964 F.2d 639
United States Court of Appeals,
Seventh Circuit.

PEOPLE WHO CARE, et al., Plaintiffs–Appellees,
v.
ROCKFORD BOARD OF EDUCATION SCHOOL DISTRICT NO. 205, Defendant–Appellee,
and
Rockford Education Association, et al., Intervenors–Appellants.

No. 91–2438.
|
May 18, 1992.

Synopsis
Portions of consent decree entered by the United States District Court for the Northern District of Illinois, Stanley J. Roszkowski, J., in school desegregation case that conflicted with teachers' collective bargaining agreement were vacated by the Court of Appeals, 961 F.2d 1335. On motion for rehearing the Court of Appeals held that the Board of Education was not entitled to modification of decree to extent it enjoins implementation of collective bargaining agreement, rather than vacating portions of consent decree.

Petitions for rehearing denied.

West Headnotes (2)

[1] Federal Civil Procedure Amending, opening, or vacating

Board of Education was not entitled to modification of portions of consent decree entered in school desegregation case that conflicted with teachers' collective bargaining agreement, rather than vacating portions of consent decree, since such order would leave Board with incompatible obligations.

2 Cases that cite this headnote

[2] Federal Civil Procedure Form and requisites; validity

Judges should not enter consent decrees interfering with legal entitlements of nonconsenting parties.

1 Cases that cite this headnote

Attorneys and Law Firms

***639** Ronald L. Futterman, Kathleen Mangold–Spoto, Robert C. Howard, Hartunian, Futterman & Howard, Chicago, Ill., Andrew Campos, Rockford Area Hispanic Coalition, Rockford, Ill., and Eugene Eubanks, Kansas City, Mo., for plaintiffs-appellees.

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Before BAUER, Chief Judge, and POSNER and EASTERBROOK, Circuit Judges.

ON PETITIONS FOR REHEARING

PER CURIAM.

Plaintiffs and the Board seek rehearing, contending that instead of vacating the portions of the consent decree that conflict with the collective bargaining agreement, we should modify the decree only to the extent it enjoins implementation of the agreement. Such an order would leave the Board with incompatible obligations—bound by contract with the union to do one thing and by judicial decree to do something else. That result, the plaintiffs insist, is the command of *W.R. Grace & Co. v. Rubber Workers Local 759,* 461 U.S. 757, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983).

[1] Grace entered into a conciliation agreement with the EEOC. The agreement contained provisions inconsistent with those in an agreement between Grace and one of its unions. The union obtained an award of damages from an arbitrator, and the Court held that Grace must pay.

[2] Plaintiffs and the Board point to language in *Grace* that the civil rights laws do not forbid an employer to assume inconsistent contractual obligations. Yet the ***640** logical possibility of inconsistent obligations does not imply that a judge must or even may assist in the creation of such conflicts. Grace undertook two contractual obligations. So did the Rockford Board of Education, but we are not concerned with the status, as contract, of the agreement between plaintiffs and the Board. The litigants wanted, and got, an order preferring their bargain over the Board's pact with the union. They ask us to leave that rule of preference in place, enforced by an injunction, remitting the unions to damages even though an arbitrator under the collective bargaining agreement might believe specific performance appropriate. We have said many times that judges should not enter consent decrees interfering with the legal entitlements of non-consenting parties. E.g., *Kasper v. Board of Election Commissioners,* 814 F.2d 332 (7th Cir.1987). Rockford's unions sought—as Grace's unions did not—the elimination of any judicial compulsion behind the employer's conflicting promise. They are entitled to that relief.

Plaintiffs and the Board ask us to remand so that they may make a showing of discrimination adequate to support greater relief under the framework of our opinion. A remand is scarcely necessary: the case is ongoing, and hearings on the merits lie ahead. Just in case, we repeat the final sentence of our opinion: “The case is remanded for proceedings consistent with this opinion.”

The petitions for rehearing are denied. No judge has called for a vote on the Board's suggestion of rehearing in banc, which is rejected.

All Citations

964 F.2d 639, 140 L.R.R.M. (BNA) 2391, 58 Fair Empl.Prac.Cas. (BNA) 1391, 58 Empl. Prac. Dec. P 41,515

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