IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 10 2002
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROY C. JOHNSON, et al.	)	
Plaintiffs,	)	
v.	)	Case No. 94-CV-39-H(M)
CITY OF TULSA	)	
Defendant.	)	

ORDER

This matter comes before the Court on the Motion to Intervene By Lodge #93 of the Fraternal Order of Police ("FOP") (Docket No. 489), filed May 2, 2002. For the reasons set forth below, the FOP's motion is hereby granted.

I

A history of the litigation and the principal facts relevant to the FOP's motion to intervene are set forth fully in the Court's August 29, 2002 order denying the FOP's motion to disqualify and need not be rehearsed here.

II

The FOP seeks intervention as of right as a defendant pursuant to Rule 24(a) of the Federal Rules of Civil Procedure. Rule 24(a)(2) provides, in pertinent part:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or the transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). "Accordingly, an applicant may intervene as of right if: (1) the application is 'timely'; (2) the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) the applicant's interest may as a practical matter be impaired or impeded; and (4) the applicant's interest is not adequately represented by existing parties." Coalition of Arizona/New Mexico Counties for Stable Econ. Growth v. Dep't of the Interior, 100 F.3d 837, 840 (10th Cir. 1996) (internal quotations omitted). In deciding whether intervention should be allowed, a court should be "somewhat liberal." See Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1249 (10th Cir. 2001); see also Nat'l Farm Lines v. Interstate Commerce Comm'n, 564 F.2d 381, 384 (10th Cir. 1977) ("Our court has tended to follow a somewhat liberal line in allowing intervention."). The Court will address the second, third and fourth parts of the test in this section, and the first part of this test, timeliness, in the following section.

A. The FOP Has Demonstrated an Interest

The second part of the four-part test for intervention as a matter of right requires the FOP to show that it has an interest "relating to the property or the transaction which is the subject of the action." The Tenth Circuit requires that the interest in the proceedings be "direct, substantial, and legally protectable." Coalition of Arizona/New Mexico Counties, 100 F.3d at 840 (citations omitted). Determining whether a proposed intervenor has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination. Id. at 841 (internal quotations omitted).

The FOP argues that it has an interest in both the merits of the litigation, which involves the actions of FOP members, and any remedy that may be imposed through settlement or

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otherwise.[1] With regard to any remedy that may be imposed, the FOP contends that such a remedy may change the terms and conditions of employment of FOP members, conflict with provisions of the Collective Bargaining Agreement ("CBA"), and violate the FOP's state law and contract right to act as the exclusive bargaining agent for Tulsa police officers.

The FOP further argues that it is an indispensable party in this case based on the case of Oklahoma Black Officers, et al. v. City of Tulsa, et al., 83-CV-246-B ("OBO"). The fact that the City referred to the FOP as a necessary party in the OBO litigation, although not binding on this Court, is evidence that the City has previously expressed the belief that the FOP has an interest in such litigation. The Court observes that the FOP was deemed to be an indispensable party in that lawsuit "to a limited extent." (February 17, 1987 Order at 2 (denying motion to dismiss FOP).) The court in OBO excused the FOP from participating in pre-trial discovery, hearings and conferences, and stated that the FOP "need not, but may participate in the trial of [that] case." (Id. at 2-3.) The court kept the FOP in the lawsuit so that it would be "bound by the remedies, if any, afforded to prevailing Plaintiffs, if any, to the extent, if any, that such remedies affect its Collective Bargaining Agreement with the City of Tulsa." (Id. at 3-4.)[2]

The Court finds that, because certain remedies sought by Plaintiffs could affect the terms

[1] The FOP additionally argues that its record of advocacy in establishing the terms and conditions of employment and in grievance and arbitration proceedings creates an interest sufficient to compel intervention. See Coalition of Arizona/New Mexico Counties, 100 F.3d 837 (holding that a wildlife photographer had sufficient interest in the Mexican spotted owl to intervene as of right where the photographer had initiated a process to protect the owl).

[2] Plaintiffs in the current lawsuit have identified some unflattering language in the OBO consent decree. The FOP in that decree explicitly stated that the City had and continued to engage in racial discrimination. However, because the OBO consent decree never became final, Plaintiffs' arguments in this regard are unavailing.

and conditions of employment of FOP members and implicate certain provisions of the CBA, the FOP has claimed an interest which is a subject of the instant action. See United States v. City of Los Angeles, 288 F.3d 391, 400 (9th Cir. 2002) ("To the extent that it contains or might contain provisions that contradict the terms of the officers' [Memorandum of Understanding governing the terms and conditions under which members of the Police League are employed], the Police League has an interest."). Cf. EEOC v. AT&T Co., 506 F.2d 735, 741-42 (3d Cir. 1974).

