

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IMPRISONED CITIZENS UNION, ET AL. :

CIVIL ACTION

v.

MILTON SHAPP, ET AL.

:-

NOS. 70-3054

71-513

71-1006

70-2545

file
FILED MAY 4 1983

REPORT AND RECOMMENDATION

WILLIAM F. HALL, JR.
UNITED STATES MAGISTRATE

Imprisoned Citizens Union v. Shapp



PC-PA-005-008

Now before the court is the defendants' motion for the approval of a stipulation for dismissal of outstanding allegations of contempt and for dismissal of the plaintiff's motion for contempt. The stipulation for dismissal contains terms of a settlement between the parties which has been signed by counsel for the plaintiff-class and for the defendants. For the reasons that follow, I recommend that the motion be granted.

This action represents the consolidation of several individual civil rights actions brought by inmates in Pennsylvania correctional institutions and was brought pursuant to 42 U.S.C. §1982, 1983 and 1988 as well as the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Upon consolidation, a class was certified which consisted of all inmates then confined and all inmates to be confined in the future in the state correctional institutions at Dallas, Graterford, Huntingdon, Muncy, Pittsburgh and Rockview. On May 22, 1978 the action was terminated by a consent decree (Consent Decree). Since that time the plaintiffs have filed a motion for the issuance of an order to show cause why the defendants should not be held in contempt for violations of the Consent

TERMINED: 5-5-83

CLERK OF COURT

Decree. In addition to the motion for issuance of an order to show cause, the court has received numerous letters from inmates in these institutions complaining that the Consent Decree was being violated. In addition, many individual civil rights complaints have been brought by inmates in which the subject matter in each of their complaints is within the scope of the Consent Decree.

The negotiations which culminated in the proposed settlement began in July, 1980. In March 1981, however, I was ordered by the court to determine the following issues:

1. Whether violations of the Consent Decree are occurring; and
2. Whether any alleged violations are individual complaints or are either institution-wide or state-wide.

I was further directed to prepare a report and recommendation upon the conclusion of of whatever proceedings I deemed appropriate. (Order dated March 31, 1981 by Chief Judge, Joseph S. Lord, III). In complying with that mandate, I referred the inmates' letters of complaint to counsel for the Bureau of Corrections (Bureau) and held hearings in January, 1982 during which testimony was given by several inmates. In addition, accompanied by counsel for the Bureau, I visited Graterford, Dallas and Huntingdon where I talked to the institutions' officials and their inmates. During the process, I received detailed reports of the investigation made by the Bureau in the cases of the more serious complaints referred to them. Counsel for the Bureau and the institutions' officials were extremely cooperative and diligently investigated the complaints, and in some instances took corrective action even when a complaint did not clearly fall within the purview of the Consent Decree. Counsel for the plaintiff-class was advised of the complaints made, and received copies of the investigative reports.

In the main, the complaints of violations of the Consent Decree made by individual inmates involved disciplinary proceedings, cell searches, the adequacy of the

health care that they are provided, and the physical condition of the institutions. The complainants, for the most part, expressed dissatisfaction with the Inmate Complaint System (complaint system) presently maintained by the institutions. The results of my investigation tend to support the allegations of deficiencies in that system. Clearly, the prisoners appear to have no confidence in its fairness or efficacy. It should be noted here, however, that the Bureau's eighteen (18) month report for the period January 1980 through June 30, 1981 reveals a total number of complaints processed which would tax the most liberally estimated capacity of the institutions.¹ The inmates' dissatisfaction with the complaint system and the institutions' performance in administering it were, in my view, crucial, for the unanswered, or inadequately investigated and answered responses to the complaints, and, of course, adverse responses to the complaints, have undoubtedly led to the filing of civil rights actions in this and other federal courts, and have contributed to their already burgeoning caseloads. The testimony which I took in court and the complaint letters received from the inmates provide convincing evidence to support this conclusion.

