

Exhibit B

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9 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

10 ROY and JOSIE FISHER, et al.,)
11)
12 Plaintiffs,)
13)
14 Plaintiff-Intervenor,)
15 vs.)
16 ANITA LOHR, et al.,)
17)
18 Defendants,)
19)
20 SIDNEY L. SUTTON, et al.,)
21)
22 Defendants-Intervenors,)
23)

No. CV 74-90 TUC DCB
**FISHER PLAINTIFFS’
OBJECTION TO AND REQUEST
FOR A REPORT AND
RECOMMENDATION BY THE
SPECIAL MASTER ON
DEFENDANT TUSD’S 03/24/14
REVISED RECRUITMENT AND
RETENTION PLAN**

Submitted to Special Master Willis
Hawley on 04/14/14

24 MARIA MENDOZA, et al.,)
25)
26 Plaintiffs,)
27)
28 UNITED STATES OF AMERICA)
Plaintiff-Intervenor,)
vs.)
TUCSON UNIFIED SCHOOL)
DISTRICT NO. ONE, et al.,)
Defendants.)

No. CV 74-204 TUC DCB

1 **1. The Fisher Plaintiffs's objection, request and joinder**

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3 COME NOW, Plaintiffs Roy and Josie Fisher (hereinafter the Fisher Plaintiffs), by and
4 through counsel undersigned, Rubin Salter, Jr. to submit for review by the Special Master
5 (SM) Willis Hawley the following objection to and request for a report and
6 recommendation regarding Defendant Tucson Unified School District's (hereinafter the
7 District or TUSD) 03/24/14 revised recruitment and retention plan, made under the
8 authority conferred by Sections X (E) (1)¹ and (6)² of the USP and Section V of the
9 01/06/12 order appointing the SM.³ Further, as noted below, the Fisher Plaintiffs join the
10 Mendoza Plaintiffs in entirety of their 04/08/14 renewal of their objection to the District's
11 03/24/14 revised recruitment and retention plan.

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13 **2. The Fisher Plaintiffs join the Mendoza Plaintiffs in their 04/08/14 renewal of their**
14 **objection to the District's 03/24/14 revised recruitment and retention plan**

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16 The Fisher Plaintiffs herewith join the Mendoza Plaintiffs in the *entirety* of their 04/08/14
17 objection to and request for a report and recommendation on the District's 03/24/14
18 revised recruitment and retention plan, especially where the Mendoza Plaintiffs: (1)

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20 _____
21 ¹ Section X (E) (1) of the USP governs the roles of the SM and plaintiffs and provides
22 that "[t]he Special Master shall have all oversight authority delegated to the Special
23 Master in the January 6, 2012 Order Appointing Special Master, as well as any other
24 oversight authority later similarly delegated" (at page 58 of order filed 02/20/13).

25 ² Section X (E) (6) of the USP recognizes the SM's "authority to bring to the Court's
26 attention at any time instances of alleged noncompliance with [the USP]. All allegations
27 of noncompliance shall be made in writing and submitted to the Court with copies
28 provided to all Parties" (at page 60 of order filed 02/20/13).

³ Section V of the order appointing the SM delimits the scope of the SM's authority and
provides that "[t]he Special Master shall have the authority to make findings of fact,
which shall be included in the Initial Report, Annual Reports, Final Unitary Status Report
and in such other cases as the Special Master deems appropriate" (at page 9 of order filed
01/06/12 emphasis added).

1 “object to the District's reliance on a flawed and incomplete Labor Market Analysis as
2 the basis for the Recruitment Plan” (see Ramirez 04/08/14 email renewal of Mendoza
3 objection and request); (2) “object to the composition of the 2013-14
4 Recruitment/Retention Advisory Committee” (idem);⁴ and (3) “[object to] the District’s
5 dilatory and unacceptably slow action with regard to the Recruitment Plan and the
6 Mendoza Plaintiffs’ inquiries” (idem).

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8 **3. The Fisher Plaintiffs object to the revised recruitment and retention plan’s**
9 **reliance on the results of the District’s flawed LMA**

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11 On 12/14/12, the Fisher Plaintiffs argued that “[t]he USP should not reference a labor
12 market study commissioned and interpreted by the Defendant (at page 8 of Fisher
13 12/14/12 objection). In the same filing, the Fisher Plaintiffs objected: “to the labor
14 market study conducted by the District and referenced in the USP [...]. The data the
15 District bases its analysis on was provided by Dr. Mary Dunn Baker, a Florida-based
16 consultant working with the ERS Group. The website for the ERS Group shows that the
17 Group Labor and Employment practice specializes in defending institutional clients from
18 charges of discrimination, in justifying reductions in force and generally minimizing
19 employer accountability in the courts.⁵ In this context, it would be difficult to
20 characterize the District’s selection of Dr. Baker and the ERS Group as a disinterested
21 inquiry into the realities of the labor market. The data which the District references
22 cannot reasonably be claimed to be an analysis and the District’s interpretation of that
23 data glosses over a number of highly relevant normative questions that remain at issue in
24 this case. In the context of the District’s recent noncompliance with its desegregation
25 obligations, it is inappropriate to allow it to define the relevant labor market for its

26
27 ⁴ The Fisher Plaintiffs object, additionally, to the high percentage of District employees
28 serving on the committee.