B. The FOP's Interest May Be Impaired or Impeded if Intervention Is Denied

To satisfy the third part of the intervention test, the FOP must demonstrate that its claimed interest may be impaired or impeded without intervention. "To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied." Utah Ass'n of Counties, 255 F.3d at 1253 (internal quotations omitted); see generally, Coalition of Arizona/New Mexico Counties, 100 F.3d at 844.

The FOP argues that the existence of alternative forums for challenging any remedy imposed through this litigation does not eliminate the possibility of impairment of the FOP's interests under the CBA. See Sanguine, Ltd. v. DOI, 736 F.2d 1416, 1420 (10th Cir. 1984) ("Sanguine I"); see also Utah Ass'n of Counties, 255 F.3d at 1254 ("Where a proposed intervenor's interest will be prejudiced if it does not participate in the main action, the mere availability of alternative forums is not sufficient to justify denial of a motion to intervene.") (internal quotations omitted). The FOP further argues that the possibility a consent decree may be entered imposing a race-conscious remedy or otherwise implicating provisions of the CBA is a possible impairment to the legal interests of the FOP and its members if not allowed to

intervene.

The Court finds that the FOP's asserted interest may be impaired in a resolution of this lawsuit, as such a resolution conceivably might implicate certain provisions of the CBA. See United States v. City of Los Angeles, 288 F.3d at 400. Accordingly, the Court finds that the FOP satisfies the third part of the intervention test.

C. The FOP's Interests Are Not Adequately Represented by the Parties

The fourth prong of the test for intervention requires that the FOP demonstrate that neither the Plaintiffs nor the City is adequately representing its asserted interests. The Tenth Circuit has described this burden as "minimal." See Coalition of Arizona/New Mexico Counties, 100 F.3d at 844 (citations omitted); see also Utah Ass'n of Counties, 255 F.3d at 1254 ("The possibility that the interests of the applicant and the parties may diverge need not be great in order to satisfy this minimal burden.") (internal quotations omitted).

"[R]epresentation is adequate when the objective of the applicant for intervention is identical to that of one of the parties."[3] Coalition of Arizona/New Mexico, 100 F.3d at 845 (internal quotations and citations omitted) (citing with approval Northwest Forest Res. Council v. Glickman, 82 F.3d 825, 838 (9th Cir. 1996) ("Where an applicant for intervention and an existing party 'have the same ultimate objective, a presumption of adequacy of representation arises.'"); see also City of Stilwell v. Ozarks Rural Elec. Coop. Corp., 79 F.3d 1038, 1042 (10th Cir. 1996)

[3] For example, identity of interests exists where both the party and the putative intervenor desire to maximize (or minimize, as the case may be) the financial impact of the litigation. See, e.g., Shea v. Angulo, 19 F.3d 343 (7th Cir. 1994); Adarand Constructors, Inc. v. Romer, 174 F.R.D. 100, 104 (D. Colo. 1997) ("A presumption of adequacy of representation arises where the applicant for intervention and the existing party have the same ultimate objective.") (citations omitted).

(holding representation is adequate when the objective of the applicant is "identical" to that of one of the parties) (quoting Bottoms v. Dresser Indus., Inc., 797 F.2d 869, 872 (10th Cir. 1986)); Sanguine I, 736 F.2d at 1419 (holding burden to show inadequate representation satisfied where representative has interest adverse to the applicant).

The FOP argues that, as adverse parties under the CBA, the City will not and has not adequately protected the FOP's interests regarding changes in terms and conditions of employment. The FOP contends that the City neither conferred with nor notified the FOP of the previous Consent Decree ("the Decree") before it was executed. The FOP points to the City's position on the scope and effect of the CBA and applicable state law on collective bargaining, as adduced at the hearings on the fairness of the proposed Decree and the hearings on the FOP's intervention, as support for its claim that the City's interests are adverse to those of the FOP. Specifically, the FOP asserts that, based on the evidence from these proceedings, the City does not believe that any remedy relating to possible changes in the terms of employment of FOP members, and the manner in which Tulsa police officers will be required to conduct their operations with respect to the Tulsa community, violates the CBA or otherwise affects the FOP.

