

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA,
Plaintiff**

CIVIL ACTION

VERSUS

No. 12-1924

**CITY OF NEW ORLEANS,
Defendant**

SECTION "E"

ORDER AND REASONS

Before the Court is the Motion to Continue/Stay Fairness Hearing filed by Crescent City Lodge No. 2, Fraternal Order of Police, Incorporated ("FOP"); Walter Powers, Jr. ("Powers"), in his official capacity as Acting President of FOP; and Powers in his individual capacity (together, "Movants").¹ Movants have requested expedited hearing of their Motion to Continue/Stay.² For the following reasons, Movants' Motion to Expedite is **GRANTED** and Motion to Continue/Stay is **DENIED**.

BACKGROUND

The Complaint in this case was brought on July 24, 2012, by the United States of America ("United States") against the City of New Orleans, Louisiana (the "City"), under the provisions of the Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141; the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. §§ 42.101-.112, in order to remedy an alleged pattern or practice of conduct by the New Orleans Police Department (the "NOPD") that subjects individuals to

¹ R. Doc. 119.

² R. Doc. 120.

excessive force in violation of the Fourth Amendment, unlawful searches and seizures in violation of the Fourth Amendment, and discriminatory policing practices in violation of the Fourteenth Amendment, the Safe Streets Act, and Title VI.³ On the same day, the United States and the City filed a joint motion for the Court to approve a consent decree redressing the matters alleged in the United States' complaint.⁴

On July 31, 2012, the Court entered an Order directing any party intending to seek intervention in this matter to file such motion to intervene no later than August 7, 2012.⁵ Movants filed their motion to intervene on August 6, 2012.⁶ The Court heard oral argument on Movants' motion on August 20, 2012, and considered a post-hearing supplemental memorandum.⁷

The Court denied Movants' motion to intervene on August 31, 2012.⁸ The Court found that Movants did not have the requisite legally protected interest necessary for intervention as of right pursuant to Rule 24(a)(1) of the Federal Rules of Civil Procedure. Movants also sought permissive intervention under Rule 24(b) of the Federal Rules of Civil Procedure. The Court denied permissive intervention because such intervention would unduly delay the proceedings, but nevertheless permitted Movants to submit a written

³ R. Doc. 1.

⁴ R. Doc. 2.

⁵ R. Doc. 7.

⁶ R. Doc. 9. The Police Association of New Orleans and Michael Glasser in his official capacity as President of PANO ("PANO"); Michael Glasser in his individual capacity ("Glasser"); the Office of the Independent Police Monitor ("OIPM") and Susan Hutson in her official capacity as Independent Police Monitor for the City of New Orleans ("IPM"); and Susan Hutson in her individual capacity ("Hutson") also filed motions to intervene. R. Docs. 11, 13, and 15.

⁷ R. Docs. 37 and 40.

⁸ R. Doc. 102.

memorandum in the nature of an amicus brief. The Court further provided Movants with an opportunity to be heard and to present evidence at the Fairness Hearing, and to submit suggested questions for the Court to ask the City and the United States at the Fairness Hearing.

Movants filed a notice of appeal with the U.S. Court of Appeals for the Fifth Circuit (“Fifth Circuit”) regarding the Court’s Order denying intervention on September 19, 2012.⁹ They filed their Motion to Continue/Stay on the same date. Movants argue that “to conduct the [Fairness Hearing] in such a short time frame is fundamentally unfair to [Movants] and not in accordance with the normal practice in Federal court.”¹⁰ Movants further assert that “[s]hould [Movants] be successful in their appeal, then this Honorable Court will face the same issue that was faced by the court in the Los Angeles consent decree case, namely, that the Fairness Hearing will have to be redone in its entirety, this time with the participation of [Movants].”¹¹ As the Court observed in its August 31, 2012 Order denying intervention, and reiterates here, the Los Angeles Police Protective League (“Police League”) had a collective bargaining agreement with the City of Los Angeles. Movants have no such agreement with the City. Furthermore, the Court has reviewed the available district court records from the Los Angeles case. Following the U.S. Court of Appeals for the Ninth Circuit’s decision in *United States v. City of Los Angeles*, 288 F.3d 391 (9th Cir. 2002), the district court did not hold a new fairness hearing regarding the consent decree in that matter. Instead, the Police League was allowed to participate in the action as a party from

⁹ R. Doc. 118.

¹⁰ R. Doc. 119-1 at p. 1.

¹¹ R. Doc. 119-1 at p. 3.

that point forward.

LAW AND ANALYSIS

Though Movants have not provided any law in support of their motion, in essence they have requested the Court to stay this matter pending appeal. The Fifth Circuit has set forth four factors that a district court should consider when determining whether to issue a stay pending appeal. *See Nat'l Treasury Emps. Union v. Von Raab*, 808 F.2d 1057, 1059 (5th Cir. 1987). To obtain a stay, a party must show that: (1) he is likely to succeed on the merits of his appeal; (2) he would suffer irreparable injury if the Court denied the motion to stay; (3) granting the motion to stay would not substantially harm the other parties involved in the suit; and (4) granting the motion to stay would serve the public interest. *See id.*; Fed. R. App. P. 8(a); *United States v. Baylor University Medical Center*, 711 F.2d 38, 39 (5th Cir.1983), *cert. denied*, 469 U.S. 1189 (1985)).

Urging the Court to stay this matter, Movants assert:

[T]he original parties will no doubt cry foul and say that [Movants] are simply trying to delay the implementation of the Consent Decree. Nothing could be further from the truth. However, as [Movants] have pointed out before, what is important is not simply getting this Consent Decree done, but to have it done *right*. If that means a short delay so that the process can be fair to all parties (including potential parties), and given the fact that the original parties have had two years to work on this, then that is a reasonable request.¹²

Movants have not demonstrated that they are likely to succeed on the merits of their appeal. Furthermore, they have not indicated how they will suffer irreparable injury if the Court does not stay this matter. Rather, as the Court will consider Movants' memorandum, Movants' arguments and evidence to be presented at the Fairness Hearing, and Movants'

¹² R. Doc. 119-1 at p. 3 (italics in original).

suggested questions provided to the Court, Movants will have participated substantially and adequately in the deliberative process regarding approval of the proposed Consent Decree. Likewise, Movants have failed to show that a stay will not substantially harm the United States and the City, and that a stay will serve the public interest.¹³ As Movants note, the United States and the City have been engaged in negotiations for more than two years. Lasting, substantive change with respect to the NOPD has been long in coming. A respected, trusted police force serves the best interests of the United States, the City, and, most importantly, the citizens of New Orleans. Moving forward with the Consent Decree process furthers those interests. A stay of or continuance in this matter would be a disservice to the public interest.

CONCLUSION

Accordingly, for the foregoing reasons,

IT IS ORDERED that Movants' Motion to Expedite be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that Movants' Motion to Continue/Stay be and is hereby **DENIED**.

New Orleans, Louisiana, this 21st day of September, 2012.


SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

¹³ As the Court noted in its Order denying Movants' motion to intervene, "the proposed intervenors have not shown that the United States will inadequately represent their interests at this stage of the proceedings." R. Doc. 102 at p. 21.