⁵ See selected cases at http://www.ersgroup.com/practiceAreas_L&E_overview.asp

1 incumbent workforce. While a legitimate labor market analysis certainly does need to be
2 conducted, it should be conducted independently and be based on the best practices of
3 similarly situated districts and should not be conducted by a consultant that specializes in
4 defending institutional employers. In light of the foregoing facts, Fisher Plaintiffs
5 respectfully move this Court to set aside the District's flawed labor market analysis and
6 instruct the Special Master to commission an impartial labor market analysis to serve as
7 the basis for goals for the recruitment, hiring, retention, promotion and recall of
8 administrators and certificated staff (at pages 8-9 of Fisher 12/14/12 objection)." Again,
9 in their response to the Special Master's 12/22/12 recommendations for the USP, the
10 Fisher Plaintiffs repeated their objection to use of the flawed labor market analysis,
11 explaining that retaining: "reference to the flawed labor market analysis will enable the
12 District to unilaterally and fatally circumscribe the scope of the relevant labor market and
13 thereby circumvent one of the primary requirements of the remedial desegregation plan:
14 eliminating the vestiges of past discrimination in the area of faculty and staff. While the
15 Special Master concedes that the District's analysis may be inadequate, he mistakenly
16 concludes that the review process contemplated in the USP will be adequate to correct
17 such an inadequacy (idem) [...]. While the District has not submitted a formal analysis, it
18 did provide the plaintiff classes with the unanalyzed (and disputed) labor market data it
19 commissioned in a 10/18/12 email circulated between counsel. The District prematurely
20 references the disputed data in its 11/09/12 memorandum filed with this Court to argue
21 that: '[t]he Labor Market Study shows that by virtually every possible measure, the
22 District has more Latino administrators and certificated staff than would be expected
23 based on a variety of possible labor markets. The District has the expected number of
24 African American administrators and certificated staff based on the Arizona labor market.
25 This data, combined with the lack of a finding of a constitutional violation and the limited
26 obligations imposed by the Stipulation, does not support a remedy of financial support for
27 Latino and African American employees to secure additional degrees or certifications' (at
28 pages 12-13 of TUSD memorandum filed 11/09/12)" (at pages 2-3 of Fisher response

1 entered into record on 02/06/13). In its ruling of the same date, the District Court found
2 that because: “the adequacy of the [labor market] study cannot be fully determined until it
3 is known how the District uses it, i.e., what conclusions the District draws from it [,] [t]he
4 Court adopts the Special Master’s recommendation to retain the provision allowing the
5 District to assess the effectiveness of its outreach and recruitment plan based on the
6 challenged Labor Market Study and to delete the deadline for review and objections to be
7 made to the study. The Court agrees with the Special Master that review and objections
8 regarding the adequacy of the Labor Market Study are better made at the time the District
9 proposes to rely on it” (at page 25 of 02/06/13 order). Not surprisingly, the 09/30/13
10 LMA conclude that: “African-Americans and Hispanics were employed by TUSD as
11 Teachers and Administrators in numbers consistent with or statistically significantly
12 and/or substantially larger than the rates at which they are represented in public schools
13 across Arizona. The data fail to produce any evidence whatsoever that these demographic
14 groups are underrepresented in the District's workforce” (at pages 17-18 of Baker
15 09/30/13 labor market analysis). As shown above, the District now cites the flawed LMA
16 to conclude that there is no underrepresentation of class members in the relevant
17 categories of its incumbent workforce and that its recruitment and retention plan need
18 not, therefore, focus on the racial and ethnic diversity of its administrators and
19 certificated staff. On the basis of these facts and arguments, the Fisher Plaintiffs object to
20 the District’s reliance on the flawed LMA and restate their original argument, that “a
21 legitimate labor market analysis certainly does need to be conducted, [but] it should be
22 conducted independently and [should] be based on the best practices of similarly situated
23 districts and should not be conducted by a consultant that specializes in defending
24 institutional employers” (at pages 2-3 of Fisher response entered into record on 02/06/13
25 emphasis added). In light of the foregoing facts, Fisher Plaintiffs respectfully ask the
26 Special Master to recommend that the District Court set aside the District’s flawed labor
27 market analysis and order whatever proceedings it deems necessary to commission an
28

1 impartial labor market analysis to serve as the basis for goals for the recruitment, hiring,
2 retention, promotion and recall of administrators and certificated staff.

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4 **4. The intent of the Unitary Status Plan requires the development of a recruitment**
5 **and retention plan**

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7 The Fisher Plaintiffs strenuously object to the District's suggestion that it is not required
8 to develop a retention plan under the USP. In the executive summary to its 03/24/14
9 revised recruitment and retention plan, the District states that "[w]hile a retention plan is
10 not required by the USP, TUSD's strategy is to combine recruitment and retention efforts
11 to attract and to keep a highly-qualified and diverse workforce" (at page 3 of 03/24/14
12 revised recruitment and retention plan). The provisions of the District's plan are clearly
13 premised on an understanding that efforts to recruit administrators and certificated staff
14 will be made in vain, unless matched by parallel, equivalent and simultaneous efforts are
15 made in the areas of hiring, retention, promotion and recall. The District, therefore, far
16 from disputing the need for retention efforts, merely attempts to shirk future
17 accountability for the success of those retention efforts. Thus, the District's absurd
18 assertion (in its retention plan) that it is not required to develop a retention plan
19 demonstrates its failure to adhere to both the letter and spirit of the USP. The very title of
20 the District's "Outreach, Recruitment, and Retention Plan" highlights the duplicity of the
21 District's assertion. For these reasons, the Fisher Plaintiffs ask the Special Master to
22 include in his report to the Court, a recommendation that the Court sanction the District
23 for its attempt to shirk future accountability for the efficacy of its retention efforts.

1 **5. The Unitary Status Plan (USP) explicitly mandates the enhancement of “racial**
2 **and ethnic diversity” not merely “diversity”**

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4 The Fisher Plaintiffs object to the plan’s described focus of its recruitment efforts as
5 “enhancing the diversity of the workforce, and in recruiting hard-to-fill positions as
6 identified each year” (at page 3 of 03/24/14 revised recruitment and retention plan).
7 Sections IV (A) (1) and (C) (3) of the Unitary Status Plan (USP) address the District’s
8 responsibilities regarding its administrators and certificated staff and clearly provide that
9 “[t]he District shall seek to enhance the racial and ethnic diversity of its administrators
10 and certificated staff through its recruitment, hiring, assignment, promotion, pay,
11 demotion, and dismissal practices and procedures” [in part by] develop[ing] and
12 implement[ing] a plan to recruit qualified African American and Latino candidates for
13 open administrator and certificated staff positions” (at pages 16 and 18 of 02/20/13 order
14 adopting the USP emphasis added). Thus, the USP explicitly contemplates and calls for
15 the enhancement of *racial and ethnic diversity*, as opposed to diversity broadly construed.
16 This distinction is not trivial, especially in the context of the Defendant’s reliance on the
17 results of a flawed 09/30/13 LMA to claim that there is no underrepresentation of African
18 American or Mexican American certificated staff or administrators in its workforce.⁶ For
19 these reasons, the Fisher Plaintiffs object to the District’s substitution of its required
20 focus on “racial and ethnic diversity” with a more general focus on “diversity.”
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24 ⁶ At page 6 of its 03/24/14 revised plan, the District “notes that the LMA findings
25 revealed no negative disparities in hiring between TUSD’s workforce and the local and
26 state labor markets” and then states that, “[i]n light of the findings of the LMA, TUSD’s
27 outreach and recruitment strategies will focus on enhancing the diversity of TUSD’s
28 workforce. These strategies will focus on Hard-to-Fill Content Areas, Critical Needs
Subject Areas, and staffing Hard-to-Fill sites” (at page 6 of 03/24/14 revised recruitment
and retention plan).

1 **6. Conclusion**

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In conclusion, the Fisher Plaintiffs ask that the SM, in his report to the Court, recommend whatever proceedings he deems necessary to grant the requested relief.

Respectfully submitted this 14th day of April, 2014

s/ Rubin Salter, Jr. _____

RUBIN SALTER, JR., ASBN 01710

Counsel for Fisher Plaintiffs

1 **7. Certificate of service**

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3 I declare and certify that foregoing document was transmitted via electronic mail to the
4 following recipients on this 14th day of April, 2014:

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11
12 Respectfully submitted this 14th day of April, 2014

13 s/ Rubin Salter, Jr. _____

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