In addressing the complaints stated in letters to the court claiming violations of the Consent Decree, the determination of whether those complaints were valid could only be made through an inquiry such as the one I have been directed to make, because there were no procedural steps available to the inmates which would permit a prompt determination of the validity of their complaints and the implementation of whatever remedies might be warranted. An obvious alternative to conducting such an inquiry, of course, would have been to conduct individual hearings to determine, first, whether the complaints fell within the purview of the Consent Decree, and then to determine whether

1. Commonwealth of Pennsylvania Bureau of Correction 18 Month Report, January 1, 1980-June 30, 1981 (published October 1981 by the Public Information Office Bureau of Correction), passim. A review of the figures in the Report indicating a decrease in the number of complaints processed through the complaint system may reveal that there is a direct correlation between the decrease in such complaints and the increase of inmates' civil rights filings in the federal district courts in Pennsylvania.

or not the complaints were valid. Neither approach offers promise of significantly decreasing the inmates' dissatisfaction with the handling of their complaints of violations of the Consent Decree, or their other complaints, because the inmates' complaints would be neither promptly nor efficiently addressed, thus denying them redress in the case of complaints which are valid, which is also unfair to the prison officials who must contend with dissatisfied, disgruntled inmates who see the Consent Decree as having little value because of difficulties in its enforcement.

As I have previously mentioned, however, during the inquiry which I have made the Bureau has conducted an investigation of complaints and demonstrated that it is able to adequately investigate complaints and provide administrative remedies in appropriate cases. Under the terms of the proposed settlement, a new complaint system will be established, which draws upon the experience which the Bureau has had in handling inmate complaints, and which addresses the deficiencies in the present complaint system which have been identified during the settlement negotiation process. The component of the proposed settlement which is concerned with the resolution of inmate complaints or grievances is the Consolidated Inmate Grievance Review System (Consolidated System, a copy of which is attached), which has as its stated purpose that of assuring that every inmate in a Bureau of Correction facility is aware that he has an avenue through which he may seek expeditious resolution of any problem which arises during the course of his confinement. The directive establishing the Consolidated System will apply to all state correctional institutions (and state regional correctional facilities and community service centers). Under the Consolidated System all inmates will have the opportunity to have their grievances addressed at three (3) levels, an Initial Review, which will include fact finding and may include preliminary review of the fact finder's decision, Appeal from Initial Review, at the level of Superintendent or Regional Director, and Final Appeal to the

Central Office. The directive establishing the Consolidated System provides procedures for reviewing inmate grievances not already covered by other Bureau of Correction Administrative Directives and policies, and serves to integrate its procedures with those established by other directives. It revises the Inmate Complaint System, however, it does not supersede or repeal any part of any other directive or policy statement.

The Consolidated System provides that grievances and appeals must be in writing in the format of forms provided by the correctional institution and that they shall be presented individually. In preparing a grievance or appeal, the aggrieved inmate may seek the assistance of a staff member or fellow inmate of the same population status. The inmate may state any claims he wishes to make regarding violations of Bureau directives, regulations, the Consent Decree, or other law. Claims of the violation of the Consent Decree must be raised pursuant to the procedure established by the Consolidated System before they may be addressed by any court. Moreover, notice shall be given to the Office of Chief Counsel of any grievance or appeal which alleges violations of the Consent Decree, and Chief Counsel shall in turn notify counsel for the plaintiff-class. With the exception of grievances raising issues already governed by other specified procedures, the Initial Review of an inmate grievance will consist of an investigation by an Inmate Grievance Coordinator, including an interview with the inmate and others having personal knowledge of the subject matter. Within ten (10) working days of the receipt of a grievance or appeal, the Inmate Grievance Coordinator must prepare a written response to the grievance including a brief rationale of his conclusions and any action taken or recommended. The Initial Review decision is final unless an appeal is received.

An inmate may appeal an unsatisfactory decision to the Superintendent, in writing, within five (5) days. The Superintendent must notify the inmate and other interested persons of his decision within ten (10) days after receiving the appeal. His

decision may consist of approval, disapproval, modification, reversal, remand or reassignment for further fact finding, and must include a brief statement of the reasons for the decision. Chief Counsel will be given notice of the disposition of any appeal of a matter in which a violation of the Consent Decree was alleged, and Chief Counsel must notify counsel for the plaintiff-class of that disposition.

An inmate or other affected person may obtain Final Review by appealing the disposition of an appeal from the Initial Review decision to the Central Office Review Committee (CORA) within seven (7) days of receiving the decision. The CORC will consist of the Commissioner, Deputy Commissioner and Chief Counsel or their designees. Final Review is not permitted until Initial Review and Appeal from Initial Review procedures have been complied with, except for good cause shown. The CORC will issue its decision within twenty-one (21) days after receipt of an appropriate appeal. If there is no consensus, the decision of the Commissioner of Correction will control. Chief Counsel will notify counsel for the plaintiff-class of the disposition of the Final Review of any matter in which a violation of the Consent Decree was alleged.

The directive establishing the Consolidated System provides that all proceedings pursuant to the directive are in the nature of settlement negotiations and will, therefore, be inadmissible before any court or other tribunal in support of any claim made against the Commonwealth of Pennsylvania or any employee. It further provides that no resolution of a grievance offered as a result of the Consolidated System procedure shall be admissible before any court or other tribunal as an admission of violation of the Consent Decree or any state or federal law.

As the defendants state in their brief in support of their Motion, the Consolidated System "permits an inmate to seek redress of a policy or practice as soon as he is affected by it without having to wait to gather enough evidence to show that it

crosses the threshold of being at minimum an institution-wide occurrence." (pp. 13-14). The Consolidated System will also correct specific flaws in the present system of which the inmates have complained. They have complained that the present system denies prompt and adequate attention to their grievances. They have also complained that the present system fails consistently in correcting problem situations brought to its attention. In addition, they have complained that under the complaint system the initial inmate grievance is seldom the grievance to which the complaint system responds. They have complained that few inmates, if any, are made aware of the procedures which must be used in the filing of a proper inmate complaint.

By remedying the complained of deficiencies in the present complaint system, the Consolidated System will encourage and facilitate the administrative resolution by the individual correctional institutions and by the Bureau of many of the inmate complaints which now give rise to civil rights and other civil actions brought by inmates. By providing an administrative grievance review process which is perceived as fair and effective, the Consolidated System will divert from the court system those inmate complaints which can and should be handled administratively, and will thus maximize the ability of the court to address those complaints which truly require resolution through the judicial process.

While the Consolidated System will address all manner of inmate complaints, it should be noted that it will serve to distinguish those complaints containing allegations which meet all of the criteria for complaints which may be brought pursuant to the Consent Decree from those which do not, and, with regard to proper Consent Decree complaints, requires exhaustion of its procedures as a prerequisite to the bringing of a court action. It would seem, therefore, as an added value of this system that those complaints which are ultimately presented to the court will consist of clearly articulated claims raising specific issues properly belonging before the court as alleged violations of the Consent Decree, which, of course, is a decided improvement over matters as they now stand.

The terms of the proposed settlement also provide for major revisions in the procedures which are followed by the correctional institutions in placing an inmate in disciplinary custody or administrative custody. The problems with the disciplinary hearing and administrative hearing process have been described by inmates testifying before me and at my interviews with inmates during visits to the institutions; those problems have been attested to in the complaint letters received from inmates, and specifically enumerated in the plaintiffs' motion for contempt. And, this court should have no difficulty in taking notice of the civil rights actions filed by inmates which raise many issues regarding disciplinary and administrative custody proceedings. The United States Supreme Court has recognized as laudatory the promulgation of the regulations providing for the procedures which are presently followed in segregated custody hearings. In a recent case determining whether compliance with Pennsylvania's regulations governing segregated custody hearings was constitutionally required, the court noted that, "the creation of procedural guidelines to channel the decision-making of prison officials is, in the view of many experts in the field, a salutary development." Hewitt v. Helms, No. 81-638, slip op. at 10 (February 22, 1983). The proposed settlement makes several improvements in the already comprehensive procedural framework for disciplinary and administrative custody hearings; notable and praiseworthy among those improvements is the establishment of positions for trained hearing examiners to replace the present Hearing Committees, as more fully described below.

The proposed settlement provides that the disciplinary proceedings shall be before a Hearing Committee which is composed of three (3) members: a Major or Captain of the Guard; a Casework Supervisor; and a School or Vocational Supervisor. The Hearing Committee panels are to be selected from a pool of nine (9) Hearing Committee members designated at each affected correctional institution, except for Graterford which shall designate twelve (12) members. The Hearing Committee members will receive in-service

in relevant areas of law by means of a curriculum developed jointly by the defendants and counsel for the plaintiff-class. The position of Chairman of the Hearing Committee is abolished and in its place there will be a Hearing Committee Coordinator who will be a Casework Supervisor whose duties will include determining the relevance and admissibility of witnesses, and the extent of direct or cross examination of witnesses; presenting and explaining the charges to the charged inmate; announcing the decision of the Hearing Committee and the rationale for it; and all other functions previously performed by the Chairman of the Hearing Committee. The proposed settlement terms provide that no member of a Hearing Committee panel may hold a position in which he directly supervises another panel member. Decisions are to be based on the concurrence of two (2) or three (3) Committee members whose votes shall all have equal weight. The records of the Committees' voting will not be disclosed to the inmate, except the vote count; however, it will be forwarded to the Program Review Committee when such review is requested. The Hearing Committee panel cannot include any staff member who wrote or approved the misconduct charge(s) or conducted the investigation in the case before it.

The Hearing Committee will be replaced by an individual "hearing examiner", within a year of the court's order approving the settlement, who will assume the duties and responsibilities of the Hearing Committee and its Coordinator, and who will be employed and supervised directly by the Central Office of the Bureau. The hearing examiners will be classified and hired pursuant to Commonwealth of Pennsylvania civil service procedures, and will receive training in the relevant areas of law by means of a curriculum developed jointly by the defendants and counsel for the plaintiff-class.

The present misconduct procedures are modified as follows. The ranking officer on duty, who is designated to be the shift, or watch commander, must review all misconduct reports, which reports are to be delivered to the inmate by someone other than the charging staff member wherever practicable. The inmate is to receive Witness Request

inmate Version Forms along with the misconduct reports. The Witness Request must be filed by 9:00 A.M. of the next working day to the block officer who shall deliver it to the hearing coordinator. The Inmates Version Form should be brought to the hearing by the inmate. The inmate shall be permitted to have the staff member who witnessed the alleged misconduct present at the hearing, or, if no staff was an actual witness, he shall be permitted to have the charging staff member present. Any inmate assisting the charged inmate shall have a reasonable opportunity to address the Hearing Committee or examiner.

The inmate will have the right to call three (3) witnesses in his behalf, and he shall be requested to make a statement regarding the relevancy and importance of the requested witnesses on the witness form. Relevant witnesses shall be produced unless the correctional institution can establish to the satisfaction of the Hearing Committee or examiner that the witness is unavailable, or that a countervailing security concern exists, in which case the institution must present evidence that the requested witness has a history of recent erratic, hostile or disruptive conduct on a number of occasions such that his presence would unduly disrupt the progress of the hearing. In the event that a requested witness has no such history but exhibits a current state of mind which would lead to erratic, hostile or disruptive conduct at the hearing, the Hearing Committee or examiner will preliminarily examine him before the hearing to determine the suitability of presenting him in person at the hearing, and if the decision is against presenting the witness, may either postpone the hearing until the witness can be safely produced, take a written statement from him, or hear his testimony out of the presence of the charged inmate. Witnesses who exhibit erratic, hostile or disruptive behaviour may be removed from the hearing. The inmate shall be permitted a reasonable opportunity to question any witness who has testified against him, except in the case of testimony heard in camera. When information supporting the misconduct charges is supplied by an informant whose identity should remain confidential, the information provided by the informant, but not his identity, shall be

