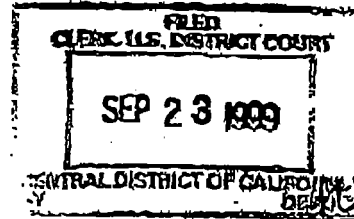


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**United States District Court
Central District of California
Western Division**

LABOR / COMMUNITY STRATEGY
CENTER, *et al.*,

Plaintiffs,

v.

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY, *et al.*,

Defendants.

CV 94-5936 TJH (MCx)

**Memorandum Opinion
and
Order**

Pursuant to the October 29, 1996, consent decree entered in this case, the Los Angeles County Metropolitan Transportation Authority ["MTA"] has asked the Court to review the Special Master's orders of March 6, 1999, and May 14, 1999.

In seeking review, the MTA raises several issues which can be consolidated into two. First, the Special Master's recommendations went beyond his powers and the powers of the Court. Second, the Special Master's findings and recommendations are clearly erroneous.

1 **DISCUSSION**

2 **Authority of the Court and the Special Master**

3 There should be no question that the Court and the Special Master possess the
4 equitable powers to enforce the consent decree. This power stems not only from well-
5 established case law, but, also, from the terms of the consent decree itself.

6 First, the consent decree clearly, and explicitly, states that all disputes shall be
7 submitted to the Special Master for his resolution, and that the Special Master's
8 resolutions may by *reviewed* by this Court. Given the complexity of any plan to
9 reduce bus overcrowding, the consensual delegation of dispute resolution powers to
10 the Special Master was appropriate. Further, in the November 21, 1996, Stipulation
11 and Order of Reference, the MTA specifically, and unequivocally, empowered the
12 Special Master to resolve disputes arising out of the consent decree.

13 Second, the MTA is estopped from asserting that the Special Master's authority
14 is very narrow and finite. "Judicial estoppel, sometimes also known as the doctrine
15 of preclusion of inconsistent positions, precludes a party from gaining an advantage
16 by taking one position, and then seeking a second advantage by taking an
17 incompatible position." *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d 597,
18 600-1 (9th Cir. 1996). When the MTA asked the Special Master to issue an injunction
19 to prohibit Plaintiff Bus Riders Union ["Bus Riders"] from encouraging a "No Seat,
20 No Fare" strike, the Bus Riders argued that the Special Master lacked the explicit
21 power to issue such an injunction. In response, the MTA argued that the Special
22 Master's powers were very broad and implicitly encompassed the authority to issue
23 the injunction. Now that the MTA disfavors the Special Master's decision on a matter
24 which he was explicitly empowered to resolve, the MTA makes a frontal attack on his
25 authority. The MTA is estopped from doing so.

26 Third, a consent decree is a permanent injunction enforceable by the Court. *See*

1 *Local 93, Int'l Ass'n. of Firefighters v. Cleveland*, 478 U.S. 501, 517-18, 106 S. Ct.
2 3063, 3072-73, 92 L. Ed. 2d 405, 420-21 (1986). Generally, this Court has broad
3 equitable remedial powers to enforce injunctions. See *Swann v. Charlotte-*
4 *Mecklenburg Bd. Of Educ.*, 402 U.S. 1, 15, 91 S. Ct. 1267, 1275, 28 L. Ed. 2d 554,
5 566 (1971). Moreover, a remedial scheme embodied in a consent decree may be even
6 broader than a court-created equitable remedy after a trial on the merits. *Local 93*,
7 478 U.S. at 525, 106 S. Ct. at 3076, 92 L. Ed. 2d at 425 (1986). Furthermore,
8 contrary to the MTA's contention, the enforceability of a consent decree is not
9 dependant upon a prior determination of a constitutional violation. See *Stone v. San*
10 *Francisco*, 968 F.2d 850, 862, n.20 (9th Cir. 1992).

11 By the clear language of the consent decree, the MTA had the *initial*
12 responsibility to devise and implement a plan to reduce bus overcrowding. Since the
13 MTA failed to meet the obligations imposed by the consent decree, it is now up to the
14 Special Master and the Court -- through the Court's equitable powers -- to enforce the
15 consent decree. See *Hutto v. Finney*, 437 U.S. 678, 687, 98 S. Ct. 2565, 2572, 57 L.
16 Ed. 2d 522, 532 (1978).

17
18 **Standard of Review**

19 In non-jury matters -- such as the equitable enforcement of a consent decree --
20 the Court must accept the Special Master's findings unless they are clearly erroneous.
21 Fed. R. Civ. P. 53(e)(2). This is in accord with the terms of the consent decree which
22 clearly states that this Court may only review the Special Master's resolutions of
23 disputes between the MTA and the Bus Riders.

24 Findings are clearly erroneous "when although there is evidence to support it,
25 the reviewing court on the entire evidence is left with the definite and firm conviction
26 that a mistake has been committed." *United States v. United States Gypsum Co.*, 333

1 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746, 766 (1948). If the Special Master's
2 findings are "plausible in light of the record viewed in its entirety [the Court] may not
3 reverse [the Special Master] even though convinced that had it been sitting as the trier
4 of fact it would have weighed the evidence differently." *Anderson v. Bessemer City*,
5 470 U.S. 564, 574, 105 S. Ct. 1504, 1511, 84 L. Ed. 2d 518, 528 (1985).

6
7 **Review of the Special Master's Orders**

8 Given the detailed findings of the Special Master, and the evidence in support
9 of his findings, the Court does not have a firm conviction that the Special Master
10 made a mistake in determining that the MTA has not substantially complied with the
11 consent decree in that the target load factor of 1.35 has not been met. Therefore, the
12 Special Master's findings regarding compliance with the consent decree were not
13 clearly erroneous.

14 As to the Special Master's remediation plan, it is affirmed as follows:

- 15 1. The Special Master's determination that 248 additional buses are needed,
16 and must be purchased immediately, to resolve "insufficient capacity"
17 violations so as to meet the 1.35 target load factor that should have been
18 met by December 31, 1997, is affirmed. The MTA shall, within thirty
19 days, through lease or other means, obtain 248 buses on a temporary
20 basis until the 248 purchased buses arrive.
- 21 2. Given the apparent increased reliability of the MTA's current fleet, the
22 Special Master shall reconsider whether the additional 49 buses he
23 ordered the MTA to purchase for spares are still needed.
- 24 3. The Court believes that it is too early to determine whether the MTA is
25 incapable of meeting the 1.25 target load factor by June 30, 2000, given
26 the current progress apparently made by the MTA and the age of the

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point check data presented to the Special Master and the Court. Therefore, the Special Master shall re-evaluate the likelihood of the MTA meeting the 1.25 target load factor after he is presented with more up-to-date point check data. The Special Master shall evaluate the data using both static twenty minute periods and non-overlapping, sliding twenty minute periods. The Special Master shall use whichever calculation method that most accurately reflects the actual level of overcrowding experienced by bus riders.

As the Special Master reconsiders and re-evaluates the above items, he should consider, with the input of the Joint Working Group, the MTA and the Bus Riders, other capacity increasing measures beyond the purchase of additional buses. For example, the Special Master should consider the movement of buses from less crowded lines to more crowded lines, and the possibility of reducing or eliminating MTA service to those municipalities served by the sixteen municipal bus lines that offer overlapping service to the service provided by the MTA.

The Special Master's orders are affirmed as to all other findings and determinations.

It is so ordered.

Date: September 29, 1999


Terry J. Hatter, Jr.
Chief United States District Judge