The Court notes that the divergence of interests between the City and the FOP may be inferred from the limitations the City now seeks to impose on the FOP's participation in any settlement negotiations. In its supplemental memoranda on the issue of intervention, the City states:

> [T]he City of Tulsa has no objection to the FOP's participation in any future settlement conferences which may be ordered by the Court. As a party whose intervention has been limited by the Court, the FOP would not have the right to disapprove or veto a settlement otherwise agreed to by the plaintiffs and the City. Nevertheless, the City continues to believe that the FOP's participation in the

> settlement process is vitally important, and may hopefully form the basis for a unified approach to the resolution of this costly and protracted litigation. A consent decree negotiated with the input of the FOP would be the best possible result for all parties to this case and the citizens of Tulsa, Oklahoma.

(Def.'s Supplemental Mem. in Resp. to Mot. to Intervene at 2.) The Court finds that, having recognized that "the FOP's participation in the settlement process is vitally important," it is illogical for the City to request that the FOP become a participant in the negotiations, but then deny it the power to accept or reject any proposed settlement. The Court concludes that the reason the City seeks to deny the FOP a meaningful role in settlement negotiations is because the City's interests may diverge from those of the FOP. Accordingly, the Court finds that the FOP's interests are not adequately represented by the City.

Having found that the FOP has satisfied the last three parts of the four-part test for intervention, the Court turns to the first part of this test, whether the FOP's motion is "timely." The Tenth Circuit's timeliness analysis contains a separate four-factor test, which will be discussed below.

III

In analyzing any motion to intervene, a court must consider the timeliness of the motion. If the motion is untimely, the intervention must be denied. Fed. R. Civ. P. 24(a); see also NAACP v. New York, 413 U.S. 345, 365 (1973); United Nuclear Corp. v. Cranford Ins. Co., 905 F.2d 1424, 1427 (10th Cir. 1990). The timeliness of a motion to intervene must be assessed in light of all the circumstances. Utah Ass'n of Counties, 255 F.3d at 1250. The four factors to be considered to determine whether a motion to intervene is timely include: (1) the length of time since the applicant knew or reasonably should have known of its interest in the case; (2) any prejudice to the existing parties; (3) any prejudice to the applicant; and (4) the existence of any unusual circumstances. Id.

The requirement of timeliness is a flexible one. 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 1916, at 422 (2d ed. 1986). It

is not intended as a means of punishment for a tardy intervenor; rather, it is a "guard against prejudicing the original parties by the failure to apply sooner." Utah Ass'n of Counties, 255 F.3d at 1250. The timeliness analysis is "contextual," and absolute measures of timeliness should be ignored. Id. at 1250 (quotations and citations omitted). In discussing the timeliness of a motion to intervene, the Tenth Circuit has stated that "[f]ederal courts should allow intervention where no one would be hurt and greater justice could be attained." Id. at 1250 (quotations and citations omitted). The Court is mindful that, with respect to timeliness, a motion to intervene as of right should be treated more leniently than a motion for permissive intervention upon a finding that serious harm might accrue to the movant if the motion were denied. See 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 1916, at 424. The Court will address each of the timeliness factors in turn.

A. The Length of Time Since the FOP Knew or Reasonably Should Have Known of Its Interest in the Case

Under applicable law, the FOP should have moved to intervene as soon as it knew or should have known of its interest in the case and that its interests were not adequately represented by the City. See Sanguine I, 736 F.2d at 1418. In this regard, the FOP has articulated its interests in the lawsuit as (1) protection of the terms of the CBA between the City and the FOP, which gives the FOP exclusive bargaining rights to bargain for its members over their "terms and conditions of employment," and (2) defense of the Tulsa Police Department ("TPD") against allegations of racism. The FOP has expressed its opposition to the settlement previously reached by the parties to this lawsuit and its criticism of the City for failing to force the case to go to trial. Therefore, the FOP's and the City's interests have at some point in this lawsuit diverged, since the City entered into the proposed settlement and Consent Decree with Plaintiffs dated April 5, 2002. Consequently, the question becomes at what point the FOP knew

or should have known that their interests had diverged from the City.

