice that would result form allowing the AFA's intervention in this cause, the court concludes that the AFA's alternative request for permissive intervention should be denied.

Any concerns the AFA desires to raise may appropriately be addressed through collective bargaining with the City and the Consent Decree's objection and fairness-hearing process.

IT IS THEREFORE ORDERED that the Motion to Intervene by International Association of Fire Fighters, Local 975; Andrews Arreola; Andrew Blair; Caroline Bull; John Edmiston; Daniel Hatcherson; Steven Herrera; William Kana; Matthew Martin; Matthew Rettig; and Meagan Stewart filed June 13, 2014 (Doc. #16) is **DENIED**.

SIGNED this 15th day of September, 2014.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE