IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NATHANIEL ROBERTS, et al.	)	CASE NO.: 4:02 CV 2329
	)	
Plaintiffs	)	JUDGE JAMES DOWD
	)	
vs.	)	
	)	
COUNTY OF MAHONING, et al.	)	**MOTION FOR CLASS CERTIFICATION**
	)	
Defendants	)	
	)	

NOW COME Plaintiffs, by and through counsel, and hereby move for a determination that this action be maintained as a class action pursuant to Rule 23(a) and 23(b)(2) F.R.C.P. and that Attorneys Robert Armbruster and Thomas Kelley be appointed to represent the class pursuant to Rule 23(g) F.R.C.P.

The proposed class is defined as all persons in the care or custody of the Mahoning County Sheriff and incarcerated on or after November 14, 2003 at the Mahoning County Justice Center, 110 Fifth Avenue, Youngstown, Ohio or the Mahoning County Minimum Security Jail, 360 W. Commerce Street, Youngstown, Ohio.

The grounds for this motion are set forth in the attached memorandum in support.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF CLASS

MEMORANDUM IN SUPPORT

Mahoning County maintains two jail facilities to incarcerate persons charged with or convicted of crimes. The facilities are the Mahoning County Justice Center (Justice Center) and the Mahoning County Minimum Security Jail (MSJ). The Mahoning County Sheriff's Department-Corrections Division operates and staffs both facilities.[1]

The Justice Center is a relatively new facility opened in the 1990's. It is a high rise facility with inmate housing located on floors two through six. The jail, as originally built, consisted mostly of singled celled housing units with a few dormitory style units. Recently, the Sheriff has started double-celling inmates in many of the housing units. The double-celling is accomplished by placing mattresses (sometimes contained in a plastic box) on the floor of certain

[1] See Exhibit A, the Sheriff's Standard Operating Policies supplied to Plaintiffs pursuant to this Courts Order of December 17, 2003.

cells. The jail is a full service facility housing both pre-trial and sentence servicing inmates and inmates charged with all types of offenses from misdemeanors through all grades of felonies. The jail regularly houses over 600 individuals.[2]

The Minimum Security Jail is also a relatively new facility. It is divided into four dormitory style pods, each pod consisting of twenty-four (24) beds. A and B pods are located in one wing at the opposite side of the building from C and D pods.[3] The jail regularly houses more inmates then ninety-six (96). The additional inmates sleep on mattresses on the floor of the housing units.

The operation and staffing of both facilities is directed by the Sheriff through the Corrections Division. All individuals assigned to the Corrections Division are under the Chief of Corrections and are governed by the same set of policies and procedures. The booking of inmates is done at the Justice Center and at that point, the determination is made at which location the inmate will be housed. Frequently, inmates housed in the Justice Center are transferred to the MSJ and sometimes inmates housed in the MSJ are transferred to the Justice Center. All inmate meals are prepared at the Justice Center and some of those meals are taken to the MSJ for the inmates housed there. Medical staff and facilities are at the Justice Center, but medical personnel regularly leave the Justice Center to attend to inmates at the MSJ. In essence, there is one operation that governs both facilities.

At the time the lawsuit was filed, all of the named Plaintiffs were in the custody of the Defendant Sheriff. All were either pre-trial detainees or sentence serving inmates. Plaintiffs

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[2] See Exhibit B-Inmate Population and Staffing Report supplied pursuant to this Court's order of December 17 2003.

[3] See Exhibit C, which is selected pages from the report of Gerry D. Billy, a joint expert used by the parties in the first litigation who conducted a staffing analysis of both facilities in 1998.

Roberts, Mancini, Baird, Whitacker, and Hamad were incarcerated in the Justice Center, and Plaintiffs Gray, Scott and Barnes were incarcerated at the MSJ, although all three had previously been incarcerated at the Justice Center. (See Affidavits attached).

The lawsuit challenges specific conditions of confinement and seeks declaratory and injunctive relief to remedy the alleged unconstitutional conditions. The conditions challenged include a severe lack of staffing. Lack of staffing when coupled with crowding and the inability to adequately classify and separate inmates according to their propensity for violence and other pertinent characteristics, creates conditions which result in dangerous and unsafe facilities. Plaintiffs claim that there are not enough guards to supervise the inmates and as a result, there are many fights and attacks involving both inmates and guards. Plaintiffs allege further that as a result of a lack of staff, fire safety is compromised as the facilities could not be evacuated in a timely fashion. A lack of sufficient staff also results in a restriction or denial of visitation, recreation opportunities and other programs and in the Justice Center, results in the locking down of inmates in their cells for inordinate periods of time.

Plaintiffs contend that due to a lack of funding or attention that both jail facilities are poorly maintained and are in a state of disrepair. Also, as a result of a lack of funding, the program which had been implemented to provide legal access to the inmates has been terminated and that the inmates are without adequate legal access.

Rule 23(a) F.R.C.P. sets forth the requirements for class certification. A class action can only be maintained if the following criteria are met:

1) The class is so numerous that joinder of all members is impracticable.

2) There are questions of law and fact common to the class.

3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and

4) The representative parties will fairly and adequately protect the interest of the class.

In addition to the criteria outline in Rule 23(a), a class action can only be maintained if one of the additional three requisites contained in Rule 23(b) are satisfied. In the instant case, Plaintiffs are proceeding under Rule 23(b)(2) which states:

> The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Initial determination of class certification is solely a procedural issue which must not be based on the merits of the case; the Plaintiffs burden is limited to demonstrating that the proposed class satisfies the requirements of Rule 23. Eisen v. Carlisle & Jacquelin, Realty Corp 499 F. 2d 1197, 1200 (6th Cir. 1974), 7B Wright, Miller & Kane, Federal Practices and Procedures: Civil at §1785 p. 125 (1986). In ruling on the motion, the Court must take the substantive allegations contained in the complaint as true. Blackie v. Barrach, 524 F. 2d 891, 901 N. 17 (9th Cir. 1975).

A trial court has broad discretion in determining whether a particular case shall proceed as a class action. In Re: American Medical Systems Inc. 75 F. 3d 1069, 1079 (6th Cir. 1996), Cross v. National Trust Life Insurance Co. 533 F. 2d 1026 (6th Cir. 1977). However, the requirements of the rule should be liberally construed in the context of civil rights suits. Neely v. United States 546 F. 2d 1059, 1071 (3rd Cir. 1976); King v. Kansas City Southern Inds., Inc., 519

F. 2d 20, 25 (7th Cir. 1975); Jones v. Diamond, 519 F. 2d 1090, 1099 (5th Cir. 1975). Weathers v. Peter's Realty Corp. 499 F. 2d 1197, 1200 (6th Cir. 1974).

1. 23(a)(1) Numerousity

In the instant case, Plaintiffs seek to have the class defined as all inmates in the care or custody of the Defendant Sheriff at the time the complaint was filed and thereafter and who were incarcerated at the Justice Center or the MSJ.

Plaintiffs have not yet engaged in formal discovery and therefore do not yet have all of the inmate population and housing statistics that they would include herein. However, the Defendant Sheriff, pursuant to this Court's order, presented some population information to Plaintiffs counsel. If numerousity is contested or the Court requires further information to reach its decision, Plaintiffs request leave to supplement this motion after receiving responses to discovery.

Based on the information provided (Exhibit B) it is readily apparent that the Sheriff houses between 600 and 820 inmates on a daily basis at his two corrections facilities. Indeed, from September 1, 2003 through December 31, 2003, the Sheriff never housed less than 697 inmates on any given day.

The jail, by its very nature, is a short term holding facility. Individuals pour in and out of the jail on a frequent basis. As a short term holding facility, its population is very fluid. Plaintiffs estimate that thousands of people pass through the facilities each year.

There is no strict numerical test to determine whether the numerousity requirement has been met. The inquiry focuses upon whether joinder is impracticable given the nature of the class. In Re: American Medical Systems Inc., *supra* at 1079 (6th Cir. 1996), Senter v. General

Motors Corp. 532 F. 2d 511 at 523, 24 (6th Cir. 1976), Allen v. Lies, Jr. 204 F.R.D. 401, 406 (S.D. 2001), Retting v. Kent City School District, 94 F.R.D. 12, 14 (N.D. Ohio 1980).

The numbers in the instant case are more than sufficient to meet the numerousity requirement. Classes have been certified when they have numbered 35 or less. Cross v. National Trust Life Ins. Co., *supra 1030*, Cudnick v. Krieger 392 F. Supp. 305, 310 (N.D. Ohio 1974), Ohio American Patrolman's League v. Deuch, 503 F. 2d 294, 298 (6th Cir. 1974), Phillips v. Joint Legislative Committee 637 F. 2d 1014, 1022 (5th Cir. 1981), Allen v. Leis, Jr., *supra at 406*, Hiatt v. County of Adams 155 F.R.D. 605 at 608 (S.D. 1994). The foregoing is especially true where, as here, the Plaintiff is seeking injunctive relief on behalf of future class members. Jones v. Diamond, *supra at 1100*, Holland v. Steele 92 F.R.D. 58, 63 (N.D. GA 1981). Horn v. Associated Wholesale Grocers 555 F. 2d 270 (10th Cir. 1977).

In the instant case, a joinder of all members of the class is extremely impracticable. The class will be constantly changing. It will not remain static for any length of time. Pretrial detainees unable to make bond will be tried in a speedy fashion. If found innocent, they will be released. If found guilty of felonies, they will be transferred to a state penal institution. The same can be said for those sentence service inmates in the custody of the Sheriff. Although their sentence may vary, there will always be a constant turnover. The population will always be in a state of flux. The jail facilities, by their very nature, are short term holding facilities.

The transient and fluctuating nature of the jail population makes joinder impracticable. Pabon v. McIntosh 546 F. Supp. 1328 (E.D. PA 1982). Indeed, other courts have found that the inevitable turnover of a jail population makes joinder impracticable and a class action a necessity. Hiatt v. Adams County *supra at* 605, 608, Cudnick v. Krieger, *supra at 310*, Glover v. Johnson 85 F.R.D. 1, 4 (E.D. Mich. 1977) Holland v. Steele, *supra 63*.

The constant turnover of a jail population makes a case such as this only maintainable as a class action. Due to the nature of short-term detention, the claims of any one individual would, in all likelihood, become moot. Plaintiffs will be released from confinement prior to having their claims heard by the Court. Jones v. Wittenburg 323 F. Supp. 93 at 99 (N.D. Ohio 1971), Hiatt v. County of Adams, *supra*, Inmates of San Diego County Jail v. Duffy 528 F. 2d 954, 956 (9th Cir. 1975). The individual Plaintiffs and the other inmates who follow them into the jail will suffer repeated deprivations. The claim is one that is distinctly capable of repetition yet one evading judicial review. Gerstein v. Pugh 420 U.S. 103 (1975). Therefore, a class action is the only vehicle whereby the legality of the operation of the two jail facilities can be reviewed. Jones v. Wittenburg, *supra*.

2. 23(a)(2) Common Questions of Law and Fact:

The commonalty requirement of Rule 23(a)(2) requires that members of the class must have allegedly been affected by a general policy of the Defendant and the general policy is the focus of the litigation. In Re: American Medical Systems Inc., *supra at 1080*, Allen v. Leis, Jr., *supra at 406*, Sweet v. General Tire & Rubber Co. 74 F.R.D. 333, 335 (N.D. Ohio 1976). Dean v. Coughlin 107 F.R.D. 311, 333 (S.D. N.Y. 1985); Lawson v. Wainwright 108 F.R.D. 450, 455 (S.D. Fla 1986). The commonalty requirement is satisfied when the actions challenged are directed at the class generally and those actions affect all class members in a similar manner. Jordan v. Global Natural Resources 102 F.R.D. 45 (S.D. Ohio 1984). It is not necessary that all questions of law and fact be identical. Senter v. General Motors Corp., *supra*, Sweet v. General Tire & Rubber Co., *supra*, Holland v. Steele, *supra*.

The "commonalty" requirement of Rule 23(a)(2) does not require that all questions of law and fact raised by the dispute be shared in common among the members of the class; it

simply requires that a single issue is shared in common among all class members and that issue is the focus of the litigation. Allen v. Leis, Jr., *supra at 406*, Hiatt v. County of Adams, *supra* at 609; 7A Wright, Miller & Kane, Federal Practice and procedure: Civil § 1763; Weiss v. York Hospital, 745 F. 2d 786, 809, cert. denied 470 U.S. 1060 (1984); Tonya v. Chicago Board of Education, 551 F. Supp. 1107 (D. Ill, 1982).

"Questions of law or fact common to the class" exist where, Plaintiffs allege that Defendants have engaged in a common course of conduct towards them, have instituted a pattern or practice, or have effectuated some policy or procedure that affects the entire class. See Senter v. General Motors Corporation, *supra*; Sweet v. General Tire & Rubber Company, *supra*; Wright & Miller, § 1763. Courts have accorded the "commonalty" requirement of Rule 23(a) an expansive interpretation and have found common questions in a broad range of contexts. See id. Further, the fact that each class member's claim may in other aspects be unique does not affect the "commonalty" of the class action, so long as all the members of the class have allegedly been similarly affected by the policies of the Defendants, and so long as those policies remain the primary focus of the litigation. Allen v. Leis, Jr., *supra at 406*, citing Sterling v. Velsical Chemical Corp. 855 F. 2d 1188, 1197 (6th Cir. 1988).

The commonalty requirement is met in this case. The Plaintiffs challenge policies and practices which are directed at all persons in the care or custody of the Sheriff. The claim of lack of adequate staffing effects all inmates in essentially the same way. There are not enough guards to supervise the inmates creating a dangerous and unsafe condition. It is a situation which is compounded by overcrowding and the inability to classify and properly segregate inmates of the same classification. The lack of staffing also results in the inability to provide visitation,

recreation and other programs to inmates. Inmates in the Justice Center are locked in their cells for long periods of time, simply because there are not enough guards to supervise them.

The lack of funds resulting in the inability to maintain the facilities and to provide a legal access program, also impacts all inmates. It is not limited to one inmate or one group of inmates. It impacts the entire operation.

In the absence of a class action, inmates who wished to challenge these living conditions at the jail would be put to the task of offering nearly identical evidence on the existing jail conditions, policies and practices. The lawsuits would be very repetitious. Class certification in this case would serve the important interest of judicial economy and convenience.

Common questions of law are also the main focus of this litigation. The legal issue, succinctly stated, is whether the acts or omissions of the Defendants violate provisions of the Federal Constitution and the laws of Ohio. The issues again, are essentially the same for all inmates housed at the jail. The fact that there are some differences between the rights of pre-trial detainees and sentenced inmates is of no consequence at the class certification stage. Holland v. Steele, *supra at 63*.

The nature of the relief sought also demonstrates the commonalty involved in a suit such as this. As stated in Jones v. Wittenburg, *supra at 99*. A similar jail suit,

> It is apparent also that this action can only be maintained realistically as a class action, the class consisting of those persons who at any given point of time are confined in the Lucas County Jail...It is also very difficult to demonstrate that any one individual has suffered a specific wrong which can be righted without regard to the totality of the wrongs in the system.

3. Typicality of Claim or Defense

F.R.C.P. 23(a)(3) requires that the claims or defenses of the representative parties are typical of the claims or defenses of the class. Fradkin v. Ernst 98 F.R.D. 478, 488 (N.D. Ohio 1983). Typicality is established where there is a sufficient nexus between the class representative's claim and the common questions of law and fact which unites the class. A sufficient nexus is established if the claims of the class and the class representative arise from the same policy and are based on the same legal theory. In Re: American Medical Systems Inc., *supra at 1082*, Allen v. Leis, Jr., *supra at 407*, Lawson v. Wainwright, *supra*. A Plaintiff's claim is typical of the class claim where the focus of the action for the Plaintiff will be on proving a policy or practice of the Defendant and not just on proving facts peculiar to Plaintiff. Sweet v. General Tire & Rubber Co., *supra at 335*, Myers v. Ace Hardware 95 F.R.D. 145, 151 (N.D. Ohio 1982). Moreover, the claims of a class representative are typical when each has been subjected to all or some of the general institution-wide deprivation alleged on behalf of the class. Slight factual differences among each class members' complaints do not mean the claims of the named Plaintiffs are not typical. Dean v. Coughlin, *supra*; Moncraview v. Dennis 89 F.R.D. 440 (W.D. Ark 1981).

In this case, the named Plaintiffs have suffered from the same conditions as all inmates and have suffered the same injury as all other inmates. (See affidavits attached as Exhibit D). All of the name Plaintiffs have been exposed to the under staffing and have been subjected to the dangerous and unsafe conditions created thereby. All named Plaintiffs have suffered from the dismal or restriction of visitation and recreation opportunities. The named Plaintiffs incarcerated in the Justice Center have been subjected to the lock downs, just the same as other inmates incarcerated therein.

Similarly, by virtue of being housed at the facilities, the named Plaintiffs have been subjected to the lack of maintenance and disrepair the same as all other inmates. The condition is system wide and is not limited to a particular inmate or group of inmates.

The same holds true for the denial of legal access claim. The program which has been provided to all inmates for years was recently terminated due to a lack of funds. All inmates, including the named Plaintiffs have been deprived of the program. Plaintiff Mancini has requested legal assistance and has been unable to receive the requested assistance. (See affidavit attached).

4. 23(a)(4) Adequate Representation:

Rule 23(a)(4) F.R.C.P. requires that the representative party will fairly and adequately protect the interest of the class. When determining adequacy of representation the Court should consider the experience and ability of counsel for Plaintiffs and whether there is any antagonism between the interest of Plaintiffs and other members of the class they seek to represent. Fradkin v. Ernst, *supra*, 490. The two criteria focused upon are as follows:

1) The representative must have a common interest with unnamed members of the class, and
2) It must appear that the representative will vigorously prosecute the interests of the class through qualified counsel.

Senter v. General Motors Corp., *supra 525*, Allen v. Leis, Jr., *supra at 407*, Bowens v. General Motors Corporation 542 F. Supp. 94 (N.D. Ohio 1981).

In the instant case both prongs of the test of adequate representation are met. As demonstrated previously, Plaintiffs do have a common interest with unnamed members of the class. Their claims are typical of the class. Their interest in the outcome of the litigation is co-extensive with all unnamed members of the class. Plaintiffs are seeking declaratory and

injunctive relief to remedy conditions from which all class members suffer. The relief sought will be beneficial to all members of the class. No antagonism or conflict exists between the interest of Plaintiffs and other members of the class. The named Plaintiffs do not have interests divergent from the rest of the class. The interest of each coincide.

The Plaintiffs and the named class are represented by qualified and competent counsel. The Plaintiffs' attorneys, Robert Armbruster and Thomas Kelley, have been involved in over twenty (20) cases concerning class action jail litigation. (See Affidavits attached as Exhibit E). As this Court is aware, there was a previous "Mahoning County" class action jail case which resulted in the closing of the old jail and resulted in the construction of the Justice Center. Attorneys Armbruster and Kelley were appointed by this Court to represent the Plaintiff class in that case. (Cummings, et al. v. Sheriff Nemeth, et al. 4:92 CV 1838).

5. 23(b)(2) Appropriateness of Injunctive and Declaratory Relief

The final requirement for class certification is contained in Rule 23(b) F.R.C.P. If the Court finds that Plaintiffs have met all of the subparts of Rule 23(A), it must inquire further to determine if one of the three criteria set forth in Rule 23(b) has been met.

In this case, Plaintiffs rely on Rule 23(b)(2). That rule requires (1) that the class as a whole is generally affected by an act or refusal to act or policy of the opposing party, and (2) the primary relief sought is in the nature of injunctive relief. Sweet v. General Motors Corp., *supra at 336*, Hiatt v. County of Adams, *supra at 610*, Fradkin v. Ernst, *supra at 490*, Moncraview v. Dennis 89 F.R.D. 440, 443 (W.D. Ark. 1981). "Moreover, Rule 23(b)(2) was intended primarily to facilitate civil rights class actions, where the class typically sought broad injunctive or declaratory relief against discriminatory practices. Penson v. Terminal Transport Co., Inc. 634 F. 22 989, 993 (5th Cir. 1981)." Holland v. Steele, *supra 64.*

There is no doubt that Plaintiffs meet the two-prong test set forth by Rule 23(b)(2) F.R.C.P. First, Plaintiffs have alleged that the policies and practices of Defendants and the condition existing at the jail affect the class as a whole. The Complaint alleges a continuous course of conduct of Defendants which impacts on all inmates. Secondly, the relief sought is declaratory and injunctive. The declaratory and injunctive relief sought would inure tot he benefit of the entire class. Indeed, the remedy sought, to be effective, must be system wide rather than individually oriented.

Conclusion

Plaintiffs respectfully request that this case be certified as a class action on behalf of all persons in the care and custody of the Mahoning County Sheriff and incarcerated at the Justice Center or MSJ and all persons who may be so confined in the future. The requirements of Rule 23(a)(b)(2) F.R.C.P. have been met.

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PROOF OF SERVICE

I hereby certify that I have this 30 day of January, 2004, forwarded a copy of the foregoing by way of regular U.S. Mail to: Thomas Michaels, Esq., Assistant Prosecuting Attorney, 21 West Boardman, Sixth Floor, Youngstown, Ohio 44503; Daniel T. Downey, Esq. and Mark Landes, Esq., Isaac, Brant, Ledman & Teetor, LLP, 250 East Broad Street, Columbus, Ohio 43215.

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