

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WILSON DIVISION

NO. 1019 - CIVIL

*1019*  
**FILED**

JUN 14 1967

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VERTA M. PRIDGEN and THE NORTH  
CAROLINA TEACHERS ASSOCIATION,  
a corporation,

Plaintiffs,

v.

WELDON CITY BOARD OF EDUCATION,  
a public body corporate, and  
B. PAUL HAMMACK, Superintendent  
of Weldon City Schools,

Defendants.  
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SAMUEL A. HOWARD, CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. CAR.

*Civ. O. B. # IV, p. 1466*

MEMORANDUM

OPINION and ORDER

LARKINS, District Judge:

This cause comes before the Court upon motions contained in defendants' answer for judgment on the pleadings, to dismiss for failure to state a claim upon which relief can be granted, and for summary judgment pursuant to Federal Rule 56(b) and (c) on the grounds that the pleadings and the answer of the defendants used as an affidavit show that they are entitled to judgment as a matter of law. As additional grounds for dismissal under Federal Rule 12, defendants in their Fourth Defense assert that plaintiffs, who seek equitable relief, have failed to show the refusal or failure of defendants to perform a clear,

legal duty so as to provide grounds for equitable relief and a valid basis for an effective decree in equity, and in their Fifth Defense, they attack plaintiffs' claim on jurisdictional grounds for failure of the individual plaintiff to exhaust her State administrative remedies. Defendants have also moved to strike certain allegations in plaintiffs' complaint, hereinafter set forth, on grounds of irrelevancy.

Plaintiffs, proceeding under 42 U.S.C. 1983, allege in their complaint that the defendants are operating the public schools of the City of Weldon upon a racially discriminatory basis, in that they employ and assign all teachers and professional personnel on the basis of race and color in order to avoid integrating the faculties of the previously all-white and all-Negro schools. The individual plaintiff bringing this class action alleges that pursuant to this alleged policy of racially-discriminatory teacher assignment, she was dismissed by the defendants; she also alleges that she was not employed for the 1966-67 school year solely because of her race and color. No facts have been set forth by affidavit or otherwise regarding the circumstances of the individual plaintiff's alleged dismissal, since the filing of defendants' motions.

In support of their motions, the defendants offer the pleadings, consisting of plaintiffs' unverified complaint and defendants' verified answer submitted as an affidavit. Interrogatories propounded by the plaintiffs and

answers thereto by the defendants, as well as a copy of the Amended Plan For Compliance with Title VI of The Civil Rights Act of 1964 adopted by the Weldon City School Board, have also been filed for the Court's consideration. Hence, pursuant to Rule 12(b) and Rule 12(c) of the Federal Rules of Civil Procedure, the motions for judgment on the pleadings and to dismiss are treated and disposed of herein as motions for summary judgment under Federal Rule 56. Pursuant to Gen. Rule 4(H), U. S. Dist. Ct., E.D.N.C., the motions are being considered and decided without a hearing, no request for hearing having been made by counsel for either movant or respondent.

Federal Rule 56(c) provides in part that summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. It is further provided in subsection (e) of Federal Rule 56 that "(W)hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against

him." Plaintiffs have failed to make any response to the motions contained in the answer filed by the defendants. Against the motions, all being treated and disposed of as a motion for summary judgment, plaintiffs rest upon the mere allegations contained in their complaint.

The Court is of the opinion that summary judgment in favor of the defendants is appropriate in respect to the claim of the individual plaintiff, Verta M. Pridgen, that she was dismissed from her employment as a teacher in the Weldon City School System and that she was not re-hired for the 1966-67 school year solely because of her race and color and in order to avoid racial integration of the teaching personnel among the six schools composing the Weldon City Administrative Unit. There exists no genuine issue as to any material facts constituting the basis upon which the relief sought could be granted; on the contrary, the pleadings, answers to interrogatories, and admissions on file contained in defendants' answer, together with defendants' verified answer as an affidavit in support of their motions, clearly show that the individual plaintiff was not dismissed from her employment, and that she was not given a position of employment during the 1966-67 school year for the reasons set forth in paragraph VIII of defendants' Further Answer and not as a result of racial discrimination.

The purported claim of discrimination by the individual complainant, supported only by the mere allegations in her complaint, is without substance in the face of

defendants' piercing, uncontroverted affidavit, answers to interrogatories, and admissions in their answer, and defendants are entitled to a judgment thereon as a matter of law.

As to plaintiffs' claim that defendants assign teachers in the Weldon City School Administrative Unit upon a racially-discriminatory basis, however, the Court does not feel that summary judgment is appropriate at this juncture. Although the allegations in defendants' verified answer submitted as an affidavit assert that "the Weldon School Board follows the policy of employing the best qualified persons obtainable for each position to be filled regardless of race" (see paragraph IX of defendants' Further Answer), as does their answer to interrogatory number 2, and although no response has been made by plaintiffs to the motions and these supporting allegations, defendants' showing is not very forceful when viewed in the light of their answer to interrogatory number 1 indicating that only one Negro teacher was assigned to previously all-white schools and that only two Caucasian teachers were assigned to previously all-Negro schools during the 1966-67 school year. The Court is of the opinion that a genuine issue does exist regarding the alleged policy and practice of the Board in its employment of teachers and in making, or allowing to be made, teacher assignments to the various schools upon a racially-discriminatory basis.

Finally, defendants' Motion to Strike allegations from paragraph III of plaintiffs' complaint regarding the objectives of the North Carolina Teachers' Association on grounds of relevancy is allowed to the extent set forth in the Order herein, the Court deeming the indicated allegations self-serving, evidentiary assertions which are unnecessary, immaterial and irrelevant to plaintiffs' statement of their claim.

O R D E R

In accordance with the foregoing, it is therefore ORDERED that the defendants' Motion for Summary Judgment in its favor on the claim of the individual plaintiff, Verta M. Pridgen, that she was dismissed from her employment and that she was not given employment for the 1966-67 school year because of her race and color be, and the same is hereby allowed.

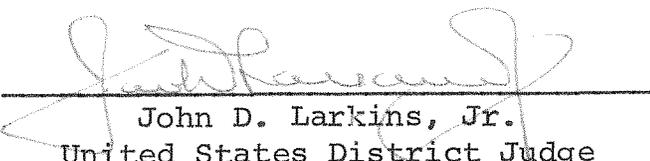
It is FURTHER ORDERED, that the defendants' Motion for Summary Judgment in its favor on the claim of the individual plaintiff and The North Carolina Teachers' Association, suing as a class, that the defendants employ and assign teachers and other school personnel in the Weldon City School Administrative Unit upon a racially-discriminatory basis be, and the same is hereby denied;

It is FURTHER ORDERED, that the following allegations be stricken from paragraph III of plaintiffs' Complaint:

"One of the objectives of the Association is to support the decisions of the United States Supreme Court on segregation in public education and to work for the assignment of students to classes and the employment and assignment of teachers and other professional personnel to professional duties within the public schools without regard to race or color. Plaintiff Association is the medium by which its members are enabled to express their views and to take action with respect to controversial issues relating to racial discrimination."

It is FURTHER ORDERED that the Clerk shall serve copies of this MEMORANDUM OPINION and ORDER upon all counsel of record.

Let this ORDER be entered forthwith.

  
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John D. Larkins, Jr.  
United States District Judge

TRENTON, NORTH CAROLINA

JUNE 13, 1967