The FOP argues that "knowledge of adverse effects on the interests of the FOP and its members did not arise until the parties filed the Settlement Agreement with this Court on April 5, 2002." (Mem. in Supp. of Mot. to Intervene by Lodge #93 of the Fraternal Order of Police ("Mem. in Supp. of Mot. to Intervene") at 16.) The FOP concedes that it knew of its interest in the lawsuit before April 5, 2002, but justifies its failure to intervene earlier on the grounds that, until the Decree became public on April 5, 2002, the FOP believed its interests were adequately being represented by the City. In support of this claim, the FOP points to the pleadings in the public record before April 5, 2002, which it argues gave no indication that its interests were not being adequately represented. The FOP contends that the public filings showed only that: (1) the City was denying liability and actively litigating the case; and (2) the Second Amended Complaint appeared to raise only issues regarding racial discrimination within the TPD.[4] The FOP further contends that representatives of the parties, in response to questions from the FOP, told the FOP that settlement discussions were confidential and that the City was defending the case vigorously. (Mem. in Supp. of Mot. to Intervene at 17.)

Facts with respect to the FOP's notice of the lawsuit and its claims for relief were adduced at the hearings held during June and July 2002, and are described in some detail in the Court's August 29, 2002 order denying the FOP's motion to disqualify. Based on the publicly filed pleadings stating Plaintiffs' claims for relief as discussed in the Court's August 29, 2002

[4] The FOP claims that it did not realize, until the terms of the Decree became public on April 5, 2002, that the parties were considering relief so broad that it might implicate rights granted the FOP by the CBA.

order, the Court finds that the FOP had ample notice of the claims asserted and equitable relief sought by the Plaintiffs. Clearly, the FOP had notice that the requested remedies were not directed solely at TPD internal affairs and that Plaintiffs' claims included a claim for hostile work environment on the basis of discriminatory treatment of African-American citizens in the community. (Second Am. Compl. at 7.)

The Court further finds that the FOP had notice of the settlement discussions and the possibility of settlement of the case from conversations with the City, the extensive public record tracking the progress of the case, and the Court's November 2001 order staying the case. The Court concludes the FOP became aware that its interests diverged from the City's shortly after the November 2001 time frame, when the case was stayed at the joint request of the parties in order that they might engage in further settlement negotiations. The Court cannot find with certainty, however, that the FOP had notice earlier than November 2001. The Court is not persuaded that, prior to that time, the FOP was not reasonably relying on representations by the City's agents to the effect that the City would not settle the case on any terms.

The fact that the FOP has had notice of the divergence of its interests from the City since November 2001, however, does not compel the conclusion that the FOP's motion to intervene is untimely now that the case has returned to a trial track. The City's withdrawal of its support for the Decree, effectively rejecting the settlement reached by the parties during the stay, resulted in a return to the status quo ante as of November 2001, when the case was stayed. Since November 2001, the case has not moved forward toward a trial of the issues. Had the FOP moved to intervene in November 2001, when it first had clear notice that its interests were diverging from those of the City, there is a reasonable likelihood, based on the record at that time, that the Court

would have permitted intervention. Therefore, because the case has been stayed during the entire time the FOP has been on notice, permitting the FOP to intervene today is no different than the Court allowing it to intervene in November 2001. Accordingly, the Court finds that, although the FOP did not intervene when it first had notice that its interests were different from the City's, the FOP's intervention is nevertheless timely since the case has returned to the status quo ante of November 2001.[5]

B. Prejudice to the Existing Parties

The second factor in an assessment of timeliness is the potential for prejudice to the existing parties. "The prejudice prong of the timeliness inquiry 'measures prejudice caused by the intervenors' delay -- not by the intervention itself.'" Utah Ass'n of Counties, 255 F.3d at 1251 (quoting Ruiz v. Estelle, 161 F.3d 814, 828 (5th Cir. 1998)).

The FOP has expressly represented to the Court that it will not seek delay in this matter if the motion to intervene is granted (See Mem. of Law in Supp. of Lodge #93 of the Fraternal Order of Police's Mot. for Stay at 4 ("In fact, the FOP's intervention would not cause any delay in a trial, beyond whatever time the other parties would need to prepare for trial.").) The FOP has further represented that the parties would not be prejudiced by intervention because it would