disclosed to the charged inmate during the hearing, unless the institution has reason to believe that disclosure of the information would reveal the informant's identity. Informant reliability must be established to the Hearing Committee or examiner by a preponderance of the evidence, and the inmate shall be present during the presentation of reliability evidence, unless the institution concludes that disclosure would jeopardize the institution's security, in which event, the evidence shall be presented in camera. No witnesses are required where the inmate pleads guilty or waives his right to a hearing. All testimony must be under oath. Determinations of credibility are at the discretion of the Hearing Committee or examiner, who shall make written findings of fact referring to the testimony of each witness.

If the inmate is acquitted, all records of the misconduct shall be expunged from his institutional record. If he is convicted he may appeal to the Program Review Committee on any of three (3) bases: insufficiency of the facts to support the verdict; disproportionality between the punishment and the offense; nonconformity of the procedures employed with the directive or the Consent Decree. The Program Review Committee may uphold, remand or uphold with modification the decision of the Hearing Committee or examiner, but may not increase the punishment imposed. The Program Review Committee's decision must be rendered within five (5) working days of receipt of an appeal.

The inmate may appeal the decision of the Program Review Committee to the Superintendent upon any of the same three (3) bases, and the Superintendent may make any disposition permitted to the Program Review Committee. His decision must be forwarded to the inmate within three (3) working days of his receipt of the appeal. A final appeal, on the bases of insufficiency of the evidence to support the verdict or nonconformity of the procedures employed with the directive or the Consent Decree, may be made to the

attorney assigned as counsel to the Bureau in the Central Office.

The proposed settlement also revises the procedures to be followed where an inmate is to be placed in administrative custody. It provides, first, that an inmate who has completed his disciplinary sentence shall be released and cannot then be continued in administrative custody unless the institution presents evidence to the Program Review Committee that there is a valid security reason for continuing him in administrative custody. When an inmate is transferred to administrative custody from the general population, and the basis for his transfer is not an outstanding misconduct charge, a self-committal or confinement under investigative status, he shall be provided with a hearing before the Program Review Committee, at which he has the right to be present, within six (6) days of his transfer. At that hearing the institution must present evidence to establish that there is a valid security reason to confine the inmate in administrative custody. A valid security reason exists when an inmate is a danger to others in the institution who cannot be protected by alternate measures, a danger to himself, the instigator of a disturbance, or likely to attempt escape. Commitment to administrative custody may only be for a specified period, after which the inmate is entitled to an additional hearing before he may be confined beyond the original period. In addition, the Program Review Committee must submit to the Superintendent a status report detailing the reasons why continued administrative custody is necessary. If the Superintendent determines that those reasons are valid, the Program Review Committee will so notify the inmate. If he does not, he shall cause the Program Review Committee to schedule a continuation hearing at which the segregated inmate and the institution may present evidence. The inmate or the Superintendent may appeal to the Deputy Commissioner the decision of the Program Review Committee with regard to the placement or denial of placement of an inmate in administrative custody, and the Deputy Commissioner must rule on the appeal within two

(2) working days of receipt of the appeal.

The complaints of inmates regarding the conduct of disciplinary and administrative procedures are substantially addressed by the revisions in those procedures provided for by the proposed settlement. Those complaints have included allegations that inmates have not been allowed to question witnesses presented in support of the charges against them, and that the charged inmates and their inmate assistants are sequestered during the testimony of witnesses supporting the misconduct charges, and are not given summaries of the testimony of those witnesses. They have also complained that they are not provided with a detailed summary of the Hearing Committee's decision or the rationale for the decision. They have complained that the Hearing Committee often refuses to call necessary witnesses and that the charging staff member is seldom present to read the charges against the inmate(s). They have complained that although inmate assistants are allowed to confer with the charged inmate during the hearing, the assistant is precluded from directly addressing the hearing panel which, in rendering its decision, rarely considers the inability of the charged inmate to adequately represent himself before the panel. The revisions in those procedures are also responsive to the inmates complaints that the defendants have transferred inmates from disciplinary custody to equivalent isolation in administrative custody for an indefinite period.

The proposed settlement also provides for changes in medical care for the inmates. The civil service class for corrections infirmary supervisors is closed, and any civil service positions which become vacant are being filled by registered nurses. Within one (1) year, every corrections infirmary supervisor is to be trained and licensed as either a registered nurse or emergency medical technician; within two (2) years there will be positions established in each institution to have registered nurses on duty twenty-four (24) hours a day. These changes are responsive to the inmates' complaints that immediate

medical attention is not available in emergency situations, and is not available to all inmates with injuries or illness who require such emergency attention.

By the terms of the proposed settlement, changes also will be made in the law libraries. Inmates in the Restricted Housing Units of their institutions will have access to specified statutes and they may request copies of cases which shall be provided at no cost, which they may keep for up to one (1) month subject to demand, and limits in the number of copies.

In addition, the proposed settlement establishes guidelines for the conducting of cell searches. In random cell searches, the selection of the cell will take place at a location removed from the block where the search is to be performed, and shall be randomly made and performed by a staff member unassociated with the administration of any block or blocks where a search is to be conducted. These searches may not take place later than one (1) hour after the institution has been locked in for the evening.

The occupant of the cell selected shall be notified before the search by the block officer, and he must be given the option of remaining during the search. He will be asked to sign a record to show that he was present during the search, or to show that he desired to be absent. Material taken during the search will be noted on a property receipt, a copy of which will be supplied to the inmate. Confiscated items must be kept in a separately secured area until a determination of their disposition has been made.

Investigative cell searches must be approved by the ranking officer on duty unless there are exigent circumstances. If a search is to be made without permitting the inmate to be present, it must be determined that his presence would pose an immediate threat to security, that emergency conditions exist, or that his presence would impair an ongoing investigation of criminal activity or of the violation of institutional regulations. The implementation of the new procedures which the proposed settlement would establish for the conducting of cell searches will eliminate the basis for the inmates' complaints that

their cells are searched routinely without their presence despite the lack of conditions justifying such in absentia searches.

The proposed settlement contains provisions governing the administrative action to be taken when contraband is discovered. It provides that the Class I Misconduct of possession of contraband will be modified in its definition of contraband, and it provides the new definition of contraband. It also provides that the possession of items not authorized for retention or receipt by inmates, but not one of the items specified in the definition of contraband, will be dealt with as a Class 2 Misconduct, for which the only sanction will be confiscation.

The proposed settlement further provides that it shall not operate as an admission on the part of the defendants regarding the truth of any of the allegations made in the plaintiffs' motion for contempt, and that the plaintiffs agree that any failure by the defendants to comply with it prior to its approval shall not in and of itself create a cause of action for any party. Nor will the proposed settlement create a private cause of action for any individual against any defendant.

However, the plaintiffs reserve the right to contest in this court at any time by any appropriate legal proceeding any institution-wide or system-wide pattern of failure or refusal by the defendants or their agents to follow the provisions of the proposed settlement. The settlement is not to form the basis for contempt proceedings for any failure or refusal which is less than an institution-wide or system-wide pattern. The settlement provides that the defendants may only be liable to any individual for damages for failure to comply with it if the alleged failure constitutes a violation of state or federal law or if the court imposes such damages as part of a contempt proceeding pursuant to the settlement.

Notice to the plaintiff-class of the proposed settlement was accomplished by means of a method proposed by counsel for the defendants, agreed to by counsel for the

plaintiff-class, and which I approved. Notices were posted on inmate bulletin boards at all affected institutions from November 22 to December 3, 1982, explaining the status of the case, and informing the inmates that copies of documents detailing the terms of the settlement proposals had been placed in the institution library for their review. The notice instructed that if the inmates desired to object to the proposed settlement or any of its terms, they had to file a written statement detailing the grounds for their objections with the Clerk of Court by December 3, 1982, and send copies to counsel for the defendants and for the plaintiff-class. The notice further said that any person who did not file objections would be deemed to have waived all objections. Letters of objection were submitted, which I have reviewed.

