

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

JOYCE MARIE MOORE, ET AL.,
Plaintiffs,

CIVIL ACTION NO.: 65-15556

VERSUS

SECTION "B" (1)

TANGIPAHOA PARISH SCHOOL BOARD,
Defendant.

JUDGE: IVAN L. R. LEMELLE

**MEMORANDUM IN SUPPORT OF RULE 59 MOTION FOR NEW TRIAL
AND, ALTERNATIVELY, RULE 60 MOTION FOR RELIEF FROM THE ORDER**

MAY IT PLEASE THE COURT:

An analysis of the defendant's collaborative procedure:

Plaintiffs' assertion that defendant failed to work with plaintiffs to fashion a new procedure is incorrect. Alton B. Lewis, Jr., held discussions with James A. Gray, II, concerning concepts that should be placed in a new procedure for the hiring of principals and other supervisory and administrative personnel. Based upon those discussions, Mr. Lewis drafted a procedure he believed to be consistent with those discussions. The procedure in Exhibit A to defendant's "Motion and Order to Approve Proposed Procedure for Hiring of Principals and Other Supervisory/Administrative Personnel" (Doc. No. 845) sets forth the procedure. Significantly, neither Mr. Gray nor Mr. Taylor have voiced or filed an opposition to the procedure submitted by Mr. Lewis as being inconsistent with his discussions with Mr. Gray.

The procedure in Exhibit A to Document No. 845 balances the requirement to hire black principals and other supervisory/administrative personnel with the need to assure that the most qualified applicant is selected. It places an onus upon the superintendent to demonstrate good faith in the making of his recommendations for the hiring of new principals and other

supervisory/administrative personnel. It incorporates a process that permits cumulative review over a reasonable period of time of employment decisions by the school board in order that it can be determined if the school board is advancing the goal of increasing the number and percentage of black principals and other supervisory/administrative personnel.

Defendant's proposed procedure also takes into account that differing considerations are at play when hiring new principals and other supervisory/administrative personnel that are not at play when hiring teachers. These considerations are not considered in the procedure in Order Document No 852. The procedure in the Order is little more than a carbon copy of the hiring procedure jointly presented to the court by the parties for the hiring of teachers. Accordingly, the procedure in the Order does not factor the traits and characteristics that separate supervisory level personnel from subordinate teachers.

Moreover, the Order does not require that persons in immediate supervisory positions partake in the hiring process. No requirement is to be found therein that requires that immediate supervisory personnel interview and evaluate applicants. This, it would seem, is a reasonable requirement to assure that recommendations by the superintendent are well informed by those who will have supervisory responsibilities over the applicant to be hired.

Finally, the procedure in Exhibit A assures that plaintiffs and the Court Compliance Officer will always review hiring decisions to determine whether they are advancing the goal of increasing the number and percentage of black principals and other supervisory/administrative personnel. Where the review shows, or is felt to show, an insufficient dedication to the hiring of black applicants, judicial review is provided for and future corrective actions can be ordered by the court.

An analysis of the procedure in the Order:

The procedure in the Order “. . . track[s] the procedures agreed upon between the parties concerning the . . . the hiring of teachers.” See “Plaintiffs’ Opposition to Defendant’s Motion to Approve Proposed Supervisory/Administrative Positions”, page 1. As discussed above, supervisory positions in a school system demand different traits and characteristics than those of classroom teachers. Principals and other supervisory/administrative personnel with education responsibilities are education leaders who are expected to set the direction and tone for the delivery of educational services to students. Education leaders have evaluation responsibilities that form no part of the classroom teacher’s responsibilities. In short, treating a hiring procedure for principal and other supervisory/administrative personnel the same as one for the hiring of teachers loses sight of the different roles played in a school system by these persons. This is precisely why the discussions between Messrs. Lewis and Gray resulted in a totally different approach.

Fatal, however, to the procedure in the Order is its review process. Under the Order review of hiring decisions is limited to only those instances in which a) the superintendent decides not to recommend a qualified black applicant for a principal or other supervisory/administrative level opening, b) the Committee, comprised of the Chief Desegregation Plan Implementation Officer, the director of personnel, and the minority recruitment officer, interviews the applicant and recommends to the superintendent that the applicant be hired, and c) the superintendent refuses to follow the recommendation received from the Committee. In such instances, the procedure in the Order requires that the superintendent advise the Court Compliance Officer of his decision prior to making an employment recommendation to the school board. In the event the Court Compliance Officer does not agree with the superintendent’s decision, she (or the plaintiffs) may petition the court for resolution. This

process can last as long as 16 days prior to the time a pleading is filed with the court seeking resolution. Such delay, coupled with whatever delay is occasioned in setting the matter for hearing and rendering a decision, can be counterproductive to the efficient operation of the school system where, for example, the open position is that of transportation director immediately prior to the start of a new school year or the beginning of a second semester when new bus routes must be finalized or altered.

Where the superintendent refuses to recommend a qualified black applicant and the Committee is in agreement, the procedure in the Order does not provide for review by the Court Compliance Officer, the plaintiffs, or oversight by the court. In short, the procedure is dependent upon persons subordinate to the superintendent telling the superintendent that his evaluation is discriminatory and wrong. This places the Committee in a different posture than its role in the teacher hiring procedure. In the teacher hiring procedure, the Committee reviews the determination of a principal who refuses to hire a qualified black teacher applicant.

If the procedure in the Order is followed, the first time a review would be had to determine if the school board has complied with the order to increase black principals and other supervisory/administrative personnel will be upon motion for unitary status. Should the court at such time determine that the school board has not acted in good faith by seeking to increase the number and percentage of blacks in these positions, judicial supervision will be extended and a new order issued with a different review process. This can be avoided by granting a new trial and addressing the glaring problem inherent in the review process in the procedure in the Order.

A new trial, or an order granting relief from the Order, ought to be ordered by the court:

A new trial, or relief from the Order, ought to be ordered to prevent the possibility of an injustice that conceivably may occur in instances where the Committee agrees with a refusal by

the superintendent to hire a black applicant based upon insufficient grounds. Review by the Committee, comprised of persons subordinate to the superintendent, is not a sufficient safeguard to assure that the review always will be fairly and impartially conducted. A court has the power and duty to order a new trial whenever, in its judgment, the action is required in order to prevent injustice. See Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2805. Under Rule 60(b)(96), a court may order relief from an order “for any other reason that justifies relief.”

A new trial will permit the court to receive evidence and consider the discussions held between Messrs. Lewis and Gray and obtain their thoughts as to why the procedure in Exhibit A more fairly addresses the goal of increasing the number and percentage of black principals and other supervisory/administrative personnel. Such evidence was not available to the court at the hearing of November 11 because the matter was decided on the pleadings and memoranda.

In the alternative, a new trial also should be order to amend or alter the Order pursuant to Rule 59(e). A new trial under Rule 59(e) will permit the court to craft a procedure that takes into consideration features of both plaintiffs’ and defendant’s proposals.

In the further alternative, defendant relief from the Order ought to be granted in order to craft a more just and workable procedure for the hiring of principals and other supervisory and administrative personnel.

WHEREFORE, Defendant Tangipahoa Parish School Board prays that a new trial be ordered herein and upon conclusion thereof that the Order in Document No. 852 be set aside or amended or altered.

Defendant further prays for relief from the Order in Document No. 852.

By Attorneys,

s/ Charles L. Patin, Jr.

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CERTIFICATE OF SERVICE

I certify that on November 16, 2009, I electronically filed the foregoing document with the Clerk of Court by using CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/ Charles L. Patin, Jr.

Charles L. Patin, Jr.