[5] The Plaintiffs cite the Tenth Circuit's recent opinion in Ute Distribution Corp. v. Norton, No. 01-4020, 2002 WL 1722061, at *4 (10th Cir. July 25, 2002), as support for the proposition that the FOP should not be permitted to intervene because its motion to intervene is untimely. Ute Distribution is inapposite, however, because, unlike the Timpanogos Tribe, the FOP has interests that may be impaired or impeded by the lawsuit if not permitted to intervene. See Ute Distribution, 2002 WL 1722061, at *6 (holding that intervention would not impair or impede protection or assertion of its interest where any ruling by the district court would have no impact on the issues raised by the Timpanogos Tribe because the APA issue did not affect the validity of any statutes or treaties relied on by the Tribe, did not decide the question of aboriginal claim to land/water rights, and did not decide whether Congress abrogated that title in the 1954 UPA).

not seek any new discovery in the matter. (See Mem. in Supp. of Mot. to Intervene at 15 ("[T]he FOP does not expect to take any depositions or submit written discovery requests, assuming the discovery already taken is promptly made available to the FOP."); see also Supplemental Mem. of Lodge #93 of the Fraternal Order of Police on Intervention at 2 ("There can be no prejudice to the existing parties by allowing the FOP to intervene as a full party now. A stay has been in effect since November of 2001 until August 16. The existing parties must get ready for trial based on existing discovery, just as the FOP would have to get ready for trial based on existing discovery.").) The Court accepts these representations as true and relies upon them in evaluating the prejudice to the parties.

The Court finds that, in light of the express representations of the FOP, the prejudice to the parties is minimal.[6] As discussed above, the FOP has represented to the Court that it will not seek additional discovery. See Utah Ass'n of Counties, 255 F.3d at 1250 (finding no prejudice to the existing parties where the intervenors "would not seek additional discovery"). The case is moving forward to a January 2003 trial date, and the preparation for the parties and the FOP will be similar.

In determining prejudice to the parties, the Court cannot consider Plaintiffs arguments that an additional party would double the work load and add issues because those factors "are a

[6] As Plaintiffs note in their supplemental brief, the City's withdrawal of its support from the Joint Motion for Approval and Adoption of the Consent Decree (Docket No. 480) and the Court's consequent rejection of the Decree, resulted in a "drastic change of circumstances" requiring reevaluation of the issue of prejudice to the parties from the FOP's intervention. (Pls.' Additional Resp. to Mot. to Intervene by Lodge #93 of the Fraternal Order of Police at 2.) The Court finds that a determination regarding whether the FOP's motion to intervene is timely is significantly different when looking through a prism of an executed settlement agreement. Accordingly, the Court's findings with respect to the prejudice to the parties must be adjusted to account for the City's withdrawal of its support for the Decree.

function of intervention itself rather than the timing of the motion to intervene." Id. at 1251 ("The prejudice prong of the timeliness inquiry measures prejudice caused by the intervenors' delay -- not by the intervention itself.") (internal quotations omitted). Similarly, the Court cannot review simply the number of years the case has been pending in order to determine prejudice because the Tenth Circuit, in Utah Ass'n of Counties, stated that the absolute measure of time between filing of the complaint and the motion to intervene is one of the least important circumstances. 255 F.3d at 1250 (citations omitted).

Furthermore, the Court finds that the FOP's intervention is in the best interest of the parties because both Plaintiffs and the City need to have a resolution of this case that will bind all affected interests. This case can be resolved only through settlement or adjudication, and all affected parties must be present to protect and vindicate their interests under the law, regardless of which course is followed. If resolution comes through settlement, there must be meaningful negotiations among the involved and affected parties.[7] If, on the other hand, the case is

[7] As previously demonstrated by the proceedings that have been conducted over the past three months, as well as the public statements of the parties, any proposed settlement agreement between the parties without the approval of the FOP is unlikely to be successful. The Court finds that the City's suggestion that the FOP be allowed to participate in settlement negotiations without having any authority to accept or reject a proposed agreement is inconsistent with the public statements it has made regarding settlement. In this regard, the City's record of inconsistencies between its legal position and public statements is instructive, and, accordingly, a sample of such statements, dating from the announcement of the settlement on April 6, 2002, is included in Appendix 1, attached hereto. See, e.g., David Harper, Black Officers' Case Settled; A Data System for TPD is Required in a Pact Signed by a Federal Judge, TULSA WORLD, April 6, 2002, at A1 (App. 1.1); Brian Barber, Savage Quizzed Over Suit Settlement, TULSA WORLD, June 14, 2002, at A1 (App. 1.2); David Harper, Racial Division is Cited, TULSA WORLD, July 16, 2002, at A9 (App. 1.3); David Harper, Mayor OK With FOP Role in Talks, TULSA WORLD, July 17, 2002, at A1 (App. 1.4); David Harper, Mayor Gets Time to Study Decree, TULSA WORLD, July 18, 2002, at A1 (App. 1.5); David Harper, Black Officers' Suit: FOP Asks Judge to Step Aside, August 15, 2002, at A11 (App. 1.6); David Harper, Black Officers' Suit: Mayor Wants Revised Decree, TULSA WORLD, August 16, 2002, at A1 (App. 1.7); David Harper, Black Officers' Suit: Judge Rejects Decree; Trial Date Ahead, TULSA WORLD, August 17, 2002, at A1 (App. 1.8); Curtis Killman, Black Officers Suit: Lawsuits Excessive, City Says, TULSA WORLD,