In evaluating the terms of this proposed settlement, I have recognized that the law favors settlement agreements and that because such agreements are a means of amicably resolving disputes they should be upheld whenever possible. Miller v. Republic National Life Insurance Company, 559 F.2d 426, 428 (5th Cir. 1977), citing Pearson v. Ecological Science Corp., 522 F.2d 171 (5th Cir. 1975). In a class action the proposed settlement must satisfy the two-fold requirement that it be fair, adequate and reasonable, and that it be arrived at with no fraud or collusion. Id. While supervising the negotiations which led to this proposed settlement, I have been mindful of the prohibition against the court attempting to modify the terms of the proposed settlement agreement or participating in any bargaining for better terms. Plummer v. Chemical Bank, 668 F.2d 654, 655 n.1 (2d Cir. 1982) citing In Re General Motors Corporation Engine Interchange Litigation, 594 F.2d 1106, 1125 n.24 (7th Cir.) cert. denied, 444 U.S. 870, 100 S.Ct 146 (1979).

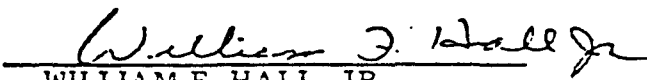
I have given comprehensive consideration to all of the factors which are generally relevant to the determination of whether a class action settlement should be approved, including, inter alia, the complexity, expense and likely duration of the litigation;

the reaction of the class to the settlement; the stage of the proceedings; and the risks of establishing liability, City of Detroit v. Grinnell Corporation, 495 F.2d 448, 462-463 (2d Cir. 1974). Moreover, I conclude that the class members have had notice in accordance with Fed.R.Civ.Pr. 23(e). That notice has more than satisfied the requirement that "the notice given must be 'reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " Grunin v. International House of Pancakes, 513 F.2d 114, 120 (8th Cir. 1975), quoting, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). That notice has also reasonably conveyed the required information and afforded those interested a reasonable time to respond. Id.

Bearing in mind that it is not the function of the court to substitute its judgment for that of the parties in reaching agreement on the proposed settlement, I have, nevertheless, felt compelled, because of the mandate of the order referring the matter to me, to go into some detail in analyzing its provisions, and to determine the extent to which it addresses the inmates' complaints. In the evaluation of the proposed settlement, I have considered the complaints of the inmates as stated in the Motion for Contempt and otherwise, their testimony during the hearings before me, and their comments made during my interviews with them at the institutions. I have also considered the arguments of the defendants in support of their motion and the plaintiffs' objections to the proposed settlement, as well as the defendants' specific responses in their motion to the objections filed by members of the plaintiff-class. I am convinced that the proposed settlement is the product of arms-length negotiations by counsel who have aggressively and zealously represented the interests of their clients. I conclude that it is responsive to the complaints of the inmates, and that it is fair, adequate and reasonable, and I endorse it without reservation. My recommendation is attached hereto.

RECOMMENDATION

AND NOW, this ~~4~~¹ day of May, 1983, it is recommended that the defendants' Motion for Approval of Stipulation for Dismissal of Outstanding Allegations of Contempt and for Dismissal of Motion for Contempt be granted, and that the compromise of the plaintiffs' action for contempt be approved and the action be dismissed pursuant to the terms included in the outstanding Stipulation, filed December 29, 1981, and modified by an amendment to the Stipulation, filed July 31, 1982. It is further recommended that pursuant to the terms of the compromise (settlement) that when the administrative procedure for inmate grievances is adopted, members of the plaintiff-class must exhaust that procedure before filing with the court any allegations of violations of the Consent Decree and/or any allegations of contempt.


WILLIAM F. HALL, JR.
UNITED STATES MAGISTRATE