adjudicated, the results of that adjudication must be binding on all the interested and affected parties, including the FOP. The greatest prejudice would be to conclude this case in such a way that the resolution, whether through settlement or adjudication, is not fully enforceable.[8]

C. Prejudice to the FOP

The third factor in a determination of timeliness is prejudice to the applicant due to denial of its motion to intervene. The FOP argues that, if not allowed to intervene, it will not be able to: (1) make future challenges to the terms of the Decree as effectively as it could were it allowed to intervene; and (2) clear the TPD of charges of racism and/or illegal acts.

Having demonstrated an interest in the litigation that may be impaired or impeded without permission to intervene, the Court finds that the FOP has demonstrated that such a denial could result in prejudice to the FOP and its view of the rights the FOP enjoys under the CBA. The Court further finds that the City's effort to prevent the FOP from having a meaningful role in settlement negotiations informs the issue of prejudice to the FOP. As noted above, the City's supplemental memoranda on the issue of intervention suggested that the FOP be allowed to participate in any future settlement conferences but that it "not have the right to disapprove or veto a settlement otherwise agreed to by the plaintiffs and the City." (Def.'s Supplemental Mem.

August 20, 2002, at A1 (App. 1.9); David Harper & Curtis Killman, Black Officers Suit: January Tentative Date for Bias Trial, TULSA WORLD, August 22, 2002, at A1 (App. 1.10); David Harper, Judge Sets Hearing on FOP Motion, TULSA WORLD, August 24, 2002, at A15 (App. 1.11); Curtis Killman & David Harper, Black Officers Suit: Settlement Supporters Stage Rally, TULSA WORLD, August 30, 2002, at A1 (App. 1.12).

[8] The Court finds that the intervention of the FOP will not necessitate further pleadings or additional discovery, as suggested by the Plaintiffs. To the contrary, the FOP is being granted intervenor status in this case as it is currently plead. As a result, the FOP will be a full participant and party to the proceedings, and it will be bound by any adjudication resulting from the Plaintiffs claims for equitable relief stated in its second amended complaint. At this time, the Court finds no basis in the record to support a motion to further amend the pleadings.

in Resp. to Mot. to Intervene at 2.) Granting the FOP a seat at the settlement table without the power to "disapprove or veto a settlement" does not grant the FOP any meaningful participation whatsoever. Accordingly, the Court finds that the FOP will be prejudiced without the right to intervene as a full party to the action.

D. Unusual Circumstances

The Court finds that to assess this factor fairly, a brief review of the procedural history of the case is necessary. The original complaint against the City was filed on January 14, 1994. In the interceding eight years, since the complaint was filed, the case has been stayed a number of times in order to facilitate settlement. Most notably, the case was stayed in November 2001, upon the joint motion of the parties, which followed nearly two years of discovery and the publicly reported payment by the City of nearly $2 million in legal fees.

After over four months of negotiations, the parties signed the proposed Decree on April 1, 2002; the Decree was executed on behalf of the City by then-Mayor Susan Savage. William LaFortune, the incoming mayor, took office later that day. Mayor LaFortune received a copy of the Decree along with a notice requiring him to either accept the Decree by signing a statement agreeing to the settlement or by simply permitting the passage of time until noon on Friday, April 5, 2002, or to reject the settlement by executing a form of objection. Mayor LaFortune lodged no objection to the Decree, and at the joint request of the parties, the Court signed the Decree on April 5, 2002.

On May 2, 2002, the FOP moved to intervene, and then on May 10, 2002, moved to compel the depositions of former Mayor Savage, Mayor LaFortune, and City Counsel Larry Simmons, and for production of all documents the parties planned to introduce in support of the Decree at the fairness hearing.[9] The Court scheduled a hearing on those issues for May 23, 2002.

[9] As the sole objector to the Decree, the FOP filed a motion asking the Court to reject the Decree on May 22, 2002.

At the hearing, the Court heard preliminary arguments on the motion to intervene, granted the FOP's motion for production of documents, and denied the motion to compel depositions. Moreover, at the hearing, the Court pledged that whether or not the motion was decided in its favor, the FOP would be a "full participant" in all proceedings dealing with the Decree. Specifically, the Court stated:

> I anticipate you're going to be a full participant at the fairness hearing in any capacity, and I welcome it and I intend to ensure it. And so precisely whether it's one or the other or multiple capacities, as far as I'm concerned you're a welcome and full participant. . .

(5/23/02 Tr. at 53.)

The Court convened hearings during June and July 2002 to hear argument on the issues of the fairness of the Decree and the FOP's intervention. As promised, the FOP was a full participant at those hearings. At the July 16, 2002 hearing, Mayor LaFortune testified that he would have preferred to have more time to study the Decree before having to make the decision of whether to support its adoption by the Court or to object. (7/16/02 Tr. at 568-69.) The following day, an officer of the TPD and employee of the City, Officer Rink, testified that he had compiled information regarding the African-American Plaintiffs from restricted City personnel records, during working hours, at the behest of the FOP, for the sole purpose of opposing the Decree. (7/17/02 Tr. at 670-71.) The Court found that Mayor LaFortune's tentative testimony regarding the Decree in its current form and Officer Rink's testimony that he was not disciplined for his unauthorized use of TPD personnel information, demonstrated an apparent lack of commitment to the successful implementation of the Decree by the individuals responsible for its enforcement. The Court determined that it could not find that the proposed Decree was in the best interest of the community except and unless the mayor and the City were prepared to give the Decree their "unequivocal" commitment. Accordingly, the Court extended the date by which Mayor LaFortune would be required to either object to or agree to the Decree, in order to give the mayor a full opportunity to further consider the Decree.

On August 16, 2002, Mayor LaFortune and the City filed a statement that withdrew the City's support for the Decree in its current form. Based on the mayor's statement and the City's withdrawal from its joint motion to approve and adopt the Decree, the Court rejected the Decree and returned the case to a trial track.

The Court finds that the facts and circumstances in this case are unusual and weigh in favor of the FOP's intervention. The Plaintiffs and the City were adversaries throughout most of this litigation. It is uncontested that, during this period, the City contributed to the FOP's reasonable belief that the City would advance the FOP's interests and oppose any settlement.

Thereafter, following months of negotiations, the Plaintiffs and the City became allies and jointly requested the Court to adopt the proposed Decree over the opposition of the FOP. With the passage of time, however, and the occurrence of events both inside and outside the courtroom, which are fully documented in the record of this case, the alliance between the Plaintiffs and the City ended. As a result, the City withdrew its support from the joint motion, and the Decree was rejected.

The procedural history of this case is manifestly unusual. Nevertheless, the case is now set for trial. With the intervention of the FOP, all interested parties will be before the Court. The Court believes that the parties, as well as the community, have an interest in a fair, comprehensive, and expeditious resolution of this lawsuit with all proper parties before the Court. This result can only be achieved if the motion to intervene is granted.

Based on the application of the four-factor test, the Court finds that the FOP's motion to intervene is timely.

IV

For the reasons set forth above, the Court finds that the FOP has satisfied the requirements for intervention under Fed. R. Civ. P. 24(a). Accordingly, the Court hereby grants the Motion to Intervene By Lodge #93 of the Fraternal Order of Police (Docket No. 489).

The Plaintiffs, Defendant City of Tulsa, and Defendant Lodge #93 of the Fraternal Order

of Police are hereby ordered to appear before Magistrate Judge Frank H. McCarthy on Thursday, September 12, 2002, at 2:30 p.m., to prepare a proposed final schedule in this matter. This proposed schedule should reflect such revisions to the current schedule, if any, as are necessary to accommodate the intervention of the FOP. The proposed schedule will be addressed at the hearing on the FOP's motion to stay set for Friday, September 13, 2002 at 11:30 a.m.

IT IS SO ORDERED.

This 10TH day of September, 2002.

Sven Erik Holmes
United States District Judge